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Congress, President Face Off Over Product Liability

Before adjourning for spring recess, both the House and the Senate approved the product liability conference report, but without the two-thirds majority in either house needed to override a presidential veto.

President Clinton had announced earlier in March that he would veto product liability legislation if it was presented to him in the form approved by the House-Senate conference committee.

While reiterating his support for "limited but meaningful product liability reform at the federal level," the president criticized the conference report on H.R. 956 on the grounds that it "interferes unduly with state prerogatives and unfairly tilts the legal playing field to the disadvantage of consumers."

"We applaud the president for his strong and principled stand against this legislation," said CFA General Counsel Mary Ellen Fise. CFA wrote to members of the Senate in March urging their opposition to the bill.

"This past year we have witnessed massive effort by the U.S. Congress to both weaken health and safety agencies and diminish individual rights in court. CFA urges you to recognize that this latest 'deal,' in the form of the Conference Report bill, is a bad one for consumers and should be defeated," the letter states.

Bill Falls Short of Votes Needed For Veto Override

While proponents of the bill were able to obtain the 60 votes they needed in the Senate to end a filibuster, on the vote to pass the bill they fell short of the two-thirds that would be needed to override a veto, 59-40. In the House, the vote was 259-158.

Although both the House and Senate passed product liability bills in 1995, negotiations over how to resolve substantial differences in the two bills were stalemated for months.

After maintaining that the Senate bill was too narrow to merit passage, House negotiators ultimately agreed to abandon a number of the more controversial provisions in their bill, including a cap on pain and suffering awards in medical malpractice cases and application of the punitive damages cap to all civil cases, not just product liability cases.

In return, however, the conference report adopted several provisions that are more onerous to consumers than those in the Senate bill.

"The conference report took a bad Senate bill and made it worse," Fise said.

For example, the conference report:

- adopted the House bill's 15-year statute of repose instead of the Senate bill's 20-year period, meaning that consumers would be unable to sue for injuries caused by durable products which were more than 15 years old;
- preempted the statute of limitations in 20 states, shortening the time that consumers in those states would have to file suit; and
- increased the burden of proof borne by plaintiffs.

"All of this comes on top of provisions that would make it much harder for consumers and their families to recover when they have been harmed by hazardous products," Fise said.

"One-way" Preemption Criticized

In announcing his intention to veto the bill, the president restated his opposition to a cap on punitive damages and to abolition of joint and several liability for non-economic losses, such as pain and suffering.

The president also criticized the bill's "one-way" preemption approach, which preempts only those state laws that are more favorable to consumers, and leaves in place those state laws that are more favorable to manufacturers and sellers.

"In the absence of compelling reasons to do so, I cannot accept such a one-way street of federalism, in which Congress defers to state law when doing so helps manufacturers and sellers, but not when doing so aids consumers," President Clinton wrote in a letter to the Senate Majority Leader announcing his intention to veto the bill.

House Passes Health Insurance Bill

Shortly before leaving for spring recess, the House passed legislation to make it easier for workers to retain health insurance when they leave a job.

As passed, however, H.R. 3103 includes several provisions that are opposed by many consumer groups and the administration, including a cap on medical malpractice awards for non-economic damages.

"The provisions at the heart of the bill are relatively non-controversial. It is unfortunate that House Republicans have insisted on loading down this modest bill with a lot of anti-consumer baggage," said CFA General Counsel Mary Ellen Fise.

A bipartisan companion bill in the Senate, S. 1028, had so far been kept free of controversial amendments and had been endorsed by the administration. The Senate was expected to act on its bill in April.

At the heart of both the House and the Senate bills are provisions to ensure that employees who leave a job where they are part of a group health plan can remain insured.

First, the bills would limit the amount of time a group insurer could refuse or limit an employee's coverage because of a pre-existing health condition.

The bill would also require insurers who offer individual coverage to offer an individual policy to anyone who had coverage with the insurer under a group policy for at least 18 months, is not eligible for coverage under another group plan, and has exhausted benefits under COBRA. Thus, an employee who lost a job would be able to maintain insurance while searching for a new job.

In addition, the bill would prohibit insurers that sell policies in the small group market from discriminating against certain employers within that market. In particular, insurers would be prohibited from refusing coverage based on an employee's health condition.

These provisions all enjoyed strong bipartisan support.

Cap On Medical Malpractice Awards Attached

Over the opposition of House Democrats, however, House Republicans insisted on adding a number of additional, more controversial provisions.

For example, the bill would limit non-economic damages in medical malpractice cases to $250,000 and limit joint and several liability.

CFA and other consumer groups have consistently opposed similar proposals on the grounds that they would deprive injured consumers of needed remuneration and shield delinquent health care providers from full legal and financial accountability for their negligent behavior.

House Republicans have continued to search for a legislative vehicle to carry the proposal, despite the fact that it has consistently failed to gain sufficient support to pass in the Senate.

Other controversial provisions included in the House bill but absent from the Senate bill include measures: to encourage small employers to form cooperatives to purchase health insurance by generally exempting them from state insurance regulation; and to allow individuals who purchase so-called "catastrophic" health insurance policies to set up tax-deductible savings accounts to be used to pay medical expenses.

House Panel Advances Health Care Antitrust Bill

Earlier in March, the House Judiciary Committee approved on a 20-4 vote a bill to loosen health care antitrust laws. H.R. 2925 would apply a more lenient standard than is currently applicable when determining whether group rates set by providers are anti-competitive.

CFA and Consumers Union wrote to members of the committee before the vote urging them to change elements of the bill that "would weaken antitrust requirements for physicians and could limit competition, reduce consumer choice, increase health care costs, and increase prices."

Health care providers argue that they need to be able to form collaborative agreements and physician networks in order to compete with managed care companies. However, current antitrust laws do not inhibit legitimate collaborative activity among health care providers, the letter notes.

"Under current law, health care providers may set prices jointly or exchange information about their health care delivery activities if they behave as a unified business and substantially 'integrate' their medical practices by sharing financial risks," the letter states.

The letter goes on to charge that, by loosening the integration requirement, H.R. 2925 "would reduce the incentive for providers to compete" and "could allow networks to operate in a cartel fashion."

Furthermore, the bill would lower the standard that currently makes certain forms of inherently harmful restraints on competition, such as price-fixing and group boycotts, unlawful under all circumstances. By doing so, the bill would make it "harder for enforcement agencies to prosecute conduct that can have serious anticompetitive effects," the letter states.

The future of the bill, which was not included in the broader legislation, was uncertain. Senate Judiciary Committee Chairman Orrin Hatch (R-UT) was said to be undecided about whether to introduce companion legislation, although he has supported similar legislation in the past.

Digital Copyright Bill Lacks Balance

Legislation currently under consideration in Congress to establish the legal framework for intellectual property rights in the digital age fails to maintain a balance between protecting copyrighted content and promoting innovation in the information and technology industries, according to comments submitted in February to the House Subcommittee on Courts and Intellectual Property by the Digital Future Coalition.

"The particular balance of interests which has been struck in the law of copyright in the print environment represents the outcome of years of legislative and judicial 'fine tuning' and should not be discarded lightly," said CFA Director of Telecommunications Policy Bradley Stillman.

"Our primary concern about H.R. 2441 in its present form is that it fails to sustain the principle of balance, placing a nearly exclusive emphasis on the protection for copyrighted content, and doing so at the expense of promoting innovation, privacy, education and public information access," he said.

The Digital Future Coalition, which submitted the comments, is made up of 26 national groups, including CFA, representing both copyright holders and users of copyrighted materials.

Central to H.R. 2441, the "National Information Infrastructure Copyright Protection Act of 1995," are its provisions to enhance the level of protection afforded to copyrighted content on the National Information Infrastructure (NII) by recognizing transmission as an aspect of the copyright owner's exclusive right to distribute copies and phonorecords to the public. Because transmission is defined globally in the legislation, it would reach practically every electronic information transaction on the NII, according to the coalition's comments.

"Clearly the problem of electronic piracy is a serious one. However, we are not convinced that such a radical change to the law is required in order to deal with it," the comments state.

The current proposal "would have the effect of dramatically increasing the potential copyright infringement liability for individuals, companies, and institutions as they go about their normal activities in cyberspace."

As a result, it "could delay the emergence of new commercial technologies which 'add value' to digital information, frustrate competition in the market for digital goods and services, stifle innovation and job creation in the private sector, threaten the growth of new educational technologies, reduce students' and educators' access to information, and erode traditional concepts and practices of 'fair use.'"

To prevent this outcome, the coalition called on Congress to, among other things, assure that any legislation which enhances the rights of copyright owners in the networked environment also:

- reaffirms the principle of fair use, which provides a limited exemption from infringement liability to certain beneficial uses of copyrighted works;
- preserves the first sale doctrine — which allows the owner of a copy of protected work to give, sell, or transfer possession of it to another under certain restrictions — in connection with digital transmission; and
- includes clear and certain rules governing service provider liability.

"Creators, distributors and consumers of information share an interest in the continued expansion of the NII as a viable medium of communication. A carefully balanced legislative approach to the complex issues raised by copyright in the networked environment will help to realize the promise of the digital future," the comments state.

To reach that goal, however, H.R. 2441 will require "a thorough reconsideration both of the provisions it contains and of those it omits," the comments state. "Legislation in the form of present H.R. 2441 could create more problems than it would solve."

A hearing on a companion Senate bill, S. 1284, was scheduled for May.

Bike Helmet Rule Needs Strengthening

In its proposed rule on bicycle helmets, the Consumer Product Safety Commission has "ignored some common sense suggestions that will increase risk communication and rider visibility," according to comments on the rule filed with the agency in February by CFA.

While generally supportive of the proposed rule, CFA suggested several specific changes to strengthen the rule.

CFA urged, for example, that labels be required to state that failure to follow warnings, by preventing the helmet from performing in the intended manner, may result in serious injury or death.

"In many different settings and on many different issues, CPSC staff has eloquently, consistently, and forcefully argued the need to always include the consequences of failing to follow warning label language," said CFA General Counsel Mary Ellen Fise, author of the comments. "It would be entirely inconsistent with all commission policy, whether formal . . . or informal, to fail to require that the consequences be included in the labeling provisions of this rule."

CFA also criticized as inadequate the proposed requirement that labeling instruct consumers to return helmets that have sustained an impact. Manufacturers should be required to include their telephone number along with their name and address to make it easier for consumers to determine whether a helmet that has sustained an impact is still effective, the comments state.

"Instead of aiming to increase safety by making it easier for consumers to determine the effectiveness of their helmets after an impact, CPSC has chosen to make it more difficult," Fise said. "This consumer agency has decided to place the burden on consumers and reduce the chances that they will learn about the adequacy of their helmets."

Also, CFA urged that a minimum basic requirement be included in the rule that bicycle helmets bear reflective material that will help increase nighttime rider visibility.

While the proposed rule states that the commission intends to study the issue and consider amendments to address the issue at a later date, such a study could take "months if not years," Fise said. "Because there is a clear increase in the risk of injury during nighttime riding, CFA urges the commission to not wait to add a visibility or conspicuity requirement," the comments state.

Finally, CFA emphasized the importance of having the agency continue to study the effectiveness of bicycle helmets in providing protection for other recreational sports, such as in-line skating, roller skating, and skateboarding.

"Because consumers may be inclined (and likely) to use a bicycle helmet to provide protection for their children for all types of sports, it is important that crash scenarios be examined to determine whether bicycle helmets provide sufficient protection for other activities," the comments state.

In addition, the comments note that it is essential that the commission require that any helmet that implies through marketing or other means that it is suitable for use while bicycling actually meet the mandatory standard.

"It is important that consumers only rely on helmets that provide adequate protection. Because the distinctions and differences may not be as clear to the average consumer, it is therefore incumbent upon the commission to provide this vigorous and thorough enforcement," the comments conclude.

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Farm Bill Falls Short On Consumer Reforms

Despite extensive rhetoric about reform of decades-old farm programs, the seven-year farm bill cleared by Congress at the end of March left sugar and peanut programs essentially unchanged, despite the fact that they cost consumers approximately $2 billion a year in higher food prices.

Amendments to phase out the two programs were narrowly defeated in the House. In the Senate, related amendments — to phase out the peanut program over time and to take the sugar issue out of the farm bill to be reconsidered separately later — went down to more decisive defeat.

"Together, these programs force American consumers to pay $2 billion a year in higher food prices," said CFA Executive Director Stephen Brobeck.

"Like Robin Hood-in-reverse, they transfer billions to mostly wealthy producers and absentee landlords who own two-thirds of the country's peanut quota," he said. "The sugar and peanut provisions in the Agriculture Market Transition Act — despite supporters' unfounded claims that they represent reform — would maintain this unacceptable status quo."

Sugar prices in the United States are roughly twice the world market price as a result of the mandated limit on imports.

The peanut program operates through a system of marketing quotas. The individuals who own those quotas — about two-thirds of whom are not farmers — essentially own the right to produce and sell peanuts in the domestic market for food uses. They rent out the right to produce and market peanuts to others, creaming most of the benefits of the price support system off the top.

"These are exactly the types of abusive programs that Congress claimed to be interested in reforming," Brobeck said. "Unfortunately, supporters of the status quo were able to hold the rest of the farm bill hostage in order to protect their special interest provisions."

President Clinton signed the bill into law in early April despite misgivings about some of its provisions.

Consumer Support Low in 104th Congress

The first session of the 104th Congress was among the worst on record for consumers, according to CFA's 1995 congressional voting analysis released in March.

Despite the efforts of nine senators and 57 representatives who were named as "Consumer Heroes" by CFA in recognition of their vigilant defense of consumer interests, consumer support in the House plummeted to 39 percent, and Senate support dropped to 42 percent in 1995. These were the lowest levels of overall consumer support since 1979 and 1983 respectively.

"In a year that saw critical votes on a wide range of consumer issues, all too many members of Congress put special interests ahead of their constituents' interests," said CFA Chairman and former senator Howard Metzenbaum.

"The 66 members who continued to fight for the rights of consumers in a very difficult year and in the face of considerable pressure deserve a special vote of thanks," he added.

Record Number of Consumer Zeroes Named

Leading the decline in consumer support were 19 senators and 77 representatives who had no pro-consumer votes in 1995, causing them to be named as "Consumer Zeroes" by CFA. This was the largest number of Consumer Zeroes named by CFA since it began compiling the voting record in 1971.

"With votes on everything from telecommunications to congressional gift limits to highway safety, it is unconscionable that 96 members of Congress could not come up with a single pro-consumer vote," Sen. Metzenbaum said.

The CFA ratings are based on 16 consumer votes each in the House and the Senate. Members with voting records of 94 percent and above on these key issues were named as Consumer Heroes, while members with no pro-consumer votes were named as Consumer Zeroes.

The report also recognizes as Lifetime Consumer Heroes those members who, over their careers, have compiled voting records of at least 90 percent in the House and 85 percent in the Senate.

CFA Legislative Counsel Bradley Stillman, who oversaw the compilation of the report, attributed the downward slide in consumer support in 1995 to the newly won Republican control of both houses of Congress and their aggressive attempts to implement many of the anti-consumer proposals in their "Contract with America."

"Consumers were forced to play a lot of defense during this legislative session, with mixed results. While some attacks on consumer protections were successful, others either went down to defeat or were stalled at the end of the legislative session," he said.

One of the biggest issues from the Contract with America, liability reform, found consumers fighting against bills designed to make it more difficult for defrauded investors and for consumers injured by dangerous products to receive just compensation for their losses. While the securities litigation bill was passed over a presidential veto, the product liability bill was still stalemated at the end of the year. (See related article, page 1.)

Also following the script set by the Republican "Contract," Congress attempted to roll back a number of hard won consumer health and safety regulations.

For example, legislation was adopted that eliminates both the federal speed limit and the federal program that encourages states to enact motorcycle helmet use laws. In addition, legislation advanced, but was not enacted in 1995, to impose a moratorium on federal regulations, to limit the ability of the Environmental Protection Agency to enforce portions of major environmental laws, and to eliminate key federal nursing home standards.

One bright spot for consumers came in the area of government reform. Anti-consumer constitutional amendments mandating a balanced budget and setting term limits were defeated, while several pro-consumer initiatives were adopted, including limits on gifts to members of Congress and their staffs and preservation of limited federal funding for presidential elections.

Republicans, and particularly the large new class of Republican freshmen in the House, led the decline in consumer support.

Republicans Lead Decline

The consumer voting record was just nine percent among House Republicans and 12 percent among Senate Republicans. These were both the lowest levels since CFA began compiling the voting record in 1971.

Among Republican House freshmen, the overall consumer voting record was just seven percent, another all-time low. Republican Senate freshmen had a 14 percent consumer voting record, the lowest since 1986.

Voting percentages among Democrats, meanwhile, were virtually unchanged, inching up two points in both houses to 77 percent in the Senate and 74 percent in the House.

"As the political season shifts into high gear, we can expect additional attacks on important consumer pocketbook and safety protections," Stillman said. "Consumers should let their representatives in Congress know that they will pay at the ballot box if they continue to abandon the vital interests of their constituents."

Copies of the 1995 Congressional Voting Record are available for $10, paid in advance, from CFA, 1424 16th Street, N.W., Suite 604, Washington, D.C. 20036. Nonprofit organizations may purchase the report for $5.

HEROES

House 1995

Beilenson (D-CA)	100
Borski (D-PA)	100
Brown (D-CA)	100
Clayton (D-NC)	100
Collins (D-IL)	100
Coyne (D-PA)	100
Dellums (D-CA)	100
Durbin (D-IL)	100
Evans (D-IL)	100
Foglietta (D-PA)	100
Gutierrez (D-IL)	100
Hinchey (D-NY)	100
Kildee (D-MI)	100
Markey (D-MA)	100
Mfume (D-MD)	100
Oberstar (D-MN)	100
Roybal-Allard (D-CA)	100
Scott (D-VA)	100
Studds (D-MA)	100
Torres (D-CA)	100
Velazquez (D-NY)	100
Waters (D-CA)	100
Waxman (D-CA)	100
Woolsey (D-CA)	100
Yates (D-IL)	100
Becerra (D-CA)	94
Brown (D-FL)	94
Conyers (D-MI)	94
DeLauro (D-CT)	94
Dixon (D-CA)	94
Engel (D-NY)	94
Fattah (D-PA)	94
Gejdenson (D-CT)	94
Hastings (D-FL)	94
Hilliard (D-AL)	94
Johnston (D-FL)	94
Klink (D-PA)	94
LaFalce (D-NY)	94
Levin (D-MI)	94
Lewis (D-GA)	94
Matsui (D-CA)	94
McDermott (D-WA)	94
Menendez (D-NJ)	94
Miller (D-CA)	94
Mink (D-HI)	94
Nadler (D-NY)	94
Olver (D-MA)	94
Payne (D-NJ)	94
Rivers (D-MI)	94
Sabo (D-MN)	94
Sanders (I-VT)	94
Stark (D-CA)	94
Stokes (D-OH)	94
Stupak (D-MI)	94
Thompson (D-MS)	94
Vento (D-MN)	94
Wise (D-WV)	94

Senate 1995

Boxer (D-CA)	100
Bingaman (D-NM)	94
Feingold (D-WI)	94
Lautenberg (D-NJ)	94
Leahy (D-VT)	94
Levin (D-MI)	94
Sarbanes (D-MD)	94
Simon (D-IL)	94
Wellstone (D-MN)	94

House Lifetime

Clayton (D-NC)	100
Roybal-Allard (D-CA)	100
Velazquez (D-NY)	100
Mink (D-HI)	99
Hinchey (D-NY)	97
Woolsey (D-CA)	97
Abercrombie (D-HI)	96
Evans (D-IL)	96
Johnson, E.B. (D-TX)	96
Mfume (D-MD)	96
Olver (D-MA)	96
Watt (D-NC)	96
Wynn (D-MD)	96
Becerra (D-CA)	95
Brown (D-FL)	95
Dellums (D-CA)	95
McDermott (D-WA)	95
Menendez (D-NJ)	95
Nadler (D-NY)	95
McKinney (D-GA)	94
Pelosi (D-CA)	94
Studds (D-MA)	94
Yates (D-IL)	94
Farr (D-CA)	93
Fields (D-LA)	93
Filner (D-CA)	93
Gejdenson (D-CT)	93
Kennedy (D-MA)	93
Maloney (D-NY)	93
Sanders (I-VT)	93
Scott (D-VA)	93
Collins (D-MI)	92
Furse (D-OR)	92
Payne (D-NY)	92
Rush (D-IL)	92
Serrano (D-NY)	92
Vento (D-MN)	92
Waters (D-CA)	92
Kildee (D-MI)	91
Lewis (D-GA)	91
Markey (D-MA)	91
Wyden (D-OR)	91
Clyburn (D-SC)	90
Engel (D-NY)	90
Eshoo (D-CA)	90
Gutierrez (D-IL)	90
Schumer (D-NY)	90
Torres (D-CA)	90

Senate Lifetime

Wellstone (D-MN)	93
Boxer (D-CA)	91
Lautenberg (D-NJ)	88
Akaka (D-HI)	87
Kennedy (D-MA)	87
Murray (D-WA)	87
Feingold (D-WI)	86
Levin (D-MI)	86
Sarbanes (D-MD)	86
Simon (D-IL)	86
Kerry (D-MA)	85

ZEROES

House 1995

Armey (R-TX)	0
Bachus (R-AL)	0
Baker (R-CA)	0
Barr (R-GA)	0
Bartlett (R-MD)	0
Boehner (R-OH)	0
Bonilla (R-TX)	0
Bryant (R-TN)	0
Burton (R-IN)	0
Callahan (R-AL)	0
Calvert (R-CA)	0
Canady (R-FL)	0
Chabot (R-OH)	0
Combest (R-TX)	0
Cox (R-CA)	0
Crane (R-IL)	0
Cremeans (R-OH)	0
Cubin (R-WY)	0
Doolittle (R-CA)	0
Dornan (R-CA)	0
Dunn (R-WA)	0
Fields (R-TX)	0
Frisa (R-NY)	0
Gallegly (R-CA)	0
Ganske (R-IA)	0
Gekas (R-PA)	0
Gutknecht (R-MN)	0
Hancock (R-MO)	0
Hansen (R-UT)	0
Hastert (R-IL)	0
Hastings (R-WA)	0
Herger (R-CA)	0
Hilleary (R-TN)	0
Hutchinson (R-AR)	0
Johnson, Sam (R-TX)	0
Knollenberg (R-MI)	0
Largent (R-OK)	0
Latham (R-IA)	0
Lightfoot (R-IA)	0
Linder (R-GA)	0
Lucas (R-OK)	0
Manzullo (R-IL)	0
McCollum (R-FL)	0
McCrery (R-LA)	0
McInnis (R-CO)	0
McKeon (R-CA)	0
Mica (R-FL)	0
Moorhead (R-CA)	0
Neumann (R-WI)	0
Ney (R-OH)	0
Packard (R-CA)	0
Paxon (R-NY)	0
Pombo (R-CA)	0
Radanovich (R-CA)	0
Riggs (R-CA)	0
Roth (R-WI)	0
Royce (R-CA)	0
Schaefer (R-CO)	0
Seastrand (R-CA)	0
Smith (R-TX)	0
Smith (R-WA)	0
Spence (R-SC)	0
Stearns (R-FL)	0
Stockman (R-TX)	0
Stump (R-AZ)	0
Talent (R-MO)	0
Tate (R-WA)	0
Tauzin (R-LA)	0
Taylor (R-NC)	0
Tiahrt (R-KS)	0
Vucanovich (R-NV)	0
Waldholtz (R-UT)	0
Walker (R-PA)	0
Weldon (R-FL)	0
Weller (R-IL)	0
Young (R-AK)	0
Zeliff (R-NH)	0

Senate 1995

Ashcroft (R-MO)	0
Bennett (R-UT)	0
Brown (R-CO)	0
Burns (R-MT)	0
Coats (R-IN)	0
Cochran (R-MS)	0
Coverdell (R-GA)	0
Craig (R-ID)	0
Gramm (R-TX)	0
Grams (R-MN)	0
Hatch (R-UT)	0
Hutchison (R-TX)	0
Inhofe (R-OK)	0
Kempthorne (R-ID)	0
Lott (R-MS)	0
Mack (R-FL)	0
Nickles (R-OK)	0
Smith (R-NH)	0
Thurmond (R-SC)	0

House Lifetime

Lucas (R-OK)	0
Royce (R-CA)	0
Allard (R-CO)	3
Bachus (R-AL)	3
Doolittle (R-CA)	4
Collins (R-GA)	5
Crapo (R-ID)	5
Inglis (R-SC)	5
Bartlett (R-MD)	7
Linder (R-GA)	7
Manzullo (R-IL)	7
Mica (R-FL)	7
Stump (R-AZ)	7
Talent (R-MO)	7
Istook (R-OK)	8
Johnson, Sam (R-TX)	8
Zeliff (R-NH)	8
Boehner (R-OH)	9
Buyer (R-IN)	9
Kingston (R-GA)	9
Smith (R-MI)	9
Bonilla (R-TX)	10
Calvert (R-CA)	10
Dunn (R-WA)	10
Hutchinson (R-AR)	10
Knollenberg (R-MI)	10
Lewis (R-CA)	10
McInnis (R-CO)	10
McKeon (R-CA)	10
Pombo (R-CA)	10
Rohrabacher (R-CA)	10
Taylor (R-NC)	10
Armey (R-TX)	11
Cox (R-CA)	11
Crane (R-IL)	11
Burton (R-IN)	12
DeLay (R-TX)	12
Dornan (R-CA)	12
Everett (R-AL)	12
Hancock (R-MO)	12
Kim (R-CA)	12
Miller (R-FL)	12
Baker (R-CA)	13
Canady (R-FL)	13
Cunningham (R-CA)	13
Portman (R-OH)	13
Archer (R-TX)	15
Dickey (R-AR)	15
Goodlatte (R-VA)	15
Hansen (R-UT)	15
Moorhead (R-CA)	15

Senate Lifetime

Helms (R-NC)	9
Faircloth (R-NC)	10
Craig (R-ID)	11
Coverdell (R-GA)	12
Hutchison (R-TX)	12
Gramm (R-TX)	13
Smith (R-NH)	13
Gregg (R-NH)	14
Kempthorne (R-ID)	15
Lott (R-MS)	15
Thurmond (R-SC)	15
Bennett (R-UT)	16
Nickles (R-OK)	17
Burns (R-MT)	18
Hatch (R-UT)	19
Inhofe (R-OK)	19
Brown (R-CO)	20
Dole (R-KS)	20
Mack (R-FL)	20

Improved Securities Bill Advances in House

After eliminating many but not all of the bill's worst provisions, the House Telecommunications and Finance Subcommittee gave unanimous approval in early March to securities deregulation legislation.

Faced with the strong opposition of SEC Chairman Arthur Levitt and ranking minority member Rep. Edward J. Markey (D-MA), bill sponsor Rep. Jack Fields (R-TX) agreed to major revisions to the bill, which was reintroduced as H.R. 3005.

"We are extremely grateful to Rep. Markey and Chairman Levitt for the role they played in ameliorating the worst provisions of this bill," said CFA Director of Investor Protection Barbara Roper. "On the other hand, we are still concerned that this legislation will undermine important investor protections at the state level."

In a March letter to subcommittee members urging their opposition to the legislation, CFA and Consumers Union singled out three provisions of the original bill as being of particular concern:

- preemption of state securities laws;
- elimination of the requirement that brokers make only suitable recommendations to their institutional clients; and
- changes to the rules governing prospectus delivery.

Suitability Requirement Retained

In a major victory for consumers, the provision eliminating the suitability requirement for institutional clients was dropped from H.R. 3005, although Rep. Fields said the issue "remains alive and well in this subcommittee."

This provision would have put county and city funds, pension funds, and other institutional investors, such as schools and charities, at risk from unscrupulous brokers.

"Not all institutional investors are sophisticated investors. If brokers were set free to entice our government officials, pension funds, charities, and schools into risky and unsuitable investments, we would all pay the price," Roper said.

Also eliminated was the provision which would have allowed securities to be sold based solely on oral representations, which do not carry the same legal liability as a written prospectus.

"Given the influx of unsophisticated, middle class investors into the markets, Congress should be looking for ways to improve the quality and timing of disclosure investors receive," Roper said. "The original bill would have provided, not better disclosure, but less disclosure," Roper added. "Elimination of the bill's provisions in this area at least maintains the status quo."

In the area of state preemption, H.R. 3005 contains important improvements, but still threatens the ability of state officials to set appropriate protections for investors in their states.

As approved by subcommittee, the new bill would:

- require states to develop uniform laws governing registration of broker dealer representatives and securities offerings within three years or face federal preemption;
- retain state authority over investment advisers;
- eliminate state authority to review mutual fund offerings; and
- preserve state anti-fraud authority.

"State anti-fraud laws are broader in scope than federal laws, giving states authority to go after scams in a number of areas where the SEC has no authority," Roper said. "Preserving these stronger state laws is essential to providing a minimum level of protection from fraud and abuse."

"Similarly, given the limited resources available at the SEC, eliminating state authority to regulate investment advisers, as the original bill proposed, would have left the majority of advisers essentially unregulated," Roper added.

While acknowledging that the bill had been dramatically improved, Roper still criticized its "unwarranted federal preemption of stronger state securities laws."

Burdens of State Regulation Exaggerated

"This legislation grossly exaggerates the burden posed by state regulation and underestimates the benefits," Roper said.

She noted that a broker wishing to register in all 50 states fills out one form, takes one test, and writes one check to cover registration fees.

Roper also cited figures from the National Association of Securities Dealers which show that approximately 89 percent of the broker licenses that are renewed annually are approved automatically, without triggering any state review. Only three to five percent of applicants, generally those with serious disciplinary records, are subject to detailed state review.

"Focusing on those who have a history of highly questionable practices allows states to protect their citizens from brokers with a proven willingness to abuse clients," Roper said.

"The securities industry and its allies in Congress are using this new approach — requiring uniformity within an impossibly short time period of three years — as a back-door attack on those states that set higher standards of investor protection for their citizens," she said.

As this issue of the newsletter went to press, members of the Senate were said to be drafting companion legislation.

"Middle class Americans are increasingly dependent on our nation's financial markets to save for retirement, fund their children's college education, and receive a rate of return on savings that exceeds the rate of inflation. Similarly, our markets are increasingly dependent on middle class investors as a source of capital," Roper said.

"Congress should proceed carefully with legislation that, by threatening essential investor protections, could cause average Americans to lose confidence in the markets and to begin seeking safer alternatives," she said.

Proposed Civil Procedure Rules Change Opposed

Proposed changes to the Federal Rule of Civil Procedure governing protective orders during the discovery process are not in the public interest and should be rejected, according to comments filed in February by CFA, Consumers Union, and the National Coalition Against Misuse of Pesticides.

Under current rules, a judge must decide that a protective order, which prevents information in a case from being made public, is "for good cause." The Committee on Rules of Practice and Procedure has proposed changes that would: remove the "good cause" standard; take the decision away from the judge, allowing protective orders to be entered into when the parties to a case agree; and make it more difficult to overturn an order, by allowing the court to consider "the reliance of the parties on the order" when deciding a request to overturn an order. "Thus, under the proposed changes, protective orders would be both more prevalent and more conclusive," said CFA General Counsel Mary Ellen Fise.

The groups opposed the proposed rule change on the grounds that:

- the concealment of discovery materials denies a valuable source of information to consumers and to government agencies and allows harmful products to remain in the marketplace;
- the proposed changes would burden the court system by forcing replicated discovery, possibly precluding valid lawsuits; and
- allowing parties to keep information private frustrates the purpose of certain civil actions, including consumer safety and civil rights suits, specifically designed to remedy societal harms.

"Defense attorneys could use stipulated protective orders to cover evidence of their clients' willful misconduct and to prevent future punitive damages. Although the availability of a stipulated protective order might serve the interests of individual litigants, it does not serve the interests of the public, who have the right to discover wrongs whose effects might extend far beyond any one plaintiff," the comments state.

The groups urged the committee to retain the "good cause" standard for the issuance of protective orders, to continue to allow dissolution of protective orders without regard to whether the parties relied on the protective order in settling the case, and to strengthen protections against protective orders where public safety is at stake.

"We believe that the rule should be strengthened rather than weakened. We favor adoption of a rule that includes a presumption against protective orders if the subject matter of the order relates to public health, public safety, environmental protection, or government operations," Fise said.

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