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SENATE BILL 26

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

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO TORTS; CREATING THE RIGHT TO EAT ENCHILADAS ACT;
ELIMINATING CIVIL LIABILITY FOR HEALTH CONDITIONS CAUSED BY THE
LONG-TERM CONSUMPTION OF FOOD; PROVIDING EXCEPTIONS.

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

Section 1. SHORT TITLE.--This act may be cited as the
"Right to Eat Enchiladas Act".

Section 2. PURPOSE OF ACT.--The purpose of the Right to
Eat Enchiladas Act is to prevent frivolous lawsuits against
manufacturers, packers, distributors, carriers, holders,
sellers, marketers or advertisers of food or an association of
one or more of those entities that comply with applicable
statutory and regulatory requirements.

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

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

7 B. "food" means:

8 (1) an article used for food or drink for a
9 person or another animal;

10 (2) chewing gum; and

11 (3) an article used for a component of an
12 article described in Paragraphs (1) and (2) of this subsection;

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

18 D. "knowing and willful violation of federal, state
19 or local law" means:

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

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

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1 regulation, order or other pronouncement.

2 Section 4. PREVENTION OF FRIVOLOUS LAWSUITS.--Except as
3 provided in Section 5 of the Right to Eat Enchiladas Act, a
4 manufacturer, packer, distributor, carrier, holder, seller,
5 marketer or advertiser of food or an association of one or more
6 of those entities shall not be subject to civil liability for a
7 claim arising out of weight gain, obesity, a health condition
8 associated with weight gain or obesity or other generally known
9 condition allegedly caused by or allegedly likely to result
10 from the long-term consumption of food.

11 Section 5. LIABILITY NOT PRECLUDED.--The Right to Eat
12 Enchiladas Act does not preclude civil liability wherein a
13 cause of action is brought on a claim of injury due to weight
14 gain, obesity, health condition associated with weight gain or
15 obesity or other generally known condition allegedly caused by
16 or allegedly likely to result from the long-term consumption of
17 food and:

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

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

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

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

15 A. the federal, state or local law that was
16 violated;

17 B. the facts that constitute a violation of the
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 material, knowing and willful violation of
24 federal, state or local law.

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

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

15 Section 8. APPLICABILITY.--The provisions of this act
16 apply to all covered causes of action pending on the effective
17 date of this act and to all causes of action filed after the
18 effective date, regardless of when the cause of action arose.