

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

March 22, 2010

To: Members of the Subcommittee on Commerce, Trade, and Consumer Protection Members and Staff

Fr: Committee on Energy and Commerce Democratic Staff

Re: Subcommittee Markup of H.R. 3993, Calling Card Consumer Protection Act; H.R. 4805, Formaldehyde Standards for Composite Wood Production Act; and H.R. 3655, Bereavement Consumer's Bill of Rights Act

On Wednesday, March 24, 2010, at 10:00 a.m. in room 2322 of the Rayburn House Office Building, the Subcommittee on Commerce, Trade, and Consumer Protection will meet in open markup session to consider the following bills: (1) **H.R. 3993**, the Calling Card Consumer Protection Act; (2) **H.R. 4805**, the Formaldehyde Standards for Composite Wood Products Act; and (3) **H.R. 3655**, the Bereaved Consumer's Bill of Rights Act.

The Chairman intends to begin opening statements at 10:00 a.m., then recess the proceeding until 1:00 p.m. when the Subcommittee will begin consideration of the bills.

I. H.R. 3993, THE CALLING CARD CONSUMER PROTECTION ACT

The Subcommittee held a legislative hearing on H.R. 3993 on December 3, 2009. A similar version of the bill, H.R. 3402, was reported favorably by the Committee and approved by the House in the 110th Congress.

H.R. 3993 is intended to prevent fraud and abuse in the prepaid calling card industry and to provide consumers with accurate and understandable information about the rates, fees, terms, and conditions associated with particular cards.

The prepaid calling card industry is a large and growing industry. In 2007, American consumers spent roughly \$4 billion dollars on these cards.¹ Prepaid calling cards generally are marketed to particular groups of consumers, including immigrants, college students, and military personnel.² Unfortunately, many of the prepaid calling cards sold in the marketplace today have numerous hidden costs such as connection fees, maintenance fees, disconnect fees, and inconsistent rate-per-minute surcharges, and they fail to deliver the full number of advertised calling minutes.³ One study found that consumers could expect to receive only 60% of the minutes promised on the card.⁴ In short, consumers often find that because of misleading information, inconsistent claims, and hidden fees, they do not get the minutes they were promised and essentially are left with a worthless piece of plastic, without any recourse.

H.R. 3993 would require calling card providers and distributors to clearly and conspicuously disclose all relevant and applicable information to consumers. These disclosures would include contact information for the provider, the number of minutes available, and the dollar value of the card. Entities also would be required to disclose any applicable fees, additional charges, limitations, changes in value, or expiration dates associated with the use of the card. In some cases, these disclosures also would be required to appear on calling card advertisements and voice prompts.

The bill would provide the Federal Trade Commission (FTC) with the authority to enforce these requirements and to promulgate regulations to carry out the Act. In order to ensure that FTC has jurisdiction over the full universe of prepaid phone cards, the bill would provide FTC with authority over common carriers for purposes of the Act. Moreover, H.R. 3993 would allow states to enforce the provisions of this Act.

At markup, Chairman Rush is expected to offer a bipartisan manager's amendment that makes several technical and substantive changes to the bill. The amendment excludes from the definition of "prepaid calling card distributor" certain retail merchants and persons who merely engage in the transport or delivery of prepaid calling cards. In addition, the amendment clarifies that the disclosures provided by entities subject to the bill may not be false, misleading, or deceptive. The amendment also clarifies section 4(c) to ensure that FTC has adequate rulemaking authority to develop disclosures that will benefit consumers and allow users of prepaid calling cards to comparison shop. Furthermore, the amendment includes a new preemption section that is similar to the preemption language in the bill as it passed the House in the 110th

¹ *Prepaid phone card industry under attack*, MSNBC.com (Oct. 23, 2008) (online at www.msnbc.msn.com/id/27327684).

² Mark E. Budnitz, Martina Rojo, and Julia Marlowe, *Deceptive Claims for Prepaid Telephone Cards and the Need for Regulation*, 19 Loyola Consumer L. Rev. 1 (2006).

³ *Fraud plagues prepaid calling card market*, Associated Press (Oct. 6, 2008) (online at www.msnbc.msn.com/id/27052474/).

⁴ The Hispanic Institute, *Facts & Figures* (online at thehispanicinstitute.net/research/callingcard/scamfacts).

Congress. Finally, the amendment requires FTC, in consultation with the FCC, to conduct a study of the prepaid wireless industry.

II. H. R. 4805, THE FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS ACT

The Subcommittee held a legislative hearing on H.R. 4805 on March 18, 2010.

Formaldehyde is a chemical known to have adverse effects on human health. For example, inhalation of formaldehyde can cause nose and throat irritation, difficulty breathing, burning sensations in the eyes and throat, chest pains, bronchitis, nausea, and severe allergic reactions.⁵

Despite its known harmful effects, formaldehyde is widely used in a variety of applications. The primary sources of formaldehyde in the air inside homes are composite wood products.⁶ Many of these products — including cabinets, furniture, shelving, and doors — are made with adhesives that contain formaldehyde, which can be released into the home.⁷ High levels of airborne formaldehyde have been detected inside homes, particularly in those with significant amounts of new composite wood products.⁸ One well-known example of toxicity caused by formaldehyde emissions from composite wood products occurred following Hurricane Katrina in the trailers provided by the Federal Emergency Management Agency as temporary housing to victims of the storm.⁹

The State of California has limits on formaldehyde emissions in most composite wood products. In 2008, after several years of scientific review and rulemaking, the California Air Resources Board finalized rules establishing the standards, the first phase of which went into effect on January 1, 2009.¹⁰ However, with the exception of outdated regulations for manufactured homes, formaldehyde emissions from composite wood products are not currently regulated by the federal government.¹¹

⁵ U.S. Environmental Protection Agency, *Indoor Air Quality: Formaldehyde* (online at: www.epa.gov/iaq/formalde.html#Health%20Effects) (accessed Mar. 15, 2010).

⁶ U.S. Environmental Protection Agency, *Formaldehyde Emissions from Pressed Wood Products*, 73 Fed. Reg. 73620, 73622 (Dec. 3, 2008).

⁷ *Id.*

⁸ U.S. Environmental Protection Agency, *Indoor Air Quality: Formaldehyde* (online at: www.epa.gov/iaq/formalde.html#Health%20Effects) (accessed Mar. 15, 2010).

⁹ See generally U.S. Centers for Disease Control, *Final Report on Formaldehyde Levels in FEMA-Supplied Travel Trailers, Park Models, and Mobile Homes* (July 2, 2008) (online at www.cdc.gov/nceh/ehhe/trailerstudy/assessment.htm#final).

¹⁰ California Environmental Protection Agency Air Resources Board, *Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products* (online at www.arb.ca.gov/regact/2007/compwood07/compwood07.htm) (Apr. 2008).

¹¹ 24 C.F.R. 328049.

H.R. 4805 establishes national limits on formaldehyde emissions from most composite wood products. It does so by requiring the Environmental Protection Agency (EPA) to issue regulations, not later than January 1, 2012, to apply the California standards to hardwood plywood, medium-density fiberboard, and particleboard that is sold, supplied, offered for sale, or manufactured anywhere in the United States. EPA's regulations must ensure that compliance with the federal standard is equivalent to compliance with the California standard, and must include provisions relating to labeling, chain of custody requirements, laminated products, third-party testing and certification, and other matters of implementation. H.R. 4805 also requires that the Department of Housing and Urban Development update its regulations to reflect the standards established by EPA. Under the bill, the new limits will go into effect 180 days after EPA issues its regulations. Finally, EPA would have authority to make further limitations at any time subsequent to the initial rulemaking.

A companion bill was introduced in the Senate on September 10, 2009, by Senator Amy Klobuchar, together with Senator Mike Crapo. That bill, S. 1660, was considered by the Senate Committee on Environment and Public Works on December 10, 2009, and ordered to be reported favorably, with an amendment in the nature of a substitute. H.R. 4805, introduced by Reps. Doris Matsui and Vernon Ehlers, reflects the changes made in that substitute amendment.

III. H.R. 3655, THE BEREAVED CONSUMER'S BILL OF RIGHTS ACT

The Subcommittee held a legislative hearing on H.R. 3655 on January 27, 2010.

Last July, news accounts revealed the unauthorized removal of human remains from graves and the reselling of those graves at Burr Oak Cemetery in Alsip, IL.¹² These reports underscored that consumers lack adequate protections from unfair or deceptive acts or practices by cemeteries. Currently, the FTC rule prohibiting unfair or deceptive acts or practices by funeral homes and their employees only applies to for-profit funeral homes. It does not apply to cemeteries, crematoria, or mausoleums, or to providers of funeral goods and services that are not funeral homes.

H.R. 3655 would direct the FTC to prescribe rules prohibiting unfair or deceptive acts or practices in the provision of all funeral goods or services. Specifically, all providers of these goods and services would be required to provide consumers with accurate, itemized price information for each specific funeral good or service offered for sale. The bill would further prohibit providers from making misrepresentations about federal, state, and local requirements, and prohibit conditioning the provision of any one funeral good or service on the purchase of another funeral good and service.

The bill also would require that contracts for funeral goods or services be written clearly and include disclosures about any fees, penalties, or costs that may be incurred in the future. With specific regard to cemeteries, the bill would require that consumers be

¹² *Bodies Unearthed at Alsip Cemetery*, Chicago Tribune (July 9, 2009).

provided with written rules and regulations and an explanation of the burial right that has been purchased. Cemeteries further would be required to keep clear records of all burials.

In addition, H.R. 3655 would authorize both the FTC and the states to enforce the Act's requirements. Also, the bill makes clear that it is not Congress's intent to preempt states' laws providing protections to consumers of funeral services or funeral goods except where there are conflicts between the respective laws.

H.R. 3655 would direct the FTC to issue the rules required under this Act within one year of enactment, in accordance with the Administrative Procedures Act. The bill also would ensure that FTC's rules apply to all providers of funeral goods or services, even nonprofit.

Chairman Rush is expected to offer a manager's amendment during markup that makes several technical and clarifying changes to the bill.