

SENATE BILL NO. 313—SENATOR NOLAN

MARCH 24, 2005

Referred to Committee on Judiciary

SUMMARY—Provides immunity from liability to certain persons and governmental entities for certain claims based on consumption of food. (BDR 3-748)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to civil liability; providing immunity from liability to certain persons and governmental entities for certain claims based on the consumption of food; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this act.

Sec. 2. *As used in sections 2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

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).*



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

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

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

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

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

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

22 2. **The immunity from any civil action provided pursuant to**
23 **subsection 1 is not applicable to a claim arising out of weight gain,**
24 **obesity, a health condition associated with weight gain or obesity,**
25 **or a health condition generally known to result or likely to result**
26 **from the cumulative effect of long-term consumption if the claim**
27 **is based on a knowing and willful violation of law related to**
28 **adulterating, branding, manufacturing, marketing, distributing,**
29 **advertising, labeling or selling food and the claimed injury was**
30 **proximately caused by that violation.**

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

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

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

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

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

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

44 **↪ For the purposes of applying the provisions of this subsection,**
45 **the requirements shall be deemed to be part of the substantive law**



1 *of this State and not merely requirements that are procedural in*
2 *nature.*

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

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

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

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

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

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

25 **Sec. 12.** *This act becomes effective upon passage and*
26 *approval.*



