

**Calendar No. 463**

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 339**

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IN THE SENATE OF THE UNITED STATES

MARCH 11, 2004

Received

MARCH 25, 2004

Read the first time

MARCH 26, 2004

Read the second time and placed on the calendar

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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.

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.

20      (c) DISCOVERY.—

21          (1) STAY.—In any action of the type described  
22      in clause (i) or (ii) of section 4(5)(B), all discovery  
23      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

1 discovery is necessary to preserve evidence or to pre-  
2 vent undue prejudice to that party.

3 (2) RESPONSIBILITY OF PARTIES.—During the  
4 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.—The term  
2           “engaged in the business” means a person who man-  
3           ufactures, markets, distributes, advertises, or sells a  
4           qualified product in the person’s regular course of  
5           trade or business.

6           (2) MANUFACTURER.—The term “manufac-  
7           turer” means, with respect to a qualified product, a  
8           person who is lawfully engaged in the business of  
9           manufacturing the product in interstate or foreign  
10          commerce.

11          (3) PERSON.—The term “person” means any  
12          individual, corporation, company, association, firm,  
13          partnership, society, joint stock company, or any  
14          other entity, including any governmental entity.

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

19          (5) QUALIFIED CIVIL LIABILITY ACTION.—(A)  
20          Subject to subparagraphs (B) and (C), the term  
21          “qualified civil liability action” means a civil action  
22          brought by any person against a manufacturer or  
23          seller of a qualified product, or a trade association,  
24          for damages, penalties, declaratory judgment, in-  
25          junctive or declaratory relief, restitution, or other re-

1       lief arising out of, related to, or resulting in injury  
2       or potential injury resulting from a person's con-  
3       sumption of a qualified product and weight gain,  
4       obesity, or any health condition that is associated  
5       with a person's weight gain or obesity, including an  
6       action brought by a person other than the person on  
7       whose weight gain, obesity, or health condition the  
8       action is based, and any derivative action brought by  
9       or on behalf of any person or any representative,  
10      spouse, parent, child, or other relative of any person.

11           (B) Such term shall not include—

12                   (i) an action in which a manufacturer or  
13                   seller of a qualified product knowingly and will-  
14                   fully violated a Federal or State statute applica-  
15                   ble to the manufacturing, marketing, distribu-  
16                   tion, advertisement, labeling, or sale of the  
17                   product, and the violation was a proximate  
18                   cause of injury related to a person's weight  
19                   gain, obesity, or any health condition associated  
20                   with a person's weight gain or obesity; or

21                   (ii) an action for breach of express con-  
22                   tract or express warranty in connection with the  
23                   purchase of a qualified product.

24           (C) Such term shall not be construed to include  
25      an action brought under the Federal Trade Commis-

1        sion Act (15 U.S.C. 41 et seq.) or the Federal Food,  
2        Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

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

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

16           (8) TRADE ASSOCIATION.—The term “trade as-  
17       sociation” means any association or business organi-  
18       zation (whether or not incorporated under Federal  
19       or State law) that is not operated for profit, and 2  
20       or more members of which are manufacturers, mar-

- 1       keters, distributors, advertisers, or sellers of a quali-
- 2       fied product.

Passed the House of Representatives March 10,  
2004.

Attest:

JEFF TRANDAHL,  
*Clerk.*

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