109TH CONGRESS 1ST SESSION

H. R. 554

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

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".
- 6 SEC. 2. PURPOSE.
- 7 The purpose of this Act is to allow Congress, State
- 8 legislatures, and regulatory agencies to determine appro-
- 9 priate laws, rules, and regulations to address the problems
- 10 of weight gain, obesity, and health conditions associated
- 11 with weight gain or obesity.
- 12 SEC. 3. PRESERVATION OF SEPARATION OF POWERS.
- 13 (a) In General.—A qualified civil liability action
- 14 may not be brought in any Federal or State court.
- 15 (b) Dismissal of Pending Actions.—A qualified
- 16 civil liability action that is pending on the date of the en-
- 17 actment of this Act shall be dismissed immediately by the
- 18 court in which the action was brought or is currently pend-
- 19 ing.
- (c) Discovery.—
- 21 (1) STAY.—In any action of the type described
- in clause (i) or (ii) of section 4(5)(B), all discovery
- and other proceedings shall be stayed during the
- 24 pendency of any motion to dismiss unless the court
- 25 finds upon motion of any party that particularized

- discovery is necessary to preserve evidence or to prevent undue prejudice to that party.
- 3 (2) RESPONSIBILITY OF PARTIES.—During the pendency of any stay of discovery under paragraph 5 (1), unless otherwise ordered by the court, any party 6 to the action with actual notice of the allegations 7 contained in the complaint shall treat all documents, 8 data compilations (including electronically recorded 9 or stored data), and tangible objects that are in the 10 custody or control of such person and that are rel-11 evant to the allegations, as if they were the subject 12 of a continuing request for production of documents 13 from an opposing party under applicable Federal or 14 State rules of civil procedure, as the case may be. 15 A party aggrieved by the willful failure of an oppos-16 ing party to comply with this paragraph may apply 17 to the court for an order awarding appropriate sanc-18 tions.
- 19 (d) PLEADINGS.—In any action of the type described 20 in section 4(5)(B)(i), the complaint initiating such action 21 shall state with particularity the Federal and State stat-22 utes that were allegedly violated and the facts that are 23 alleged to have proximately caused the injury claimed.
- 24 SEC. 4. DEFINITIONS.
- 25 In this Act:

- 1 (1) Engaged in the business" means a person who man2 "engaged in the business" means a person who man3 ufactures, markets, distributes, advertises, or sells a
 4 qualified product in the person's regular course of
 5 trade or 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.
 - (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.—(A) Subject to subparagraphs (B) and (C), 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 re-

lief 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.

(B) Such term shall not include—

- (i) an action in which a manufacturer or seller of a qualified product knowingly and will-fully violated a Federal or State statute applicable to the manufacturing, marketing, distribution, 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; or
- (ii) an action for breach of express contract or express warranty in connection with the purchase of a qualified product.
- (C) Such term shall not be construed to include an action brought under the Federal Trade Commis-

- sion Act (15 U.S.C. 41 et seq.) or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).
 - (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.
 - (8) Trade association.—The term "trade association" means any association or business organization (whether or not incorporated under Federal or State law) that is not operated for profit, and 2 or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a qualified product.

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