

4426

2009-2010 Regular Sessions

I N   S E N A T E

April 23, 2009

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Introduced by Sen. O. JOHNSON -- read twice and ordered printed, and  
when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to obligations  
of care of purveyors of food

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Article 9 of the general obligations law is amended by  
2     adding a new title 3 to read as follows:

3                                T I T L E   3

4                                P U R V E Y O R S   O F   F O O D

5     SECTION 9-301. SHORT TITLE.

6                9-303. DEFINITIONS.

7                9-305. PURVEYORS OF FOOD THAT COMPLY WITH THE APPLICABLE STATE  
8                                AND FEDERAL LAWS.

9     S 9-301. SHORT TITLE. THIS TITLE SHALL BE KNOWN AND MAY BE CITED AS  
10    THE "COMMONSENSE CONSUMPTION ACT".

11    S 9-303. DEFINITIONS. FOR THE PURPOSES OF THIS TITLE:

12    1. "CLAIM" SHALL MEAN ANY CLAIM BY OR ON BEHALF OF A NATURAL PERSON,  
13    AS WELL AS ANY DERIVATIVE OR OTHER CLAIM ARISING THEREFROM ASSERTED BY  
14    OR ON BEHALF OF ANY OTHER PERSON.

15    2. "GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY  
16    TO RESULT FROM LONG-TERM CONSUMPTION" SHALL MEAN A CONDITION GENERALLY  
17    KNOWN TO RESULT OR LIKELY TO RESULT FROM THE CUMULATIVE EFFECT OF  
18    CONSUMPTION, AND NOT FROM A SINGLE INSTANCE OF CONSUMPTION.

19    3. "KNOWING AND WILLFUL VIOLATION OF FEDERAL OR STATE LAW" SHALL MEAN  
20    THAT:

21    A. THE CONDUCT CONSTITUTING THE VIOLATION WAS COMMITTED WITH THE  
22    INTENT TO DECEIVE OR INJURE CONSUMERS OR WITH ACTUAL KNOWLEDGE THAT SUCH  
23    CONDUCT WAS INJURIOUS TO CONSUMERS; AND

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 B. THE CONDUCT CONSTITUTING THE VIOLATION WAS NOT REQUIRED BY THE  
2 RULES, ORDERS, OR OTHER PRONOUNCEMENT OF, OR ANY LAW ADMINISTERED BY ANY  
3 FEDERAL, STATE OR LOCAL AGENCY.

4 4. "OTHER PERSON" SHALL MEAN ANY INDIVIDUAL, CORPORATION, LIMITED  
5 LIABILITY COMPANY, ASSOCIATION, FIRM, PARTNERSHIP OR OTHER ENTITY,  
6 INCLUDING ANY GOVERNMENTAL ENTITY.

7 S 9-305. PURVEYORS OF FOOD THAT COMPLY WITH THE APPLICABLE STATE AND  
8 FEDERAL LAWS. 1. EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION TWO OF THIS  
9 SECTION, A MANUFACTURER, PACKER, DISTRIBUTOR, CARRIER, HOLDER, SELLER,  
10 MARKETER OR ADVERTISER OF FOOD, AS DEFINED IN SECTION 201 (F) OF THE  
11 FEDERAL FOOD DRUG AND COSMETIC ACT (21 U.S.C. 321 (F)), OR AN ASSOCI-  
12 ATION OF ONE OR MORE SUCH ENTITIES, SHALL NOT BE SUBJECT TO ANY CIVIL  
13 ACTION FOR ANY CLAIM ARISING OUT OF WEIGHT GAIN, OBESITY, A HEALTH  
14 CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY, OR OTHER GENERALLY  
15 KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM  
16 LONG-TERM CONSUMPTION OF FOOD.

17 2. SUBDIVISION ONE OF THIS SECTION SHALL NOT PRECLUDE A CIVIL ACTION  
18 WHERE THE CLAIM OF WEIGHT GAIN, OBESITY, HEALTH CONDITION ASSOCIATED  
19 WITH WEIGHT GAIN OR OBESITY, OR OTHER GENERALLY KNOWN CONDITION ALLEGED-  
20 LY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION OF  
21 FOOD WHEN SUCH CLAIM:

22 A. INCLUDES AS AN ELEMENT OF THE CAUSE OF ACTION A MATERIAL VIOLATION  
23 OF AN ADULTERATION OR MISBRANDING REQUIREMENT PRESCRIBED BY FEDERAL OR  
24 STATE LAW OR REGULATION, AND THE CLAIMED INJURY WAS PROXIMATELY CAUSED  
25 BY SUCH VIOLATION; OR

26 B. IS BASED ON ANY OTHER MATERIAL VIOLATION OF FEDERAL OR STATE LAW  
27 APPLICABLE TO THE MANUFACTURING, MARKETING, DISTRIBUTION, ADVERTISING,  
28 LABELING OR SALE OF FOOD, PROVIDED THAT SUCH VIOLATION WAS KNOWING AND  
29 WILLFUL, AND THE CLAIMED INJURY WAS PROXIMATELY CAUSED BY SUCH  
30 VIOLATION.

31 3. A. IN ANY ACTION AUTHORIZED PURSUANT TO PARAGRAPH A OF SUBDIVISION  
32 TWO OF THIS SECTION, THE COMPLAINT SHALL STATE WITH PARTICULARITY FOR  
33 EACH DEFENDANT AND CAUSE OF ACTION THE FOLLOWING:

34 (1) THE PROVISION OF FEDERAL OR STATE LAW, RULE OR REGULATION THAT  
35 ALLEGEDLY CREATED THE CAUSE OF ACTION;

36 (2) EACH ELEMENT OF THE CAUSE OF ACTION AND THE SPECIFIC FACTS ALLEGED  
37 TO SATISFY EACH ELEMENT OF THE CAUSE OF ACTION; AND

38 (3) THE SPECIFIC FACTS THAT ALLEGEDLY DEMONSTRATE THAT THE VIOLATION  
39 OF THE PROVISION OF FEDERAL OR STATE LAW, RULE OR REGULATION PROXIMATELY  
40 CAUSED ACTUAL INJURY TO THE PLAINTIFF.

41 B. IN ANY ACTION AUTHORIZED PURSUANT TO PARAGRAPH B OF SUBDIVISION TWO  
42 OF THIS SECTION, THE COMPLAINT SHALL COMPLY WITH THE PROVISIONS OF PARA-  
43 GRAPH A OF THIS SUBDIVISION AND THE COMPLAINT COMMENCING SUCH ACTION  
44 SHALL STATE WITH PARTICULARITY FACTS SUFFICIENT TO SUPPORT A REASONABLE  
45 INFERENCE THAT THE VIOLATION WAS WITH INTENT TO DECEIVE OR INJURE  
46 CONSUMERS OR WITH THE ACTUAL KNOWLEDGE THAT SUCH VIOLATION WAS INJURIOUS  
47 TO CONSUMERS.

48 4. A. IN ANY ACTION AUTHORIZED PURSUANT TO SUBDIVISION TWO OF THIS  
49 SECTION, THE OBLIGATION OF ANY PARTY OR NON-PARTY TO MAKE DISCLOSURES OF  
50 ANY KIND UNDER ANY APPLICABLE LAW, RULE OR ORDER, OR TO RESPOND TO  
51 DISCOVERY REQUESTS OF ANY KIND, AS WELL AS ALL PROCEEDINGS UNRELATED TO  
52 ADJUDICATING A MOTION TO DISMISS, SHALL BE STAYED PRIOR TO THE TIME FOR  
53 FILING A MOTION TO DISMISS AND DURING THE PENDENCY OF ANY SUCH MOTION  
54 UNLESS THE COURT FINDS UPON MOTION OF ANY PARTY THAT A RESPONSE TO A  
55 PARTICULARIZED DISCOVERY REQUEST IS NECESSARY TO PRESERVE EVIDENCE.

1 B. DURING THE PENDENCY OF ANY STAY OF DISCOVERY PURSUANT TO THIS  
2 SUBDIVISION, THE RESPONSIBILITIES OF THE PARTIES WITH REGARD TO THE  
3 TREATMENT OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE OBJECTS SHALL  
4 BE GOVERNED BY THE PROVISIONS OF THE CIVIL PRACTICE LAW AND RULES. A  
5 PARTY AGGRIEVED BY THE FAILURE OF AN OPPOSING PARTY TO COMPLY WITH THE  
6 PROVISIONS OF THIS PARAGRAPH MAY SEEK THE APPLICABLE REMEDIES UNDER THE  
7 CIVIL PRACTICE LAW AND RULES.

8 S 2. This act shall take effect immediately and shall apply to any  
9 action or proceeding pending on such effective date, and to any action  
10 or proceeding commenced on or after the effective date of this act.