

1 HB242  
2 125918-6  
3 By Representative Jones  
4 RFD: Judiciary  
5 First Read: 09-FEB-12



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 packer, distributor, manufacturer, 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) Unless otherwise ordered by the court, during  
25 the pendency of any stay of discovery pursuant to this  
26 section, the responsibilities of the parties with regard to  
27 the 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 ..... . . . . . 09-FEB-12

Read for the second time and placed  
on the calendar 1 amendment ..... . . . . . 08-MAR-12

Read for the third time and passed  
as amended..... . . . . . 17-APR-12

Yeas 70, Nays 10, Abstains 2

Greg Pappas  
Clerk