

CHAPTER 23**(SB 103)**

AN ACT relating to food establishments.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

For purposes of Sections 1 to 5 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) *"Food establishment" means:*
 - (a) *Any entity required to hold a permit pursuant to KRS 217.125; or*
 - (b) *Any other manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food as defined in KRS 217.015(18) or 21 U.S.C. sec. 321(f).*
- (3) *"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; and*
- (4) *"Knowing and willful violation" means that the conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers, and the conduct constituting the violation was not required by regulations, orders, rules, or other pronouncements of, or any statutes administered by, a federal, state, or local government agency.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

A food establishment, or an association of one (1) or more food establishments, shall not be subject to civil liability for any claim 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, except where the claim:

- (1) *Includes as an element of the cause of action a material violation of an adulteration or misbranding requirement prescribed by federal or state statute or regulation, and the claimed injury was proximately caused by the violation. Nothing in this subsection shall be construed to create new or expand existing private rights, if any, under adulteration or misbranding statutes or regulations, nor shall this subsection be construed to interfere with any agency's exclusive or primary jurisdiction to find or declare violations of those statutes or regulations; or*
- (2) *Is based on any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, if the violation was a knowing and willful violation, and the claimed injury was proximately caused by the violation.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

- (1) *In any action exempted under subsection (1) of Section 2 of this Act, the complaint initiating the action shall state with particularity:*
 - (a) *The federal or state statute, regulation, or other law that was allegedly violated;*
 - (b) *The facts that allegedly constitute a material violation of the statute, regulation, or other law; and*
 - (c) *The facts that allegedly demonstrate that the violation proximately caused actual injury to the plaintiff.*
- (2) *In any action exempted under subsection (2) of Section 2 of this Act, in addition to the pleading requirements of subsection (1) of this section, the complaint initiating the action shall state with particularity facts sufficient to support a reasonable inference that the violation was a knowing and willful violation.*
- (3) *For the purposes of applying Sections 1 to 5 of this Act, the pleading requirements in this section are deemed part of the substantive law of this Commonwealth and not merely in the nature of procedural provisions.*

SECTION 4. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

In any action exempted under Section 2 of this Act, 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 section, 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 that 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 Kentucky Rules of Civil Procedure.

SECTION 5. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO READ AS FOLLOWS:

The provisions of Sections 1 to 5 of this Act shall apply to all covered claims pending on the effective date of this Act and all claims filed thereafter, regardless of when the claim arose.

Section 6. This Act shall be known and may be cited as the "Commonsense Consumption Act."

Approved March 8, 2005