

108TH CONGRESS
1ST SESSION

S. 1428

To prohibit civil liability actions from being brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for damages or injunctive relief for claims of injury resulting from a person's weight gain, obesity, or any health condition related to weight gain or obesity.

IN THE SENATE OF THE UNITED STATES

JULY 17, 2003

Mr. McCONNELL introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To prohibit civil liability actions from being brought or continued against food manufacturers, marketers, distributors, advertisers, sellers, and trade associations for damages or injunctive relief for claims of injury resulting from a person's weight gain, obesity, or any health condition related to 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 “Commonsense Con-
5 sumption Act of 2003”.

1 **SEC. 2. PROHIBITION ON BRINGING OF QUALIFIED CIVIL**
2 **LIABILITY ACTIONS IN FEDERAL OR STATE**
3 **COURT.**

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

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

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

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

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

23 (3) PERSON.—The term “person” means any
24 individual, corporation, company, association, firm,
25 partnership, society, joint stock company, or any
26 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 manufac-
8 turer or seller of a qualified product, or a trade as-
9 sociation, for damages or injunctive relief based on
10 a claim of injury resulting from a person’s weight
11 gain, obesity, or any health condition that is related
12 to weight gain or obesity, but shall not include—

13 (A) an action in which a manufacturer or
14 seller of a qualified product knowingly and will-
15 fully violated a Federal or State statute applica-
16 ble to the manufacturing, marketing, distribu-
17 tion, advertisement, labeling, or sale of the
18 product, and the violation was a proximate
19 cause of the claim of injury resulting from a
20 person’s weight gain, obesity, or health condi-
21 tion related to weight gain or obesity;

22 (B) an action for breach of contract or ex-
23 press warranty in connection with the purchase
24 of a qualified product; or

1 (C) an action regarding the sale of a quali-
2 fied product which is adulterated (as described
3 in section 402 of the Federal Food, Drug, and
4 Cosmetic Act (21 U.S.C. 342)).

5 (6) SELLER.—The term “seller” means, with
6 respect to a qualified product, a person lawfully en-
7 gaged in the business of marketing, distributing, ad-
8 vertising, or selling a qualified product in interstate
9 or foreign commerce.

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

18 (8) TRADE ASSOCIATION.—The term “trade as-
19 sociation” means any association or business organi-
20 zation (whether or not incorporated under Federal
21 or State law) that is not operated for profit, and 2
22 or more members of which are manufacturers, mar-
23 keters, distributors, advertisers, or sellers of a quali-
24 fied product.

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