

By: Senator(s) Ross

To: Judiciary, Division A

SENATE BILL NO. 2910

1 AN ACT TO PREVENT FRIVOLOUS LAWSUITS AGAINST MANUFACTURERS,  
2 PACKERS, DISTRIBUTORS, CARRIERS, HOLDERS, SELLERS, MARKETERS OR  
3 ADVERTISERS OF FOOD PRODUCTS THAT COMPLY WITH APPLICABLE STATUTORY  
4 AND REGULATORY REQUIREMENTS; AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1.** This act may be cited as the "Commonsense  
7 Consumption Act."

8 **SECTION 2.** (1) **Prevention of frivolous lawsuits.** Except as  
9 exempted in subsection (2) of this section, a manufacturer,  
10 packer, distributor, carrier, holder, seller, marketer or  
11 advertiser of a food (as defined in Section 201(f) of the Federal  
12 Food Drug and Cosmetic Act (21 USC 321(f)), or an association of  
13 one or more such entities, shall not be subject to civil liability  
14 arising under any law of Mississippi (including all statutes,  
15 regulations, rules, common law, public policies, court or  
16 administrative decisions or decrees, or other state action having  
17 the effect of law) for any claim arising out of weight gain,  
18 obesity, a health condition associated with weight gain or  
19 obesity, or other generally known condition allegedly caused by or  
20 allegedly likely to result from long-term consumption of food.

21 (2) **Exemption.** Subsection (1) of this section shall not  
22 preclude civil liability where the claim of weight gain, obesity,  
23 health condition associated with weight gain or obesity, or other  
24 generally known condition allegedly caused by or allegedly likely  
25 to result from long-term consumption of food is based on (a) a  
26 material violation of an adulteration or misbranding requirement  
27 prescribed by state or federal statute or regulation and the  
28 claimed injury was proximately caused by such violation; or (b)

29 any other material violation of federal or state law applicable to  
30 the manufacturing, marketing, distribution, advertising, labeling  
31 or sale of food.

32 (3) **Definitions.** For purposes of this act, the following  
33 words and phrases shall have the meanings ascribed unless the  
34 context clearly requires otherwise:

35 (a) "Claim" means any claim by or on behalf of natural  
36 person, as well as any derivative or other claim arising therefrom  
37 asserted by or on behalf of any other person.

38 (b) "Other person" means any individual, corporation,  
39 company, association, firm, partnership, society, joint-stock  
40 company or any other entity, including any governmental entity or  
41 private attorney.

42 (c) "Generally known condition allegedly caused by or  
43 allegedly likely to result from long-term consumption" means a  
44 condition generally known to result or to likely result from the  
45 cumulative effect of consumption, and not from a single instance  
46 of consumption.

47 (d) "Violation of federal or state law" means that (i)  
48 the conduct constituting the violation was committed with the  
49 intent to deceive or injure consumers or with actual knowledge  
50 that such conduct was injurious to consumers; and (ii) the conduct  
51 constituting the violation was not required by regulations,  
52 orders, rules or other pronouncement of, or any statute  
53 administered by, a federal, state or local government agency.

54 (4) **Pleading requirements.** In any action exempted under  
55 subsection (2)(a) of this section, the complaint initiating the  
56 action shall state with particularity the following: the statute,  
57 regulation or other law of the State of Mississippi or of the  
58 United States that was allegedly violated; the facts that are  
59 alleged to constitute a material violation of such statute or  
60 regulation; and the facts alleged to demonstrate that such  
61 violation proximately caused actual injury to the plaintiff. In

62 any action exempted under subsection (2)(b) of this section, in  
63 addition to the foregoing pleading requirements, the complaint  
64 initiating such action shall state with particularity facts  
65 sufficient to support a reasonable inference that the violation  
66 was with intent to deceive or injure consumers or with the actual  
67 knowledge that such violation was injurious to consumers. For  
68 purposes of applying this act, the foregoing pleading requirements  
69 are hereby deemed part of the substantive law of the State of  
70 Mississippi and not merely in the nature of procedural provisions.  
71 The requirements of actual injury and proximate causation set  
72 forth in this subsection (4) shall apply, notwithstanding any  
73 other law which may be inconsistent with or contrary to such  
74 requirements.

75       **SECTION 3.** The provisions of this act shall apply to all  
76 covered claims pending on the date of the effective date and all  
77 claims filed thereafter, regardless of when the claim arose.

78       **SECTION 4.** This act shall take effect and be in force from  
79 and after its passage.