

Fifty-ninth  
Legislative Assembly  
of North Dakota

## ENGROSSED HOUSE BILL NO. 1241

Introduced by

Representatives Koppelman, Iverson, Kasper, Thoreson

Senators Christmann, Trenbeath

1 A BILL for an Act to provide for limited liability for a food producer, processor, manufacturer,  
2 packer, distributor, carrier, holder, seller, marketer, trade association, or advertiser for a claim  
3 of injury resulting from weight gain, obesity, or any health condition related to weight gain.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. Limited liability.**

- 6 1. Except as provided in subsection 2, a producer, processor, manufacturer, packer,  
7 distributor, carrier, holder, seller, marketer, trade association, or advertiser of a  
8 food, as defined in section 201(f) of the Federal Food Drug and Cosmetic Act  
9 [21 U.S.C. 321(f)], or an association of one or more of those entities, may not be  
10 subject to civil liability arising under any state statute, rule, public policy, court or  
11 administrative decision, municipal ordinance, or other action having the effect of  
12 law, for any claim arising out of weight gain, obesity, a health condition associated  
13 with weight gain or obesity, or other generally known condition allegedly caused by  
14 or allegedly likely to result from long-term consumption of food.
- 15 2. Subsection 1 does not apply to the claim of obesity or weight gain that is based on:
- 16 a. A material violation of an adulteration or misbranding requirement prescribed  
17 by state or federal statute, rule, or ordinance and the claimed injury was  
18 proximately caused by the violation; or
- 19 b. Any other material violation of federal or state law applicable to the  
20 manufacturing, marketing, distribution, advertising, labeling, or sale of food,  
21 provided that the violation is knowing and willful, and the claimed injury was  
22 proximately caused by the violation.

23 **SECTION 2. Pleading requirements.**

- 1           1. In any action commenced under this Act, the complaint or petition must state with  
2           particularity the following:
- 3           a. The statute, rule, regulation, ordinance, or other law that was allegedly  
4           violated;
- 5           b. The facts that are alleged to constitute a material violation of the statute, rule,  
6           regulation, ordinance, or other law; and
- 7           c. The facts alleged to demonstrate that the violation proximately caused actual  
8           injury to the plaintiff.
- 9           2. The complaint or petition must also state with particularity facts sufficient to  
10          support a reasonable inference that the violation was with intent to deceive or  
11          injure consumers or with the actual knowledge that the violation was injurious to  
12          consumers.

13          **SECTION 3. Stay pending motion to dismiss.**

- 14          1. In any action commenced under this Act, all discovery and other proceedings must  
15          be stayed during the pendency of any motion to dismiss unless the court finds  
16          upon the motion of any party that particularized discovery is necessary to preserve  
17          evidence or to prevent undue prejudice to a party.
- 18          2. During the pendency of any stay of discovery pursuant to this section, unless  
19          otherwise ordered by the court, any party to the action with actual notice of the  
20          allegations contained in the complaint shall treat all documents, data compilations,  
21          and tangible objects that are in the custody or control of the party and are relevant  
22          to the allegations, as if they were the subject of a continuing request for production  
23          from an opposing party under rule 34 of the North Dakota Rules of Civil Procedure.

24          **SECTION 4. APPLICATION.** This Act applies to all claims filed after the effective date  
25          of this Act, regardless of when the claim arose.