Union Calendar No. 248

108TH CONGRESS 2D SESSION

H. R. 339

[Report No. 108-432]

To prevent frivolous lawsuits against the manufacturers, distributors, or sellers of food or non-alcoholic beverage products that comply with applicable statutory and regulatory requirements.

IN THE HOUSE OF REPRESENTATIVES

January 27, 2003

Mr. Keller (for himself, Mr. Ney, Mr. Graves, Mr. Tiberi, Mrs. Biggert, Mr. Crenshaw, and Mr. Peterson of Minnesota) introduced the following bill; which was referred to the Committee on the Judiciary

March 5, 2004

Additional sponsors: Mr. MICA, Mr. MARIO DIAZ-BALART of Florida, Mr. FEENEY, Mr. PENCE, Mr. CHOCOLA, Mr. MILLER of Florida, Mr. Issa, Mr. Schrock, Mr. Putnam, Mr. Forbes, Mr. Kirk, Mr. Baker, Ms. HART, Mr. COLE, Mr. PITTS, Mr. FRANKS of Arizona, Mr. WILSON of South Carolina, Mr. Osborne, Mr. Delay, Mr. Blunt, Mr. Weldon of Florida, Mr. Stearns, Mr. Akin, Mr. Sensenbrenner, Mr. Isakson, Mr. Barrett of South Carolina, Mr. Oxley, Mr. Souder, Mr. Wamp, Mr. Foley, Mr. Cannon, Mr. Lobiondo, Mr. Hastings of Washington, Mr. Lewis of Kentucky, Ms. Harris, Ms. Ginny Brown-Waite of Florida, Mrs. Cubin, Mr. Janklow, Mr. Smith of Texas, Mr. BOEHNER, Mr. DEMINT, Mr. HOEKSTRA, Mr. HOBSON, Mr. GOSS, Mr. TIAHRT, Mr. CHABOT, Mr. CARTER, Mr. RENZI, Mr. BONILLA, Mr. Gallegly, Mr. Goode, Mrs. Jo Ann Davis of Virginia, Mr. Good-LATTE, Mrs. BLACKBURN, Mr. YOUNG of Florida, Mr. CALVERT, Mr. DOOLITTLE, Mr. HERGER, Mr. ROGERS of Michigan, Mr. Sessions, Mr. OTTER, Mr. Young of Alaska, Mr. Kline, Mr. Kennedy of Minnesota, Mr. Scott of Georgia, Mr. Green of Wisconsin, Mr. Ballenger, Mr. Lucas of Kentucky, Mr. Platts, Mr. Everett, Mr. Upton, Mr. VITTER, Mr. GREENWOOD, Mr. BRADLEY of New Hampshire, Ms. PRYCE of Ohio, Mr. Saxton, Mr. Towns, Mr. Hensarling, Mrs. Musgrave, Mrs. Northup, Mr. Simmons, Mr. Ryan of Wisconsin, Mr. Petri, Mr. KNOLLENBERG, Mr. McInnis, Mr. Shaw, Mrs. Emerson, Mr. BiliRAKIS, Mr. SULLIVAN, Mr. BRADY of Texas, Mr. PEARCE, Mr. NETHERCUTT, Mr. TANCREDO, Ms. ROS-LEHTINEN, Mr. GARRETT of New Jersey, Mrs. Capito, Mr. Toomey, Mr. Rogers of Alabama, Mr. Ford, Mr. LaHood, Mr. Burgess, Ms. Berkley, Mr. John, Mr. Bachus, Mr. Hall, Mr. Burns, Mr. Cox, Mr. Beauprez, Mr. Simpson, Mr. Ferguson, Mr. Terry, Mr. Cardoza, and Mr. Stenholm

March 5, 2004

Reported with amendments, 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 January 27, 2003]

A BILL

To prevent frivolous lawsuits against the manufacturers, distributors, or sellers of food or non-alcoholic beverage products that comply with applicable statutory and regulatory requirements.

- 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".
- 6 SEC. 2. PURPOSE.
- 7 The purpose of this Act is to allow Congress, State leg-
- 8 islatures, and regulatory agencies to determine appropriate
- 9 laws, rules, and regulations to address the problems of
- 10 weight gain, obesity, and health conditions associated with
- 11 weight gain or obesity.

1 SEC. 3. PRESERVATION OF SEPARATION OF POWERS.

- 2 (a) In General.—A qualified civil liability action
- 3 may not be brought in any Federal or State court.
- 4 (b) Dismissal of Pending Actions.—A qualified
- 5 civil liability action that is pending on the date of the en-
- actment of this Act shall be dismissed immediately by the 6
- court in which the action was brought or is currently pend-
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(c) Discovery.—

10 (1) STAY.—In any qualified civil liability ac-11 tion, all discovery and other proceedings shall be 12 stayed during the pendency of any motion to dismiss 13 unless the court finds upon motion of any party that 14 particularized discovery is necessary to preserve evi-15

dence or to prevent undue prejudice to that party.

(2) RESPONSIBILITY OF PARTIES.—During the pendency of any stay of discovery under paragraph (1), unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under applicable Federal or

- State rules of civil procedure, as the case may be. A

 party aggrieved by the willful failure of an opposing

 party to comply with this paragraph may apply to

 the court for an order awarding appropriate sanc
 tions.
- 6 (d) PLEADINGS.—In any action of the type described
 7 in section 4(5)(A), the complaint initiating such action
 8 shall state with particularity the Federal and State statutes
 9 that were allegedly violated and the facts that are alleged
 10 to have proximately caused the injury claimed.

11 SEC. 4. DEFINITIONS.

12 In this Act:

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- 13 (1) ENGAGED IN THE BUSINESS.—The term "en-14 gaged in the business" means a person who manufac-15 tures, markets, distributes, advertises, or sells a quali-16 fied product in the person's regular course of trade or 17 business.
 - (2) Manufacturer.—The term "manufacturer" means, with respect to a qualified product, a person who is lawfully engaged in the business of manufacturing the product in interstate or foreign commerce.
 - (3) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

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- (4) QUALIFIED PRODUCT.—The term "qualified product" means a food (as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(f))).
 - (5) Qualified civil liability action.—The term "qualified civil liability action" means a civil action brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, penalties, declaratory judgment, injunctive or declaratory relief, restitution, or other relief arising out of, related to, or resulting in injury or potential injury resulting from a person's consumption of a qualified product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity, including an action brought by a person other than the person on whose weight gain, obesity, or health condition the action is based, and any derivative action brought by or on behalf of any person or any representative, spouse, parent, child, or other relative of any person, but shall not include—
 - (A) an action in which a manufacturer or seller of a qualified product knowingly and willfully violated a Federal or State statute applicable to the manufacturing, marketing, distribu-

- tion, advertisement, labeling, or sale of the product, and the violation was a proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity;
 - (B) an action for breach of express contract or express warranty in connection with the purchase of a qualified product; or
 - (C) an action regarding the sale of a qualified product which is adulterated (as described in section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342)).
 - (6) Seller.—The term "seller" means, with respect to a qualified product, a person lawfully engaged in the business of marketing, distributing, advertising, or selling a qualified product in interstate or foreign commerce.
 - (7) STATE.—The term "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

1 (8) TRADE ASSOCIATION.—The term "trade asso2 ciation" means any association or business organiza3 tion (whether or not incorporated under Federal or
4 State law) that is not operated for profit, and 2 or
5 more members of which are manufacturers, marketers,
6 distributors, advertisers, or sellers of a qualified prod7 uct.

Amend the title so as to read: "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."

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