

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 554**

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**AN ACT**

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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## AN ACT

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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  
11 of foods and beverages substantially affect interstate  
12 and foreign commerce;

13           (3) a person’s weight gain, obesity, or a health  
14 condition associated with a person’s weight gain or  
15 obesity is based on a multitude of factors, including  
16 genetic factors and the lifestyle and physical fitness  
17 decisions of individuals, such that a person’s weight  
18 gain, obesity, or a health condition associated with  
19 a person’s weight gain or obesity cannot be attrib-  
20 uted to the consumption of any specific food or bev-  
21 erage; and

22           (4) because fostering a culture of acceptance of  
23 personal responsibility is one of the most important  
24 ways to promote a healthier society, lawsuits seeking  
25 to blame individual food and beverage providers for

1 a person's weight gain, obesity, or a health condition  
2 associated with a person's weight gain or obesity are  
3 not only legally frivolous and economically dam-  
4 aging, but also harmful to a healthy America.

5 (b) PURPOSE.—The purpose of this Act is to allow  
6 Congress and regulatory agencies to determine appro-  
7 priate laws, rules, and regulations to address the problems  
8 of weight gain, obesity, and health conditions associated  
9 with weight gain or obesity.

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

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

13 (b) DISMISSAL OF PENDING ACTIONS.—A qualified  
14 civil liability action that is pending on the date of the en-  
15 actment of this Act shall be dismissed immediately by the  
16 court in which the action was brought or is currently pend-  
17 ing.

18 (c) DISCOVERY.—

19 (1) STAY.—In any action that is allegedly of  
20 the type described in section 4(5) seeking to impose  
21 liability of any kind based on accumulative acts of  
22 consumption of a qualified product, the obligation of  
23 any party or non-party to make disclosures of any  
24 kind under any applicable rule or order, or to re-  
25 spond to discovery requests of any kind, as well as

1 all proceedings unrelated to a motion to dismiss,  
2 shall be stayed prior to the time for filing a motion  
3 to dismiss and during the pendency of any such mo-  
4 tion, unless the court finds upon motion of any  
5 party that a response to a particularized discovery  
6 request is necessary to preserve evidence or to pre-  
7 vent undue prejudice to that party.

8 (2) RESPONSIBILITY OF PARTIES.—During the  
9 pendency of any stay of discovery under paragraph  
10 (1), the responsibilities of the parties with regard to  
11 the treatment of all documents, data compilations  
12 (including electronically recorded or stored data),  
13 and tangible objects shall be governed by applicable  
14 Federal or State rules of civil procedure. A party ag-  
15 grieved by the failure of an opposing party to comply  
16 with this paragraph shall have the applicable rem-  
17 edies made available by such applicable rules, pro-  
18 vided that no remedy shall be afforded that conflicts  
19 with the terms of paragraph (1).

20 (d) PLEADINGS.—In any action that is allegedly of  
21 the type described in section 4(5) seeking to impose liabil-  
22 ity of any kind based on accumulative acts of consumption  
23 of a qualified product, the complaint initiating such action  
24 shall state with particularity for each defendant and cause  
25 of action—

1           (1) each element of the cause of action and the  
2           specific facts alleged to satisfy each element of the  
3           cause of action;

4           (2) the Federal and State statutes or other laws  
5           that allegedly create the cause of action; and

6           (3) the section 4(5)(B) exception being relied  
7           upon and the specific facts that allegedly satisfy the  
8           requirements of that exception.

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

12          **SEC. 4. DEFINITIONS.**

13          In this Act:

14               (1) **ENGAGED IN THE BUSINESS.**—The term  
15               “engaged in the business” means a person who man-  
16               ufactures, markets, distributes, advertises, or sells a  
17               qualified product in the person’s regular course of  
18               trade or business.

19               (2) **MANUFACTURER.**—The term “manufac-  
20               turer” means, with respect to a qualified product, a  
21               person who is lawfully engaged in the business of  
22               manufacturing the product.

23               (3) **PERSON.**—The term “person” means any  
24               individual, corporation, company, association, firm,

1 partnership, society, joint stock company, or any  
2 other entity, including any governmental entity.

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

7 (5) QUALIFIED CIVIL LIABILITY ACTION.—

8 (A) IN GENERAL.—Subject to subpara-  
9 graph (B), the term “qualified civil liability ac-  
10 tion” means a civil action brought by any per-  
11 son against a manufacturer, marketer, dis-  
12 tributor, advertiser, or seller of a qualified  
13 product, or a trade association, for damages,  
14 penalties, declaratory judgment, injunctive or  
15 declaratory relief, restitution, or other relief  
16 arising out of, or related to a person’s accumu-  
17 lated acts of consumption of a qualified product  
18 and weight gain, obesity, or a health condition  
19 that is associated with a person’s weight gain or  
20 obesity, including an action brought by a person  
21 other than the person on whose weight gain,  
22 obesity, or health condition the action is based,  
23 and any derivative action brought by or on be-  
24 half of any person or any representative,



1 spouse, parent, child, or other relative of that  
2 person.

3 (B) EXCEPTION.—A qualified civil liability  
4 action shall not include—

5 (i) an action based on allegations of  
6 breach of express contract or express war-  
7 ranty, provided that the grounds for recov-  
8 ery being alleged in such action are unre-  
9 lated to a person’s weight gain, obesity, or  
10 a health condition associated with a per-  
11 son’s weight gain or obesity;

12 (ii) an action based on allegations  
13 that—

14 (I) a manufacturer or seller of a  
15 qualified product knowingly violated a  
16 Federal or State statute applicable to  
17 the marketing, advertisement, or la-  
18 beling of the qualified product with in-  
19 tent for a person to rely on that viola-  
20 tion;

21 (II) such person individually and  
22 justifiably relied on that violation; and

23 (III) such reliance was the proxi-  
24 mate cause of injury related to that  
25 person’s weight gain, obesity, or a

1 health condition associated with that  
2 person's weight gain or obesity; or

3 (iii) an action brought by the Federal  
4 Trade Commission under the Federal  
5 Trade Commission Act (15 U.S.C. 41 et  
6 seq.) or by the Federal Food and Drug  
7 Administration under the Federal Food,  
8 Drug, and Cosmetic Act (21 U.S.C. 301 et  
9 seq.).

10 (6) SELLER.—The term “seller” means, with  
11 respect to a qualified product, a person lawfully en-  
12 gaged in the business of marketing, distributing, ad-  
13 vertising, or selling a qualified product.

14 (7) STATE.—The term “State” includes each of  
15 the several States of the United States, the District  
16 of Columbia, the Commonwealth of Puerto Rico, the  
17 Virgin Islands, Guam, American Samoa, and the  
18 Commonwealth of the Northern Mariana Islands,  
19 and any other territory or possession of the United  
20 States, and any political subdivision of any such  
21 place.

22 (8) TRADE ASSOCIATION.—The term “trade as-  
23 sociation” means any association or business organi-  
24 zation (whether or not incorporated under Federal  
25 or State law) that is not operated for profit, and 2

1 or more members of which are manufacturers, mar-  
2 keters, distributors, advertisers, or sellers of a quali-  
3 fied product.

Passed the House of Representatives October 19,  
2005.

Attest:

*Clerk.*