

House Bill 196 (AS PASSED HOUSE AND SENATE)

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

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 2 of Title 26 of the Official Code of Georgia Annotated, relating to standards, labeling, and adulteration of food, so as to change certain provisions relating to common-sense consumption; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"ARTICLE 16

26-2-430.

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

26-2-431.

As used in this article, the term:

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

26-2-432.

Except as provided in Code Section 26-2-433, a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food, as defined in Section 201(f) of the federal act, 21 U.S.C. Section 321(f), 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~~ generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

26-2-433.

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

(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~~ statutes or regulations applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that such violation is knowing and willful, the claim is brought by a party authorized to bring suit under such law, and the claimed injury was proximately caused by such violation.

26-2-434.

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

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

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

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

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

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

26-2-435.

In any action exempted under Code Section 26-2-433, 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 stay of discovery pursuant to this Code 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 Title 9.

26-2-436.

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

SECTION 2.

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