



**House
Legislative
Analysis
Section**

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PROHIBIT DISPARAGEMENT OF FOOD PRODUCTS

House Bill 5451

Sponsor: Rep. Michelle McManus

House Bill 5808

Sponsor: Rep. Carl F. Gnodtke

Committee: Agriculture & Forestry

Complete to 5-6-96

A SUMMARY OF HOUSE BILLS 5451 AND 5808 AS INTRODUCED 11-30-95 AND 4-25-96

House Bill 5451 would create a new act to specify that someone who made a false or misleading statement of fact relating to the food product of another person to a "third party" (i.e., someone other than the producer, distributor, or seller of the food product) would be liable for all damages proximately caused by the false or misleading statement of fact. Under the bill, a "false or misleading statement of fact" would mean a factual assertion that was not supported by scientific or other evidence.

House Bill 5808 would add a new section to the Revised Judicature Act (MCL 600.2963) to specify that someone who intentionally disparaged an agricultural product would be liable in an action for damages and other relief that a court considered appropriate. If someone was found to have disparaged an agricultural product, a court would have to award damages that were triple the actual damages suffered. Under the bill, "disparage an agricultural product" would mean to publicly disseminate information about a product in any manner that directly indicated it was not safe for human consumption, that--at the time of dissemination--the disseminator knew was inaccurate, and that was not based on reasonable and reliable scientific inquiry, facts, or data.

Any of the following could bring an action under the bill: a producer who suffered damages, an association representing producers, or the attorney general on behalf of the state or at a state department's request. The bill would establish a statute of limitations of two years after the last disparagement of a food product by the person who was liable.

If an association representing producers brought an action under the bill, it would have to notify each producer member that suffered or may have suffered compensable damages. A producer represented by an association that brought an action could appear through his or her own attorney or request exclusion from the action, and a court would have to exclude a producer who so requested. If an association brought an action, a judgment in that action--whether favorable or not--would have to include all of the association's producer members who received notice and did not request exclusion.

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A notice would have to at least state that 1) the court would exclude an association's producer member if, by a specific date, he or she requested exclusion, 2) a producer member who did not request exclusion could appear through his or her own attorney, and 3) a judgment in the action, whether or not favorable, would include all the association's producer members who received notice and did not request exclusion. If an association recovered money damages for its producer members in an action, the court would have to order it to submit a plan for the distribution of the money damage award to the association and its producer members who were included in the judgment, and could accept or modify it.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.