

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 683

Committee Substitute Favorable 5/15/13

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Short Title: Commonsense Consumption Act.

(Public)

Sponsors:

Referred to:

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO BAR CIVIL ACTIONS AGAINST PACKERS, DISTRIBUTORS, MANUFACTURERS, CARRIERS, HOLDERS, SELLERS, MARKETERS, OR ADVERTISERS OF FOOD PRODUCTS THAT COMPLY WITH APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS BASED ON CLAIMS ARISING OUT OF WEIGHT GAIN, 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; AND TO CLARIFY THAT LOCAL GOVERNMENTS MAY NOT REGULATE THE SIZE OF SOFT DRINKS OFFERED FOR SALE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 99E of the General Statutes is amended by adding a new Article to read:

"Article 5.

"Commonsense Consumption Act.

"§ 99E-40. Title.

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

"§ 99E-41. Definitions.

The following definitions apply in this Article:

(1) Claim. – Any claim by or on behalf of a natural person, as well as any derivative or other claim arising from a common set of facts or circumstances and asserted by or on behalf of any other person.

(2) Knowing and willful conduct. – Conduct which meets all of the following criteria:

a. The conduct was committed with any of the following:

1. The intent to deceive or injure consumers.

2. Actual knowledge that such conduct was injurious to consumers.

3. Reason to know there is a reasonable probability of injury to consumers.

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.



1 (3) Other person. – Any individual, corporation, company, association, firm,
2 partnership, society, joint-stock company, or any other entity, including any
3 governmental entity or private attorney general.

4 "**§ 99E-42. Claims arising from weight gain, obesity, associated health conditions, or**
5 **long-term consumption of food. – Limitation on liability.**

6 Except as set forth in G.S. 99E-43, a packer, distributor, manufacturer, carrier, holder,
7 seller, marketer, or advertiser of a food, as defined in section 201(f) of the federal Food, Drug,
8 and Cosmetic Act, 21 U.S.C. § 321(f), or an association of one or more such entities, shall not
9 be liable in any civil action for any claim arising out of weight gain, obesity, a health condition
10 associated with weight gain or obesity, or other generally known condition allegedly caused by
11 or allegedly likely to result from long-term consumption of food. For purposes of this section, a
12 health condition arising from a single instance of consumption shall not be considered to result
13 from long-term consumption of food.

14 "**§ 99E-43. Claims arising from weight gain, obesity, associated health conditions, or**
15 **long-term consumption of food. – Exceptions to limit on liability.**

16 G.S. 99E-42 shall not preclude liability in a civil action in which the claim of weight gain,
17 obesity, health condition associated with weight gain or obesity, or other generally known
18 condition allegedly caused by or allegedly likely to result from long-term consumption of food
19 meets either of the following:

- 20 (1) The claim includes as an element of the cause of action a material violation
21 of an adulteration or misbranding requirement prescribed by statute or rule
22 of this State or the United States of America, and the claimed injury was
23 proximately caused by such violation.
24 (2) The claim is based on knowing and willful conduct applicable to the
25 manufacturing, marketing, distribution, advertising, labeling, or sale of food,
26 and the claimed injury was proximately caused by such violation.

27 "**§ 99E-44. Construction of Article.**

28 (a) Nothing in this Article shall be construed to create any new claim, right of action, or
29 civil liability not previously existing under State law.

30 (b) Nothing in this Article shall be construed to interfere with any agency's exclusive or
31 primary jurisdiction to find or declare violations of a food adulteration or misbranding statute
32 or rule."

33 **SECTION 2.** Article 8 of Chapter 160A is amended by adding a new section to
34 read:

35 "**§ 160A-203. Limitations on regulating soft drink sizes.**

36 No city ordinance may prohibit the sale of soft drinks above a particular size. This section
37 does not prohibit any ordinance regulating the sanitation or other operational aspect of a device
38 for the dispensing of soft drinks. For purposes of this section, "soft drink" shall have the
39 meaning set forth in G.S. 105-164.3."

40 **SECTION 3.** Article 6 of Chapter 153A is amended by adding a new section to
41 read:

42 "**§ 153A-146. Limitations on regulating soft drink sizes.**

43 No county ordinance may prohibit the sale of soft drinks above a particular size. This
44 section does not prohibit any ordinance regulating the sanitation or other operational aspect of a
45 device for the dispensing of soft drinks. For purposes of this section, "soft drink" shall have the
46 meaning set forth in G.S. 105-164.3."

47 **SECTION 4.** Section 1 of this act becomes effective October 1, 2013, and applies
48 to causes of action arising on or after that date. The remainder of this act is effective when it
49 becomes law.