

Common Sense Consumption

This Act provides for limited liability of food manufacturers, packers, distributors, and others from claims relating to weight gain and obesity.

Submitted as:

Georgia

[HB 1519 \(enrolled version\)](#)

Status: Passed Legislature in 2004.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act may be cited as the "Common Sense Consumption
2 Act."

3
4 Section 2. [*Definitions.*] As used in this Act:

5 (1) "Claim" means any claim by or on behalf of a natural person, as well as any
6 derivative or other claim arising there from asserted by or on behalf of any other person.

7 (2) "Federal Act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C.
8 Section 301, et seq., 52 Stat. Section 1040, et seq.).

9 (3) "Generally-known condition allegedly caused by or allegedly likely to result from
10 long-term consumption" means a condition generally known to result or likely to result from the
11 cumulative effect of consumption and not from a single instance of consumption.

12 (4) "Knowing and willful" means that:

13 (A) The conduct constituting a violation of federal or state law was committed
14 with the intent to deceive or injure consumers or with actual knowledge that such conduct was
15 injurious to consumers; and

16 (B) The conduct constituting such violation was not required by regulations,
17 orders, rules, or other pronouncement of, or any statute administered by, a federal, state, or local
18 government agency.

19 (5) "Other person" means any individual, corporation, company, association, firm,
20 partnership, society, joint-stock company, or other entity, including any governmental entity or
21 private attorney general.

22
23 Section 3. [*Limiting Certain Manufacturers from Civil Liability.*] Except as provided in
24 Section 4 of this Act, a manufacturer, packer, distributor, carrier, holder, seller, marketer, or
25 advertiser of a food, as defined in Section 201(f) of the federal act, or an association of one or
26 more such entities, shall not be subject to civil liability arising under any law of this state for any
27 claim arising out of weight gain, obesity, a health condition associated with weight gain or
28 obesity, or other generally-known condition allegedly caused by or allegedly likely to result from
29 long-term consumption of food.

30
31 Section 4. [*Civil Liability Resulting from Misbranding or Willful Actions Causing Injury.*]
32 The limitation of liability provided for in Section 3 of this Act shall not preclude civil liability
33 where the claim of weight gain, obesity, health condition associated with weight gain or obesity,

34 or other generally-known condition allegedly caused by or allegedly likely to result from long-
35 term consumption of food is based on:

36 (1) A material violation of an adulteration or misbranding requirement prescribed by
37 statute or regulation of this state or of the United States and the claimed injury was proximately
38 caused by such violation; or

39 (2) Any other material violation of federal or state law applicable to the manufacturing,
40 marketing, distribution, advertising, labeling, or sale of food, provided that such violation is
41 knowing and willful and the claimed injury was proximately caused by such violation.

42
43 Section 5. [*Contents of Complaint.*]

44 (1) In any action exempted under paragraph (1) of Section 4 of this Act, the complaint
45 initiating such action shall state with particularity the following:

46 (A) The statute, regulation, or other law of this state or of the United States that
47 was allegedly violated;

48 (B) The facts that are alleged to constitute a material violation of such statute,
49 regulation, or other law; and

50 (C) The facts alleged to demonstrate that such violation proximately caused actual
51 injury to the plaintiff.

52 (2) In any action exempted under paragraph (2) of Section 4 of this Act, in addition to the
53 requirements of subsection (1) of this section, the complaint initiating such action shall state with
54 particularity facts sufficient to support a reasonable inference that the violation was knowing and
55 willful. For purposes of this Act, the requirements of subsection (1) of this Section are hereby
56 deemed part of the substantive law of this state and not merely in the nature of procedural
57 provisions.

58
59 Section 6. [*Stays and Discovery.*] In any action exempted under Section 4 of this Act, all
60 discovery and other proceedings shall be stayed during the pendency of any motion to dismiss
61 unless the court finds upon the motion of any party that particularized discovery is necessary to
62 preserve evidence or to prevent undue prejudice to that party. During the pendency of any state
63 of discovery pursuant to this section, unless otherwise ordered by the court, any party to the
64 action with actual notice of the allegations contained in the complaint shall treat all documents,
65 data compilations, including electronically recorded or stored data, and tangible objects that are
66 in the custody or control of such party and that are relevant to the allegations, as if they were the
67 subject of a continuing request for production of documents from an opposing party under [insert
68 citation].

69
70 Section 7. [*Covered Claims.*] The provisions of this Act shall apply to all covered claims
71 pending on the effective date of this Act and all claims filed thereafter, regardless of when the
72 claim arose.

73
74 Section 8. [*Severability.*] [Insert severability clause.]

75
76 Section 9. [*Repealer.*] [Insert repealer clause.]

77
78 Section 10. [*Effective Date.*] [Insert effective date.]