

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 2195

5 By: Representative Collins-Smith
6

For An Act To Be Entitled

8 AN ACT TO PROMOTE AND ENHANCE ECONOMIC DEVELOPMENT
9 WITHIN THE STATE AND TO PROTECT THOSE BUSINESSES,
10 COMPANIES, AND MANUFACTURERS THAT ARE CURRENTLY
11 COMPLYING WITH STATUTORY AND REGULATORY REQUIREMENTS;
12 TO PROHIBIT FRIVOLOUS LAWSUITS; AND FOR OTHER
13 PURPOSES.
14

Subtitle

15
16 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT
17 WITHIN THE STATE AND TO PROTECT THOSE
18 BUSINESSES, COMPANIES, AND MANUFACTURERS
19 THAT ARE CURRENTLY COMPLYING WITH
20 STATUTORY AND REGULATORY REQUIREMENTS AND
21 TO PROHIBIT FRIVOLOUS LAWSUITS.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 16, Chapter 55 is amended to add a new
28 subchapter to read as follows:

29 Subchapter 3 – Frivolous lawsuits

30 16-55-301. Definitions.

31 As used in this subchapter:

32 (1) “Claim” means any claim made by or on behalf of a natural person,
33 as well as any derivative or other claim arising from it that is asserted by
34 or on behalf of any other person; and

35 (2) “Generally known condition allegedly caused by or allegedly likely
36 to result from long-term consumption” means a condition generally known to



1 result or likely to result from the cumulative effect of consumption, and not
2 from a single instance of consumption.

3
4 16-55-302. Prevention of frivolous lawsuits.

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

13 (b) The prohibitions of subsection (a) of this section shall not
14 preclude a civil action :

15 (1) In which the claim of weight gain, obesity, a health
16 condition associated with weight gain or obesity, or other generally known
17 condition allegedly caused by or allegedly likely to result from long-term
18 consumption of food includes as an element of the cause of action a material
19 violation of adulteration or misbranding requirement prescribed by federal or
20 state statute or regulation, and the claimed injury was proximately caused by
21 such violation; or

22 (2) Based on any other material violation of state or federal
23 law applicable to the manufacturing, marketing, distribution, advertising,
24 labeling, or sale of food, provided that such violation is knowing and
25 willful, and the claimed injury was proximately caused by such violation.

26
27 16-55-303. Construction.

28 This subchapter shall not interfere with any agency's exclusive or
29 primary jurisdiction to find or declare violations of an adulteration or
30 misbranding statute or regulation.

31
32 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
33 General Assembly of the State of Arkansas that the cost of defending lawsuits
34 is expensive and potentially devastating to the economic interests of
35 businesses in the State of Arkansas; that frivolous lawsuits against
36 businesses can be just as costly and potentially devastating as legitimate

1 lawsuits can be; and that this act is immediately necessary because
2 protecting businesses that are operating within applicable laws, rules, and
3 regulations from frivolous lawsuits is necessary to promote economic
4 development and jobs. Therefore, an emergency is declared to exist, and this
5 act being immediately necessary for the preservation of the public peace,
6 health, and safety shall become effective on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,
9 the expiration of the period of time during which the Governor may veto the
10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is
12 overridden, the date the last house overrides the veto.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36