

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0494.01 Debbie Haskins

HOUSE BILL 11-1190

HOUSE SPONSORSHIP

Sonnenberg,

SENATE SPONSORSHIP

Jahn,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING LIMITATIONS ON DAMAGES AGAINST FOOD RETAILERS IN
102 PRODUCT LIABILITY ACTIONS FOR FOOD-BORNE ILLNESSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

The bill applies to a product liability action brought against a food retailer who is not a manufacturer of food but who is deemed to be the manufacturer of the food because jurisdiction cannot be obtained over the manufacturer. The bill limits the liability of food retailers who are deemed manufacturers for causing an injured party to suffer a food-borne

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

illness unless the injured party establishes that:

- ! The food retailer introduced into the food the contaminant, agent, defect, or mechanism producing the food-borne illness; or
- ! The food retailer has actual knowledge at the time of the sale that the food contained the contaminant, agent, defect, or mechanism producing the food-borne illness or was subject to a recall.

The bill defines the terms "food", "food-borne illness", and "food retailer".

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Part 4 of article 21 of title 13, Colorado Revised
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
4 read:

5 **13-21-402.3. Limited liability of food retailers who are deemed**
6 **manufacturers.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
7 OTHERWISE REQUIRES:

8 (a) "FOOD" MEANS ANY FOOD OR BEVERAGE, INCLUDING ICE,
9 CHEWING GUM, AND DIETARY SUPPLEMENTS, INTENDED FOR HUMAN OR
10 ANIMAL CONSUMPTION AND ARTICLES USED FOR COMPONENTS OF ANY
11 SUCH FOOD OR BEVERAGE. "FOOD" INCLUDES A PACKAGED FOOD
12 PRODUCT.

13 (b) "FOOD-BORNE ILLNESS" MEANS ANY ILLNESS OR INJURY THAT
14 IS PROXIMATELY CAUSED TO AN INJURED PARTY BY THE CONSUMPTION OF
15 FOOD THAT IS DEFECTIVE, CONTAMINATED, SPOILED, OR UNFIT FOR HUMAN
16 OR ANIMAL CONSUMPTION.

17 (c) "FOOD RETAILER" MEANS A SELLER OF FOOD WHO IS NOT A
18 MANUFACTURER OF THE FOOD AS DEFINED IN SECTION 13-21-401 (1) BUT
19 WHO IS DEEMED TO BE THE MANUFACTURER OF THE FOOD PURSUANT TO
20 SECTION 13-21-402 (2).

1 (2) NO PRODUCT LIABILITY ACTION SHALL BE COMMENCED OR
2 MAINTAINED AGAINST A FOOD RETAILER FOR CAUSING AN INJURED PARTY
3 TO SUFFER A FOOD-BORNE ILLNESS UNLESS THE INJURED PARTY
4 ESTABLISHES:

5 (a) THE FOOD RETAILER INTRODUCED INTO THE FOOD THE
6 CONTAMINANT, AGENT, DEFECT, OR MECHANISM PRODUCING THE
7 FOOD-BORNE ILLNESS; OR

8 (b) THE FOOD RETAILER HAD ACTUAL KNOWLEDGE AT THE TIME OF
9 SALE THAT THE FOOD:

10 (I) CONTAINED THE CONTAMINANT, AGENT, DEFECT, OR
11 MECHANISM PRODUCING THE FOOD-BORNE ILLNESS; OR

12 (II) WAS SUBJECT TO A RECALL.

13 **SECTION 2. Act subject to petition - effective date -**
14 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
15 following the expiration of the ninety-day period after final adjournment
16 of the general assembly (August 10, 2011, if adjournment sine die is on
17 May 11, 2011); except that, if a referendum petition is filed pursuant to
18 section 1 (3) of article V of the state constitution against this act or an
19 item, section, or part of this act within such period, then the act, item,
20 section, or part shall not take effect unless approved by the people at the
21 general election to be held in November 2012 and shall take effect on the
22 date of the official declaration of the vote thereon by the governor.

23 (2) The provisions of this act shall apply to causes of action filed
24 on or after the applicable effective date of this act.