

Union Calendar No. 75

109TH CONGRESS
1ST SESSION

H. R. 554

[Report No. 109-130]

To prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person's weight gain, obesity, or any health condition associated with weight gain or obesity.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2005

Mr. KELLER (for himself, Mr. DELAY, Mr. BLUNT, Ms. PRYCE of Ohio, Mr. SENSENBRENNER, Mr. NEY, Mr. TIBERI, Mr. BOEHNER, Mr. GARRETT of New Jersey, Mr. KENNEDY of Minnesota, Mr. SMITH of New Jersey, Mr. HENSARLING, Mr. FOLEY, Mr. BROWN of South Carolina, Ms. GINNY BROWN-WAITE of Florida, Mr. JONES of North Carolina, Mr. CARTER, Mr. SMITH of Texas, Mr. BACHUS, Mr. PENCE, Mr. SIMPSON, Mrs. CUBIN, Mr. AKIN, Mr. NORWOOD, Mr. OTTER, Mr. STEARNS, Mr. BRADLEY of New Hampshire, Mr. COX, Mrs. BLACKBURN, Mr. FRANKS of Arizona, Mr. MACK, Mr. CALVERT, Mr. PETRI, Mr. KIRK, Mrs. JO ANN DAVIS of Virginia, Mr. GREEN of Wisconsin, Mr. MCHUGH, Mr. HASTINGS of Washington, Mr. GILCHREST, Mr. PETERSON of Pennsylvania, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 14, 2005

Additional sponsors: Mr. MILLER of Florida, Mr. HALL, Mr. FORTUÑO, Mr. SHAW, Mr. SOUDER, Mr. GOODLATTE, Mr. KLINE, Mr. JINDAL, Ms. HART, Mr. EVERETT, Mr. REGULA, Mr. CANNON, Mr. BAKER, Mr. MCCOTTER, Ms. FOXX, Mr. UPTON, Mr. SHUSTER, Mr. WILSON of South Carolina, Mr. KINGSTON, Mr. HOEKSTRA, Mr. MCHENRY, Mr. GINGREY, Mrs. EMERSON, Mr. BRADY of Texas, Ms. HERSETH, Mr. TOWNS, Mr. ISSA, Mr. DANIEL E. LUNGREN of California, Mr. BONILLA, Mr. CHABOT, Mr. WESTMORELAND, Mr. BOUSTANY, Ms. HARRIS, Mr. BURGESS, Mr. TERRY, Mr. ALEXANDER, Mrs. MILLER of Michigan, Mr.

SAXTON, Mrs. NORTHUP, Mr. GILLMOR, Mr. COBLE, Mr. GOHMERT, Mr. SODREL, Mr. PRICE of Georgia, and Mr. DAVIS of Kentucky

JUNE 14, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 2, 2005]

A BILL

To prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for claims of injury relating to a person's weight gain, obesity, or any health condition associated with weight gain or obesity.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Personal Responsibility*
 5 *in Food Consumption Act of 2005”.*

6 **SEC. 2. FINDINGS; PURPOSE.**

7 *(a) FINDINGS.—Congress finds that—*

8 *(1) the food and beverage industries are a sig-*
 9 *nificant part of our national economy;*

10 *(2) the activities of manufacturers and sellers of*
 11 *foods and beverages substantially affect interstate and*
 12 *foreign commerce;*

1 (3) *a person’s weight gain, obesity, or a health*
2 *condition associated with a person’s weight gain or*
3 *obesity is based on a multitude of factors, including*
4 *genetic factors and the lifestyle and physical fitness*
5 *decisions of individuals, such that a person’s weight*
6 *gain, obesity, or a health condition associated with a*
7 *person’s weight gain or obesity cannot be attributed*
8 *to the consumption of any specific food or beverage;*
9 *and*

10 (4) *because fostering a culture of acceptance of*
11 *personal responsibility is one of the most important*
12 *ways to promote a healthier society, lawsuits seeking*
13 *to blame individual food and beverage providers for*
14 *a person’s weight gain, obesity, or a health condition*
15 *associated with a person’s weight gain or obesity are*
16 *not only legally frivolous and economically damaging,*
17 *but also harmful to a healthy America.*

18 (b) *PURPOSE.—The purpose of this Act is to allow*
19 *Congress and regulatory agencies to determine appropriate*
20 *laws, rules, and regulations to address the problems of*
21 *weight gain, obesity, and health conditions associated with*
22 *weight gain or obesity.*

23 **SEC. 3. PRESERVATION OF SEPARATION OF POWERS.**

24 (a) *IN GENERAL.—A qualified civil liability action*
25 *may not be brought in any Federal or State court.*

1 (b) *DISMISSAL OF PENDING ACTIONS.*—A qualified
2 *civil liability action that is pending on the date of the en-*
3 *actment of this Act shall be dismissed immediately by the*
4 *court in which the action was brought or is currently pend-*
5 *ing.*

6 (c) *DISCOVERY.*—

7 (1) *STAY.*—*In any action that is allegedly of the*
8 *type described in section 4(5)(B) seeking to impose li-*
9 *ability of any kind based on accumulative acts of con-*
10 *sumption of a qualified product, the obligation of any*
11 *party or non-party to make disclosures of any kind*
12 *under any applicable rule or order, or to respond to*
13 *discovery requests of any kind, as well as all pro-*
14 *ceedings unrelated to a motion to dismiss, shall be*
15 *stayed prior to the time for filing a motion to dismiss*
16 *and during the pendency of any such motion, unless*
17 *the court finds upon motion of any party that a re-*
18 *sponse to a particularized discovery request is nec-*
19 *essary to preserve evidence or to prevent undue preju-*
20 *dice to that party.*

21 (2) *RESPONSIBILITY OF PARTIES.*—*During the*
22 *pendency of any stay of discovery under paragraph*
23 *(1), the responsibilities of the parties with regard to*
24 *the treatment of all documents, data compilations (in-*
25 *cluding electronically recorded or stored data), and*

1 *tangible objects shall be governed by applicable Fed-*
2 *eral or State rules of civil procedure. A party ag-*
3 *grieved by the failure of an opposing party to comply*
4 *with this paragraph shall have the applicable rem-*
5 *edies made available by such applicable rules, pro-*
6 *vided that no remedy shall be afforded that conflicts*
7 *with the terms of paragraph (1).*

8 *(d) PLEADINGS.—In any action that is allegedly of the*
9 *type described in section 4(5)(B) seeking to impose liability*
10 *of any kind based on accumulative acts of consumption of*
11 *a qualified product, the complaint initiating such action*
12 *shall state with particularity—*

13 *(1) each element of the cause of action;*

14 *(2) the Federal and State statutes or other laws*
15 *that were allegedly violated;*

16 *(3) the specific facts alleged to constitute the*
17 *claimed violation of law; and*

18 *(4) the specific facts alleged to have caused the*
19 *claimed injury.*

20 *(e) RULE OF CONSTRUCTION.—No provision of this*
21 *Act shall be construed to create a public or private cause*
22 *of action or remedy.*

23 **SEC. 4. DEFINITIONS.**

24 *In this Act:*

1 (1) *ENGAGED IN THE BUSINESS.*—The term “en-
2 *gaged in the business*” means a person who manufac-
3 *tures, markets, distributes, advertises, or sells a quali-*
4 *fied product in the person’s regular course of trade or*
5 *business.*

6 (2) *MANUFACTURER.*—The term “manufacturer”
7 *means, with respect to a qualified product, a person*
8 *who is lawfully engaged in the business of manufac-*
9 *turing the product.*

10 (3) *PERSON.*—The term “person” means any in-
11 *dividual, corporation, company, association, firm,*
12 *partnership, society, joint stock company, or any*
13 *other entity, including any governmental entity.*

14 (4) *QUALIFIED PRODUCT.*—The term “qualified
15 *product*” means a food (as defined in section 201(f)
16 *of the Federal Food, Drug, and Cosmetic Act (21*
17 *U.S.C. 321(f))).*

18 (5) *QUALIFIED CIVIL LIABILITY ACTION.*—

19 (A) *IN GENERAL.*—Subject to subparagraph
20 (B), the term “qualified civil liability action”
21 *means a civil action brought by any person*
22 *against a manufacturer, marketer, distributor,*
23 *advertiser, or seller of a qualified product, or a*
24 *trade association, for damages, penalties, declar-*
25 *atory judgment, injunctive or declaratory relief,*

1 *restitution, or other relief arising out of, or re-*
2 *lated to a person's accumulated acts of consump-*
3 *tion of a qualified product and weight gain, obe-*
4 *sity, or a health condition that is associated with*
5 *a person's weight gain or obesity, including an*
6 *action brought by a person other than the person*
7 *on whose weight gain, obesity, or health condi-*
8 *tion the action is based, and any derivative ac-*
9 *tion brought by or on behalf of any person or*
10 *any representative, spouse, parent, child, or other*
11 *relative of that person.*

12 *(B) EXCEPTION.—A qualified civil liability*
13 *action shall not include—*

14 *(i) an action based on allegations of*
15 *breach of express contract or express war-*
16 *ranty, provided that the grounds for recov-*
17 *ery being alleged in such action are unre-*
18 *lated to a person's weight gain, obesity, or*
19 *a health condition associated with a per-*
20 *son's weight gain or obesity;*

21 *(ii) an action based on allegations*
22 *that—*

23 *(I) a manufacturer or seller of a*
24 *qualified product knowingly violated a*
25 *Federal or State statute applicable to*

1 *the marketing, advertisement, or label-*
2 *ing of the qualified product with intent*
3 *for a person to rely on that violation;*
4 *(II) such person individually and*
5 *justifiably relied on that violation; and*
6 *(III) such reliance was the proxi-*
7 *mate cause of injury related to that*
8 *person’s weight gain, obesity, or a*
9 *health condition associated with that*
10 *person’s weight gain or obesity; or*
11 *(iii) an action brought by the Federal*
12 *Trade Commission under the Federal Trade*
13 *Commission Act (15 U.S.C. 41 et seq.) or by*
14 *the Federal Food and Drug Administration*
15 *under the Federal Food, Drug, and Cos-*
16 *metic Act (21 U.S.C. 301 et seq.).*

17 (6) *SELLER.*—*The term “seller” means, with re-*
18 *spect to a qualified product, a person lawfully en-*
19 *gaged in the business of marketing, distributing, ad-*
20 *vertising, or selling a qualified product.*

21 (7) *STATE.*—*The term “State” includes each of*
22 *the several States of the United States, the District of*
23 *Columbia, the Commonwealth of Puerto Rico, the Vir-*
24 *gin Islands, Guam, American Samoa, and the Com-*
25 *monwealth of the Northern Mariana Islands, and any*

1 *other territory or possession of the United States, and*
2 *any political subdivision of any such place.*

3 (8) *TRADE ASSOCIATION.*—*The term “trade asso-*
4 *ciation” means any association or business organiza-*
5 *tion (whether or not incorporated under Federal or*
6 *State law) that is not operated for profit, and 2 or*
7 *more members of which are manufacturers, marketers,*
8 *distributors, advertisers, or sellers of a qualified prod-*
9 *uct.*

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