

1 (1ST EXTRAORDINARY SESSION)  
ENGROSSED SENATE  
2 BILL NO. 12X

By: Bingman, Sykes, Jolley and  
Shortey of the Senate

3  
4 and

5 Shannon and Stiles of the  
House

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7  
8 An Act relating to liability for food products;  
9 repealing 76 O.S. 2011, Sections 34, 35, 36 and 37,  
10 which relate to the Common Sense Consumption Act;  
11 creating the Common Sense Consumption Act; providing  
12 short title; stating legislative intent; defining  
13 terms; providing immunity from civil liability for  
14 certain claims; providing exception; establishing  
15 pleading requirements; providing for stay of  
16 discovery and other proceedings in certain  
17 circumstances; stating applicability of act;  
18 providing for codification; and declaring an  
19 emergency.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. REPEALER 76 O.S. 2011, Sections 34, 35, 36  
22 and 37, are hereby repealed.

23 SECTION 2. NEW LAW A new section of law to be codified  
24 in the Oklahoma Statutes as Section 38 of Title 76, unless there is  
created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Common Sense  
Consumption Act".

1 SECTION 3. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 39 of Title 76, unless there is  
3 created a duplication in numbering, reads as follows:

4 The intent of the Common Sense Consumption Act is to prevent  
5 frivolous lawsuits against manufacturers, packers, distributors,  
6 carriers, holders, sellers, marketers or advertisers of food  
7 products that comply with applicable statutory and regulatory  
8 requirements.

9 SECTION 4. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 40 of Title 76, unless there is  
11 created a duplication in numbering, reads as follows:

12 As used in the Common Sense Consumption Act:

13 1. "Claim" means any claim by or on behalf of a natural person,  
14 as well as any derivative or other claim arising therefrom asserted  
15 by or on behalf of any other individual, corporation, company,  
16 association, firm, partnership, society, joint-stock company, or any  
17 other entity, including any governmental entity or governmental  
18 officer, or private attorney; and

19 2. "Knowing and willful violation" means that:

20 a. the conduct constituting the violation was committed  
21 with the intent to deceive or injure consumers or with  
22 actual knowledge that such conduct was injurious to  
23 consumers, and  
24

1           b.    the conduct constituting the violation was not  
2                    required by regulations, orders, rules or other  
3                    pronouncement of, or any statute administered by, a  
4                    federal, state, or local government agency.

5           SECTION 5.        NEW LAW        A new section of law to be codified  
6 in the Oklahoma Statutes as Section 41 of Title 76, unless there is  
7 created a duplication in numbering, reads as follows:

8           A.    Except as provided in subsection B of this section, a  
9 manufacturer, packer, distributor, carrier, holder, seller, marketer  
10 or advertiser of a food, as defined in Section 201(f) of the Federal  
11 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an  
12 association of one or more such entities, shall not be subject to  
13 civil liability arising under any law of this state, including all  
14 statutes, regulations, rules, common law, public policies, court or  
15 administrative decisions or decrees, or other state action having  
16 the effect of law, for any claim arising out of weight gain,  
17 obesity, or a health condition associated with weight gain or  
18 obesity.

19           B.    Subsection A of this section shall not preclude civil  
20 liability if the claim of weight gain, obesity, or a health  
21 condition associated with weight gain or obesity, is based on:

22           1.    A material violation of an adulteration or misbranding  
23 requirement prescribed by statute or regulation of this state or the  
24

1 United States of America and the claimed injury was proximately  
2 caused by such violation; or

3 2. Any other material violation of federal or state law  
4 applicable to the manufacturing, marketing, distribution,  
5 advertising, labeling, or sale of food, provided that such violation  
6 is knowing and willful, and the claimed injury was proximately  
7 caused by such violation.

8 C. In any action exempted under paragraph 1 of subsection B of  
9 this section, the complaint initiating such action shall state with  
10 particularity the following: the statute, regulation or other law  
11 of this state or of the United States that was allegedly violated;  
12 the facts that are alleged to constitute a material violation of  
13 such statute or regulation; and the facts alleged to demonstrate  
14 that such violation proximately caused actual injury to the  
15 plaintiff. In any action exempted under paragraph 2 of subsection B  
16 of this section, in addition to the foregoing pleading requirements,  
17 the complaint initiating such action shall state with particularity  
18 facts sufficient to support a reasonable inference that the  
19 violation was with intent to deceive or injure consumers or with the  
20 actual knowledge that such violation was injurious to consumers.  
21 For purposes of applying the Common Sense Consumption Act, the  
22 foregoing pleading requirements are hereby deemed part of the  
23 substantive law of this state and not merely in the nature of  
24 procedural provisions.

1 D. In any action exempted under subsection B of this section,  
2 all discovery and other proceedings shall be stayed during the  
3 pendency of any motion to dismiss unless the court finds upon the  
4 motion of any party that particularized discovery is necessary to  
5 preserve evidence or to prevent undue prejudice to that party.  
6 During the pendency of any stay of discovery pursuant to this  
7 subsection, unless otherwise ordered by the court, any party to the  
8 action with actual notice of the allegations contained in the  
9 complaint shall treat all documents, data compilations, including  
10 electronically recorded or stored data, and tangible objects that  
11 are in the custody or control of such party and that are relevant to  
12 the allegations, as if they were the subject of a continuing request  
13 for production of documents from an opposing party under Section  
14 3234 of Title 12 of the Oklahoma Statutes.

15 E. The provisions of the Common Sense Consumption Act shall  
16 apply to all covered claims pending on the effective date of this  
17 act, and all claims filed thereafter, regardless of when the claim  
18 arose.

19 SECTION 6. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval.

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1 Passed the Senate the 5th day of September, 2013.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2013.

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9 Presiding Officer of the House  
10 of Representatives