

Act No. 367  
Public Acts of 2004  
Approved by the Governor  
October 7, 2004  
Filed with the Secretary of State  
October 7, 2004  
EFFECTIVE DATE: October 7, 2004

**STATE OF MICHIGAN  
92ND LEGISLATURE  
REGULAR SESSION OF 2004**

**Introduced by Reps. Palsrok, DeRossett, Bisbee, Drolet, Milosch, Wenke, Palmer, Vander Veen, Mortimer, Shulman, Hoogendyk, Ward, Tabor, Stahl, Sheen, Shackleton, Shaffer, Casperson, Amos, Pastor, Brandenburg, Garfield, Hune, Stakoe, Hummel, Pappageorge, Ehardt, Nofs, Farhat, Emmons, Middaugh, Woronchak, DeRoche, Bradstreet, Hager, Meyer, Kooiman, LaJoy, Walker, Moolenaar, Steil, Richardville, Acciavatti, Gaffney, Pumford, Julian, Newell, Caswell, Rocca, Ruth Johnson, Huizenga, Robertson, Nitz and Hart**

# **ENROLLED HOUSE BILL No. 5809**

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," (MCL 600.101 to 600.9947) by adding section 2974.

*The People of the State of Michigan enact:*

Sec. 2974. (1) Subject to subsection (2), a manufacturer, packer, distributor, carrier, holder, seller, marketer, promoter, or advertiser of a food or an association that includes 1 or more manufacturers, packers, distributors, carriers, holders, sellers, marketers, promoters, or advertisers of a food is not subject to civil liability for personal injury or death arising out of weight gain, obesity, or a health condition associated with weight gain or obesity.

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

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

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

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

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

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

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

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

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

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

(6) This section applies to all actions pending on and all actions filed after the effective date of the amendatory act that added this section, regardless of when the claim accrued.

(7) As used in this section:

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

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

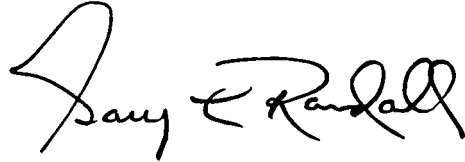
(i) The conduct was committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers.

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

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

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

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor