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FOOD, DRUGS, AND COSMETICS Common Sense Consumption Act: Provide for Limited Liability of Food Manufacturers, Packers, Distributors, and Others from Claims Relating to Weight Gain and Obesity; Provide for Exceptions to Such Liability; Provide for Pleading Requirements Relating to Claims; Provide for a Stay During the Pendency of Any Motion; Provide for Applicability of Claims; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

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FOOD, DRUGS, AND COSMETICS

Common Sense Consumption Act: Provide for Limited Liability of Food Manufacturers, Packers, Distributors, and Others from Claims Relating to Weight Gain and Obesity; Provide for Exceptions to Such Liability; Provide for Pleading Requirements Relating to Claims; Provide for a Stay During the Pendency of Any Motion; Provide for Applicability of Claims; Provide for Related Matters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 26-2-430 to -436 (new)
BILL NUMBER:	HB 1519
ACT NUMBER:	590
GEORGIA LAWS:	2004 Ga. Laws 767
SUMMARY:	The Act prohibits consumers from filing claims against food manufacturers, packers, distributors, and others, based on the legal theory that the foods caused weight gain or obesity. However, there are exceptions to the limited liability for adulteration or misbranding violations and any other material federal or state law violations. The Act provides definitions of terms and requires that one plead with particularity any claims arising under the exemption for adulteration or misbranding.
EFFECTIVE DATE:	July 1, 2004

History

In late 2002, two minors and their parents filed a lawsuit in the United States District Court for the Southern District of New York against McDonald's and several of its retail outlets alleging damages resulting from the minors' obesity.¹ The plaintiffs alleged that

1. See *Pelman v. McDonald's Corp.*, 237 F. Supp. 2d 512, 519 (S.D.N.Y. 2003).

McDonald's food products caused the minors' obesity.² In the lawsuit, the plaintiffs alleged that McDonald's sold a deceptive product, and the deception caused the minors to consume McDonald's food products.³ The court dismissed the initial lawsuit, but it dismissed certain counts without prejudice to allow the plaintiffs to plead their allegations with specificity.⁴ However, the court subsequently dismissed the amended complaint as well, this time with prejudice.⁵ Even though the court provided specific guidelines, the plaintiffs neither made any claims about specific instances of deceptive advertising nor did they provide adequate information for a determination of whether McDonald's products were the proximate cause of their obesity.⁶ Yet, had the plaintiffs been able to document particular advertisements and to establish the "connection between [their] injuries and the consumption of McDonald's foods," the judge might have allowed their lawsuit to continue.⁷

Bill Tracking of HB 1519

Consideration by the House

The sponsors of HB 1519 introduced the bill to prevent a claim similar to the one in *Pelman* from arising in Georgia.⁸ Representatives DuBose Porter, Butch Parrish, Greg Morris, and Edward Stephens of the 119th, 102nd, 120th, and 124th districts, respectively, sponsored HB 1519.⁹ The House first read HB 1519 on February 18, 2004, and the Speaker then assigned the bill to the House Economic Development and Tourism Committee.¹⁰ The

2. *Id.*

3. *See id.* at 516.

4. *Id.* at 543.

5. *See Pelman v. McDonald's Corp.*, No. 02-7821, 2003 U.S. Dist. LEXIS 15202, at *41 (S.D.N.Y. Apr. 7, 2003).

6. *Id.* at *40.

7. *Id.* at *41.

8. *See* Audio Recording of Senate Proceedings, Mar. 22, 2004 (remarks by Sen. Preston Smith), at http://www.georgia.gov/00/article/0,2086,4802_6107103_12623825,00.html [hereinafter Senate Audio].

9. HB 1519, as introduced, 2004 Ga. Gen. Assem.

10. *See* State of Georgia Final Composite Status Sheet, HB 1519, Feb. 18, 2004 (May 19, 2004).

House engrossed the bill on February 19, 2004, and the House Committee favorably reported on February 25, 2004.¹¹

Passage by the House

The House adopted the engrossed bill on March 1, 2004 by a vote of 169 to 0.¹² Representative Porter spoke to the floor and urged his fellow representatives to pass the bill.¹³ He explained that the bill's intent was to combat frivolous lawsuits, and he emphasized the importance of individuals taking responsibility for their own actions.¹⁴ He assured the floor that companies would still be responsible for packing or misbranding violations and that the "knowing and willful standard" would still apply even though the intent of the bill was to limit liability for these same parties.¹⁵ Only one question came from the floor.¹⁶ Representative Barbara Bunn of the 63rd district asked whether the bill would apply to tobacco products, and Representative Porter assured her that the bill was only applicable to food and beverage products.¹⁷

Consideration and Passage by the Senate

The Senate first read HB 1519 on March 2, 2004.¹⁸ Senate President Mark Taylor then assigned it to the Senate Judiciary Committee.¹⁹ The Senate Committee favorably reported the bill on March 9, 2004, and the bill passed by a vote of 50 to 0 on March 22, 2004.²⁰ Senator Preston Smith of the 52nd district spoke about the bill on the Senate floor and urged his colleagues to pass the tort reform legislation.²¹ Senator Nadine Thomas from the 10th district

11. See State of Georgia Final Composite Status Sheet, HB 1519, Feb. 19, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 1519, Feb. 25, 2004 (May 19, 2004).

12. Georgia House of Representatives Voting Record, HB 1519 (Mar. 1, 2004).

13. See Audio Recording of House Proceedings, Mar. 1, 2004 (remarks by Rep. DuBose Porter), at http://www.georgia.gov/00/article/0,2086,4802_6107103_12595146,00.html [hereinafter House Audio].

14. *Id.*

15. *Id.*

16. *Id.* (remarks by Rep. Barbara Bunn).

17. *Id.* (remarks by Reps. DuBose Porter and Barbara Bunn).

18. State of Georgia Final Composite Status Sheet, HB 1519, Mar. 2, 2004 (May 19, 2004).

19. See *id.*

20. See State of Georgia Final Composite Status Sheet, HB 1519, Mar. 22, 2004 (May 19, 2004); Georgia Senate Voting Record, HB 1519 (Mar. 22, 2004).

21. See Senate Audio, *supra* note 8 (remarks by Sen. Preston Smith).

made a single comment, asking Senator Smith to remember that obesity is a disease and that there should be a distinction between obese and morbidly obese people.²²

The Act

The Act creates the “Common-[S]ense Consumption Act” by adding Code sections 26-2-430 to -436.²³ Section 26-2-430 states that Article 16 “shall be known and may be cited as the Common-[S]ense Consumption Act.”²⁴ The next section provides definitions for the following terms: “[c]laim,” “Federal act,” “[g]enerally-known condition allegedly caused by or allegedly likely to result from long-term consumption,” “[k]nowing and willful,” and “[o]ther person.”²⁵ Section 26-2-432 provides limited civil liability for “a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food . . . for any claim arising out of weight gain [or] obesity”²⁶ Notwithstanding section 26-2-432, the next section allows certain civil suits where the claim alleges either a “material violation of an adulteration or misbranding requirement” or “[a]ny other material violation of federal or state law” relating to food products.²⁷ The remaining sections of the Act provide the pleading and discovery requirements for lawsuits allowed under section 26-2-433 and apply the Act to all lawsuits pending as of July 1, 2004, regardless of when the claim arose.²⁸

22. *Id.* (remarks by Sen. Nadine Thomas).

23. O.C.G.A. §§ 26-2-430 to -436 (2004).

24. O.C.G.A. § 26-2-430.

25. O.C.G.A. § 26-2-431.

26. O.C.G.A. § 26-2-432.

27. O.C.G.A. § 26-2-433.

28. *See* O.C.G.A. §§ 26-2-434 to -436.

Analysis

Georgia is not the only state to pass a bill imposing limited liability for obesity-related lawsuits against food manufacturers and retailers. In Illinois, the legislature passed a similar bill that provides qualified immunity for food and beverage manufacturers, sellers, and suppliers for claims of obesity, weight gain, or any related physical or mental condition arising from over-consumption.²⁹ Additionally, the United States House of Representatives has passed H.R. 339, dubbed the “cheeseburger bill.”³⁰ This bill, called the “Personal Responsibility in Food Consumption Act,” provides qualified civil immunity to manufacturers, marketers, distributors, advertisers, sellers, and trade associations from lawsuits alleging weight gain or obesity from consumption of food products.³¹

The sponsors of these bills introduced them in response to the first lawsuit against McDonald’s, which the District Court for the Southern District of New York dismissed with prejudice in September 2003.³² Although the court dismissed the suit against McDonald’s, lawmakers may have worried that similar fast food lawsuits could lead to litigation as large as the recent tobacco suits.³³ In fact, some commentators have even advocated that these lawsuits are necessary to combat the nation’s obesity problem.³⁴ Advocates of the lawsuits argue that the food retailers and manufacturers would raise prices to compensate for the lawsuits, thereby making the food, which is now relatively inexpensive, comparable in price to healthier foods.³⁵ The threat of lawsuits may have also caused fast food outlets to revamp their menus.³⁶ McDonald’s has recently introduced an

29. See Illinois Public Act 093-0848.

30. See H.R. 339, 108th Cong. (2004); Anastasia Ustinova & Ruby L. Bailey, “*Cheeseburger Bill*” to Block Fast Food Suits Passes House, BRADENTON HERALD, Mar. 11, 2004, at <http://www.bradenton.com/mld/bradenton/business/8156195.htm>.

31. See H.R. 339, 108th Cong. (2004).

32. See *Pelman v. McDonald’s Corp.*, No. 02-7821, 2003 U.S. Dist. LEXIS 15202 (S.D.N.Y. Apr. 7, 2003).

33. See *Pelman v. McDonald’s Corp.*, 237 F. Supp. 2d 512, 532 n.18 (S.D.N.Y. 2003).

34. Sherry F. Colb, *Why Suing McDonald’s Could Be a Good Thing*, CNN.com, at <http://www.cnn.com/2003/LAW/01/29/findlaw.analysis.colb.mcdonalds> (Jan. 29, 2003).

35. See *id.*

36. Associated Press, *Adult “Happy Meals” Offer Salad, No Prize*, CNN.com, at <http://www.cnn.com/2004/HEALTH/diet.fitness/04/15/adult.happy.meals.ap/index.html> (Apr. 15, 2004).

adult “Go Active!” meal that contains salads and water along with healthy lifestyle tips for consumers.³⁷ Other companies may follow McDonald’s lead and make similar changes, regardless of efforts by Congress and state legislatures to limit the liability of these companies.

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37. *See id.*