

HOUSE BILL 3041
By Briley

AN ACT relative to enacting the "Commonsense Consumption Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Commonsense Consumption Act."

SECTION 2.

(a) Except as exempted in subsection (b), a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food (as defined in Section 201(f) of the Federal Food Drug and Cosmetic Act [21 U.S.C. 321(f)]), or an association of one (1) or more such entities, shall not be subject to civil liability arising under any law of the state of Tennessee for any claim arising out of weight gain or 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.

(b) Subsection (a) 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 the state of Tennessee or the United States of America 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.

(c) For purposes of this act:

(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) "Generally known condition allegedly caused by or allegedly likely to result from long-term consumption" means a condition generally known to result or to likely result from the cumulative effect of consumption, and not from a single instance of consumption;

(3) "Knowing and willful" violation of federal or state law means that:

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

(4) "Other person" as used in subsection (c)(1) means any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general.

(d) In any action exempted under subsection (b)(1), the complaint initiating such action shall state with particularity the following:

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

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

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

In any action exempted under subsection (b)(2), in addition to the foregoing pleading requirements, the complaint initiating such action shall state with particularity

facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers. For purposes of this act, the foregoing pleading requirements are hereby deemed part of the substantive law of the state of Tennessee and not merely in the nature of procedural provisions.

(e) In any action exempted under subsection (b), 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 subsection, 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 the state of Tennessee Rules of Civil Procedure.

SECTION 3. The provisions of this act shall apply to all covered claims pending on the date of the effective date and all claims filed thereafter, regardless of when the claim arose.

SECTION 4. This act shall take effect July 1, 2004, the public welfare requiring it.