



*Jeff Grim*

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 350**

125th General Assembly  
(As Re-referred to S. Agriculture)

**Reps. Gibbs, Wagner, Setzer, Seitz, Husted, Williams, Hollister, Young, C. Evans, Webster, Hagan, Martin, Aslanides, McGregor, Collier, Allen, Raussen, Faber, Schaffer, Seaver, Widener, Latta, Core, Willamowski, Book, Buehrer, Calvert, Carmichael, Cates, Clancy, Daniels, Distel, Domenick, D. Evans, Flowers, Gilb, Harwood, Hoops, Hughes, Niehaus, T. Patton, Peterson, Raga, Reidelbach, Reinhard, Schlichter, Schneider, Sferra, G. Smith, J. Stewart, Taylor, Trakas, Walcher, White, Wilson, Wolpert**

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### **BILL SUMMARY**

- Precludes any manufacturer or seller of a qualified product (generally, food or drink) and any trade association from being liable for injury, death, or loss to person or property for damages, from being subject to an action for declaratory judgment, injunctive relief, or declaratory relief, or from being responsible for restitution, damages, or other relief arising out of, resulting from, or related to cumulative consumption, weight gain, obesity, or any health condition that is related to cumulative consumption, weight gain, or obesity.
- Permits a party that prevails on a motion to dismiss an action described above to recover reasonable attorney's fees and costs that the party incurred in connection with the motion to dismiss.
- Specifies certain exceptions to the immunity from liability pertaining to misbranding, willful violation of federal or state law, or breach of contract or express warranty.
- Provides that in a tort action, generally, an owner, lessee, renter, or operator of premises that are open to the public for direct access to growing agricultural produce is not imputed to extend any assurance to a person that the premises are safe from naturally occurring hazards merely by the act of giving permission to the person to enter the premises or by receiving consideration for the produce picked or to assume

responsibility or liability for injury, death, or loss to person or property allegedly resulting from the natural condition of the terrain of the premises or from the condition of the terrain resulting from cultivation of soil.

- Provides that an owner, lessee, or occupant of premises does not owe a duty to a user of a recreational trail to keep the premises safe for entry or use by a user of a recreational trail and does not assume, has no responsibility for, does not incur liability for, and is not liable for any injury to person or property caused by any act of a user of a recreational trail.
- Modifies the definitions of "premises" and "recreational user" for the purposes of the existing exceptions from liability to a recreational user of an owner, lessee, or occupant of premises to include privately owned lands, ways, and waters leased to a private person, firm, or organization.
- Expands the definition of "conduct" with regards to frivolous conduct actions to include the filing of a pleading, motion, or other paper in a civil action.
- Expands the definition of "frivolous conduct" with regards to frivolous conduct actions to include conduct that is for another improper purpose, conduct that cannot be supported by a good faith argument for the establishment of new law, conduct that consists of allegations or other factual contentions that have no evidentiary support, or conduct that consists of denials or factual contentions that are not warranted by the evidence.
- Modifies the procedure for making an award based on frivolous conduct.

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## **CONTENT AND OPERATION**

### **Immunity in actions related to cumulative consumption, weight gain, or obesity**

The bill generally precludes any manufacturer or seller of a qualified product and any trade association from being liable for injury, death, or loss to person or property for damages, from being subject to an action for declaratory judgment, injunctive relief, or declaratory relief, or from being responsible for restitution, damages, or other relief arising out of, resulting from, or related to cumulative consumption, weight gain, obesity, or any health condition that is

related to cumulative consumption, weight gain, or obesity (sec. 2305.36(B)). For the purposes of this grant of immunity, the bill defines the following terms:

(1) "Manufacturer" means a person engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild a product or a component of a product (by reference to sec. 2307.71, not in the bill).

(2) "Seller" means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling the product.

(3) "Person engaged in the business" means a person who manufactures, markets, distributes, advertises, or sells a qualified product in the regular course of the person's trade or business.

(4) "Qualified product" means articles used for food or drink for a human being or other animal, chewing gum, and articles used for components of such articles or gum.

(5) "Trade association" means any association or business organization that is not operated for profit and in which two or more members of the trade association are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.

(6) "Cumulative consumption" means, with respect to a health condition, any health condition, including, but not limited to, increased cholesterol, heart disease, or high blood pressure, that is caused by successive consumption of a qualified product. (Sec. 2305.36(A).)

The bill permits a party that prevails on a motion to dismiss an action described above to recover reasonable attorney's fees and costs that the party incurred in connection with the motion to dismiss (sec. 2305.36(C)).

The bill provides that the immunity from liability described above does not apply to any of the following:

(1) The misbranding of the qualified product involved;

(2) Any willful violation of state or federal law that applies to the qualified product involved;

(3) Any breach of express contract or breach of express warranty in connection with the purchase of the qualified product involved (sec. 2305.36(D)).

### **Civil actions regarding picking agricultural produce**

The bill provides that, in a tort action, in the absence of willful or wanton misconduct or intentionally tortious conduct, an owner, lessee, renter, or operator of premises that are open to the public for direct access to growing agricultural produce is not imputed to do either of the following:

(1) Extend any assurance to a person that the premises are safe from naturally occurring hazards merely by the act of giving permission to the person to enter the premises or by receiving consideration for the produce picked; or

(2) Assume responsibility or liability for injury, death, or loss to person or property allegedly resulting from the natural condition of the terrain of the premises or from the condition of the terrain resulting from cultivation of soil (sec. 901.52(B)).

For this purpose, the bill defines "tort action" as a civil action for damages for injury, death, or loss to person or property, including a product liability claim, but not including an action for damages for a breach of contract or another agreement between persons (sec. 901.52(A), by reference to sec. 2305.35, not in the bill).

### **Immunity from liability for owner, lessee, or occupant of premises with regard to user of recreational trail**

The bill provides that an owner, lessee, or occupant of premises does not owe any duty to a user of a recreational trail to keep the premises safe for entry or use by a user of a recreational trail. An owner, lessee, or occupant of premises does not assume, has no responsibility for, does not incur liability for, and is not liable for any injury to person or property caused by any act of a user of a recreational trail. The bill states that these provisions do not apply if an intentional tort is involved. (Sec. 1519.07(B) and (C).)

For the purposes of these provisions, the bill defines the following terms:

(1) "Intentional tort" means an injury to person or property that the tortfeasor intentionally caused, to which the tortfeasor intentionally contributed, or that the tortfeasor knew or believed was substantially certain to result from the tortfeasor's conduct.

(2) "Premises" means a parcel of land together with any waters, buildings, or structures on it that is privately owned and that is directly adjacent to a recreational trail.

(3) "Recreational trail" means a public trail that is used for hiking, bicycling, horseback riding, ski touring, canoeing, or other nonmotorized forms of recreational travel and that interconnects state parks, forests, wildlife areas, nature preserves, scenic rivers, or other places of scenic or historic interest.

(4) "User of a recreational trail" means a person who, in the course of using a recreational trail, enters on premises without first obtaining express permission to be there from the owner, lessee, or occupant of the premises. (Sec. 1519.07(A).)

The bill also modifies the definitions in current law of "premises" and "recreational user" that apply to the existing exceptions from liability of an owner, lessee, or occupant of premises to a recreational user. Under the bill, the definition of "premises" is expanded to include all *privately owned* lands, ways, and waters leased to a private person, firm, or organization, including any buildings and structures on them (sec. 1533.18(A)). The definition of "recreational user" also is expanded to include a person to whom permission has been granted, without the payment of a fee or consideration to the owner, lessee, or occupant of premises, other than a fee or consideration paid to the state or any agency of the state, *or a lease payment paid to the owner of privately owned lands*, to enter upon premises to hunt, fish, trap, camp, hike, swim, operate a snowmobile or all-purpose vehicle, or engage in other recreational pursuits (sec. 1533.18(B)).

### **Frivolous conduct**

The bill expands the existing definition of "conduct" for purposes of the law providing for the recovery of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with a civil action by a party to a civil action who is adversely affected by frivolous conduct to include the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes (sec. 2323.51(A)(1)(a)).

The bill also expands the definition of "frivolous conduct" that applies to that law to additionally include conduct that satisfies any of the following:

(1) The conduct obviously serves merely to harass or maliciously injure another party to the civil action or appeal (current law) *or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation* (added by the bill).

(2) It is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law (current law) *or cannot be supported by a good faith argument for the establishment of new law* (added by the bill).



(3) *The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery* (added by the bill).

(4) *The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief* (added by the bill). (Sec. 2323.51(A)(2)(a).)

Under current law, generally at any time prior to the commencement of the trial in a civil action or within 21 days after the entry of judgment in a civil action or at any time prior to the hearing in an appeal against a government entity or employee that is filed by an inmate or within 21 days after the entry of judgment in an appeal of that nature, the court may award court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal to any party to the civil action or appeal who was adversely affected by frivolous conduct. The award may be made against a party, the party's counsel of record, or both. The bill modifies this provision by instead providing that generally, at any time not more than 30 days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct against a party, the party's counsel of record, or both. (Sec. 2323.51(B)(1) and (4).)

Finally, the bill also allows the court on its own initiative to award court costs, reasonable attorney's fees, and other reasonable expenses because of frivolous conduct (sec. 2323.51(B)(2)).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-09-03	p. 1260
Reported, H. Civil & Commercial Law	03-10-04	p. 1674
Passed House (89-7)	03-10-04	pp. 1686-1689
Re-referred to S. Agriculture	03-18-04	pp. 1650-1651

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