CFAnews

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CONSUMER FEDERATION OF AMERICA

Consumers Want Congress To Protect Internet Rights

As Congress gears up to consider a major rewrite of telecommunications policy, a new survey shows that consumers support inclusion of provisions to prevent Internet network owners from blocking or impairing their access to information and services.

The survey – released in January by CFA, Free Press, and Consumers Union – found that:

• more than 75 percent of Internet users polled are seriously concerned about not being able to freely choose an Internet service provider or being required to pay twice for certain Internet services;

• another 70 percent are concerned about providers' blocking or impairing their access to Internet services, such as Internet telephone service, or sites, such as online retailers; and

• more than half (54 percent) want Congress to take action to ensure that Internet providers are prohibited from engaging in these practices.

"These results show that, although consumers believe network owners should provide unfettered access to the Internet, few believe they'll do so unless required by law," said CFA Research Director Mark Cooper.

Congress has indicated it plans a serious debate over telecommunications policy, including Internet policy, this year.

The stage was set for that debate by the recent Federal Communications Commission (FCC) decision to eliminate network owners' obligation to provide communications services under nondiscriminatory rates, terms, and conditions.

FCC Decision Sets Stage for Legislative Debate

The result is that broadband network owners are no longer required to allow Internet service providers to offer competitive services on the network owners' broadband networks, Cooper explained.

"Not only does that effectively eliminate the competition in broadband services that has resulted in lower consumer costs in the past," Cooper said, "but it also gives network owners the power to discriminate against content or services that their subscribers access via the Internet, such as Internet telephone service, video streaming and other applications, and even content that may compete with the owner's own offerings."

As a result, some members of Congress have sought to pass "network neutrality" legislation that would prohibit network owners from blocking or impairing consumer access to content and services on the Web.

Although the FCC adopted network neutrality principles last year, these fall well short of what is needed, Cooper said, because they do not include enforcement mechanisms.

Concern about potential for discrimination was given new urgency by reports that two dominant network owners — Verizon and AT&T — intend to charge fees for high-speed service to Internet content and services providers, such as Google and Yahoo. These fees would be in addition to Internet access fees charged to consumers.

"These pricing schemes are simply poorly disguised discrimination," said Free Press Policy Director Ben Scott. "Requiring Internet companies to pay for high-speed access to the Internet when they're already charging consumers for the same service means consumers will ultimately pay twice.

"Worse, the scheme will stifle innovation and competition by effectively denying access to start-ups that can't afford to pay for access to high speeds," he said.

In response, the groups called on Congress to move forward swiftly on meaningful legislation to prohibit discrimination.

"Congress should enact tough new laws prohibiting cable and telephone companies from blocking consumer access to content and services on the Internet, bilking both consumers and Internet-based companies," said CU Senior Policy Analyst Jeannine Kenney. "If they don't, these big companies will use their market power to line their pockets by discriminating against competitors in favor of their own content and service offerings," she said.

Survey Findings Support Need for Legislation

The report findings are based on three nationally representative random sample surveys, each consisting of 1,000 households, commissioned by CFA in November.

The following are among the polls' key findings:

• nearly two-thirds of all households have access to the Internet, and a majority of those have high-speed or "broadband" access;

• two-thirds of users say the Internet is important for personal communications and researching products;

• about 40 percent use the Internet for online banking, e-commerce, and retrieving government information;

• nearly 90 percent of consumers say being forced to pay for an Internet service provider they did not want would be a serious problem;

• more than three-fourths of consumers say not being allowed to use the service provider of their choice would be a serious problem;

• a majority of respondents said blocking or slowing Internet services is a very serious problem;

• more than two-thirds of users agree cable and telephone companies should adhere to the stated network neutrality principles, yet only 47 percent expect them not to engage in problematic behavior; and

• a majority of respondents support congressional action to uphold network neutrality principles and ensure access to all legal Internet services.

"Our findings that consumers view the Internet as an important communications and information service only underscore the danger of discriminatory network practices," Cooper said.

On the **Web**
www.consumerfed.org/pdfs/net_neutrality_poll.pdf
www.consumerfed.org/pdfs/net_neutrality_press_release.pdf
www.hearusnow.org

CPSC Urged To Address Problems Revealed by ATV Recalls

An analysis of ATV recalls reveals pervasive problems that the Consumer Product Safety Commission (CPSC) should address through safety standards, CFA argued in a comment letter submitted to the agency in December.

"CPSC should be taking action to ensure that children are not riding adult-size ATVs and should be broadly looking at ways to make ATVs and riding them less hazardous," said CFA Director of Product Safety and Senior Counsel Rachel Weintraub.

The CPSC voted in October to issue an Advanced Notice of Proposed Rulemaking regarding the risks of injury and death posed by ATVs. CFA submitted its comment letter to the agency in response to that ANPR.

In that letter, CFA continued to make its case that children should not ride adult-size ATVs, and it argued against the creation of a new "transitional" class of ATVs, which would only serve "to place children on larger, heavier, and more powerful ATVs," Weintraub said.

As part of its comment letter, CFA also analyzed all ATV recalls conducted by CPSC that appear on CPSC's web site.

Between June 2000 and November 2005, CPSC conducted 48 recalls of ATVs involving a total of just over 1.2 million units. Seventeen of those recalls, involving 80,910 units, came in the first 11 months of 2005.

CFA's analysis showed that nearly all of the recalls (92 percent) involved ATVs manufactured by major manufacturers who are members of the Specialty Vehicle Institute of America and were conducted because of the potential for serious bodily injury or death (94 percent).

Safety Standard Needed

CFA categorized the recalls by failure type and found that most (77 percent) were due to mechanical failure, while 13 percent were due to a fuel or fire risk. The two leading types of mechanical failure were suspension and drive-train failures, accounting for 52 percent of all ATV recalls.

In its letter, CFA urged the agency "to use its institutional expertise to determine why these suspension and drive train failures occurred in ATVs manufactured by numerous companies and what types of performance or design standards could be instituted to prevent these types of failures in the future."

CFA also categorized the ATV recalls by the type of hazard posed by the ATV and found that the hazard posed in most instances is "severe — leading to the potential for a loss of control, serious injury, or death."

"The seriousness of the potential hazard should compel CPSC to critically look at the pervasive causes for ATV recalls and to seriously consider solutions that will solve some of these problems," Weintraub said.

"I can think of no other category of recalled products which could, in such large percentages, lead to such life threatening hazards," she added.

Enforcement Provisions Urged

In order to give teeth to any rule it adopts, CFA urged CPSC to make its agreements with manufacturers — known as ATV Action Plans or Letters of Undertaking — mandatory, giving the CPSC clear enforcement authority.

It also urged CPSC to apply any mandatory rule it adopts to dealers as well as manufacturers and to require them to use their best efforts to sell adult-size ATVs only for use by adults and to inform consumers about the current ATV death and injury statistics.

CPSC should have authority to assess penalties against dealers who do not comply and deny their ability to sell ATVs in the future for repeated violations, CFA argued.

"CPSC now has the opportunity to take strong concrete actions that would save lives and prevent injuries caused by operating ATVs," Weintraub said. "We truly hope that CPSC won't miss this window and fail to protect consumers."

2005 Legislative Wrap-up

Consumer Credit

Bankruptcy — In April, Congress cleared and the president signed legislation making it more difficult for families hit by financial misfortune to make a fresh start (S. 256, P.L. 109-08). At the heart of the new law is a rigid means test that will force more debtors to file under Chapter 13 of the bankruptcy code, which requires a court-ordered repayment plan, rather than under Chapter 7, which allows them to wipe away many of their debts. In addition, the law creates new categories of non-dischargeable debts, affords bankruptcy judges little discretion to waive means test requirements, increases filing costs and paperwork, makes debtors more vulnerable to eviction, and makes Chapter 13 plans to save homes and cars more difficult. At the same time, the law's homestead exemption will allow wealthy debtors to shelter multi-million-dollar homes in bankruptcy, while the asset protection trust loophole will let them keep substantial financial assets out of the reach of creditors. Meanwhile, corporate executives facing bankruptcy because of business debt will be exempt from the means test, although those facing bankruptcy because of medical bills will not. The Senate passed the bill in March on a 74-25 vote after turning aside numerous amendments offered by Senate Democrats to soften the law's impact on average families, close loopholes for wealthy debtors, end abusive lending practices, and end abusive practices by businesses in bankruptcy. The House took up the Senate bill in April under a rule that did not permit any amendments and adopted it on a 302-126 vote. The president then signed the bill into law. Some efforts were made to delay implementation of the harshest provisions of the law for victims of Hurricane Katrina. Although several bills to delay or waive provisions of the new law were introduced in both houses of Congress, the administration and Republican congressional leaders refused to allow consideration of the measures. The Department of Justice did agree to be lenient in enforcing some requirements for hurricane victims, such as mandatory credit counseling.

Credit Card Reforms — The House Appropriations Committee added language to the Treasury-Transportation-HUD spending bill that would have banned "universal default" interest rate increases by credit card issuers, but Republican leaders used a procedural maneuver to strip the provision from the bill when it reached the House floor in June. The provision would have made it illegal for credit card issuers to use negative information in a consumer's credit report that is unrelated to their payment record for that credit card account to increase the interest rate on the account. Separately, pro-consumer credit card reform legislation (H.R. 3492, S. 499, S. 393) was introduced but not acted on.

Refund Anticipation Loans — Sen. Daniel Akaka (D-HI) and Rep. Janice Shakowsky introduced bills (S. 324, H.R. 969) to prohibit lenders from making loans against the Earned Income Tax Credit. That legislation, endorsed by CFA and other consumer and low income advocates, was not acted on. However, the Senate did adopt an amendment by Sen. Akaka to the Treasury appropriations bill (H.R. 3058, P.L. 109-109) requiring a study of practices in this area.

Payday Loans — Pro-consumer bills were introduced but not acted on to ban loans based on checks or electronic access to bank accounts (S. 1878) and to authorize demonstration project grants to entities to provide low-cost small loans (S. 1347).

Bank Overdraft Loans — Pro-consumer legislation (H.R. 3449) was introduced but not acted on clarifying that bank overdraft loans are covered by the basic consumer protections of the Truth in Lending Act.

Check Deposit Holds — Pro-consumer legislation (H.R. 799) was introduced but not acted on to shorten the length of time that a bank or other financial institution can hold a deposited check.

Housing

GSE Oversight — The full House and the Senate Banking Committee approved legislation (H.R. 1461, S. 190) in 2005 to overhaul regulatory oversight of the mortgage finance government sponsored enterprises (GSEs). Both bills would create a new regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks with authority to set minimum and risk-based capital requirements, to approve their entry into new lines of business, and to regulate their mortgage portfolios. The Senate bill goes further, in a move opposed by committee Democrats, by mandating that the regulator establish criteria to restrict the types of assets in those portfolios. In what was viewed as a victory for consumers, language was removed from the Senate bill that would have expressly prohibited the GSEs from operating either directly or indirectly in the primary market and that would have forbidden Fannie Mae and Freddie Mac from assuming any role before mortgages are closed and funded. In addition, both bills include provisions to strengthen the GSEs' affordable housing goals. As approved by committee, the House bill included a provision to require Fannie Mae and Freddie Mac to earmark an annual portion of their earnings for a fund for production, preservation, and rehabilitation of housing targeted at households earning 30 percent or less of the area median income. Efforts by Sen. Jack Reed (D-RI) and Sen. Paul Sarbanes (D-MD) to include a similar provision in the Senate bill were defeated. Instead, the Senate Committee adopted a weaker alternative sponsored by Sen. Rick Santorum (R-PA). Meanwhile, opponents of the provision kept the bill off the House floor until October and succeeded in getting strict limits placed on the groups that would be eligible to receive grants from the fund.

Predatory Mortgage Lending — Competing bills to address predatory lending in the subprime mortgage market were introduced in the House. Fortunately, the bill that was initially considered to have the most momentum behind it — H.R. 1295, introduced by Representative Bob Ney (R-OH) and Paul Kanjorski (D-PA) — did not advance. CFA and other consumer and housing groups opposed that bill, charging that it would preempt states from enacting their own anti-predatory lending laws while failing to protect borrowers from predatory lending. The Ney-Kanjorski bill permits prepayment penalties for high-cost loans, fails to effectively address abusive loan flipping, and includes numerous loopholes that undercut the bill's stated purpose. Unfortunately, H.R. 1182 — the pro-consumer alternative introduced by Rep. Brad Miller (D-NC), Rep. Melvin Watt (D-NC), and Rep. Barney Frank (D-MA) — also failed to advance. Patterned after the highly effective North Carolina anti-predatory lending law, H.R. 1182 would, among other things, include the costs of typical abusive practices in the definition of a "high-cost mortgage," prohibit financing points or fees as part of any high-cost mortgage, curb abusive broker kickbacks and anti-competitive pre-payment penalties, prohibit refinancing any home loan without a reasonable, tangible net benefit to the borrower. It drew strong support from consumer advocates and strong opposition from mortgage lenders. In December, Rep. William Lacy Clay (D-MO) introduced a third bill (H.R. 4471) he presented as an alternative to the Ney-Kanjorski bill. The Clay bill also drew opposition from CFA and other housing groups, however, who argued it would lead to higher fees and more foreclosures. Like H.R. 1295, the Clay bill also lacks effective enforcement provisions and would prevent victims of predatory lending from defending their homes against foreclosure, they argued. Both bills also contain loopholes that would allow a wide variety of abusive practices, including charging families extra fees for paying off high-cost loans early, and would override state laws that have been effective in preventing predatory lending.

Insurance

TRIA Extension — In a last-minute deal reached in the final days of the 2005 session, Congress cleared legislation (S. 467, P.L. 109-144) for the president's signature that extends for two years a scaled-back version of the Terrorism Risk Insurance Act (TRIA). The insurance industry had sought, and the House had passed, legislation (H.R. 4314) expanding the federal subsidies granted to the insurance and real estate industries under TRIA. In a victory for consumers, however, the final measure more closely resembled the Senate bill, increasing the share of losses insurers must pay in the event of a terrorist attack, reducing the lines of insurance that will be covered under TRIA, and moving towards a definite end to this temporary program after 2007. It passed the Senate in November, was then taken up in the House in December and passed under a suspension of the rules, and was signed by the president later that month.

Insurance Regulation — House Financial Services Committee Chairman Michael Oxley (R-OH) failed to follow through on plans to introduce and mark-up legislation in 2005 to overhaul state insurance regulation. CFA was part of a broad coalition voicing opposition to a draft bill for a wide range of reasons, including that it would override state consumer protection laws by preempting state regulation of insurance rates and lifting state controls on line drawing designed to prevent redlining.

Disaster Insurance — In the wake of last year's deadly hurricane season, Congress gave consideration to the idea of setting up a broad disaster insurance program covering such catastrophes as earthquakes and hurricanes. CFA testified against moving ahead with such a program, at least until Congress had determined why the flood insurance program has not been more effective. A provision in the House Terrorism Risk Insurance Act that would have mandated a study on creation of such a program was rejected by the Senate and stripped from the final bill.

Investments

Stock Options Expensing — Legislation was introduced in the House (H.R. 913) to limit corporate reporting of stock option compensation costs as expenses on financial statements. This bill was intended to scale back a rule adopted last year by the Financial Accounting Standards Board. Although new SEC Chairman Christopher Cox had co-sponsored the legislation as a member of Congress, he allowed the new FASB rule to take effect in June as scheduled and did not support a proposed valuation methodology that could have been used to understate options' costs.

SEC Inspections — Anti-consumer legislation (H.R. 4618) was introduced but not acted on to weaken the Securities and Exchange Commission's inspection and investigation authority by reassigning inspection activities to the agency's regulatory divisions and limiting its authority to conduct sweep examinations.

Sarbanes-Oxley Revisions — Bills were introduced in the House but not acted on to weaken two key provisions of the Sarbanes-Oxley Act adopted in the wake of massive accounting scandals at Enron and Worldcom. H.R. 1641 would make voluntary the law's requirement that internal controls against fraud by tested by an independent auditor. H.R. 1657 would repeal the Sarbanes-Oxley provision holding CEOs criminally liable for the accuracy of their company's financial statements.

Other Financial Services

Abusive Practices Targeting Military — In June, the House gave near unanimous approval to a bill (H.R. 458) to address the targeted sale of abusive financial services products to members of the military. The bill would ban the sale of contract mutual funds, give state insurance regulators clear authority to oversee insurance sales on military basis, create a registry of barred insurance agents and securities salespersons to be shared among federal and state regulators and military bases, and place new restrictions on the marketing of high-cost loans to service members. The latter provisions, which consumer advocates viewed as weak and possibly harmful, would require lenders with 10 percent or

more of their customers in the military to provide a list of disclosures to consumers of high-interest loans and would codify industry language addressing collection abuses. A bill (H.R. 97) containing stronger protections against predatory lending practices, capping the annual percentage rate at 36 percent for loans obtained by military personnel and their spouses was never acted on. Shortly before the August recess, however, Sen. Elizabeth Dole (R-NC) introduced an amendment to the defense authorization bill on the Senate floor that contained the same rate cap and protections as H.R. 97. Before the measure could be voted on, however, the Senate leadership broke off debate on the defense appropriations measure amid unresolved disputes over base closures and the treatment of military detainees. When the bill was taken up again after recess, the payday lending industry had succeeded in building opposition to the amendment, and several committees raised jurisdictional claims. In the end, Sen. Dole agreed to an amendment that requires that a short-term study be conducted by the Department of Defense, with outside consumer groups, federal bank regulators, and military charities to be consulted. That measure was included in the final defense authorization bill (P.L. 109-163) that cleared Congress in December and was signed into law by the president in January.

Regulatory Relief — Both the House and the Senate began consideration in 2005 of wide-ranging changes to the laws governing financial services. In November, the House Financial Services Committee gave unanimous approval to a regulatory relief bill (H.R. 3505) containing anti-consumer provisions to: allow Industrial Loan Companies to branch at will into all 50 states; remove restrictions on interstate branching by national and state banks; preempt the voter-mandated constitutional interest rate ceilings in the state of Arkansas; exempt certain financial institutions from the annual privacy notice disclosure requirement under the Gramm-Leach-Bliley Act; exempt check diversion companies operating under contracts with local prosecutors from the Fair Debt Collection Practices Act (FDCPA); and erode certain FDCPA restrictions applicable to all debt collectors. In its one pro-consumer provision, the bill attempts to create lower-priced alternatives for check cashing and international remittances by allowing more credit unions to offer these services. The bill was expected to be voted on by the full House early in the 2006 legislative session. In the Senate, meanwhile, the Senate Banking Committee began drafting its own version of regulatory relief legislation, but a bill had not been introduced at the end of the 2005 legislative session.

Preemption of State Banking Regulation — Bills were introduced in both the House and the Senate (H.R. 3426, S.1502) to restore state consumer and civil rights protections that have been undermined by federal bank and thrift regulators. The bills, which were endorsed by CFA and other housing and consumer groups, were not acted on by Congress.

Energy

Energy Policy Overhaul — Congress passed and the president signed legislation (H.R. 6, P.L. 109-53) to rewrite national energy policy, but did so in a way that does little to reduce either fuel consumption or greenhouse gas emissions. Instead, the new law grants costly new subsidies to highly profitable energy companies. In addition, the legislation repealed the Public Utility Holding Company Act, a move long opposed by consumer advocates, including CFA. One bright spot in the otherwise largely anti-consumer bill was inclusion of a requirement that at least 4 billion gallons of ethanol and biodiesel be used in 2006, with the amount increasing to 7.5 billion gallons in 2012.

Refining Capacity — Just two months after the energy bill was signed into law, the House adopted additional legislation (H.R. 3893) to encourage construction of oil refineries that once again failed to take necessary steps either to increase oil refining capacity or to spur fuel conservation. The House refused to consider a pro-consumer amendment to increase the corporate average fuel efficiency standard. On a largely party-line vote of 199-222, it voted down a substitute amendment that would have established a Strategic Refinery Reserve to allow for the release of refined product during energy emergencies and empowered the Federal Trade Commission and the states to deter and punish price gouging in the sale of petroleum products during energy emergencies. As adopted, the House bill does not grant state and federal regulators specific legal authority to investigate and punish price gouging, but instead calls for a study of the problem. The House bill passed in October on a 212-210. Subsequent efforts to pass a similar bill (S. 1772) in the Senate Environment and Public Works Committee failed on a tie vote, when Sen. Lincoln Chafee (R-RI) joined with all committee Democrats in opposition.

Telecommunications

Telecommunications Act Rewrite — Members of both houses began work on a sweeping overhaul of the nation's telecommunications laws in 2005 but made little tangible progress. That may be viewed as a positive outcome for consumers, since a majority of the proposals under consideration appear to be designed to scale back, rather than enhance protections against anti-consumer, anti-competitive practices. CFA and Consumers Union testified in opposition to a draft bill being circulated in the House. The Senate Commerce Committee held a series of hearings on the issue, but Commerce Committee Chairman Ted Stevens (R-AK) had not issued a draft bill by the end of year. Committee member Sen. John Ensign (R-NV) did introduce a broad, deregulatory bill (S. 1504) in July.

Health and Safety

Highway Safety — In an important victory for consumers, a package of safety measures was included in the highway bill that cleared Congress in late July and was signed into law by the president in August (H.R. 3, P.L. 109-59). The new law requires the National Highway Traffic Safety Administration (NHTSA) to issue rules requiring: rollover prevention technology; an upgrade of the roof strength standard; a new ejection prevention standard; an improved door lock standard; and an improved side impact standard. It also requires: testing of 15-passenger vans for rollover safety; safer power window switch designs to protect children; vehicle window labels with government safety rating information; data collection of non-crash, non-traffic incidents; and studies of tire aging, how to improve effectiveness of seat belt use reminders, and technology to prevent back-over crashes. Finally, the new law includes two state incentive grant programs to encourage adoption of primary enforcement seat belt laws and booster seat laws. An amendment that would have undermined truck safety by extending the hours that truckers can work without a break was defeated.

CPSC Budget — Congress passed and the president signed appropriations legislation (H.R. 3058, P.L. 109-115) providing $63 million in funding to the Consumer Product Safety Commission. This is less than the $64.549 million called for by CFA and other consumer advocates as the minimum necessary to allow the agency to maintain its current level of program and activities.

Bittering Agent in Antifreeze — The Senate Commerce Committee approved legislation (S. 1110) in November to reduce the incidence of poisonings of children and pets that may ingest antifreeze. While supporting the goal of the bill, consumer groups, including CFA, opposed the legislation because of its broad liability waiver for the industries involved in producing and selling antifreeze and coolants that contain the bittering agent denatonium benzoate even if use of the agent causes groundwater contamination, personal injury, property damage, or even death. A companion bill (H.R. 2567) was introduced in the House but not acted on in 2005.

Drinking Water Safety — Pro-consumer legislation was introduced in both houses of Congress (S. 1328, H.R. 3178) but not acted on to strengthen the federal regulations that govern lead testing and standards in the nation's public drinking water systems.

Food Safety and Nutrition

"Mad Cow" Disease — The Senate approved a joint resolution (S.J. Res. 4) in March providing for congressional disapproval of a rule issued by the Department of Agriculture relating to the establishment of minimal-risk regions for the introduction of bovine spongiform encephalopathy (BSE) into the United States. The USDA proposed to establish Canada as "minimal risk region" — thus opening the border to Canadian cattle and cattle products under 30 months of age — without adhering to the strict requirements that the International Office of Epizootics has established for that minimal risk designation. The House never acted on either the Senate resolution or a companion measure (H.J. Res. 23), and in July the United States resumed imports of Canadian cattle under 30 months of age.

Country-of-Origin Labeling — Congress passed and the president signed agriculture appropriations legislation (H.R. 2744, P.L. 109-97) that will once again delay mandatory country-of-origin labeling for meat products and fruits and vegetables sold in the United States. As a result, the labeling that was scheduled to begin in October will be delayed until October 2008. The House bill would have delayed the labeling for one year, and the Senate did not include a provision on labeling in its bill. Once the bill went to conference, however, the conferees not only adopted the House provision, they added two years to the delay.

Food Safety — Once again in 2005, several pro-consumer food safety bills were introduced but not acted on. These included bills to consolidate food safety regulation in a separate Food Safety Administration (S. 729, H.R. 1507); bills to clarify the authority of the Department of Agriculture to set performance standards for the reduction of pathogens in meat, poultry, and meat and poultry products and to set safety standards (S. 1357, H.R. 3160); and bills to take steps to preserve the effectiveness of medically important antibiotics by limiting their non-therapeutic use, including their use in animal feed (S. 742, H.R. 2562).

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CFAnews

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Legislative Wrap-up

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Food Safety and Label Uniformity — The House Commerce Committee approved legislation (H.R. 4167) in December to eliminate important state and local government food safety and labeling laws in the name of uniformity. The committee adopted the bill, which is opposed by CFA and other consumer and food safety groups, without ever holding a hearing on the issue.

Civil Liability

Class Action Limits — Congress passed and the president signed legislation (S. 5, P.L. 109-2) making it more difficult to obtain redress through class action lawsuits. The new law requires class action lawsuits seeking more than $5 million in damages to be filed in federal court if fewer than one-third of the plaintiffs are from the same state as the primary defendant. As a result, many cases will likely not be heard at all, since a series of legal precedents has limited the ability of federal judges to consider large class actions that involve varying laws of different states. The House has repeatedly passed legislation to restrict class action lawsuits, but those bills had previously failed to pass the Senate. This year, the Senate took up the issue first and cleared the bill on a 72-26 vote in February. The House then adopted the Senate bill without amendment on a 279-149 vote, and the president signed it into law.

Gun Liability Limits — In October, Congress passed and the president signed legislation (H.R. 800, S. 397, P.L. 109-92) that prohibits most civil lawsuits against gun manufacturers, dealers, distributors, importers, and trade groups from being brought in state or federal court. It also dismissed pending lawsuits. It includes exemptions from liability protections for anyone who sells a firearm knowing it is intended for use in a crime of violence or drug trafficking or who knowingly violates state or federal laws applicable to the marketing or sale of firearms, if the violation results in harm. Liability protections also would not apply in cases in which proper use of a firearm resulted in physical injury, death, or property damage because of a defect in the firearm. The law includes a provision, sponsored by Sen. Herb Kohl (D-WI), requiring all licensed manufacturers, importers, and dealers to include a separate child safety lock or storage device with each handgun sold. The bill passed the Senate in July on a 65-31 vote. It was taken up by the House in October under a rule that did not allow amendments, passed on a 283-144 vote, and was signed into law by the president.

Medical Malpractice — Once again in 2005 the House passed legislation (H.R. 5) to limit the ability of those injured or made ill by medical malpractice to receive fair compensation. Like versions passed in previous congresses, the bill would limit non-economic damages to $250,000 and would limit punitive damages to the greater of two times economic losses or $250,000. After having failed repeatedly to invoke cloture on a similar measure in the previous Congress, the Senate did not take up the measure in 2005. However, Senate Majority Leader Bill Frist (R-TN) has said he is committed to winning its passage.

Drug Industry Liability — At the end of the session, Congress added a provision to the military spending bill (H.R. 1815, P.L. 109-163) immunizing the drug industry from liability in the event of a pandemic outbreak. Although the measure was promoted as a means to encourage development of vaccines and countermeasures in the event of a pandemic, its liability protections extend far beyond new pandemic drugs and vaccines and protect drug companies from accountability even in the event of negligent or grossly negligent conduct. Furthermore, while it shields the drug companies from liability, it provides no compensation or protection for first responders and ordinary individuals who suffer serious illness or death as a result of taking a vaccine or other countermeasure against the pandemic. The measure was included in the bill during conference, despite the fact that it had not been included in either the House or Senate bill and had not even been debated on the floor of either chamber. The conference report passed the House on a 374-41 vote and the Senate on a voice vote in the very last days of the session. It was signed into law by the president just after the New Year.

Food Liability Limits — The House passed legislation (H.R. 554) in October to prohibit future lawsuits, and to dismiss pending lawsuits, against food manufacturers, marketers, distributors, advertisers, sellers, or trade associations for contributing to obesity or other associated health conditions. The Senate ended the year without acting on the measure, or on a companion bill (S. 908).

Rules of Civil Procedure — The House adopted legislation (H.R. 420) in October to roll back protections afforded by Rule 11 of the Federal Rules of Civil Procedure and to apply the rule to certain state court actions. CFA and other public interest groups wrote in opposition to the legislation on the grounds that it would force litigants to operate under terms that could be used to punish and deter valid claims of discrimination. The Senate had not acted on the measure when the session ended.

FDA Urged to Limit Carbon Monoxide Use in Fresh Meat Packaging

Food Safety Advocates CFA and Safe Tables Our Priority (S.T.O.P.) submitted a letter to the Food and Drug Administration in January urging the agency to rescind its decision to allow the use of carbon monoxide in the packaging of fresh meat.

"Using carbon monoxide in modified atmosphere packaging disguises the natural browning of meat and removes one of the best ways that consumers have of immediately determining that meat is old," said Carol Tucker Foreman, Director of CFA's Food Policy Institute.

FDA has established the use of carbon monoxide in packaging of fresh meat as "generally regarded as safe" (GRAS) in response to petitions by Precept Foods, Inc. and Practiv Corporation. In November, Kalsec, Inc. submitted a petition requesting that the agency prohibit its use.

CFA and S.T.O.P submitted their letter in support of the Kalsec petition, arguing that the use of carbon monoxide to displace oxygen in some packaging of case-ready red meat and ground meat products raises issues of both food safety and economic deception. They also sent a copy to the head of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS).

Carbon monoxide reacts with myoglobin in the meat to produce a bright red color, which consumers see as an indication of freshness in meat. However, this carbon monoxide-induced coloration has been found to last beyond the time of spoilage, thus potentially misleading consumers into thinking that the meat is fresher than it actually is.

This is of concern because older meat is more likely to have higher levels of both spoilage and pathogenic bacteria. In addition, the bright red color produced by carbon monoxide could be used to disguise the fact that a meat product has been subject to temperature abuse and thus could carry a heavier load of pathogens. "The use of carbon monoxide thus hides the visual clues that consumers use to determine the safety and freshness of their meat," Foreman said.

She called on the FDA to rescind its "no objection" stance on GRAS notifications for this type of carbon monoxide use, and she called on FSIS not to allow this use of carbon monoxide in meat. The primary reason for seeking this use of carbon monoxide is to make it cheaper for meat companies to package meat into final retail cuts at slaughter plants. "This is not a good enough reason to justify the added risks associated with this practice," Foreman said.

On the Web
www.consumerfed.org/pdfs/CO_&_Meat_Press_Release_1.17.06.pdf
www.consumerfed.org/pdfs/CFA_STOP_Letter_of_Support_CO_&_Meat.pdf

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