

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1245

Short Title: Civil Actions Regarding Food Products. (Public)

Sponsors: Representatives Hill, Culp, Daughtridge, and Gibson (Primary Sponsors).

Referred to: Judiciary I.

April 18, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PREVENT FRIVOLOUS LAWSUITS AGAINST MANUFACTURERS,
3 PACKERS, DISTRIBUTORS, CARRIERS, HOLDERS, SELLERS,
4 MARKETERS, OR ADVERTISERS OF FOOD PRODUCTS THAT COMPLY
5 WITH APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Chapter 99E of the General Statutes is amended by adding a
8 new Article to read:

9 "Article 4.

10 "Liability of Purveyors of Food Products.

11 "**§ 99E-30. Definitions.**

12 For purposes of this Article, the following definitions apply:

- 13 (1) 'Claim' means any claim by, or on behalf of, a natural person, as well
14 as any derivative or other claim arising from such claim asserted by or
15 on behalf of any other person.
- 16 (2) 'Food' has the meaning set forth in section 201(f) of the federal Food,
17 Drug, and Cosmetic Act, 21 U.S.C. § 321(f), as amended.
- 18 (3) 'Generally known condition caused by or likely to result from
19 long-term consumption' means a condition generally known to result
20 or to likely result from the cumulative effect of consumption, and not
21 from a single instance of consumption.
- 22 (4) 'Knowing and willful violation' means that the conduct constituting the
23 violation was committed with the intent to deceive or injure consumers
24 or with actual knowledge that such conduct was injurious to
25 consumers; and the conduct constituting the violation was not required
26 by any regulation, order, rule, or other pronouncement of, or any
27 statute administered by a State, federal, or local government agency.

1 (5) 'Law of this State' means any statute, regulation, rule, common law,
2 public policy, court or administrative decision or decree, or other any
3 State action having the effect of law.

4 (6) 'Other person' means any individual, corporation, company,
5 association, firm, partnership, society, joint-stock company, or any
6 other entity, including any governmental entity or private attorney
7 general.

8 **"§ 99E-35. Immunity for purveyors of food products.**

9 Subject to G.S. 99E-40, a manufacturer, packer, distributor, carrier, holder, seller,
10 marketer, or advertiser of a food, or an association of one or more such entities, shall
11 not be subject to civil liability arising under any law of this State for any claim arising
12 out of weight gain, obesity, a health condition associated with weight gain or obesity, or
13 other generally known condition caused by or likely to result from long-term
14 consumption of food.

15 **"§ 99E-40. Exemption.**

16 (a) The provisions of G.S. 99E-35 do not preclude civil liability when the claim
17 of weight gain, obesity, health condition associated with weight gain or obesity, or other
18 generally known condition caused by or likely to result from long-term consumption of
19 food satisfies either of the following:

20 (1) The claim includes as an element of the cause of action a material
21 violation of an adulteration or misbranding requirement prescribed by
22 State or federal statute, rule, or regulation, and the injury was
23 proximately caused by the violation.

24 (2) The claim is based on all of the following:

25 a. A material violation of a State or federal law that applies to the
26 manufacturing, marketing, distribution, advertising, labeling, or
27 sale of food other than a claim under subdivision (1) of this
28 subsection.

29 b. The violation of the State or federal law is knowing and willful.

30 c. The injury was proximately caused by the violation.

31 (b) Nothing in subsection (a) of this section shall be construed to create new, or
32 expand existing, private rights, if any, under the adulteration or misbranding State or
33 federal statutes, rules, or regulations, nor shall subsection (a) of this section be
34 construed to interfere with any agency's exclusive or primary jurisdiction to find or
35 declare violations of such statutes, rules, or regulations.

36 **"§ 99E-45. Pleading requirements.**

37 In any action subject to liability under subdivision (1) of subsection (a) of
38 G.S. 99E-40, the complaint shall state with particularity all the following:

39 (1) The State or federal statute, rule, or regulation that was allegedly
40 violated.

41 (2) The facts that constitute a material violation of the State or federal
42 statute, rule, or regulation.

43 (3) The facts that demonstrate that the violation proximately caused actual
44 injury to the plaintiff.

1 (b) In any action subject to liability under subdivision (2) of subsection (a) of
2 G.S. 99E-40, in addition to the pleading requirements under subsection (a) of this
3 section, the complaint shall state with particularity facts sufficient to support a
4 reasonable inference that the violation was with the intent to deceive or injure
5 consumers or with the actual knowledge that the violation was injurious to consumers.

6 (c) For purposes of applying this Article, the pleading requirements under this
7 section are substantive law and not in the nature of procedural requirements only.

8 **"§ 99E-50. Stay pending motion to dismiss.**

9 In any action subject to liability under subsection (a) of G.S. 99E-40, discovery and
10 other proceedings shall be stayed during the pendency of any motion to dismiss, unless
11 the court finds upon the motion of any party that particularized discovery is necessary to
12 preserve evidence or to prevent undue prejudice to that party. During the pendency of
13 any stay of discovery pursuant to this section, the responsibilities of the parties with
14 regard to the treatment of all documents; data compilations, including electronically
15 recorded or stored data; and tangible objects shall be governed by the applicable rules of
16 civil procedure."

17 **SECTION 2.** This act is effective when it becomes law and applies to all
18 causes of action that arise on or after that date.