

## 2005 ASSEMBLY BILL 338

April 15, 2005 – Introduced by Representatives VRAKAS, KRAWCZYK, KERKMAN, VUKMIR, MONTGOMERY, SUDER, JESKEWITZ, MOULTON, LEMAHIEU, AINSWORTH, VAN ROY, VOS, KESTELL, GARD, JENSEN, HINES, WOOD, STRACHOTA, MURSAU, HONADEL, F. LASEE, J. FITZGERALD, NASS, HAHN, BALLWEG, MUSSER, ALBERS, OTT, PETROWSKI, GUNDERSON, MCCORMICK, KREIBICH, HUNDERTMARK, NERISON, LOTHIAN, M. WILLIAMS, KLEEFISCH, GRONEMUS, PETTIS and ZIEGELBAUER, cosponsored by Senators REYNOLDS, HARSDORF, LEIBHAM, ROESSLER, OLSEN, KEDZIE, KANAVAS, BRESKE, LAZICH, S. FITZGERALD, DARLING and GROTHMAN, by request of Wisconsin Restaurant Association. Referred to Committee on Judiciary.

1     **AN ACT to amend** 814.04 (intro.); and **to create** 895.506 of the statutes; **relating**  
 2     **to:** civil liability exemption for claims resulting from weight gain and obesity.

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### *Analysis by the Legislative Reference Bureau*

This bill provides a civil liability exemption for food manufacturers, marketers, packers, advertisers, distributors, and sellers for claims resulting from a person's weight gain or obesity or health condition related to weight gain or obesity caused by the consumption of food. The bill also provides an exception to this immunity if the claim involves a knowing violation of a state or federal law concerning the food, a breach of contract or express warranty in connection with the purchase of the food, or a claim that the food is adulterated under federal law. Finally, a defendant on a summary judgment motion concerning one of these claims may, in addition to the attorney fees of not more than \$100 recoverable under current law, recover reasonable attorney fees and the costs of the investigation and litigation.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3     **SECTION 1.** 814.04 (intro.) of the statutes is amended to read:  
 4     **814.04 Items of costs.** (intro.) Except as provided in ss. 93.20, 100.30 (5m),  
 5     106.50 (6) (i) and (6m) (a), 115.80 (9), 281.36 (2) (b) 1., 767.33 (4) (d), 769.313, 814.025,

**ASSEMBLY BILL 338****SECTION 1**

1 814.245, 895.035 (4), 895.10 (3), 895.506, 895.75 (3), 895.77 (2), 895.79 (3), 895.80 (3),  
2 943.212 (2) (b), 943.245 (2) (d) and 943.51 (2) (b), when allowed costs shall be as  
3 follows:

4 **SECTION 2.** 895.506 of the statutes is created to read:

5 **895.506 Liability exemption; weight gain and obesity claims. (1)** Any  
6 person who manufactures, markets, packs, distributes, advertises, or sells food, as  
7 defined in 21 USC 321 (f), is immune from civil liability for a person's weight gain  
8 or obesity caused by the consumption of the food, or for a health condition related to  
9 weight gain or obesity.

10 **(2)** Subsection (1) does not apply to any of the following:

11 (a) A claim that a defendant under sub. (1) knowingly violated a federal or state  
12 law concerning the manufacturing, marketing, distribution, advertisement,  
13 labeling, or sale of the food, and the violation was the proximate cause of the weight  
14 gain, obesity, or related health condition.

15 (b) A claim for breach of contract or express warranty in connection with the  
16 purchase of the food.

17 (c) A claim regarding the sale of food that is adulterated under 21 USC 342.

18 **(3)** In addition to the costs allowed under s. 814.04, a defendant that prevails  
19 on a motion under s. 802.08 filed in an action under sub. (2) may recover reasonable  
20 attorney fees and the costs of the investigation and litigation.

21 **SECTION 3. Initial applicability.**

22 (1) This act first applies to actions pending on the effective date of this  
23 subsection.

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(END)