

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

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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.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

24           (4) OTHER PERSON. Any individual, corporation,  
25 company, association, firm, partnership, society, joint-stock  
26 company, or any other entity, including any governmental  
27 entity or private attorney general.

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

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

26           Section 5. (a) In any action exempted under  
27 subdivision (1) of Section 4, the complaint initiating the

1 action shall state with particularity for each defendant and  
2 cause of action all of the following:

3 (1) The statute, rule, or other law of the state or  
4 of the United States that allegedly creates the cause of  
5 action.

6 (2) Each element of the cause of action and the  
7 specific facts alleged to satisfy each element of the cause of  
8 action.

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

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

24 (b) (1) In any action exempted under Section 4, the  
25 obligation of any party or non-party to make disclosures of  
26 any kind under any applicable rule or order, or to respond to  
27 discovery requests of any kind, as well as all proceedings

1 unrelated to adjudicating a motion to dismiss, shall be stayed  
2 prior to the time for filing a motion to dismiss and during  
3 the pendency of any such motion unless the court finds upon  
4 motion of any party that a response to a particularized  
5 discovery request is necessary to preserve evidence.

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

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

20 (b) Nothing in this act shall be construed to  
21 interfere with any agency's exclusive or primary jurisdiction  
22 to find or declare violations of an adulteration or  
23 misbranding statute or rule.

24 Section 7. The provisions of this act shall apply to  
25 all covered claims pending on the date of the effective date  
26 of this act and all claims filed thereafter, regardless of  
27 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.