



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/5/2004, by Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

New Act

Creates the Commonsense Consumption Act. Exempts a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food product from civil liability for any claim arising out of weight gain, obesity, or other generally known condition allegedly likely to result from long-term consumption of the food product. Provides exceptions to the exemption. Sets out pleading requirements for claims filed under the exceptions.

LRB093 20571 LCB 46381 b

1 AN ACT concerning civil liability.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Commonsense Consumption Act.

6 Section 5. Legislative finding. The General Assembly finds
7 that it is in the best interest of this State to reduce the
8 number of frivolous lawsuits in Illinois by preventing the
9 filing of frivolous claims against manufacturers, packers,
10 distributors, carriers, holders, sellers, marketers, or
11 advertisers of food products that comply with applicable
12 statutory and regulatory requirements.

13 Section 10. Definitions. As used in this Act:

14 "Claim" means any claim by or on behalf of a natural person
15 as well as any derivative or other claim arising from, asserted
16 by, or on behalf of any corporation, company, association,
17 firm, partnership, or other entity, including any governmental
18 entity or private attorney general.

19 "Generally known condition allegedly caused by or
20 allegedly likely to result from long-term consumption" means a
21 condition generally known to result or to likely result from
22 the cumulative effect of consumption and not from a single
23 instance of consumption.

24 "Knowing or willful violation of federal or State law"
25 means that:

26 (1) the conduct constituting the violation was
27 committed with the intent to deceive or injure consumers or
28 with actual knowledge that the conduct was injurious to
29 consumers; and

30 (2) the conduct constituting the violation was not
31 required by regulations, orders, rules, or other

1 pronouncements of or statutes administered by a federal,
2 State, or local governmental agency.

3 Section 15. Exemption. Except as provided in Section 20, a
4 manufacturer, packer, distributor, carrier, holder, seller,
5 marketer, or advertiser of a food (as defined in Section 201(f)
6 of the Federal Food Drug and Cosmetic Act (21 U.S.C. 321(f)),
7 or an association of one or more such entities shall not be
8 subject to civil liability under any State law, including all
9 statutes, regulations, rules, common law, public policies,
10 court or administrative decisions or decrees, or other State
11 actions having the effect of law, for any claim arising out of
12 weight gain, obesity, or other generally known condition
13 allegedly caused by or allegedly likely to result from
14 long-term consumption of the food.

15 Section 20. Exception to exemption.

16 (a) The exemption provided in Section 15 of this Act does
17 not preclude civil liability where the claim of weight gain,
18 obesity, health condition associated with weight gain or
19 obesity, or other generally known condition allegedly caused by
20 or allegedly likely to result from long-term consumption of the
21 food is based on:

22 (1) a material violation of an adulteration or
23 misbranding requirement prescribed by statute or
24 regulation of this State or the United States and the
25 claimed injury was proximately caused by the violation; or

26 (2) any other material violation of federal or State
27 law applicable to the manufacturing, marketing,
28 distribution, advertising, labeling, or sale of a food,
29 provided that the violation is knowing and willful, and the
30 claimed injury was proximately caused by the violation.

31 (b) The provisions of Section 15 of this Act shall not
32 preclude civil liability for breach of express contract or
33 express warranty in connection with the purchase of a food.

1 Section 25. Pleading requirements.

2 (a) In any petition stating a cause of action under
3 subdivision (a)(1) of Section 20 of this Act, the petitioner
4 shall state with particularity the following:

5 (1) the statute, regulation, or other State or federal
6 law that was allegedly violated;

7 (2) the facts that are alleged to constitute a material
8 violation of the statute or regulation; and

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

11 (b) In any petition stating a cause of action under
12 subdivision (a)(2) of Section 20 of this Act, the petitioner
13 shall state with particularity the following:

14 (1) the statute, regulation, or other State or federal
15 law that was allegedly violated;

16 (2) the facts that are alleged to constitute a material
17 violation of the statute or regulation;

18 (3) the facts alleged to demonstrate that the violation
19 proximately caused actual injury to the plaintiff; and

20 (4) facts sufficient to support a reasonable inference
21 that the violation occurred with the intent to deceive or
22 injure consumers or with actual knowledge that the
23 violation was injurious to consumers.

24 (c) For purposes of applying this Act, the pleading
25 requirements under this Section are deemed part of State
26 substantive law and not merely procedural provisions.

27 Section 30. Discovery. In any action brought under Section
28 20 of this Act, all discovery and other proceedings shall be
29 stayed during the pendency of any motion to dismiss unless the
30 court finds, upon the motion of any party, that particularized
31 discovery is necessary to preserve evidence or to prevent undue
32 prejudice to that party. During the pendency of any stay of
33 discovery under this Section and unless otherwise ordered by
34 the court, any party to the action with actual notice of the
35 allegations contained in the petition shall treat all

1 documents, data compilations (including electronically
2 recorded or stored data), and tangible objects that are in the
3 custody or control of the party that are relevant to the
4 allegations as if they were the subject of a continuing request
5 for production of documents from an opposing party under the
6 Illinois rules of civil procedure.

7 Section 35. Application. The provisions of this Act shall
8 apply to all covered claims pending on or filed after the
9 effective date of this Act, regardless of when the claim arose.