

1 SENATE BILL 85

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Mary Jane M. Garcia

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10 AN ACT

11 RELATING TO TORTS; CREATING THE PERSONAL RESPONSIBILITY IN FOOD
12 CONSUMPTION ACT; ELIMINATING LIABILITY FOR CLAIMS BASED ON THE
13 LONG-TERM CONSUMPTION OF FOOD; PROVIDING EXCEPTIONS AND A STAY
14 PENDING A MOTION TO DISMISS.

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. SHORT TITLE.--This act may be cited as the
18 "Personal Responsibility in Food Consumption Act".

19 Section 2. PURPOSE OF ACT.--The purpose of the Personal
20 Responsibility in Food Consumption Act is to encourage personal
21 responsibility in food consumption and to prevent frivolous
22 lawsuits against manufacturers, producers, packers,
23 distributors, carriers, holders, sellers, marketers or
24 advertisers of food, or an association of one or more of those
25 entities, that comply with applicable statutory and regulatory

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1 requirements.

2 Section 3. DEFINITIONS.--As used in the Personal
3 Responsibility in Food Consumption Act:

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

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

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

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

21 (2) the conduct constituting the violation was
22 not required by state, local or federal government law,
23 statute, rule, regulation, order or other pronouncement.

24 Section 4. PREVENTION OF FRIVOLOUS LAWSUITS.--Except as
25 provided in Section 5 of the Personal Responsibility in Food

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1 Consumption Act, a manufacturer, producer, packer, distributor,
2 carrier, holder, seller, marketer or advertiser of food, as
3 defined in the Federal Food, Drug, and Cosmetic Act, 21
4 U.S.C.A. 321(f), or an association of one or more of those
5 entities, shall not be subject to civil liability for a claim
6 arising out of weight gain, obesity, a health condition
7 associated with weight gain or obesity or other generally known
8 condition allegedly caused by or allegedly likely to result
9 from the long-term consumption of food.

10 Section 5. LIABILITY NOT PRECLUDED.--The Personal
11 Responsibility in Food Consumption Act does not preclude civil
12 liability where a cause of action brought on a claim of injury
13 due to weight gain, obesity, a health condition associated with
14 weight gain or obesity or other generally known condition
15 allegedly caused by or allegedly likely to result from the
16 long-term consumption of food:

17 A. includes, as an element of the cause of action,
18 the adulteration or misbranding of food in violation of
19 federal, state or local law, statute, rule, regulation, order
20 or other pronouncement and the claimed injury was proximately
21 caused by that violation; provided that nothing in this
22 subsection shall be construed to create new, or expand
23 existing, private rights under adulteration or misbranding
24 laws, statutes, rules, regulations, orders or other
25 pronouncement, nor shall this subsection be construed to

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1 interfere with any governmental entity's exclusive or primary
2 jurisdiction to find or declare a violation of those laws,
3 statutes, rules, regulations, orders or other pronouncements;
4 or

5 B. is based on any other violation of federal,
6 state or local law applicable to the manufacturing, production,
7 marketing, distribution, advertising, labeling or sale of food;
8 provided that the violation is a knowing and willful violation
9 of federal, state or local law and the claimed injury was
10 proximately caused by the violation.

11 Section 6. PLEADING REQUIREMENTS.--In a cause of action
12 for a claim brought under Section 5 of the Personal
13 Responsibility in Food Consumption Act, the complaint shall
14 allege with particularity the following elements that are
15 deemed to be a part of the substantive law of this state:

16 A. the law that was violated;

17 B. the facts that constitute a violation of
18 federal, state or local law;

19 C. the facts demonstrating that the violation was
20 the proximate cause of the injury; and

21 D. when appropriate to the cause of action, facts
22 sufficient to support a reasonable inference that the violation
23 of law was a knowing and willful violation of federal, state or
24 local law.

25 Section 7. STAY PENDING MOTION TO DISMISS.--In an action

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1 not precluded pursuant to Section 5 of the Personal
2 Responsibility in Food Consumption Act, all discovery and other
3 proceedings shall be stayed during the pendency of a motion to
4 dismiss unless the court finds upon the motion of a party that
5 particularized discovery is necessary to preserve evidence or
6 to prevent undue prejudice to that party. During the pendency
7 of a stay of discovery, unless otherwise ordered by the court,
8 a party to an action with actual notice of the allegations
9 contained in the complaint shall treat all documents, data
10 compilations, including electronically recorded or stored data,
11 and tangible objects that are in the custody or control of that
12 party and that are relevant to the allegations as if they were
13 the subject of a continuing request for production of documents
14 from an opposing party under the New Mexico Rules of Civil
15 Procedure for the District Courts.

16 Section 8. APPLICABILITY.--The provisions of the Personal
17 Responsibility in Food Consumption Act apply to all covered
18 causes of action filed on or after the effective date of this
19 act, regardless of when the cause of action arose.

20 Section 9. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2007.