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HOUSE BILL NO. 1617

Offered January 12, 2005

Prefiled December 16, 2004

A *BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 8.01 a section numbered 8.01-44.7, relating to product liability; open and obvious dangers; establishing the Virginia Litigation Reduction and Consumer Personal Responsibility Act of 2005.*

Patrons—Janis, Athey, Bell, Dudley, Lingamfelter and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 8.01 a section numbered 8.01-44.7 as follows:

§ 8.01-44.7. Product liability; products containing open and obvious dangers.

A. A product liability action may not be brought in any federal or state court under Virginia law against any manufacturer or seller of a qualified food product where the claim arises from an injury, potential injury or death resulting from a person's consumption of a food product and weight gain, obesity or any health condition that is associated with a person's weight gain or obesity.

B. In a product liability action, a manufacturer or seller shall not be liable under Virginia law where the claim arises from an injury to or the death of a voluntary user of the product that is directly caused by an open and obvious danger of the product.

C. For purposes of this section:

(1) A "qualified food product" means a food as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)); and

(2) Products with an "open and obvious danger" shall include (i) tobacco products, or (ii) firearms.

D. Nothing in this section shall prevent (i) a cause of action in which a manufacturer or seller of a qualified product knowingly and willfully violated federal or state law applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the product, and the violation was a proximate cause of injury, potential injury or death resulting from a person's consumption of a food product and weight gain, obesity or any health condition that is associated with a person's weight gain or obesity; or (ii) an action for breach of express contract or express warranty in connection with the purchase of a qualified product.

E. The provisions of this section may be cited as the Virginia Litigation Reduction and Consumer Personal Responsibility Act of 2005.

INTRODUCED

HB1617