

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1823

5 By: Representatives Ledbetter, Bradford, J. Johnson, Pace, Walters
6
7

For An Act To Be Entitled

9 AN ACT TO BE KNOWN AS THE "COMMONSENSE
10 CONSUMPTION ACT"; TO LIMIT LIABILITY CLAIMS
11 RELATING TO WEIGHT GAIN AND OBESITY; TO PROVIDE
12 NUTRITIONAL INFORMATION TO THE PUBLIC; AND FOR
13 OTHER PURPOSES.
14

Subtitle

15 AN ACT TO BE KNOWN AS THE COMMONSENSE
16 CONSUMPTION ACT; TO LIMIT LIABILITY
17 CLAIMS RELATING TO WEIGHT GAIN AND
18 OBESITY; TO PROVIDE NUTRITIONAL
19 INFORMATION TO THE PUBLIC.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 16 is amended to add a new chapter to
26 read as follows:

27 16-127-101. Short title.

28 This chapter shall be known and may be cited as the "Commonsense
29 Consumption Act".
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31 16-127-102. Finding and purpose.

32 (a) It is found and determined by the General Assembly that:

33 (1) The State of Arkansas should provide protection to the food
34 industry from lawsuits related to weight gain or obesity;

35 (2) The public is seeking more nutritional information
36 concerning the food they purchase in restaurants;



1 (3) The consistency of menu items and preparation methods among
 2 restaurants of a chain having at least ten (10) locations nationally makes it
 3 reasonable for the public to expect the chain restaurants to post nutritional
 4 information in the restaurant;

5 (4) Some chain restaurants are already providing nutritional
 6 information either in their restaurants or on their Internet websites; and

7 (5) It is difficult to accurately calculate nutritional
 8 information for restaurants that are not part of a chain or are part of a
 9 small chain of restaurants because of the inconsistency of menu items and
 10 variance in the preparation of meals in the restaurants.

11 (b) It is the purpose of this chapter to provide protection to the
 12 food industry from lawsuits related to a person's weight gain or obesity and
 13 to assist the public in obtaining nutritional information.

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 15 16-127-103. Definitions.

16 As used in this chapter:

17 (1) "Chain restaurant" means a restaurant or similar retail food
 18 establishment that is identified with a chain having ten (10) or more
 19 locations nationally conducting business under the same trade name,
 20 regardless of the type of ownership of the individual restaurant locations,
 21 and offering predominantly the same types of meals, foods, or menus;

22 (2) "Engaged in the business" means a person who sells a
 23 qualified product in the person's regular course of trade or business;

24 (3) "Menu" means a list presented to the patron that states the
 25 food items for sale in a food service establishment;

26 (4) "Person" means an individual, corporation, company,
 27 association, firm, partnership, society, joint stock company, or any other
 28 entity, including any governmental entity;

29 (5)(A) "Qualified civil liability action" means a civil action
 30 brought by any person against a seller of a qualified product, for damages or
 31 injunctive relief based on a claim of injury resulting from a person's weight
 32 gain, obesity, or any health condition that is related to weight gain or
 33 obesity.

34 (B) A qualified civil liability action shall not include:

35 (i) An action in which a seller of a qualified
 36 product violated a federal or state statute applicable to the marketing,

1 distribution, advertisement, labeling, or sale of the product, and the
2 violation was a proximate cause of the claim of injury resulting from a
3 person's weight gain, obesity, or health condition related to weight gain or
4 obesity;

5 (ii) An action for breach of contract or express
6 warranty in connection with the purchase of a qualified product;

7 (iii) An action regarding the sale of a qualified
8 product which is adulterated as described in Section 402 of the Federal Food,
9 Drug, and Cosmetic Act, 21 U.S.C. § 342 as it existed on January 1, 2005; or

10 (iv) An action in which the seller is a chain
11 restaurant unless the chain restaurant complies with § 16-127-106;

12 (6) "Qualified product" means a food as defined in Section
13 201(f) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321(f); and

14 (7) "Seller" means, with respect to a qualified product, a
15 person lawfully engaged in the business of selling a qualified product.

16
17 16-127-104. Limited liability.

18 No person shall bring a qualified civil liability action in state
19 court against any seller of a qualified product.

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21 16-127-105. Additional requirements for chain restaurants.

22 (a) The limitation of liability provided for in § 16-127-104 shall not
23 apply to a chain restaurant unless the chain restaurant complies with the
24 following:

25 (1)(A) The menu lists next to each item on the menu, in a size
26 and typeface similar to other information about each item, nutritional
27 information, including, but not limited to, the total number of the following
28 per serving, as usually prepared and offered for sale:

29 (i) Calories;

30 (ii) Grams of saturated fat plus trans fat; and

31 (iii) Milligrams of sodium.

32 (B) If the chain restaurant uses only a menu board, it may
33 limit the nutritional information listed on the menu board to the total
34 number of calories per serving per item in a size and typeface similar to
35 other information about the item. Additional written information shall be
36 made available to customers at the point of sale upon request. The menuboard

1 shall include a notice that additional information is available on request.

2 (C) If the chain restaurant provides a salad bar, buffet
 3 line, cafeteria service, or similar self-serve arrangement, it may limit the
 4 nutritional information provided for items offered in such an arrangement to
 5 the total number of calories per standard serving per item in a size and
 6 typeface similar to other information provided about the item. Additional
 7 written information about the item shall be made available to customers at
 8 the point of sale upon request;

9 (2)(A) The chain restaurant shall obtain the nutrient analysis
 10 required by this section from an independent nutrition testing laboratory and
 11 shall use analytic methods and express nutrient content in a manner
 12 consistent with the Food, Drug, and Cosmetic Act, § 20-56-201 et seq., and
 13 implementing regulations.

14 (B) A nutritional information label is out of compliance
 15 with this section if the label declaration is more than twenty percent (20%)
 16 lower than nutrient analysis shows as the content of the menu item;

17 (3)(A) For menu items that come in different flavors and
 18 varieties but that are listed as a single menu item, such as soft drinks, ice
 19 cream, pizza, and doughnuts, the median value for calories or other nutrients
 20 for all flavors or varieties shall be listed on menus and menu boards if the
 21 calorie or other nutrient values for all flavors or varieties are within
 22 twenty percent (20%) of the median.

23 (B) If the calories or other nutrient values are not
 24 within twenty percent (20%) of the median, then the range for all the flavors
 25 or varieties of that menu item shall be listed from the lowest to the highest
 26 value.

27 (C)(i) If a menu item that comes in different varieties is
 28 on display with a name placard or similar signage, the calories per serving
 29 as offered for sale shall be listed on the placard along with the name.

30 (ii)(a) If the menu item is not on display,
 31 nutrition information for each individual flavor or variety shall be provided
 32 by means of an in-store brochure, booklet, kiosk, or other device that is
 33 easily accessible to customers.

34 (b) Signage shall alert customers to the
 35 availability of the information; and

36 (4)(A) The bottom of each page of a menu shall include the

1 following statement in a clear and conspicuous manner: "Recommended limits
2 for a 2,000 calorie daily diet are 20 g of saturated fat and 2,400 mg of
3 sodium. Saturated fat numbers include trans fat."

4 (B) When used by chain restaurants, menu boards shall
5 include the following statement in a clear and conspicuous manner: "Daily
6 Values are based on a 2,000 calorie diet."

7 (b) The requirement that nutritional information be listed by a chain
8 restaurant pursuant to subsection (a) of this section does not apply to:

9 (1) Temporary menu items such as specials that appear on the
10 menu for less than thirty (30) days per year; and

11 (2) Condiments and other items placed on a table or counter for
12 general use without charge.

13 (c) Nothing in this section precludes restaurants and similar retail
14 food establishments from providing additional nutrition information
15 voluntarily.

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17 16-127-106. Applicability.

18 (a)(1) This chapter applies to all causes of action accruing on or
19 after the effective date of this chapter.

20 (2) However, for a chain restaurant § 16-127-104 does not apply
21 to any cause of action accruing prior to the date the chain restaurant
22 complies with § 16-127-105.

23 (b) This chapter does not apply to any action filed or cause of action
24 accruing prior to the effective date of this chapter.

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26 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
27 General Assembly of the State of Arkansas that the State of Arkansas should
28 protect the food industry from lawsuits related to weight gain or obesity but
29 should also assist the public in protecting their health by requiring more
30 nutritional information to be made available to patrons of chain restaurants;
31 and that this act is immediately necessary in order to avoid financial harm
32 to the food industry and to protect the health of the general public.
33 Therefore, an emergency is declared to exist and this act being immediately
34 necessary for the preservation of the public peace, health, and safety shall
35 become effective on:

36 (1) The date of its approval by the Governor;

1 (2) If the bill is neither approved nor vetoed by the Governor,
2 the expiration of the period of time during which the Governor may veto the
3 bill; or

4 (3) If the bill is vetoed by the Governor and the veto is
5 overridden, the date the last house overrides the veto.

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