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**HOUSE BILL NO. 1617****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice  
on January 21, 2005)

(Patron Prior to Substitute—Delegate Janis)

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 civil actions; open and obvious dangers; establishing the Virginia Litigation Reduction and Consumer Personal Responsibility Act of 2005.*

**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. Action against manufacturer or seller for products containing open and obvious dangers.

A. No action may 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. 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. For purposes of this section, the only products that represent an "open and obvious danger" shall be limited to (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.

**HOUSE SUBSTITUTE**

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