

1 HB242  
2 125918-7  
3 By Representative Jones  
4 RFD: Judiciary  
5 First Read: 09-FEB-12

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ENROLLED, An Act,

To bar civil actions against packers, distributors, manufacturers, carriers, holders, sellers, marketers, or advertisers of food products that comply with applicable statutory and regulatory requirements based on claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

(1) CLAIM. 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) GENERALLY KNOWN CONDITION ALLEGEDLY CAUSED BY OR ALLEGEDLY LIKELY TO RESULT FROM LONG-TERM CONSUMPTION. A condition generally known to result or to likely result from the cumulative effect of consumption, and not from a single instance of consumption.

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

3           a. The conduct constituting the violation was  
4 committed with the intent to deceive or injure consumers or  
5 with actual knowledge that such conduct was injurious to  
6 consumers.

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

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

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

1           (3)a. The exemption under subsection (a) being  
2           relied upon and the specific facts that allegedly demonstrate  
3           that the violation of the statute, rule, or other law in  
4           subdivision (1) proximately caused actual injury to the  
5           plaintiff.

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

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

1           (2) Unless otherwise ordered by the court, during  
2 the pendency of any stay of discovery pursuant to this  
3 section, the responsibilities of the parties with regard to  
4 the treatment of all documents, data compilations, including  
5 electronically recorded or stored data, and tangible objects  
6 shall be governed by applicable rules of civil procedure. A  
7 party aggrieved by the failure of an opposing party to comply  
8 with this subdivision shall have the applicable remedies made  
9 available by such applicable rules, provided that no remedy  
10 shall be afforded that conflicts with the terms of this  
11 subdivision.

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

16           (b) Nothing in this act shall be construed to  
17 interfere with any agency's exclusive or primary jurisdiction  
18 to find or declare violations of an adulteration or  
19 misbranding statute or rule.

20           ~~(c) Nothing in this act shall be construed to apply~~  
21 ~~to a manufacturer of food.~~

22           Section 7. The provisions of this act shall apply to  
23 all covered claims pending on the date of the effective date  
24 of this act and all claims filed thereafter, regardless of  
25 when the claim arose.

1                   Section 8. This act shall become effective  
2 immediately following its passage and approval by the  
3 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 17-APR-12, as amended.

Greg Pappas  
Clerk

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Senate 16-MAY-12 Passed