

ONE HUNDRED ELEVENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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MEMORANDUM

May 3, 2010

To: Members of the Committee on Energy and Commerce

Fr: Committee on Energy and Commerce Democratic Staff

Re: Full Committee Markup of H.R. 3993, the Calling Card Consumer Protection Act, amended, and H.R. 3655, the Bereaved Consumer's Bill of Rights, amended

On Wednesday, May 5, 2010, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Committee will meet in open markup session to consider **H.R. 3993**, the Calling Card Consumer Protection Act, and **H.R. 3655**, the Bereaved Consumer's Bill of Rights Act, with text of each bill as approved by the Subcommittee on Commerce, Trade, and Consumer Protection on March 24, 2010.

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

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 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

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).

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 the FTC has jurisdiction over the full universe of prepaid phone cards, the bill would provide the 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.

H.R. 3993 was introduced by Rep. Eliot Engel (D-NY) on November 3, 2009. In the 110th Congress, a similar version of the bill, H.R. 3402, was reported favorably by the Committee and approved by the House. The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 3993 on December 3, 2009. On March 24, 2010, the Subcommittee met in open markup session to consider the bill. The Subcommittee subsequently forwarded H.R. 3993 to the full Committee, amended, by a voice vote.

The Subcommittee approved a bipartisan manager's amendment that made several substantive and technical changes to the bill. It excluded 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 clarified that the disclosures provided by entities subject to the bill may not be false, misleading, or deceptive. The amendment also added language to the bill to ensure that the 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 included a new provision requiring coordination between the FTC and the Federal Communications Commission (FCC) to avoid the implementation of inconsistent regulations should the FCC decide to implement disclosure rules. The amendment also added preemption language and required the FTC, in consultation with the FCC, to conduct a study of the prepaid wireless industry.

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).

At the full Committee markup, a bipartisan manager's amendment is expected to be offered that will make one technical change to the bill. The amendment provides the FTC with flexibility to narrow the disclosures required to be placed on advertising and other promotional material. The FTC already has this flexibility under the bill with respect to prepaid calling cards.

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

Burr Oak Cemetery, in Alsip, IL, made national news in July 2009 when stories surfaced that cemetery employees had removed human remains from graves and resold some of the graves to unsuspecting consumers.⁵ H.R. 3655, introduced by Rep. Bobby L. Rush (D-IL), is intended to address some of the deplorable conditions discovered at Burr Oak by requiring, among other things, all cemeteries to record and retain records of burial, inurnment, and entombment locations, explain to consumers the nature of the burial, inurnment, or entombment rights they are purchasing, and provide consumers with all the cemetery's written rules and regulations.

Funeral arrangements are a major expense for most families and households. Each year consumers spend billions of dollars arranging more than two million funerals for families and friends.⁶ Consumers are currently protected under the FTC's Funeral Rule against unfair and deceptive acts and practices committed by funeral homes.⁷ The FTC's Funeral Rule further requires funeral homes to provide pricing disclosures for goods and services that they sell and to allow consumers to purchase the goods and services they want.⁸ Similar protections, however, are not afforded to consumers of funeral, burial, and cremation goods and services, when those goods and services are sold by cemeteries, crematoria, or third-party sellers. Because consumers of funeral goods and services are grieving, they can be easily exploited and financially harmed by deceitful salesmen. H.R. 3655 seeks to reconcile the differences in consumer protections that the same consumer would receive when shopping for funeral-related goods and services as compared to burial and cremation goods and services.

H.R. 3655 would direct the FTC to prescribe rules prohibiting unfair or deceptive acts or practices in the provision of all funeral, burial, and cremation 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 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, burial, or cremation good or service on the purchase of another funeral, burial, or cremation good and service.

⁵ *Bodies Unearthed at Alsip Cemetery*, Chicago Tribune (July 9, 2009).

⁶ Federal Trade Commission, Facts for Consumers: Funerals: A Consumer's Guide (online at <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro19.shtm>).

⁷ 16 C.F.R. Part 453 (1982).

⁸ *Id.*

The bill also would require that contracts for funeral, burial, or cremation 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 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 the intent of Congress to preempt state 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, burial, or cremation goods or services, including nonprofit providers.

The Subcommittee on Commerce, Trade, and Consumer Protection held a legislative hearing on H.R. 3655 on January 27, 2010. On March 24, 2010, the Subcommittee considered H.R. 3655 in open markup session and subsequently favorably forwarded H.R. 3655 to the full Committee, amended, by a voice vote. The Subcommittee agreed to a manager's amendment that made several technical and clarifying changes to the bill, including the removal of an unnecessary reference to the Religious Freedom Restoration Act.