

Enrolled
House Bill 2591

Sponsored by Representative RICHARDSON

CHAPTER

AN ACT

Relating to causes of action related to food.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Food" has the meaning given that term in 21 U.S.C. 321, as in effect on the effective date of this 2005 Act.

(b) "Food-related condition" means:

(A) Weight gain;

(B) Obesity;

(C) A health condition associated with weight gain or obesity; or

(D) A generally recognized health condition alleged to be caused by, or alleged to likely result from, long-term consumption of food rather than a single instance of consumption of food.

(2) A person may not maintain an action for a claim of injury or death caused by a food-related condition against a person involved in the selling of food, as described in ORS 616.210.

(3) This section does not apply to a claim that includes as an element of the cause of action that a food-related condition was caused by:

(a) Adulterated food, as described in ORS 616.235;

(b) Reliance on information about food that has been misbranded, as described in ORS 616.250;

(c) Violation of a provision of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as in effect on the effective date of this 2005 Act, prohibiting adulterated or misbranded food; or

(d) Knowing and willful violation of any other state or federal law related to the manufacturing, marketing, distribution, advertisement, labeling or sale of food.

(4) A violation of law is knowing and willful for the purposes of subsection (3)(d) of this section if the person engaged in the conduct that constituted the violation with the intent to deceive or injure or with actual knowledge that the conduct was deceptive or injurious.

(5) This section does not create any claim, right of action or civil liability. This section does not affect any government agency's statutory authority to enforce laws relating to adulteration or misbranding of food.

SECTION 2. Section 1 of this 2005 Act does not apply to any cause of action for which a civil action was commenced as described by ORS 12.020 before the effective date of this 2005 Act.

SECTION 3. (1) As used in this section:

(a) "Food" has the meaning given that term in 21 U.S.C. 321, as in effect on the effective date of this 2005 Act.

(b) "Food-related condition" means:

(A) Weight gain;

(B) Obesity;

(C) A health condition associated with weight gain or obesity; or

(D) A generally recognized health condition alleged to be caused by, or alleged to likely result from, long-term consumption of food rather than a single instance of consumption of food.

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim described in section 1 (3) of this 2005 Act must plead with particularity each element of the cause of action, including a description of all of the following:

(a) The law that allegedly was violated.

(b) The facts that are alleged to constitute a violation of the law identified in paragraph (a) of this subsection.

(c) The facts that are alleged to demonstrate that the food-related condition was caused by the violation.

(d) If the violation was of a law described in section 1 (3)(d) of this 2005 Act, facts sufficient to support a reasonable inference that the violation was committed with the intent to deceive or injure or with actual knowledge that the conduct was deceptive or injurious.

(3) In any action for a claim of injury or death caused by a food-related condition, a court shall stay all discovery and other proceedings during the pendency of any motion to dismiss. The court, on motion and for good cause shown, shall order that specified discovery be conducted notwithstanding the stay imposed under this subsection.

SECTION 4. Section 3 of this 2005 Act applies only to complaints, cross-claims, counter-claims or third-party complaints filed on or after the effective date of this 2005 Act.

Passed by House June 10, 2005

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate July 14, 2005

.....
President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

.....
Secretary of State