

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1835

Short Title: Liability of Purveyors of Food for Obesity. (Public)

Sponsors: Representatives Daughtridge, Hill, Crawford, Brubaker (Primary Sponsors); Brown and McGee.

Referred to: Commerce, Small Business and Entrepreneurship, if favorable, Judiciary I.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CIVIL ACTIONS AGAINST THE PURVEYORS OF FOOD ARISING OUT OF WEIGHT GAIN, OBESITY, A HEALTH CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY, OR ANY OTHER KNOWN CONDITION RESULTING FROM LONG-TERM CONSUMPTION OF FOOD UNLESS THE CIVIL ACTIONS RELATE TO STATE OR FEDERAL ADULTERATION OR MISBRANDING LAWS OR RELATE TO STATE OR FEDERAL LAWS REGARDING THE MANUFACTURING, MARKETING, DISTRIBUTION, ADVERTISING, LABELING, OR SALE OF FOOD, AND TO ADD REQUIREMENTS TO THESE ACTIONS.

The General Assembly of North Carolina enacts:

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

"Article 5.

"Civil Actions for Weight Gain, Obesity, Associated Health Conditions; Limit Liability of Purveyors of Food.

§ 99E-40. Definitions.

For purposes of this Article, the following definitions apply:

- (1) Claim. – Any claim by or on behalf of a natural person, as well as any derivative or other claim arising therefrom asserted by or on behalf of any other person.
- (2) Food. – Defined in G.S. 106-121, but limited to food for consumption by humans.
- (3) Other person. – Any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or attorney general.
- (4) Generally known condition allegedly caused by or allegedly likely to result from long-term consumption. – A condition generally known to

1 result or likely result from the cumulative effect of consumption, and
2 not from a single instance of consumption.

- 3 (5) Knowing and willful violation of federal or State law. – A violation for
4 which the conduct constituting the violation is committed with the
5 intent to deceive or injure consumers or with actual knowledge that
6 such conduct is injurious to consumers and for which the conduct
7 constituting the violation is not required by regulations, orders, rules,
8 or other pronouncement of, or any statute administered by, a State,
9 federal, or local government agency.

10 **"§ 99E-41. Lawsuits regarding weight gain, obesity, health conditions prohibited.**

11 Subject to G.S. 99E-42, a manufacturer, packer, distributor, carrier, holder, seller,
12 marketer, or advertiser of a food, or an association of one or more such entities, shall
13 not be subject to any civil action for any claim arising out of weight gain, obesity, a
14 health condition associated with weight gain or obesity, or other generally known
15 condition allegedly caused by or allegedly likely to result from long-term consumption
16 of food.

17 **"§ 99E-42. Certain lawsuits against purveyors of food allowed.**

18 G.S. 99E-41 does not preclude a civil action where the claim of weight gain, obesity,
19 health condition associated with weight gain or obesity, or other generally known
20 condition allegedly caused by or allegedly likely to result from long-term consumption
21 of food satisfies at least one of the following:

- 22 (1) The claim includes as an element of the cause of action a material
23 violation of an adulteration or misbranding requirement prescribed by
24 Article 12 of Chapter 106 of the General Statutes or a federal law or
25 regulation and the claimed injury was proximately caused by this
26 violation.
27 (2) The claim is based on any other material violation of State or federal
28 law applicable to the manufacturing, marketing, distribution,
29 advertising, labeling, or sale of food, provided that such violation is
30 knowing and willful and the claimed injury was proximately caused by
31 such violation.

32 **"§ 99E-43. Pleading requirements for lawsuits that are allowed.**

33 (a) In any action allowed under G.S. 99E-42, the complaint initiating such action
34 shall state with particularity for each defendant and cause of action all of the following:

- 35 (1) The statute, rule, regulation, or other State or federal law that
36 allegedly created the cause of action.
37 (2) Each element of the cause of action and the specific facts
38 alleged to satisfy each element of the cause of action.
39 (3) A statement that G.S. 99E-42 is being relied upon to allow the
40 action to proceed and, if G.S. 99E-42(1) is being relied upon,
41 the specific facts that allegedly demonstrate that the violation of
42 the specific statute, rule, regulation, or other State or federal law
43 proximately caused actual injury to the plaintiff.

1 (b) If G.S. 99E-42(2) is being relied upon, in addition to the pleading
2 requirements under subsection (a) of this section, the complaint initiating such action
3 shall state with particularity facts sufficient to support a reasonable inference that the
4 violation was committed with the intent to deceive or injure consumers or with the
5 actual knowledge that such violation was injurious to consumers.

6 (c) For purposes of applying this Article, the pleading requirements of this
7 section shall be deemed part of the substantive law of North Carolina rather than
8 procedural requirements.

9 **"§ 99E-44. Stay pending motion to dismiss.**

10 (a) In any action allowed under G.S. 99E-42, the obligation of any party or
11 nonparty to make disclosures under any applicable rule or order, or to respond to
12 discovery requests of any kind, as well as all proceedings unrelated to adjudicating a
13 motion to dismiss, shall be stayed prior to the time a motion to dismiss is filed and
14 during the pendency of any such motion, unless the court finds upon motion of any
15 party that a response to a particularized discovery request is necessary to preserve
16 evidence.

17 (b) During the pendency of any stay of discovery pursuant to this section, the
18 responsibilities of the parties with regard to the treatment of all documents, data
19 compilations, including electronically recorded or stored data, and tangible objects shall
20 be governed by the applicable rules of civil procedure. A party aggrieved by the failure
21 of an opposing party to comply with this section shall have available the applicable
22 remedies for a violation of such applicable rules, to the extent no such remedy conflicts
23 with the terms of this section.

24 **"§ 99E-45. Rules of construction.**

25 (a) Nothing in this Article shall be construed to create any claim, right of action,
26 or civil liability that did not previously exist under the laws of North Carolina.

27 (b) Nothing in this Article shall be construed to interfere with any State or federal
28 agency's exclusive or primary jurisdiction to find or declare violations of an adulteration
29 or misbranding statute, rule, or regulation."

30 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
31 actions filed on or after that date and applies to actions pending on that date.