

109TH CONGRESS
1ST SESSION

S. 908

To allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions associated with weight gain or obesity.

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2005

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

A BILL

To allow Congress, State legislatures, and regulatory agencies to determine appropriate laws, rules, and regulations to address the problems of weight gain, obesity, and health conditions 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 2005”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

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

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

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

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

23 (b) PURPOSE.—The purpose of this Act is to allow
24 Congress, State legislatures, and regulatory agencies to
25 determine appropriate laws, rules, and regulations to ad-

1 dress the problems of weight gain, obesity, and health con-
2 ditions associated with weight gain or obesity.

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

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 (c) DISCOVERY.—

12 (1) STAY.—In any action that is allegedly of
13 the type described in section 4(5)(B) seeking to im-
14 pose liability of any kind based on accumulative acts
15 of consumption of a qualified product, the obligation
16 of any party or non-party to make disclosures of any
17 kind under any applicable rule or order, or to re-
18 spond to discovery requests of any kind, as well as
19 all proceedings unrelated to a motion to dismiss,
20 shall be stayed prior to the time for filing a motion
21 to dismiss and during the pendency of any such mo-
22 tion, unless the court finds upon motion of any
23 party that a response to a particularized discovery
24 request is necessary to preserve evidence or to pre-
25 vent undue prejudice to that party.

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

13 (d) PLEADINGS.—In any action that is allegedly of
14 the type described in section 4(5)(B) seeking to impose
15 liability of any kind based on accumulative acts of con-
16 sumption of a qualified product, the complaint initiating
17 such action shall state with particularity—

18 (1) each element of the cause of action;

19 (2) the Federal and State statutes or other laws
20 that were allegedly violated;

21 (3) the specific facts alleged to constitute the
22 claimed violation of law; and

23 (4) the specific facts alleged to have caused the
24 claimed injury.

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

4 **SEC. 4. DEFINITIONS.**

5 In this Act:

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

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

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

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

23 (5) QUALIFIED CIVIL LIABILITY ACTION.—

24 (A) IN GENERAL.—Subject to subpara-
25 graph (B), the term “qualified civil liability ac-

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

18 (B) EXCEPTION.—A qualified civil liability
19 action shall not include—

20 (i) an action based on allegations of
21 breach of express contract or express war-
22 ranty, provided that the grounds for recov-
23 ery being alleged in such action are unre-
24 lated to a person’s weight gain, obesity, or

1 a health condition associated with a per-
2 son's weight gain or obesity;

3 (ii) an action based on allegations
4 that—

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

12 (II) such person individually and
13 justifiably relied on that violation; and

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

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

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

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

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

○