

110TH CONGRESS
1ST SESSION

S. 1323

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.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2007

Mr. McCONNELL (for himself, Mr. PRYOR, Mr. GRAHAM, Mr. BAUCUS, Mr. CORNYN, Mrs. LINCOLN, Mr. ALEXANDER, Mrs. DOLE, and Mr. BUNNING) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Commonsense Con-
3 sumption Act of 2007”.

4 **SEC. 2. FINDINGS; PURPOSE.**

5 (a) FINDINGS.—Congress finds that—

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

8 (2) the activities of manufacturers and sellers
9 of foods and beverages substantially affect interstate
10 and foreign commerce;

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

20 (4) because fostering a culture of acceptance of
21 personal responsibility is one of the most important
22 ways to promote a healthier society, lawsuits seeking
23 to blame individual food and beverage providers for
24 a person’s weight gain, obesity, or a health condition
25 associated with a person’s weight gain or obesity are

1 not only legally frivolous and economically dam-
2 aging, but also harmful to a healthy America.

3 (b) PURPOSE.—The purpose of this Act is to allow
4 Congress, State legislatures, and regulatory agencies to
5 determine appropriate laws, rules, and regulations to ad-
6 dress the problems of weight gain, obesity, and health con-
7 ditions associated with weight gain or obesity.

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

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

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

16 (c) DISCOVERY.—

17 (1) STAY.—If, in an action filed after May 7,
18 2007, a party files a motion asserting that some or
19 all claims raised in a complaint are subject to dis-
20 missal pursuant to this Act, or notifies the court
21 that it intends to file such a motion in a timely man-
22 ner, no person shall be required before the court's
23 final decision on such motion to respond to any dis-
24 covery request or otherwise provide any party with
25 any documents, data compilations, tangible things,

1 testimony, admissions, information regarding poten-
2 tial evidence or witnesses, or other information un-
3 less the court finds upon motion of any party that
4 a response to a particularized discovery request is
5 necessary to preserve evidence or to prevent undue
6 prejudice to that party.

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

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

23 (d) PLEADINGS.—In any action that is allegedly of
24 the type described in section 4(5) seeking to impose liabil-
25 ity of any kind based on accumulative acts of consumption

1 of a qualified product, the complaint initiating such action
2 shall state with particularity for each defendant and cause
3 of action—

4 (1) each element of the cause of action and the
5 specific facts alleged to satisfy each element of the
6 cause of action;

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

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

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

15 **SEC. 4. DEFINITIONS.**

16 In this Act:

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

22 (2) MANUFACTURER.—The term “manufac-
23 turer” means, with respect to a qualified product, a
24 person who is lawfully engaged in the business of
25 manufacturing the product.

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

5 (4) QUALIFIED PRODUCT.—The term “qualified
6 product”—

7 (A) means a food (as defined in section
8 201(f) of the Federal Food, Drug, and Cos-
9 metic Act (21 U.S.C. 321(f))); and

10 (B) shall not include a dietary supplement
11 (as defined in section 201(ff) of the Federal
12 Food, Drug and Cosmetic Act (21 U.S.C.
13 321(ff))).

14 (5) QUALIFIED CIVIL LIABILITY ACTION.—

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

18 (i) means a civil action brought by
19 any person against a manufacturer, mar-
20 keter, distributor, advertiser, or seller of a
21 qualified product, or a trade association,
22 for damages, penalties, declaratory judg-
23 ment, injunctive or declaratory relief, res-
24 titution, or other relief arising out of, or
25 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 that is
6 associated with that person's weight
7 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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