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FISCAL IMPACT REPORT

SPONSOR Marquardt DATE TYPED 2/21/05 HB 553

SHORT TITLE Right to Eat Enchiladas Act SB _____

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 291

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General (AG)

Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 553 prevents frivolous lawsuits against manufacturers, packers, distributors, carriers, holders, sellers, marketers or advertisers of food that comply with applicable statutory and regulatory requirements. The aforementioned groups protected from frivolous lawsuits are as defined in the Federal Food, Drug and Cosmetic Act [21 U.S.C.A. 321(f)]. The bill provides protection from lawsuits carrying claims of injury arising from weight gain or obesity that is allegedly caused by long-term consumption of food.

Significant Issues

The bill makes clear that protection from civil liability is not provided where a claim of injury due to weight gain or obesity due to long-term consumption of food is based on adulteration or misbranding of food in violation of state or federal law. The bill includes criteria for a cause of action for a claim brought under the proposed Act. The provisions of the bill include applicabil-

ity to all covered causes of action pending on the effective date of the Act and all causes of action filed after the effective date, regardless of when the cause of action took place.

The title of the bill does not appear to accurately reflect its intent. According to the Attorney General's staff analysis, the bill is modeled after other recently enacted legislation in other states. Similar legislation in other states is entitled "[state name] Commonsense Consumption Act."

The bill does not include definitions for those protected from civil liability such as "manufacturers", distributors" or "association(s) of one or more of these entities." Likewise no definition exists for "civil liability," "long-term consumption" or "knowing and willful."

According to the Attorney General's staff analysis:

"The bill places immunity on causes of action that can currently be brought under the laws of this state while also defining exceptions to the immunity thus, maintaining certain rights and causes of action that can be enforced by law (substantive law). This is distinguished from a law that prescribes the procedures and methods of enforcing rights (procedural law). The applicability of the act applies to covered causes of action that are pending on the effective date of the act. Please note that pursuant to the New Mexico Constitution Article 4, Section 34, "[n]o act of the legislature shall affect the right or remedy of either party, or change the rules of evidence or procedure, in any pending case." It is the general rule that a case is not pending within the meaning of this constitutional provision before it is on the docket of some court or after a final judgment is filed. *State v. Druktenis*, 135 N.M. 223, 86 P.3d 1050 (2004)."

Finally, the bill covers civil liability for any claim of injury but does not cover wrongful death claims.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB 291.

TECHNICAL ISSUES

The Attorney General's staff analysis suggests that for consistency in Section 2, Line 21, after the word food the following words should be inserted, "or an association of one or more of these entities." If the intent of the legislature is to provide limited exceptions to civil liability, the legislature can further narrow the second exception where liability is not precluded, by inserting the word "material" before the word "violation" on Section 4, Line 17. If this change is made the word "material" would also have to be added before the word "violation" in Section 4, line 20 and also inserted before the word "violation" in Section 4, Line 21. Section 5 would also have to be amended slightly.

OTHER SUBSTANTIVE ISSUES

The Attorney General's staff analysis suggests states that the bill reflects a national trend to address the mounting concern about the growing obesity epidemic we are facing in the United States. As of October 15, 2004, bills granting immunity to those in the food distribution and marketing industry had been introduced in twenty-five (25) states and were enacted in thirteen (13) of those states. The thirteen states that have enacted legislation include Arizona, Colorado,

Georgia, Florida, Idaho, Illinois, Louisiana, Michigan, Missouri, South Dakota, Tennessee, Utah and Washington State. Many state-level proposals are modeled after federal legislation introduced in 2003, and are known as the Commonsense Consumption Act or the Personal Responsibility in Food Consumption Act.

There has been discussion about who is responsible for the health risks associated with the choices in food consumption, which has led to the potential for food industry-focused tort litigation. However, other questions arise about the advisability of limiting the access to potential remedies through the courts. Industry leaders argue that these types of bills will protect against frivolous lawsuits for obesity claims. Trial lawyers argue that the award of sanctions and attorney's fees currently are in place to prevent and punish those who file frivolous lawsuits.

ALTERNATIVES

The bill could expand the immunity to include claims of wrongful death as some states have done including Florida, South Dakota, Louisiana and Michigan.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Manufacturers, packers, distributors, carriers, holders, sellers, marketers or advertisers of food would continue without immunity from frivolous lawsuits based on claims of injury resulting from weight gain or obesity related to long-term consumption of food.

DXM/yr