

1 SB100  
2 125918-1  
3 By Senator Allen  
4 RFD: Judiciary  
5 First Read: 07-FEB-12  
6 PFD: 01/25/2012

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8 SYNOPSIS: This bill would prohibit lawsuits based on  
9 claims arising out of weight gain, obesity, a  
10 health condition associated with weight gain or  
11 obesity, or other generally known condition  
12 allegedly caused by or allegedly likely to result  
13 from long-term consumption of food.

14  
15 A BILL  
16 TO BE ENTITLED  
17 AN ACT

18  
19 To bar civil actions against manufacturers, packers,  
20 distributors, carriers, holders, sellers, marketers, or  
21 advertisers of food products that comply with applicable  
22 statutory and regulatory requirements based on claims arising  
23 out of weight gain, obesity, a health condition associated  
24 with weight gain or obesity, or other generally known  
25 condition allegedly caused by or allegedly likely to result  
26 from long-term consumption of food.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

17 a. The conduct constituting the violation was  
18 committed with the intent to deceive or injure consumers or  
19 with actual knowledge that such conduct was injurious to  
20 consumers.

21 b. The conduct constituting the violation was not  
22 required by regulations, orders, rules, or other pronouncement  
23 of, or any statute administered by, a federal, state, or local  
24 government agency.

25 (4) OTHER PERSON. Any individual, corporation,  
26 company, association, firm, partnership, society, joint-stock

1 company, or any other entity, including any governmental  
2 entity or private attorney general.

3 Section 3. Except as exempted in Section 4, a  
4 manufacturer, packer, distributor, carrier, holder, seller,  
5 marketer, or advertiser of a food, as defined at Section  
6 201(f) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.  
7 §321(f), or an association of one or more such entities, shall  
8 not be subject to any civil action for any claim arising out  
9 of weight gain, obesity, a health condition associated with  
10 weight gain or obesity, or other generally known condition  
11 allegedly caused by or allegedly likely to result from  
12 long-term consumption of food.

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

1 willful, and the claimed injury was proximately caused by such  
2 violation.

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

7 (1) The statute, rule, or other law of the state or  
8 of the United States that allegedly creates the cause of  
9 action.

10 (2) Each element of the cause of action and the  
11 specific facts alleged to satisfy each element of the cause of  
12 action.

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

18 b. In any action exempted under subdivision (2) of  
19 Section 4, in addition to the foregoing pleading requirements,  
20 the complaint initiating the action shall state with  
21 particularity facts sufficient to support a reasonable  
22 inference that the violation was with intent to deceive or  
23 injure consumers or with the actual knowledge that the  
24 violation was injurious to consumers. For purposes of applying  
25 this act, the pleading requirements in this subsection are

1 deemed part of the substantive law of the state and not merely  
2 in the nature of procedural provisions.

3 (b) (1) In any action exempted under Section 4, the  
4 obligation of any party or non-party to make disclosures of  
5 any kind under any applicable rule or order, or to respond to  
6 discovery requests of any kind, as well as all proceedings  
7 unrelated to adjudicating a motion to dismiss, shall be stayed  
8 prior to the time for filing a motion to dismiss and during  
9 the pendency of any such motion unless the court finds upon  
10 motion of any party that a response to a particularized  
11 discovery request is necessary to preserve evidence.

12 (2) During the pendency of any stay of discovery  
13 pursuant to this section, the responsibilities of the parties  
14 with regard to the treatment of all documents, data  
15 compilations, including electronically recorded or stored  
16 data, and tangible objects shall be governed by applicable  
17 rules of civil procedure. A party aggrieved by the failure of  
18 an opposing party to comply with this subdivision shall have  
19 the applicable remedies made available by such applicable  
20 rules, provided that no remedy shall be afforded that  
21 conflicts with the terms of this subdivision.

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

1                   (b) Nothing in this act shall be construed to  
2 interfere with any agency's exclusive or primary jurisdiction  
3 to find or declare violations of an adulteration or  
4 misbranding statute or rule.

5                   Section 7. The provisions of this act shall apply to  
6 all covered claims pending on the date of the effective date  
7 of this act and all claims filed thereafter, regardless of  
8 when the claim arose.

9                   Section 8. This act shall become effective  
10 immediately following its passage and approval by the  
11 Governor, or its otherwise becoming law.