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)

Suggested State Legislation

(Title, enacting clause, etc.)

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

Section 2. [Definitions.] As used in this Act:
(1) "Claim" means any claim by or on behalf of a natural person, as well as any derivative or other claim arising there from asserted by or on behalf of any other person.
(2) "Federal Act" means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Section 301, et seq., 52 Stat. Section 1040, et seq.).
(3) "Generally-known condition allegedly caused by or allegedly likely to result from long-term consumption" means a condition generally known to result or likely to result from the cumulative effect of consumption and not from a single instance of consumption.
(4) "Knowing and willful" means that:
   (A) The conduct constituting a violation of federal or state law was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers; and
   (B) The conduct constituting such violation was not required by regulations, orders, rules, or other pronouncement of, or any statute administered by, a federal, state, or local government agency.
(5) "Other person" means any individual, corporation, company, association, firm, partnership, society, joint-stock company, or other entity, including any governmental entity or private attorney general.

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

Section 4. [Civil Liability Resulting from Misbranding or Willful Actions Causing Injury.] The limitation of liability provided for in Section 3 of this Act shall not preclude civil liability where the claim of weight gain, obesity, health condition associated with weight gain or obesity,
or other generally-known condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

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

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

Section 5. [Contents of Complaint.]

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

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

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

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

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

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

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

Section 8. [Severability.] [Insert severability clause.]

Section 9. [Repealer.] [Insert repealer clause.]

Section 10. [Effective Date.] [Insert effective date.]