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HOUSE BILL 683  
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PROPOSED SENATE COMMITTEE SUBSTITUTE H683-PCS80407-TG-63

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.



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- 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 in violation of any other State or federal law and the claimed injury was  
27 proximately caused by such violation.

28 **"§ 99E-44. Construction of Article.**

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

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

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

36 **"§ 160A-203. Limitations on regulating soft drink sizes.**

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

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

43 **"§ 153A-146. Limitations on regulating soft drink sizes.**

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

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