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Bill Analysis
Legislative Service Commission

S.B. 161

125th General Assembly
(As Introduced)

Sens. Mumper, Stivers, Nein, Wachtmann, Schuring, Carey, Schuler, Goodman, Randy Gardner, Hottinger, Austria, Armbruster, Coughlin, Carnes, Robert Gardner, Harris

BILL SUMMARY

- Provides a qualified immunity from civil damages to a manufacturer or supplier of a food or a nonalcoholic beverage for a claim of weight gain, obesity, or a related health condition resulting from the consumption of the food or nonalcoholic beverage unless certain circumstances are proven by a claimant.

CONTENT AND OPERATION

The bill states that a manufacturer or supplier of a food or nonalcoholic beverage generally is not liable for compensatory, punitive, or exemplary damages, including compensatory damages that represent noneconomic loss, in a tort action brought by a plaintiff based on a claim of injury, death, or loss resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity that is the result of consumption of the food or nonalcoholic beverage. However, a manufacturer or supplier of a food or nonalcoholic beverage is liable for compensatory, punitive, or exemplary damages if the plaintiff in the tort action proves that, at the time of the sale of the food or nonalcoholic beverage consumed, the food or nonalcoholic beverage was not in compliance with applicable statutory and regulatory requirements, and the noncompliance was the proximate cause of the claim of injury, death, or loss resulting from a person's weight gain, obesity, or health condition related to weight gain or obesity, and the award of damages complies with the Product Liability Law. (Sec. 2305.36(B).)

The bill defines "tort action" as a civil action for damages for injury, death, or loss to person or property and states that it includes a product liability claim, but does not include a civil action for damages for a breach of contract or another agreement between the persons (sec. 2305.36(A)(4)). "Product liability claim" has the same meaning as in the Product Liability Law, that is, a claim that is asserted

in a civil action and that seeks to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product in question, that allegedly arose from any of the following: (1) the design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product, (2) any warning or instruction, or lack of warning or instruction, associated with that product, or (3) any failure of that product to conform to any relevant representation or warranty (sec. 2305.36(A)(1)).

Similarly, "manufacturer" and "supplier" have the same meanings as in that Law. "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. "Supplier" means either of the following: (1) a person that, in the course of a business conducted for the purpose, sells, distributes, leases, prepares, blends, packages, labels, or otherwise participates in the placing of a product in the stream of commerce, or (2) a person that, in the course of a business conducted for the purpose, installs, repairs, or maintains any aspect of a product that allegedly causes harm. However, "supplier" does not include any of the following: (1) a manufacturer, (2) a seller of real property, (3) a provider of professional services who, incidental to a professional transaction the essence of which is the furnishing of judgment, skill, or services, sells or uses a product, or (4) any person who acts only in a financial capacity with respect to the sale of a product, or who leases a product under a lease arrangement in which the selection, possession, maintenance, and operation of the product are controlled by a person other than the lessor. (Sec. 2305.36(A)(1).)

The bill defines "noneconomic loss" as nonpecuniary harm that results from an injury, death, or loss to person or property that is a subject of a tort action, including, but not limited to, pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, disfigurement, mental anguish, and any other intangible loss (sec. 2305.36(A)(2)). Under the bill, "plaintiff" includes the person for whom the plaintiff is legal representative (sec. 2305.36(A)(3)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-11-03	p. 1286

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