

Calendar No. 254

109TH CONGRESS
1ST SESSION

H. R. 554

IN THE SENATE OF THE UNITED STATES

OCTOBER 20, 2005

Received; read the first time

OCTOBER 21, 2005

Read the second time and placed on the calendar

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 of 2005”.

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 and regulatory agencies to determine appro-

1 piate laws, rules, and regulations to address the problems
2 of weight gain, obesity, and health conditions associated
3 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.—In any action that is allegedly of
14 the type described in section 4(5) seeking to impose
15 liability of any kind based on accumulative acts of
16 consumption of a qualified product, the obligation of
17 any party or non-party to make disclosures of any
18 kind under any applicable rule or order, or to re-
19 spond to discovery requests of any kind, as well as
20 all proceedings unrelated to a motion to dismiss,
21 shall be stayed prior to the time for filing a motion
22 to dismiss and during the pendency of any such mo-
23 tion, unless the court finds upon motion of any
24 party that a response to a particularized discovery

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

21 (1) each element of the cause of action and the
22 specific facts alleged to satisfy each element of the
23 cause of action;

24 (2) the Federal and State statutes or other laws
25 that allegedly create the cause of action; and

1 (3) the section 4(5)(B) exception being relied
2 upon and the specific facts that allegedly satisfy the
3 requirements of that exception.

4 (e) RULE OF CONSTRUCTION.—No provision of this
5 Act shall be construed to create a public or private cause
6 of action or remedy.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

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

14 (2) MANUFACTURER.—The term “manufac-
15 turer” means, with respect to a qualified product, a
16 person who is lawfully engaged in the business of
17 manufacturing the product.

18 (3) PERSON.—The term “person” means any
19 individual, corporation, company, association, firm,
20 partnership, society, joint stock company, or any
21 other entity, including any governmental entity.

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

1 (5) QUALIFIED CIVIL LIABILITY ACTION.—

2 (A) IN GENERAL.—Subject to subpara-
3 graph (B), the term “qualified civil liability ac-
4 tion” means a civil action brought by any per-
5 son against a manufacturer, marketer, dis-
6 tributor, advertiser, or seller of a qualified
7 product, or a trade association, for damages,
8 penalties, declaratory judgment, injunctive or
9 declaratory relief, restitution, or other relief
10 arising out of, or related to a person’s accumu-
11 lated acts of consumption of a qualified product
12 and weight gain, obesity, or a health condition
13 that is associated with a person’s weight gain or
14 obesity, including an action brought by a person
15 other than the person on whose weight gain,
16 obesity, or health condition the action is based,
17 and any derivative action brought by or on be-
18 half of any person or any representative,
19 spouse, parent, child, or other relative of that
20 person.

21 (B) EXCEPTION.—A qualified civil liability
22 action shall not include—

23 (i) an action based on allegations of
24 breach of express contract or express war-
25 ranty, provided that the grounds for recov-

1 ery being alleged in such action are unre-
2 lated to a person's weight gain, obesity, or
3 a health condition associated with a per-
4 son's weight gain or obesity;

5 (ii) an action based on allegations
6 that—

7 (I) a manufacturer or seller of a
8 qualified product knowingly violated a
9 Federal or State statute applicable to
10 the marketing, advertisement, or la-
11 beling of the qualified product with in-
12 tent for a person to rely on that viola-
13 tion;

14 (II) such person individually and
15 justifiably relied on that violation; and

16 (III) such reliance was the proxi-
17 mate cause of injury related to that
18 person's weight gain, obesity, or a
19 health condition associated with that
20 person's weight gain or obesity; or

21 (iii) an action brought by the Federal
22 Trade Commission under the Federal
23 Trade Commission Act (15 U.S.C. 41 et
24 seq.) or by the Federal Food and Drug
25 Administration under the Federal Food,

1 Drug, and Cosmetic Act (21 U.S.C. 301 et
2 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.

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

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

Passed the House of Representatives October 19,
2005.

Attest:

JEFF TRANDAHL,

Clerk.

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