

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1115
92ND GENERAL ASSEMBLY

Reported from the Committee on Judiciary, March 4, 2004, with recommendation that the House Committee Substitute for House Bill No. 1115 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

3836L.03C

AN ACT

To amend chapter 537, RSMo, by adding thereto one new section relating to the commonsense consumption act, with an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 537, RSMo, is amended by adding thereto one new section, to be known as section 537.900, to read as follows:

537.900 1. This section may be known as the "Commonsense Consumption Act".

2. As used in this section, the following terms mean:

(1) "Claim", 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", 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 or willful violation of federal or state law", 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 pronouncements of, or statutes administered by, a federal, state, or local government agency;

(4) "Other person", any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general.

18 **3. Except as exempted in subsection 4 of this section, a manufacturer, packer,**
19 **distributor, carrier, holder, seller, marketer, or advertiser of a food, as defined in the**
20 **Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f)), as amended, but shall not include**
21 **alcoholic beverages, or an association of one or more such entities shall not be subject to**
22 **civil liability under any state law, including all statutes, regulations, rules, common law,**
23 **public policies, court or administrative decisions or decrees, or other state actions having**
24 **the effect of law, for any claim arising out of weight gain, obesity, or a health condition**
25 **associated with weight gain or obesity.**

26 **4. The provisions of subsection 3 of this section shall not preclude civil liability**
27 **where the claim of weight gain, obesity, health condition associated with weight gain or**
28 **obesity, or other generally known condition allegedly caused by or allegedly likely to result**
29 **from long-term consumption of food is based on:**

30 **(1) A material violation of an adulteration or misbranding requirement prescribed**
31 **by statute or regulation of the state of Missouri or the United States and the claimed injury**
32 **was proximately caused by such violation; or**

33 **(2) Any other material violation of federal or state law applicable to the**
34 **manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that**
35 **such violation is knowing and willful, and the claimed injury was proximately caused by**
36 **such violation.**

37
38 **The provisions of subsection 3 of this section shall not preclude civil liability for breach of**
39 **express contract or express warranty in connection with the purchase of food.**

40 **5. In any action exempted under subdivision (1) or (2) of subsection 4 of this**
41 **section, the petition initiating such action shall state with particularity the following: the**
42 **statute, regulation, or other state or federal law that was allegedly violated, the facts that**
43 **are alleged to constitute a material violation of such statute or regulation, and the facts**
44 **alleged to demonstrate that such violation proximately caused actual injury to the plaintiff.**
45 **In any action exempted under subdivision (2) of subsection 4 of this section, the petition**
46 **initiating such action shall also state with particularity facts sufficient to support a**
47 **reasonable inference that the violation occurred with the intent to deceive or injure**
48 **consumers or with the actual knowledge that such violation was injurious to consumers.**
49 **For purposes of applying this section the pleading requirements under this section are**
50 **deemed part of state substantive law and not merely procedural provisions.**

51 **6. In any action exempted under subsection 4 of this section, all discovery and other**
52 **proceedings shall be stayed during the pendency of any motion to dismiss unless the court**
53 **finds upon the motion of any party that particularized discovery is necessary to preserve**

54 evidence, resolve the motion to dismiss, or to prevent undue prejudice to that party.
55 During the pendency of any stay of discovery under this subsection and unless otherwise
56 ordered by the court, any party to the action with actual notice of the allegations contained
57 in the petition shall treat all documents, data compilations, including electronically
58 recorded or stored data, and tangible objects that are in the custody or control of such
59 party that are relevant to the allegations as if they were the subject of a continuing request
60 for production of documents from an opposing party under the Missouri rules of civil
61 procedure.

62 7. The provisions of this section shall apply to all covered claims pending on or filed
63 after the effective date of this section, regardless of when the claim arose.

Section B. Section A of this act shall become effective on January 1, 2005.