

February 11, 2005

Madam President:

Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred

SENATE BILL 291

has had it under consideration and reports same with recommendation that it DO PASS, amended as follows:

1. On page 1, between lines 22 and 23, insert a new section to read:

"Section 3. DEFINITIONS.--As used in the Right to Eat Enchiladas Act:

A. "claim" means a claim by or on behalf of a natural person or a derivative or other claim arising from the claim of the natural person asserted by or on behalf of another natural person, corporation, company, association, firm, partnership, society, joint-stock company or other entity, including a governmental entity or private attorney general;

B. "generally known condition allegedly caused by or allegedly likely to result from the long-term consumption" means a condition generally known to result or to likely result from the cumulative effect of consumption and not from a single instance of consumption; and

C. "knowing and willful violation of federal, state or local law" means:

(1) the conduct constituting the violation was committed with the intent to deceive or injure a consumer of food or with the actual knowledge that the conduct was injurious to a consumer of food; and

(2) the conduct constituting the violation was not required by a state, local or federal government law, statute, rule,

FORTY- SEVENTH LEGISLATURE
FIRST SESSION, 2005

SPAC/SB 291

Page 2

regulation, order or other pronouncement. "

2. Renumber the succeeding sections accordingly.

3. On page 2, line 4, strike "under the laws of this state for any claim of injury" and insert in lieu thereof "for a claim".

4. On page 2, line 7, after "or" insert "allegedly".

5. On page 2, line 10, strike "the" and insert in lieu thereof "a cause of action is brought on a".

6. On page 2, line 13, after "or" insert "allegedly".

7. On page 2, line 14, strike "is based on" and insert in lieu thereof a colon and:

"A. includes as an element of the cause of action".

8. On page 2, line 15, strike "state or federal law" and insert in lieu thereof "federal, state or local law, statute, rule, regulation, order or other pronouncement".

9. On page 2, line 16, strike the comma and insert in lieu thereof:

"; provided that nothing in this subsection shall be construed to create new or expand existing private rights under the adulteration or misbranding laws, statutes, rules, regulations, orders or other pronouncement, nor shall this subsection be construed to interfere with any governmental entities exclusive or primary jurisdiction to find or declare a violation of these laws, statutes, rules, regulations, orders or other pronouncements;".

10. On page 2, line 17, insert the subsection designation "B. " at the beginning of the line.

FORTY- SEVENTH LEGISLATURE
FIRST SESSION, 2005

SPAC/SB 291

Page 3

11. On page 2, line 20, after "is" insert "a" and after "willful" insert "violation of federal, state or local law".

12. On page 3, line 2, strike "state or federal" and insert in lieu thereof "federal, state or local".

13. On page 3, line 9, after "was" insert "a" and before the period insert "violation of federal, state or local law".

14. On page 3, between lines 9 and 10, insert a new section to read:

"Section 7. STAY PENDING MOTION TO DISMISS.--In an action not precluded pursuant to Section 5 of the Right to Eat Enchiladas Act, all discovery and other proceedings shall be stayed during the pendency of a motion to dismiss unless the court finds upon the motion of a party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. During the pendency of a stay of discovery, unless otherwise ordered by the court, a party to an action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of that party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the New Mexico Rules of Civil Procedure for the District Courts."

15. Renumber the succeeding section accordingly.

16. On page 3, line 10, strike "this act" and insert in lieu thereof "the Right to Eat Enchiladas Act".,

and thence referred to the JUDICIARY COMMITTEE.

FORTY- SEVENTH LEGI SLATURE
FIRST SESSION, 2005

SPAC/SB 291

Page 4

Respectfully submitted,

Dede Feldman, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 2 Against

Yes: 7

No: Feldman, Ortiz y Pino

Excused: None

Absent: None

SB0291PA1

. 155221. 1