

111TH CONGRESS  
1ST SESSION

# H. R. 812

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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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 2009

Mr. BOREN (for himself and Mr. TIBERI) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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 “Commonsense Con-  
5       sumption Act of 2009”.

1 **SEC. 2. FINDINGS; PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) the food and beverage industries are a sig-  
4 nificant part of our national economy;

5 (2) the activities of manufacturers and sellers  
6 of foods and beverages substantially affect interstate  
7 and foreign commerce;

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

17 (4) because fostering a culture of acceptance of  
18 personal responsibility is one of the most important  
19 ways to promote a healthier society, lawsuits seeking  
20 to blame individual food and beverage providers for  
21 a person’s weight gain, obesity, or a health condition  
22 associated with a person’s weight gain or obesity are  
23 not only legally frivolous and economically dam-  
24 aging, but also harmful to a healthy America.

25 (b) PURPOSE.—The purpose of this Act is to allow  
26 Congress, State legislatures, and regulatory agencies to

1 determine appropriate laws, rules, and regulations to ad-  
2 dress the problems of weight gain, obesity, and health con-  
3 ditions associated with weight gain or obesity.

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

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

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

12 (c) DISCOVERY.—

13 (1) STAY.—If, in an action filed after May 7,  
14 2007, a party files a motion asserting that some or  
15 all claims raised in a complaint are subject to dis-  
16 missal pursuant to this Act, or notifies the court  
17 that it intends to file such a motion in a timely man-  
18 ner, no person shall be required before the court's  
19 final decision on such motion to respond to any dis-  
20 covery request or otherwise provide any party with  
21 any documents, data compilations, tangible things,  
22 testimony, admissions, information regarding poten-  
23 tial evidence or witnesses, or other information un-  
24 less the court finds upon motion of any party that  
25 a response to a particularized discovery request is

1        necessary to preserve evidence or to prevent undue  
2        prejudice to that party.

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

15           (3) EXPEDITED CONSIDERATION.—In any ac-  
16       tion in which a stay is entered pursuant to para-  
17       graph (1), the court is encouraged to expedite con-  
18       sideration of the motion to dismiss.

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

5 (A) means a food (as defined in section  
6 201(f) of the Federal Food, Drug, and Cos-  
7 metic Act (21 U.S.C. 321(f))); and

8 (B) shall not include a dietary supplement  
9 (as defined in section 201(ff) of the Federal  
10 Food, Drug and Cosmetic Act (21 U.S.C.  
11 321(ff))).

12 (5) QUALIFIED CIVIL LIABILITY ACTION.—

13 (A) IN GENERAL.—Subject to subpara-  
14 graph (B), the term “qualified civil liability ac-  
15 tion”—

16 (i) means a civil action brought by  
17 any person against a manufacturer, mar-  
18 keter, distributor, advertiser, or seller of a  
19 qualified product, or a trade association,  
20 for damages, penalties, declaratory judg-  
21 ment, injunctive or declaratory relief, res-  
22 titution, or other relief arising out of, or  
23 related to—

1 (I) a person's accumulated acts  
2 of consumption of a qualified product;  
3 and

4 (II) that person's weight gain,  
5 obesity, or a health condition caused  
6 or associated with that person's  
7 weight gain or obesity; and

8 (ii) includes an action brought by a  
9 person other than the person on whose  
10 weight gain, obesity, or health condition  
11 the action is based, and any derivative ac-  
12 tion brought by or on behalf of any person  
13 or any representative, spouse, parent,  
14 child, or other relative of that person.

15 (B) EXCEPTION.—A qualified civil liability  
16 action shall not include—

17 (i) an action based on allegations of  
18 breach of express contract or express war-  
19 ranty, provided that the grounds for recov-  
20 ery being alleged in such action are unre-  
21 lated to a person's weight gain, obesity, or  
22 a health condition associated with a per-  
23 son's weight gain or obesity;

24 (ii) an action based on allegations  
25 that—

1 (I) a manufacturer or seller of a  
2 qualified product knowingly violated a  
3 Federal or State statute applicable to  
4 the marketing, advertisement, or la-  
5 beling of the qualified product with in-  
6 tent for a person to rely on that viola-  
7 tion;

8 (II) such person individually and  
9 justifiably relied on that violation; and

10 (III) such reliance was the proxi-  
11 mate cause of injury related to that  
12 person's weight gain, obesity, or a  
13 health condition associated with that  
14 person's weight gain or obesity; or

15 (iii) an action brought by the Federal  
16 Trade Commission under the Federal  
17 Trade Commission Act (15 U.S.C. 41 et  
18 seq.) or by the Federal Food and Drug  
19 Administration under the Federal Food,  
20 Drug, and Cosmetic Act (21 U.S.C. 301 et  
21 seq.).

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



1           (7) STATE.—The term “State” includes each of  
2           the several States of the United States, the District  
3           of Columbia, the Commonwealth of Puerto Rico, the  
4           Virgin Islands, Guam, American Samoa, and the  
5           Commonwealth of the Northern Mariana Islands,  
6           and any other territory or possession of the United  
7           States, and any political subdivision of any such  
8           place.

9           (8) TRADE ASSOCIATION.—The term “trade as-  
10          sociation” means any association or business organi-  
11          zation (whether or not incorporated under Federal  
12          or State law) that is not operated for profit, and 2  
13          or more members of which are manufacturers, mar-  
14          keters, distributors, advertisers, or sellers of a quali-  
15          fied product.

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