

## CHAPTER 229

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**COURTS**


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**HOUSE BILL 04-1150**

BY REPRESENTATIVE(S) Hefley, Mitchell, Harvey, Brophy, Decker, Fairbank, Hoppe, Jahn, King, May M., Rippy, Salazar, Schultheis, Weddig, White, Williams S., Cadman, Clapp, Coleman, Crane, Hall, Johnson R., Marshall, Miller, Rhodes, Sinclair, Spence, Spradley, Stafford, Stengel, Tochtrop, Williams T., and Rose;  
also SENATOR(S) Hillman, Andrews, Arnold, Cairns, Chlouber, Dyer, Jones, May R., McElhany, Owen, and Teck.

**AN ACT****CONCERNING THE CREATION OF THE "COMMONSENSE CONSUMPTION ACT".**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 21 of title 13, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

PART 11  
COMMONSENSE CONSUMPTION ACT

**13-21-1101. Short title.** THIS PART 11 SHALL BE KNOWN AND MAY BE CITED AS THE "COMMONSENSE CONSUMPTION ACT".

**13-21-1102. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) OBESITY AND MANY OTHER CONDITIONS THAT ARE DETRIMENTAL TO THE HEALTH AND WELL-BEING OF INDIVIDUALS ARE FREQUENTLY LONG-TERM MANIFESTATIONS OF POOR CHOICES THAT ARE HABITUALLY MADE BY THOSE INDIVIDUALS;

(b) DESPITE COMMERCIAL INFLUENCES, INDIVIDUALS REMAIN ULTIMATELY RESPONSIBLE FOR THE CHOICES THEY MAKE REGARDING THEIR BODY; AND

(c) EXCESSIVE LITIGATION RESTRICTS THE WIDE RANGE OF CHOICES OTHERWISE AVAILABLE TO INDIVIDUALS WHO CONSUME PRODUCTS RESPONSIBLY.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**13-21-1103. Definitions.** FOR THE PURPOSES OF THIS PART 11, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "CLAIM" MEANS ANY CLAIM BY OR ON BEHALF OF A NATURAL PERSON AND ANY DERIVATIVE OR OTHER CLAIM ARISING THEREFROM THAT IS ASSERTED BY OR ON BEHALF OF ANY OTHER PERSON.

(2) "FOOD" MEANS ANY FOOD OR BEVERAGE, INCLUDING CHEWING GUM, INTENDED FOR HUMAN CONSUMPTION AND ARTICLES USED FOR COMPONENTS OF ANY SUCH FOOD OR BEVERAGE.

(3) "INJURY CAUSED BY OR LIKELY TO RESULT FROM LONG-TERM CONSUMPTION" MEANS AN INJURY OR CONDITION RESULTING OR LIKELY TO RESULT FROM THE CUMULATIVE EFFECT OF CONSUMPTION AND NOT FROM A SINGLE INSTANCE OF CONSUMPTION.

(4) "OTHER PERSON" MEANS ANY INDIVIDUAL, CORPORATION, COMPANY, ASSOCIATION, FIRM, PARTNERSHIP, SOCIETY, JOINT-STOCK COMPANY, OR ANY OTHER ENTITY, INCLUDING ANY GOVERNMENTAL ENTITY OR PRIVATE ATTORNEY GENERAL.

**13-21-1104. Actions against food providers that comply with applicable state and federal laws - exemptions.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, A MANUFACTURER, PACKER, DISTRIBUTOR, CARRIER, HOLDER, OR SELLER OF A FOOD, OR AN ASSOCIATION OF ONE OR MORE SUCH ENTITIES, SHALL NOT BE SUBJECT TO CIVIL LIABILITY FOR ANY CLAIM ARISING FROM WEIGHT GAIN, OBESITY, A HEALTH CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY, OR OTHER INJURY CAUSED BY OR LIKELY TO RESULT FROM THE LONG-TERM CONSUMPTION OF THE FOOD.

(2) THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION SHALL NOT PRECLUDE CIVIL LIABILITY OF A MANUFACTURER, PACKER, DISTRIBUTOR, CARRIER, HOLDER, OR SELLER OF A FOOD, IN CASES IN WHICH A CLAIM OF INJURY NOT RELATED TO WEIGHT GAIN, OBESITY, OR A HEALTH CONDITION ASSOCIATED WITH WEIGHT GAIN OR OBESITY IS BASED ON A MATERIAL VIOLATION OF A COMPOSITION, BRANDING, OR LABELING STANDARD PRESCRIBED BY STATE OR FEDERAL LAW AND THE CLAIMED INJURY WAS ACTUAL AND PROXIMATELY CAUSED BY SUCH VIOLATION.

**13-21-1105. Pleading requirements.** (1) IN ANY ACTION PERMITTED UNDER SECTION 13-21-1104 (2), THE PLAINTIFF SHALL STATE THE FOLLOWING WITH PARTICULARITY IN THE COMPLAINT:

(a) THE STATUTE, REGULATION, OR OTHER PROVISION OF STATE OR FEDERAL LAW THAT WAS ALLEGEDLY VIOLATED;

(b) THE FACTS THAT ARE ALLEGED TO CONSTITUTE A MATERIAL VIOLATION OF SUCH LAW; AND

(c) THE FACTS THAT ARE ALLEGED TO DEMONSTRATE THAT THE MATERIAL VIOLATION PROXIMATELY CAUSED ACTUAL INJURY TO THE PLAINTIFF.

(2) IN ADDITION TO THE REQUIREMENTS SET FORTH IN SUBSECTION (1) OF THIS

SECTION, THE COMPLAINT SHALL STATE WITH PARTICULARITY FACTS SUFFICIENT TO SUPPORT A REASONABLE INFERENCE THAT THE VIOLATION WAS KNOWING AND WILLFUL.

(3) FOR PURPOSES OF APPLYING THIS PART 11:

(a) THE PLEADING REQUIREMENTS CONTAINED IN THIS SECTION SHALL BE REGARDED AS JURISDICTIONAL PREREQUISITES TO THE BRINGING OF AN ACTION AND NOT MERELY PROCEDURAL PROVISIONS; AND

(b) THE REQUIREMENTS OF ACTUAL INJURY, KNOWLEDGE AND WILLFULNESS, AND PROXIMATE CAUSE AS DESCRIBED IN THIS SECTION SHALL APPLY TO ALL ACTIONS COMMENCED UNDER THIS PART 11 NOTWITHSTANDING ANY PROVISION OF LAW OF ANOTHER STATE THAT MAY BE INCONSISTENT WITH OR CONTRARY TO SUCH REQUIREMENTS.

**13-21-1106. Stay of proceedings pending motion to dismiss.** (1) IN ANY ACTION BROUGHT AGAINST A MANUFACTURER, PACKER, DISTRIBUTER, CARRIER, HOLDER, OR SELLER OF A FOOD FOR CLAIMS RELATED TO THE LONG-TERM CONSUMPTION OF FOOD, ALL PROCEEDINGS INCLUDING BUT NOT LIMITED TO DISCOVERY SHALL BE STAYED DURING THE PENDENCY OF A MOTION TO DISMISS UNLESS THE COURT FINDS FOR GOOD CAUSE SHOWN ON THE MOTION OF ANY PARTY THAT LIMITED DISCOVERY IS NECESSARY TO PRESERVE EVIDENCE OR TO PREVENT UNDUE PREJUDICE TO THE MOVANT.

(2) DURING A STAY OF DISCOVERY, UNLESS OTHERWISE ORDERED BY THE COURT, ANY PARTY IN THE CASE, INCLUDING ANY PLAINTIFF AND ANY DEFENDANT THAT HAS BEEN PROPERLY SERVED WITH THE COMPLAINT, SHALL PRESERVE ALL DOCUMENTS, DATA COMPILATIONS INCLUDING BUT NOT LIMITED TO ELECTRONICALLY RECORDED DATA AND ELECTRONICALLY STORED DATA, AND TANGIBLE OBJECTS THAT ARE IN THE CUSTODY OR CONTROL OF SUCH PARTY AND THAT ARE RELEVANT TO THE ALLEGATIONS IN THE COMPLAINT AS THOUGH A REQUEST FOR PRODUCTION OF THOSE DOCUMENTS AND THINGS HAD BEEN SERVED PURSUANT TO COURT RULE.

**SECTION 2. Effective date - applicability.** This act shall take effect upon passage, and shall apply to actions filed on or after the effective date of this act.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 17, 2004