

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. GOODLATTE, 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. BILL-

RAKIS, 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-
6 actment of this Act shall be dismissed immediately by the
7 court in which the action was brought or is currently pend-
8 ing.

9 (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.

16 (2) *RESPONSIBILITY OF PARTIES.*—During the
17 pendency of any stay of discovery under paragraph
18 (1), unless otherwise ordered by the court, any party
19 to the action with actual notice of the allegations con-
20 tained in the complaint shall treat all documents,
21 data compilations (including electronically recorded
22 or stored data), and tangible objects that are in the
23 custody or control of such person and that are rel-
24 evant to the allegations, as if they were the subject of
25 a continuing request for production of documents
26 from an opposing party under applicable Federal or

1 *State rules of civil procedure, as the case may be. A*
2 *party aggrieved by the willful failure of an opposing*
3 *party to comply with this paragraph may apply to*
4 *the court for an order awarding appropriate sanc-*
5 *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:*

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.*

18 *(2) MANUFACTURER.—The term “manufacturer”*
19 *means, with respect to a qualified product, a person*
20 *who is lawfully engaged in the business of manufac-*
21 *turing the product in interstate or foreign commerce.*

22 *(3) PERSON.—The term “person” means any in-*
23 *dividual, corporation, company, association, firm,*
24 *partnership, society, joint stock company, or any*
25 *other entity, including any governmental entity.*

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

5 (5) *QUALIFIED CIVIL LIABILITY ACTION.*—*The*
6 *term “qualified civil liability action” means a civil*
7 *action brought by any person against a manufacturer*
8 *or seller of a qualified product, or a trade association,*
9 *for damages, penalties, declaratory judgment, injunc-*
10 *tive or declaratory relief, restitution, or other relief*
11 *arising out of, related to, or resulting in injury or po-*
12 *tential injury resulting from a person’s consumption*
13 *of a qualified product and weight gain, obesity, or*
14 *any health condition that is associated with a per-*
15 *son’s weight gain or obesity, including an action*
16 *brought by a person other than the person on whose*
17 *weight gain, obesity, or health condition the action is*
18 *based, and any derivative action brought by or on be-*
19 *half of any person or any representative, spouse, par-*
20 *ent, child, or other relative of any person, but shall*
21 *not include—*

22 (A) *an action in which a manufacturer or*
23 *seller of a qualified product knowingly and will-*
24 *fully violated a Federal or State statute applica-*
25 *ble to the manufacturing, marketing, distribu-*

1 *tion, advertisement, labeling, or sale of the prod-*
2 *uct, and the violation was a proximate cause of*
3 *injury related to a person’s weight gain, obesity,*
4 *or any health condition associated with a per-*
5 *son’s weight gain or obesity;*

6 *(B) an action for breach of express contract*
7 *or express warranty in connection with the pur-*
8 *chase of a qualified product; or*

9 *(C) an action regarding the sale of a quali-*
10 *fied product which is adulterated (as described*
11 *in section 402 of the Federal Food, Drug, and*
12 *Cosmetic Act (21 U.S.C. 342)).*

13 *(6) SELLER.—The term “seller” means, with re-*
14 *spect to a qualified product, a person lawfully en-*
15 *gaged in the business of marketing, distributing, ad-*
16 *vertising, or selling a qualified product in interstate*
17 *or foreign commerce.*

18 *(7) STATE.—The term “State” includes each of*
19 *the several States of the United States, the District of*
20 *Columbia, the Commonwealth of Puerto Rico, the Vir-*
21 *gin Islands, Guam, American Samoa, and the Com-*
22 *monwealth of the Northern Mariana Islands, and any*
23 *other territory or possession of the United States, and*
24 *any political subdivision of any such place.*

1 (8) *TRADE ASSOCIATION.*—*The term “trade asso-*
2 *ciation” means any association or business organiza-*
3 *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 prod-*
7 *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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