

CIVIL PRACTICE AND REMEDIES CODE  
TITLE 6. MISCELLANEOUS PROVISIONS  
CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

Sec. 138.001. DEFINITIONS. In this chapter:

(1) "Agricultural commodity" has the meaning assigned by Section 41.002, Agriculture Code.

(2) "Agricultural producer" means any producer of an agricultural commodity.

(3) "Food" has the definition assigned by Section 431.002, Health and Safety Code. "Food" does not include:

(A) a cosmetic, as defined by Section 321(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321 (i));

(B) a drug, as defined by Section 321(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)), whether prescription or over-the-counter; or

(C) a dietary supplement, as defined by Section 321(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(ff)).

(4) "Livestock" has the meaning assigned by Section 1.003, Agriculture Code.

(5) "Livestock producer" means any producer of livestock.

(6) "Manufacturer" means a person lawfully engaged, in the regular course of the person's trade or business, in manufacturing a food.

(7) "Seller" means a person lawfully engaged, in the regular course of the person's trade or business, in marketing, distributing, advertising, or selling a food.

(8) "State" includes each state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States and any political subdivision of any of those places.

(9) "Trade association" means any association or

business organization, whether or not incorporated under federal or state law, that is not operated for profit and two or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a food.

Added by Acts 2005, 79th Leg., Ch. 906 (H.B. 107), Sec. 1, eff. June 18, 2005.

Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Except as otherwise provided by this section, a manufacturer, seller, trade association, livestock producer, or agricultural producer is not liable under any law of this state for any claim arising out of weight gain or obesity, a health condition associated with weight gain or obesity, or any other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food, including:

(1) an action brought by a person other than the individual on whose weight gain, obesity, or health condition the action is based; and

(2) any derivative action brought by or on behalf of any individual or any representative, spouse, parent, child, or other relative of any individual.

(b) This section does not prohibit a person from bringing:

(1) an action in which:

(A) a manufacturer or seller of a food knowingly and wilfully violates a federal or state statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the food; and

(B) the violation is a proximate cause of injury related to an individual's weight gain or obesity or any health condition associated with an individual's weight gain or obesity; or

(2) an action brought:

(A) under Chapter 431, Health and Safety Code; or

(B) by the attorney general under Section 17.47, Business & Commerce Code.

(c) This section does not create a cause of action.

Added by Acts 2005, 79th Leg., Ch. 906 (H.B. 107), Sec. 1, eff. June

18, 2005.

Sec. 138.003. PLEADINGS. In an action described in Section 138.002(b)(1), the initiating petition must state with particularity:

(1) the federal and state statutes allegedly violated; and

(2) the facts that are alleged to have proximately caused the injury claimed.

Added by Acts 2005, 79th Leg., Ch. 906 (H.B. 107), Sec. 1, eff. June 18, 2005.

Sec. 138.004. STAY. (a) For an action described by Section 138.002(b), all discovery and other proceedings are stayed during the pendency of any motion to dismiss unless the court finds on motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the petition shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the applicable rules of civil procedure.

(c) A party aggrieved by the wilful failure of an opposing party to comply with this section may apply to the court for an order awarding appropriate sanctions.

Added by Acts 2005, 79th Leg., Ch. 906 (H.B. 107), Sec. 1, eff. June 18, 2005.