

1 HB193
2 125918-2
3 By Representatives Jones, Rich, Moore (B), Beckman, Merrill,
4 Lee and Henry
5 RFD: Judiciary
6 First Read: 08-MAR-11

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To bar civil actions against manufacturers, packers,
9 distributors, carriers, holders, sellers, marketers, or
10 advertisers of food products that comply with applicable
11 statutory and regulatory requirements based on claims arising
12 out of weight gain, obesity, a health condition associated
13 with weight gain or obesity, or other generally known
14 condition allegedly caused by or allegedly likely to result
15 from long-term consumption of food.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. This act may be cited as the "Commonsense
18 Consumption Act."

19 Section 2. For purposes of this act, the following
20 words have the following meanings:

21 (1) CLAIM. Any claim by or on behalf of a natural
22 person, as well as any derivative or other claim arising
23 therefrom asserted by or on behalf of any other person.

24 (2) GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR
25 ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION. A
26 condition generally known to result or to likely result from

1 the cumulative effect of consumption, and not from a single
2 instance of consumption.

3 (3) KNOWING AND WILLFUL. Conduct in violation of
4 federal or state law which meets both of the following
5 criteria:

6 a. The conduct constituting the violation was
7 committed with the intent to deceive or injure consumers or
8 with actual knowledge that such conduct was injurious to
9 consumers.

10 b. The conduct constituting the violation was not
11 required by regulations, orders, rules, or other pronouncement
12 of, or any statute administered by, a federal, state, or local
13 government agency.

14 (4) OTHER PERSON. Any individual, corporation,
15 company, association, firm, partnership, society, joint-stock
16 company, or any other entity, including any governmental
17 entity or private attorney general.

18 Section 3. Except as exempted in Section 4, a
19 ~~manufacturer,~~ packer, distributor, carrier, holder, seller,
20 marketer, or advertiser of a food, as defined at Section
21 201(f) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
22 §321(f), or an association of one or more such entities, shall
23 not be subject to any civil action for any claim arising out
24 of weight gain, obesity, a health condition associated with
25 weight gain or obesity, or other generally known condition
26 allegedly caused by or allegedly likely to result from
27 long-term consumption of food.

1 Section 4. Section 3 shall not preclude a civil
2 action in which the claim of weight gain, obesity, health
3 condition associated with weight gain or obesity, or other
4 generally known condition allegedly caused by or allegedly
5 likely to result from long-term consumption of food (1)
6 includes as an element of the cause of action a material
7 violation of an adulteration or misbranding requirement
8 prescribed by statute or rule of this state or the United
9 States of America, and the claimed injury was proximately
10 caused by such violation; or (2) is based on any other
11 material violation of federal or state law applicable to the
12 manufacturing, marketing, distribution, advertising, labeling,
13 or sale of food, provided that such violation is knowing and
14 willful, and the claimed injury was proximately caused by such
15 violation.

16 Section 5. (a) In any action exempted under
17 subdivision (1) of Section 4, the complaint initiating the
18 action shall state with particularity for each defendant and
19 cause of action all of the following:

20 (1) The statute, rule, or other law of the state or
21 of the United States that allegedly creates the cause of
22 action.

23 (2) Each element of the cause of action and the
24 specific facts alleged to satisfy each element of the cause of
25 action.

26 (3)a. The exemption under subsection (a) being
27 relied upon and the specific facts that allegedly demonstrate

1 that the violation of the statute, rule, or other law in
2 subdivision (1) proximately caused actual injury to the
3 plaintiff.

4 b. In any action exempted under subdivision (2) of
5 Section 4, in addition to the foregoing pleading requirements,
6 the complaint initiating the action shall state with
7 particularity facts sufficient to support a reasonable
8 inference that the violation was with intent to deceive or
9 injure consumers or with the actual knowledge that the
10 violation was injurious to consumers. For purposes of applying
11 this act, the pleading requirements in this subsection are
12 deemed part of the substantive law of the state and not merely
13 in the nature of procedural provisions.

14 (b) (1) In any action exempted under Section 4, the
15 obligation of any party or non-party to make disclosures of
16 any kind under any applicable rule or order, or to respond to
17 discovery requests of any kind, as well as all proceedings
18 unrelated to adjudicating a motion to dismiss, shall be stayed
19 prior to the time for filing a motion to dismiss and during
20 the pendency of any such motion unless the court finds upon
21 motion of any party that a response to a particularized
22 discovery request is necessary to preserve evidence or to
23 prevent undue prejudice to that party.

24 (2) During the pendency of any stay of discovery
25 pursuant to this section, unless otherwise ordered by the
26 court, the responsibilities of the parties with regard to the
27 treatment of all documents, data compilations, including

1 electronically recorded or stored data, and tangible objects
2 shall be governed by applicable rules of civil procedure. A
3 party aggrieved by the failure of an opposing party to comply
4 with this subdivision shall have the applicable remedies made
5 available by such applicable rules, provided that no remedy
6 shall be afforded that conflicts with the terms of this
7 subdivision.

8 Section 6. (a) Nothing in this act shall be
9 construed to create any claim, right of action, or civil
10 liability that did not previously exist under the law of this
11 state.

12 (b) Nothing in this act shall be construed to
13 interfere with any agency's exclusive or primary jurisdiction
14 to find or declare violations of an adulteration or
15 misbranding statute or rule.

16 (c) Nothing in this act shall be construed to apply
17 to a manufacturer of food.

18 Section 7. The provisions of this act shall apply to
19 all covered claims pending on the date of the effective date
20 of this act and all claims filed thereafter, regardless of
21 when the claim arose.

22 Section 8. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 08-MAR-11

Read for the second time and placed
on the calendar 1 amendment 14-APR-11

Read for the third time and passed
as amended..... 03-MAY-11

Yeas 75, Nays 20, Abstains 0

Greg Pappas
Clerk