

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1835  
Committee Substitute Favorable 5/14/07

Short Title: Liability of Purveyors of Food for Obesity.

(Public)

Sponsors:

Referred to:

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. – A claim by or on behalf of an individual, 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) Generally known condition allegedly caused by or allegedly likely to result from long-term consumption. – A condition generally known to result or likely result from the cumulative effect of consumption, and not from a single instance of consumption.
- (4) Violation of federal or State law. – A knowing and willful violation for which the conduct constituting the violation is committed with the

1 intent to deceive or injure consumers or with actual knowledge that the  
2 conduct is injurious to consumers and for which the conduct  
3 constituting the violation is not required by regulations, orders, rules,  
4 or other pronouncement of, or any statute administered by, a State,  
5 federal, or local government agency.

6 **"§ 99E-41. Lawsuits regarding weight gain, obesity, health conditions prohibited.**

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

13 **"§ 99E-42. Certain lawsuits against purveyors of food allowed.**

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

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

27 **"§ 99E-43. Pleading requirements for lawsuits that are allowed.**

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

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

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

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

1       (a) In any action allowed under G.S. 99E-42, the obligation of any party or  
2 nonparty to make disclosures or respond to discovery requests of any kind under the  
3 Rules of Civil Procedure, as well as all court proceedings unrelated to adjudicating a  
4 motion in the action to dismiss, shall be stayed during the pendency of any motion to  
5 dismiss the action, unless the court finds upon motion of any party that a response to a  
6 particularized discovery request is necessary to preserve evidence.

7       (b) During the pendency of any stay of discovery pursuant to this section, the  
8 responsibilities of the parties with regard to the treatment of all documents, data  
9 compilations, including electronically recorded or stored data, and tangible objects shall  
10 be governed by the Rules of Civil Procedure. A party aggrieved by the failure of an  
11 opposing party to comply with this section shall have available the applicable remedies  
12 for a violation of such applicable rules, to the extent no remedy conflicts with the terms  
13 of this section.

14 **"§ 99E-45. Rules of construction.**

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

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

20               **SECTION 2.** This act becomes effective October 1, 2007, and applies to  
21 causes of action arising on or after that date.