

TITLE 39  
HEALTH AND SAFETY

CHAPTER 87  
IDAHO COMMONSENSE CONSUMPTION ACT

39-8701. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Commonsense Consumption Act."

[39-8701, added 2004, ch. 380, sec. 1, p. 1141.]

39-8702. PREVENTION OF FRIVOLOUS LAWSUITS. Except as provided in section 39-8703, Idaho Code, a manufacturer, packer, distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in section 39-8704, Idaho Code, or an association of one (1) or more of such entities, shall not be subject to civil liability arising under any Idaho law for any claim, as defined in section 39-8704, Idaho Code, arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption of food.

[39-8702, added 2004, ch. 380, sec. 1, p. 1141.]

39-8703. EXEMPTION. Notwithstanding section 39-8702, Idaho Code, civil liability shall not be precluded where the claim of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding provision set forth by statute, rule or regulation in Idaho or the United States provided the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state law applicable to manufacturing, marketing, distribution, advertising, labeling or the sale of food, provided such violation is knowing and willful, as defined in section 39-8704, Idaho Code, and provided further that the claimed injury was proximately caused by such violation.

[39-8703, added 2004, ch. 380, sec. 1, p. 1141.]

39-8704. DEFINITIONS. As used in this chapter:

(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" means:

(a) Articles used for food or drink for persons or other animals;

(b) Chewing gum; and

(c) Articles used for components of any other such article.

(3) "Generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption" means an obesity-related condition generally known to result or to likely result from the cumulative effect of consumption and not from a single instance of consumption.

(4) "Knowing and willful violation" means:

(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 any law, regulation, order or rule of the United States, the state of Idaho, or any political subdivision thereof.

(5) "Person" means any individual, partnership, corporation, firm, association, governmental subdivision or agency, public or private organization or other legal entity.

[39-8704, added 2004, ch. 380, sec. 1, p. 1141.]

39-8705. PLEADING REQUIREMENTS. (1) In any action exempted pursuant to section 39-8703(1), Idaho Code, the complaint initiating such action shall state with particularity the following:

(a) The statute, rule, regulation or other law of Idaho or the United States 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 such violation proximately caused actual injury to the plaintiff.

(2) In any action exempted pursuant to section 39-8703(2), Idaho Code, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was done with the intent to deceive or injure consumers or with actual knowledge that such violation was injurious to consumers.

[39-8705, added 2004, ch. 380, sec. 1, p. 1142.]

39-8706. STAY PENDING MOTION TO DISMISS. In any action exempted pursuant to section 39-8703, Idaho Code, 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, 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 such 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.

[39-8706, added 2004, ch. 380, sec. 1, p. 1142.]