Senate Bill 540

By: Senators Smith of the 52nd, Thomas of the 54th, Mullis of the 53rd, Cagle of the 49th and Seabaugh of the 28th

A BILL TO BE ENTITLED
AN ACT

1   To amend Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to

2   standards, labeling, and adulteration of food, so as to enact the "Common-sense Consumption

3   Act"; to provide for a short title; to provide for definitions; to provide for limited liability of

4   food manufacturers, packers, distributors, and others from claims relating to weight gain and

5   obesity; to provide for exceptions to such liability; to provide for pleading requirements

6   relating to claims; to provide for a stay during the pendency of any motion; to provide for

7   applicability of claims; to provide for related matters; to repeal conflicting laws; and for other

8   purposes.

9   BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10   **SECTION 1.**

11 Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to standards,

12 labeling, and adulteration of food, is amended by adding a new article to read as follows:

13   "ARTICLE 16

14   26-2-430.

15   This article shall be known and may be cited as the "Common-sense Consumption Act."

16   26-2-431.

17   As used in this article, the term:

18   (1) 'Claim' means any claim by or on behalf of a natural person, as well as any derivative

19   or other claim arising therefrom asserted by or on behalf of any other person.

20   (2) 'Federal act' means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C.

21   Section 301, et seq., 52 Stat. Section 1040, et seq.).

22   (3) 'Generally-known condition allegedly caused by or allegedly likely to result from

23   long-term consumption' means a condition generally known to result or likely to result

1 from the cumulative effect of consumption and not from a single instance of

2 consumption.

3 (4) 'Knowing and willful' means that:

4   (A) The conduct constituting a violation of federal or state law was committed with the

5   intent to deceive or injure consumers or with actual knowledge that such conduct was

6   injurious to consumers; and

7   (B) The conduct constituting such violation was not required by regulations, orders,

8   rules, or other pronouncement of, or any statute administered by, a federal, state, or

9   local government agency.

10 26-2-432.

11 Except as provided in Code Section 26-2-433, a manufacturer, packer, distributor, carrier,

12 holder, seller, marketer or advertiser of a food, as defined in Section 201(f) of the federal

13 act, or an association of one or more such entities, shall not be subject to civil liability

14 arising under any law of this state for any claim arising out of weight gain, obesity, a health

15 condition associated with weight gain or obesity, or other generally-known condition

16 allegedly caused by or allegedly likely to result from long-term consumption of food.

17 26-2-433.

18 The limitation of liability provided for in Code Section 26-2-432 shall not preclude civil

19 liability where the claim of weight gain, obesity, health condition associated with weight

20 gain or obesity, or other generally-known condition allegedly caused by or allegedly likely

21 to result from long-term consumption of food is based on:

22 (1) A material violation of an adulteration or misbranding requirement prescribed by

23   statute or regulation of this state or of the United States and the claimed injury was

24   proximately caused by such violation; or

25 (2) Any other material violation of federal or state law applicable to the manufacturing,

26   marketing, distribution, advertising, labeling, or sale of food provided that such violation

27   is knowing and willful and the claimed injury was proximately caused by such violation.

28 26-2-434.

29 (a) In any action exempted under paragraph (1) of Code Section 26-2-433, the complaint

30 initiating such action shall state with particularity the following:

31 (1) The statute, regulation, or other law of this state or of the United States that was

32   allegedly violated;

33 (2) The facts that are alleged to constitute a material violation of such statute, regulation,

34   or other law; and

1   (3) The facts alleged to demonstrate that such violation proximately caused actual injury

2   to the plaintiff.

3   (b) In any action exempted under paragraph (2) of Code Section 26-2-433, in addition to

4   the requirements of subsection (a) of this Code section, the complaint initiating such action

5   shall state with particularity facts sufficient to support a reasonable inference that the

6   violation was knowing and willful. For purposes of this article, the requirements of

7   subsection (a) of this Code section are hereby deemed part of the substantive law of this

8   state and not merely in the nature of procedural provisions.

9   26-2-435.

10   In any action exempted under Code Section 26-2-433, all discovery and other proceedings

11   shall be stayed during the pendency of any motion to dismiss unless the court finds upon

12   the motion of any party that particularized discovery is necessary to preserve evidence or

13   to prevent undue prejudice to that party. During the pendency of any state of discovery

14   pursuant to this Code section, unless otherwise ordered by the court, any party to the action

15   with actual notice of the allegations contained in the complaint shall treat all documents,

16   data compilations, including electronically recorded or stored data, and tangible objects that

17   are in the custody or control of such party and that are relevant to the allegations, as if they

18   were the subject of a continuing request for production of documents from an opposing

19   party under Title 9.

20   26-2-436.

21   The provisions of this article shall apply to all covered claims pending on the effective date

22   of this article and all claims filed thereafter, regardless of when the claim arose."

23   **SECTION 2.**

24   All laws and parts of laws in conflict with this Act are repealed.