

1 SB264
2 125918-4
3 By Senator Allen
4 RFD: Judiciary
5 First Read: 09-FEB-12

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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

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19 To bar civil actions against packers, distributors,
20 carriers, holders, sellers, marketers, or advertisers of food
21 products that comply with applicable statutory and regulatory
22 requirements based on claims arising out of weight gain,
23 obesity, a health condition associated with weight gain or
24 obesity, or other generally known condition allegedly caused
25 by or allegedly likely to result from long-term consumption of
26 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 packer, distributor, carrier, holder, seller, marketer, or
3 advertiser of a food, as defined at Section 201(f) of the
4 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §321(f), or an
5 association of one or more such entities, shall not be subject
6 to any civil action for any claim arising out of weight gain,
7 obesity, a health condition associated with weight gain or
8 obesity, or other generally known condition allegedly caused
9 by or allegedly likely to result from long-term consumption of
10 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 or to
6 prevent undue prejudice to that party.

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

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

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

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

1 Section 7. The provisions of this act shall apply to
2 all covered claims pending on the date of the effective date
3 of this act and all claims filed thereafter, regardless of
4 when the claim arose.

5 Section 8. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.