

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

As Engrossed: H3/14/11

A Bill

HOUSE BILL 2195

5 By: Representatives Collins-Smith, Barnett, Bell, Branscum, Deffenbaugh,
6 Eubanks, Gillam, Lenderman, Linck, Sanders, Shepherd, Stubblefield,
7 Westerman, B. Wilkins
8 By: Senators Rapert, Bledsoe, Burnett, Irvin
9

For An Act To Be Entitled

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

19 AN ACT TO PROMOTE ECONOMIC DEVELOPMENT
20 WITHIN THE STATE AND TO PROTECT THOSE
21 BUSINESSES, COMPANIES, AND MANUFACTURERS
22 THAT ARE CURRENTLY COMPLYING WITH
23 STATUTORY AND REGULATORY REQUIREMENTS AND
24 TO PROHIBIT FRIVOLOUS LAWSUITS.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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30 SECTION 1. Arkansas Code Title 16, Chapter 55 is amended to add a new
31 subchapter to read as follows:

32 Subchapter 3 – Frivolous lawsuits

33 16-55-301. Definitions.

34 As used in this subchapter:

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



1 or on behalf of any other person; and

2 (2) "Generally known condition allegedly caused by or allegedly likely
3 to result from long-term consumption" means a condition generally known to
4 result or likely to result from the cumulative effect of consumption, and not
5 from a single instance of consumption.

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7 16-55-302. Prevention of frivolous lawsuits.

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

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

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

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

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30 16-55-303. Construction.

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

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35 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
36 General Assembly of the State of Arkansas that the cost of defending lawsuits

1 is expensive and potentially devastating to the economic interests of
2 businesses in the State of Arkansas; that frivolous lawsuits against
3 businesses can be just as costly and potentially devastating as legitimate
4 lawsuits can be; and that this act is immediately necessary because
5 protecting businesses that are operating within applicable laws, rules, and
6 regulations from frivolous lawsuits is necessary to promote economic
7 development and jobs. Therefore, an emergency is declared to exist, and this
8 act being immediately necessary for the preservation of the public peace,
9 health, and safety shall become effective on:

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

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

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

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17 /s/Collins-Smith
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