

LEGISLATURE OF NEBRASKA  
ONE HUNDREDTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 625**

Introduced by Engel, 17; Erdman, 47; Heidemann, 1; Karpisek, 32;  
Kruse, 13; Pedersen, 39; Synowiecki, 7

Read first time January 17, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to adopt the Commonsense  
2 Consumption Act; to prohibit civil actions based upon  
3 weight gain or obesity as prescribed; and to provide a  
4 duty for the Revisor of Statutes.  
5 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 8 of this act shall be known and  
2 may be cited as the Commonsense Consumption Act.

3           Sec. 2. For purposes of the Commonsense Consumption Act,  
4 unless the context otherwise requires:

5           (1) Claim means any claim by or on behalf of a natural  
6 person and any derivative or other claim arising therefrom that is  
7 asserted by or on behalf of any other person;

8           (2) Food has the meaning found in 21 U.S.C. 321(f);

9           (3) Generally known condition allegedly caused by or  
10 allegedly likely to result from long-term consumption means a  
11 condition generally known to result or to likely result from the  
12 cumulative effect of consumption and not from a single instance of  
13 consumption;

14           (4) Knowing and willful means that the conduct  
15 constituting the violation:

16           (a) Was committed with the intent to deceive or injure  
17 consumers or with actual knowledge that such conduct was injurious  
18 to consumers; and

19           (b) Was not required by regulation, order, rule, or other  
20 pronouncement of a government agency or by a statute administered  
21 by a government agency;

22           (5) Other person means an individual, corporation,  
23 limited liability company, association, firm, partnership, society,  
24 joint-stock company, or other entity, including any governmental  
25 entity.

1           Sec. 3. Except as otherwise provided in section 4 of this  
 2 act, a manufacturer, packer, distributor, carrier, holder, seller,  
 3 marketer, or advertiser of a food, or an association of one or  
 4 more such entities, shall not be subject to civil liability for any  
 5 claim arising under any law of the State of Nebraska, including all  
 6 statutes, regulations, rules, common law, public policies, court or  
 7 administrative decisions or decrees, or other state action having  
 8 the effect of law, for any claim arising out of weight gain or  
 9 obesity, a health condition associated with weight gain or obesity,  
 10 or other generally known condition allegedly caused by or allegedly  
 11 likely to result from long-term consumption of food.

12           Sec. 4. Section 3 of this act shall not preclude  
 13 civil liability when the claim of weight gain or obesity,  
 14 health condition associated with weight gain or obesity, or other  
 15 generally known condition allegedly caused by or allegedly likely  
 16 to result from long-term consumption of food is based on:

17           (1) A material violation of an adulteration or  
 18 misbranding requirement prescribed by statute or regulation of  
 19 the State of Nebraska or of the United States of America and the  
 20 claimed injury was proximately caused by such violation; or

21           (2) Any other material violation of federal or state  
 22 law applicable to the manufacturing, marketing, distribution,  
 23 advertising, labeling, or sale of food if the violation is knowing  
 24 and willful and the claimed injury was proximately caused by such  
 25 violation.

1           Sec. 5. (1) In any action brought pursuant to subdivision  
 2 (1) of section 4 of this act, the complaint initiating the action  
 3 shall state with particularity the following:

4           (a) The statute, regulation, or other law of the state or  
 5 of the United States that was allegedly violated;

6           (b) The facts that are alleged to constitute a material  
 7 violation of the statute or regulations; and

8           (c) The facts alleged to demonstrate that the violation  
 9 proximately caused actual injury to the plaintiff.

10           (2) In any action brought pursuant to subdivision (2) of  
 11 section 4 of this act, the complaint initiating the action shall  
 12 state with particularity each requirement set forth in subsection  
 13 (1) of this section and facts sufficient to support a reasonable  
 14 inference that the violation was:

15           (a) With intent to deceive or injure consumers; or

16           (b) With the actual knowledge that the violation was  
 17 injurious to consumers.

18           Sec. 6. For purposes of applying the provisions of the  
 19 Commonsense Consumption Act, the pleading requirements described in  
 20 section 5 of this act are deemed part of the substantive law of the  
 21 state and not merely in the nature of procedural provisions.

22           Sec. 7. In any action described in section 4 of this  
 23 act, all discovery and other proceedings shall be stayed during  
 24 the pendency of any motion to dismiss unless the court finds  
 25 upon the motion of any party that particularized discovery is

1 necessary to preserve evidence or to prevent undue prejudice to  
2 that party. During the pendency of any stay of discovery pursuant  
3 to this section, unless otherwise ordered by the court, any party  
4 to the action with actual notice of the allegations contained  
5 in the complaint shall treat all documents, data compilations,  
6 including electronically recorded or stored data, and tangible  
7 objects that are in the custody or control of such party and that  
8 are relevant to the allegations, as if they were the subject of  
9 a continuing request for production of documents from the opposing  
10 party pursuant to the rules of procedure for discovery.

11           Sec. 8. The Commonsense Consumption Act shall apply to  
12 all covered claims filed on and after January 1, 2008.

13           Sec. 9. The Revisor of Statutes shall assign sections 1  
14 to 8 of this act to Chapter 25, article 21.