

Amendment No. 400

Senate Amendment to Senate Bill No. 313

(BDR 3-748)

Proposed by: Committee on Judiciary**Amendment Box:****Resolves Conflicts with:** N/A**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend section 1, page 1, line 2, by deleting “8,” and inserting “10,”.

Amend sec. 2, page 1, line 4, by deleting “8,” and inserting “10,”.

Amend sec. 2, page 1, line 6, by deleting “6,” and inserting “7,”.

Amend the bill as a whole by deleting sections 3 through 10 and adding new sections designated sections 3 through 12, following sec. 2, to read as follows:

“Sec. 3. “Claim” means any claim by or on behalf of a natural person, including any derivative or other claim arising therefrom asserted by or on behalf of a natural person, corporation, company, association, firm, partnership, society, joint-stock company or any other entity, including a private attorney general.

Sec. 4. “Food” has the meaning ascribed to it in section 321(f) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(f).

KEL/BAW

Date: 4/19/2005

S.B. No. 313—Provides immunity from liability to certain persons and governmental entities for certain claims based on consumption of food.



Sec. 5. “Governmental entity” means a government, governmental agency or political subdivision of a government.

Sec. 6. “Knowing and willful violation of law” means that the conduct constituting the violation was:

1. Committed with the intent to deceive or injure a consumer or with actual knowledge that the conduct was injurious to consumers; and

2. Not required by any statute administered by a federal, state or local governmental agency or any regulation, order, rule or other pronouncement of a federal, state or local governmental agency.

Sec. 7. “Long-term consumption” means multiple instances of the consumption of food over a period of time.

Sec. 8. 1. Except as otherwise provided in subsection 2, a person or governmental entity who manufactures, packs, distributes, sells, markets or otherwise provides food to another person or governmental entity for consumption is immune from any civil action for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or a health condition generally known to result or likely to result from the cumulative effect of long-term consumption.

2. The immunity from any civil action provided pursuant to subsection 1 is not applicable to a claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or a health condition generally known to result or likely to result from the cumulative effect of long-term consumption if the claim is based on a knowing and willful violation of law

related to adulterating, branding, manufacturing, marketing, distributing, advertising, labeling or selling food and the claimed injury was proximately caused by that violation.

Sec. 9. *In any action in which it is alleged that the immunity provided pursuant to subsection 1 of section 8 of this act is not applicable:*

1. The complaint initiating the action must state with particularity each element of the cause of action, including:

(a) The federal or state statute, regulation or other law that was allegedly violated;

(b) The facts that are alleged to constitute such a violation;

(c) The facts that are alleged to demonstrate that such a violation proximately caused the claimed injury; and

(d) Facts that are sufficient to support a reasonable inference that such a violation constituted a knowing and willful violation of law.

↪ For the purposes of applying the provisions of this subsection, the requirements shall be deemed to be part of the substantive law of this State and not merely requirements that are procedural in nature.

2. The obligation of any party or nonparty to make disclosures of any kind under any applicable rule or order, or to respond to requests for discovery of any kind, as well as all proceedings unrelated to adjudicating a motion to dismiss, must be stayed by the court before the time for filing a motion to dismiss and during the pendency of any such motion unless the court finds upon motion of any party that a disclosure or response to a particular request for discovery is necessary to preserve evidence.

Sec. 10. *Nothing in the provisions of sections 2 to 10, inclusive, of this act shall be construed to:*

1. Create any claim, right of action or civil liability that did not previously exist under the law of this State; or

2. Interfere with the exclusive or primary authority of any agency to find or declare violations of any law related to adulterating, branding, manufacturing, marketing, distributing, advertising, labeling or selling food.

Sec. 11. 1. Except as otherwise provided in subsection 2, the provisions of this act apply to an action filed before, on or after the effective date of this act, including any pending action.

2. The provisions of this act do not apply to any action for which a final judgment has been entered and for which no further appeal may be filed.

Sec. 12. This act becomes effective upon passage and approval.”.