

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

538J0699

## HOUSE BILL NO. 1282

Introduced by: Representatives McCaulley, Bradford, Cutler, Haverly, Kraus, Rave, Rhoden, Schafer, Teupel, Thompson, and Weems and Senators Apa, Abdallah, and Jaspers

1 FOR AN ACT ENTITLED, An Act to prohibit recovery based on claims resulting from weight  
2 gain, obesity, or any health conditions relating to weight gain, obesity, or cumulative  
3 consumption.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

6 (1) "Claim," any claim asserted by or on behalf of any person on whose weight gain,  
7 obesity, or health condition the claim is based; any person other than the person on  
8 whose weight gain, obesity, or health condition the claim is based; and any derivative  
9 claim made by or on behalf of any person or any representative, spouse, parent, child,  
10 or other relative of any person;

11 (2) "Cumulative consumption," with respect to a health condition, any health condition  
12 that increases in severity in whole or in part because of the successive consumption  
13 of a qualified product, including increased cholesterol, heart disease, and high blood  
14 pressure;

15 (3) "Engaged in business," manufacturing, marketing, distributing, advertising, or selling



1 a qualified product in the regular course of trade or business;

2 (4) "Livestock," cattle, bison swine, sheep, goats, horses, ratites, and captive cervidae;

3 (5) "Livestock producer," any producer of livestock;

4 (6) "Manufacturer," any person who is lawfully engaged in the business of  
5 manufacturing a qualified product;

6 (7) "Qualified product," any food or drink as defined in section 201(f) of the Federal  
7 Food Drug and Cosmetic Act (21 U.S.C. § 321(f)) and specifically including meat  
8 and meat products from livestock;

9 (8) "Qualified product producer," any livestock producer, manufacturer, seller, or trade  
10 association;

11 (9) "Seller," any person lawfully engaged in the business of marketing, distributing,  
12 advertising, or selling a qualified product;

13 (10) "Trade association," any association or business organization that is not operated for  
14 profit, if two or more members are manufacturers, marketers, distributors, livestock  
15 producers, advertisers, or sellers of a qualified product.

16 Section 2. No qualified product producer is liable on any claim for damages, penalties,  
17 declaratory judgment, injunctive or declaratory relief, restitution, or other relief arising out of,  
18 resulting from, or related to injury from the consumption of a qualified product and weight gain,  
19 obesity, or any health condition that is related to weight gain, obesity, or cumulative  
20 consumption.

21 Section 3. Nothing in section 2 of this Act prevents or limits the liability of any qualified  
22 producer in an action:

23 (1) In which a qualified product producer knowingly and willfully violated a federal or  
24 state statute applicable to the manufacturing, marketing, distribution, advertisement,

1 labeling, or sale of the product if the violation was a proximate cause of the injury  
2 resulting from a person's weight gain, obesity, or health condition associated with  
3 weight gain, obesity, or cumulative consumption;

4 (2) For breach of express contract or express warranty in connection with the purchase  
5 of a qualified product; or

6 (3) Regarding the sale of a qualified product which is in material violation of an  
7 adulteration or misbranding requirement prescribed by statute, rule or regulation and  
8 if the claimed injury was directly caused by such violation.

9 Section 4. Any party that prevails on a motion to dismiss under section 2 of this Act may  
10 recover reasonable attorney's fees and costs incurred in connection with the motion to dismiss.

11 Section 5. This Act may be cited as the Commonsense Consumption Act.