

By: Representative Bondurant

To: Judiciary A

HOUSE BILL NO. 764

1 AN ACT TO PROVIDE CIVIL IMMUNITY FOR FOOD MANUFACTURERS AND
2 SELLERS FOR ACTIONS FOR LIABILITY FOR WEIGHT GAIN OR OBESITY; AND
3 FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** (1) Subject to subsection (2) of this section, a
6 manufacturer, packer, distributor, carrier, holder, seller,
7 marketer, promoter or advertiser of a food or an association that
8 includes one or more manufacturers, packers, distributors,
9 carriers, holders, sellers, marketers, promoters or advertisers of
10 a food is not subject to civil liability for personal injury or
11 death arising out of weight gain, obesity or a health condition
12 associated with weight gain or obesity.

13 (2) Subsection (1) does not preclude civil liability for
14 personal injury or death based on either of the following:

15 (a) A material violation of an adulteration or
16 misbranding requirement prescribed by a statute or regulation of
17 this state or the United States that proximately caused the injury
18 or death.

19 (b) A knowing and willful material violation of federal
20 or state law applicable to the manufacturing, marketing,
21 distribution, advertising, labeling or sale of food that
22 proximately caused the injury or death.

23 (3) In an action for civil liability described in subsection
24 (2) of this section, the complaint shall state with particularity
25 all of the following:

26 (a) The statute, regulation or other law of this state
27 or the United States that was allegedly violated.

28 (b) The facts that are alleged to constitute a material
29 violation of the statute, regulation or law.

30 (c) The facts alleged to demonstrate that the violation
31 proximately caused actual injury to the plaintiff or individual on
32 whose behalf the plaintiff is bringing the action.

33 (d) If the plaintiff claims that subsection (2)(b) of
34 this section applies, facts sufficient to support a reasonable
35 inference that the conduct was committed with intent to deceive or
36 injure consumers or with the actual knowledge that the conduct was
37 injurious to consumers.

38 (4) In an action for civil liability described in subsection
39 (2) of this section, all discovery and other proceedings shall be
40 stayed while a motion to dismiss is pending unless the court finds
41 on motion of a party that particularized discovery is necessary to
42 preserve evidence or to prevent undue prejudice to that party.
43 While discovery is stayed under this subsection, unless otherwise
44 ordered by the court upon a motion from the plaintiff, a party to
45 the action with actual notice of the allegations in the complaint
46 shall tender to the court in camera all documents, data
47 compilations, including electronically recorded or stored data,
48 and tangible objects that are in the custody or control of the party
49 and that are relevant to the allegations or that may lead
50 to the discovery of relevant facts.

51 (5) A political subdivision of this state shall not file,
52 prosecute or join, on its own behalf or on behalf of its citizens
53 or another class of persons, a civil action described in this
54 section for damages or other remedy against a person.

55 (6) As used in this section:

56 (a) "Food" means that term as defined in 21 USCS 321.

57 (b) "Knowing and willful" means, with respect to a
58 violation of federal or state law, that both of the following
59 apply to the conduct constituting the violation:

60 (i) The conduct was committed with the intent to
61 deceive or injure consumers or with actual knowledge that the
62 conduct was injurious to consumers.

63 (ii) The conduct was not required by a regulation,
64 order, rule or other pronouncement of, or a statute administered
65 by, a federal, state or local government agency.

66 (c) "Person" means an individual, partnership,
67 corporation, association or other legal entity.

68 (d) "Political subdivision" means a county, city,
69 township or village.

70 **SECTION 2.** This act shall take effect and be in force from
71 and after July 1, 2006, and shall apply to all causes of action
72 filed on or after that date.