

House Bill 196

By: Representatives Smith of the 113<sup>th</sup>, Ehrhart of the 36<sup>th</sup>, Willard of the 49<sup>th</sup>, Fleming of the 117<sup>th</sup>, Parrish of the 156<sup>th</sup>, and others

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 change certain provisions relating to  
3 common-sense consumption; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 style="text-align:center">**SECTION 1.**

6 Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to standards,  
7 labeling, and adulteration of food, is amended by striking Article 16, relating to  
8 common-sense consumption, and inserting in lieu thereof the following:

9 style="text-align:center">"ARTICLE 16

10 26-2-430.

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

12 26-2-431.

13 As used in this article, the term:

14 (1) 'Claim' means any claim by or on behalf of a natural person, as well as any derivative  
15 or other claim arising therefrom asserted by or on behalf of any other person.

16 (2) 'Federal act' means the Federal Food, Drug, and Cosmetic Act (Title 21 U.S.C.  
17 Section 301, et seq., 52 Stat. Section 1040, et seq.).

18 (3) '~~Generally-known~~ Generally known condition allegedly caused by or allegedly likely  
19 to result from long-term consumption' means a condition generally known to result or  
20 likely to result from the cumulative effect of consumption and not from a single instance  
21 of consumption.

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

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

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

7 (5) 'Other person' means any individual, corporation, company, association, firm,  
 8 partnership, society, joint-stock company, or other entity, including any governmental  
 9 entity or private attorney general.

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, 21 U.S.C. Section 321(f), or an association of one or more such entities, shall not be  
 14 subject to civil liability arising under any law of this state for any claim arising out of  
 15 weight gain, obesity, a health condition associated with weight gain or obesity, or other  
 16 ~~generally-known~~ generally known condition allegedly caused by or allegedly likely to  
 17 result from long-term consumption of food.

18 26-2-433.

19 The limitation of liability provided for in Code Section 26-2-432 shall not preclude civil  
 20 liability that might otherwise exist under the law of this state where the ~~claim~~ claimed  
 21 injury does not arise out of weight gain, obesity, health condition associated with weight  
 22 gain or obesity, or other ~~generally-known~~ generally known condition allegedly caused by  
 23 or allegedly likely to result from long-term consumption of food ~~is~~ but is instead based on  
 24 other cognizable injuries arising from:

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

28 (2) Any other material violation of federal or state ~~law~~ statutes or regulations applicable  
 29 to the manufacturing, marketing, distribution, advertising, labeling, or sale of food,  
 30 provided that such violation is knowing and willful, the claim is brought by a party  
 31 authorized to bring suit under such law, and the claimed injury was proximately caused  
 32 by such violation.

1 26-2-434.

2 (a) In any action exempted under paragraph (1) of Code Section 26-2-433, the complaint  
3 initiating such action shall state with particularity the following:

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

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

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

10 (b) In any action exempted under paragraph (2) of Code Section 26-2-433, in addition to  
11 the requirements of subsection (a) of this Code section, the complaint initiating such action  
12 shall state with particularity facts sufficient to support a reasonable inference that the  
13 violation was ~~knowing and willful~~ with intent to deceive or injure consumers or with the  
14 actual knowledge that such violation was injurious to consumers.

15 (c) For purposes of applying this article, the requirements of subsection (a) of this Code  
16 section are hereby deemed part of the substantive law of this state and not merely in the  
17 nature of procedural provisions.

18 26-2-435.

19 In any action exempted under Code Section 26-2-433, all discovery and other proceedings  
20 shall be stayed during the pendency of any motion to dismiss unless the court finds upon  
21 the motion of any party that particularized discovery is necessary to preserve evidence or  
22 to prevent undue prejudice to that party. During the pendency of any state of discovery  
23 pursuant to this Code section, unless otherwise ordered by the court, any party to the action  
24 with actual notice of the allegations contained in the complaint shall treat all documents,  
25 data compilations, including electronically recorded or stored data, and tangible objects that  
26 are in the custody or control of such party and that are relevant to the allegations, as if they  
27 were the subject of a continuing request for production of documents from an opposing  
28 party under Title 9.

29 26-2-436.

30 The provisions of this article shall apply to all covered claims pending on ~~July 1, 2004~~, the  
31 effective date of this Code section and all claims filed thereafter, regardless of when the  
32 claim arose.”

33 **SECTION 2.**

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