

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1241
(Representatives Koppelman, Iverson, Kasper, Thoreson)
(Senators Christmann, Trenbeath)

AN ACT to provide for limited liability for a food producer, processor, manufacturer, packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser for a claim of injury resulting from weight gain, obesity, or any health condition related to weight gain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Limited liability.

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

SECTION 2. Pleading requirements.

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

SECTION 3. Stay pending motion to dismiss.

1. In any action commenced under this Act, all discovery and other proceedings must be stayed during the pendency of any motion to dismiss unless the court finds upon the

motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party.

2. During the pendency of any stay of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, and tangible objects that are in the custody or control of the party and are relevant to the allegations, as if they were the subject of a continuing request for production from an opposing party under rule 34 of the North Dakota Rules of Civil Procedure.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1241.

House Vote: Yeas 72 Nays 15 Absent 7

Senate Vote: Yeas 31 Nays 14 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State