

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1241

Introduced by

Representatives Koppelman, Iverson, Kasper, Thoreson

Senators Christmann, Trenbeath

1 A BILL for an Act to provide for limited liability for a food producer, processor, manufacturer,
2 packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser for a claim
3 of injury resulting from weight gain, obesity, or any health condition related to weight gain.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. Limited liability.**

- 6 1. Except as provided in subsection 2, a producer, processor, manufacturer, packer,
7 distributor, carrier, holder, seller, marketer, trade association, or advertiser of a
8 food, as defined in section 201(f) of the Federal Food Drug and Cosmetic Act
9 [21 U.S.C. 321(f)], or an association of one or more of those entities, may not be
10 subject to civil liability arising under any state statute, rule, public policy, court or
11 administrative decision, municipal ordinance, or other action having the effect of
12 law, for any claim arising out of weight gain, obesity, a health condition associated
13 with weight gain or obesity, or other generally known condition allegedly caused by
14 or allegedly likely to result from long-term consumption of food.
- 15 2. Subsection 1 does not apply to the claim of obesity or weight gain that is based on:
- 16 a. A material violation of an adulteration or misbranding requirement prescribed
17 by state or federal statute, rule, or ordinance and the claimed injury was
18 proximately caused by the violation; or
- 19 b. Any other material violation of federal or state law applicable to the
20 manufacturing, marketing, distribution, advertising, labeling, or sale of food,
21 provided that the violation is knowing and willful, and the claimed injury was
22 proximately caused by the violation.

23 **SECTION 2. Pleading requirements.**

- 1 1. In any action commenced under this Act, the complaint or petition must state with
2 particularity the following:
- 3 a. The statute, rule, regulation, ordinance, or other law that was allegedly
4 violated;
- 5 b. The facts that are alleged to constitute a material violation of the statute, rule,
6 regulation, ordinance, or other law; and
- 7 c. The facts alleged to demonstrate that the violation proximately caused actual
8 injury to the plaintiff.
- 9 2. The complaint or petition must also state with particularity facts sufficient to
10 support a reasonable inference that the violation was with intent to deceive or
11 injure consumers or with the actual knowledge that the violation was injurious to
12 consumers.

13 **SECTION 3. Stay pending motion to dismiss.**

- 14 1. In any action commenced under this Act, all discovery and other proceedings must
15 be stayed during the pendency of any motion to dismiss unless the court finds
16 upon the motion of any party that particularized discovery is necessary to preserve
17 evidence or to prevent undue prejudice to a party.
- 18 2. During the pendency of any stay of discovery pursuant to this section, unless
19 otherwise ordered by the court, any party to the action with actual notice of the
20 allegations contained in the complaint shall treat all documents, data compilations,
21 and tangible objects that are in the custody or control of the party and are relevant
22 to the allegations, as if they were the subject of a continuing request for production
23 from an opposing party under rule 34 of the North Dakota Rules of Civil Procedure.

24 **SECTION 4. APPLICATION.** This Act applies to all claims filed after the effective date
25 of this Act, regardless of when the claim arose.