



Legislative Bulletin.....February 12, 2003

Contents:

- H.Res. 62**—Recognizing the courage and sacrifice of those members of the United States Armed Forces who were held as prisoners of war during the Vietnam conflict and calling for a full accounting of the 1,902 members of the Armed Forces who remain unaccounted for from the Vietnam conflict
- H.R. 346**—American Spirit Fraud Prevention Act
- H.R. 395**—Do-Not-Call Implementation Act

**H.Res. 62 — Recognizing the courage and sacrifice of those members of the United States Armed Forces who were held as prisoners of war during the Vietnam conflict and calling for a full accounting of the 1,902 members of the Armed Forces who remain unaccounted for from the Vietnam conflict.
(DeLay)**

Order of Business: The resolution is scheduled for consideration on Wednesday, February 12th, under a motion to suspend the rules and pass the bill.

Summary: H.Res. 62 includes the following statements:

- “Whereas participation by the United States Armed Forces in combat operations in Southeast Asia during the Vietnam conflict resulted in more than 700 American military personnel being taken prisoner by enemy forces;
- “Whereas American military personnel who were taken prisoner were held in numerous prisoner of war facilities, the most notorious of which was Hoa Lo Prison in downtown Hanoi, Vietnam, which was dubbed by prisoners held there as the ‘Hanoi Hilton;’
- “Whereas many American military personnel who were taken prisoner as a result of combat in Southeast Asia have not returned to their loved ones and their fate remains unknown;
- “Whereas American military personnel who were prisoners of war in Southeast Asia were routinely subjected to brutal mistreatment, including beatings, torture, starvation, and denial of medical attention and outside information, and were frequently isolated from each other and prohibited from communicating with one another;
- “Whereas the prisoners held in the Hanoi Hilton included then-Major Samuel R. Johnson, United States Air Force, now a Member of Congress from the Third District of Texas, who was shot down on April 16, 1966, while flying his 25th mission over North Vietnam, who spent more than half of his time as a prisoner in solitary confinement, conducted himself with such valor as to be labeled by the enemy as a

die-hard resister, and, notwithstanding the tremendous suffering inflicted upon him, demonstrated an unflinching devotion to duty, honor and country, who, during his military career, was awarded two Silver Stars, two Legions of Merit, the Distinguished Flying Cross, one Bronze Star with 'V' device for valor, two Purple Hearts, four Air Medals, and three Outstanding Unit awards, who retired from active duty in 1979 in the grade of colonel, and who personifies the verse in Isaiah 40:31, 'They shall mount with wings as eagles;'

- "Whereas the American military personnel who were prisoners of war during the Vietnam conflict truly represent all that is best about America;
- "Whereas the 30th anniversary of Operation Homecoming begins on February 12, 2003, and ends on April 1, 2003; and
- "Whereas the Nation owes a debt of gratitude to these patriots and their families for their courage, heroism, and exemplary service."

The resolution further states that the House of Representatives:

- "expresses its deepest gratitude for, and calls upon all Americans to reflect upon and to show their gratitude for, the courage and sacrifice of the brave members of the United States Armed Forces, including particularly Sam Johnson of Texas, who were held as prisoners of war during the Vietnam conflict;
- "urges States and localities to honor the courage and sacrifice of those prisoners of war with appropriate ceremonies and activities;
- "acting on behalf of all Americans, will not forget the 1,902 members of the United States Armed Forces who remain unaccounted for from the Vietnam conflict and will continue to press for a full accounting of all of these members; and
- "remembers all of the members of the United States Armed Forces who fight, and sometimes die, for our freedoms today."

Additional Background: Additional information, including a photo album of Rep. Sam Johnson's homecoming, is available on his website at <http://www.samjohnson.house.gov>.

Cost to Taxpayers: The resolution authorizes no expenditure.

Does the Bill Create New Federal Programs or Rules?: No.

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H.R. 346— American Spirit Fraud Prevention Act (Bass)

Order of Business: The bill is scheduled to be considered on Wednesday, February 12, 2003, under a motion to suspend the rules and pass the bill. The same legislation was considered in the 107th Congress and passed under suspension of the rules by voice vote on November 14, 2001.

Summary: The legislation would amend sections of the Federal Trade Commission Act (15 U.S.C. sections 45(m)(1) and 53) to increase the civil penalties and add a new provision for a violation involving an “unfair or deceptive act” where “the act or practice exploits popular reaction to [a] national emergency, major disaster, or emergency.” H.R. 346 authorizes the FTC to impose a civil penalty of up to \$22,000 per violation on individuals or organizations that commit these violations (double the current fine amount). The bill defines “emergency period” and “disaster period” as beginning on the date that the President declares a national emergency or disaster under his current authority and expires one year after the emergency has terminated

According to *National Journal*, the American Spirit Fraud Prevention Act was prompted by reports that scam artists had exploited public outrage over the Sept. 11, 2001 terrorist attacks to bilk consumers.

Additional Information: According to the Federal Emergency Management Agency, major disasters were declared 47 times in 2002 and 44 times in 2001 with two national emergency declarations. (Source: <http://www.fema.gov/library/diz02.shtm>)

Cost to Taxpayers: CBO estimates that implementing H.R. 346 would increase the agency's enforcement costs by less than \$500,000 a year, subject to appropriations. Under the bill, the FTC also may collect more civil fines, however CBO estimates that any increase in fines collected would be negligible.

Does the Bill Create New Federal Programs or Rules?: The bill creates a new type of federal FTC violation and amends current law to authorize the FTC to impose stiffer fines if the motivation behind the violation was to “exploit popular reaction” to a national emergency or disaster.

Constitutional Authority: A committee report from the Energy and Commerce Committee citing constitutional authority is unavailable. In the 107th Congress, the Committee prepared a report (Rept. # 107-276) on the same legislation citing Article I, Section 8, Clause 3 (Commerce Powers) of the Constitution.

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H.R. 395—Do-Not-Call Implementation Act (Tauzin)

Order of Business: The bill is scheduled to be considered on Wednesday, February 12th, subject to unanimous consent.

Summary: H.R. 395 would authorize the Federal Trade Commission (FTC) to promulgate regulations to collect fees from sellers and telemarketers for the implementation and enforcement of a national “do-not-call” registry. Sellers and telemarketers would have to pay the federal government to access the national registry. [Though access to the national registry

would not be required, sellers and telemarketers would still be legally responsible for whom they call at home.]

This national do-not-call registry, not yet in force, was a product of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(ii)), promulgated under the Telephone Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Under the Rule, sellers or telemarketers acting on behalf of sellers are required to maintain lists of people who have previously stated that they do not wish to receive calls made by or on behalf of the sellers whose goods or services are being offered. Any deliberate calling of someone on a do-not-call list is deemed to be an abusive telemarketing act or practice and a violation of the Rule (resulting in up to an \$11,000 fine per incident).

The Rule does not apply to calls seeking political contributions.

The FTC has never been given the proper authorization to proceed with a national registry. The national do-not-call registry would allow consumers to opt-out of telemarketing calls, making it illegal for sellers or telemarketers to intentionally call the numbers on the registry.

The FTC could collect registry fees (amounts not yet set) for fiscal years 2003 through 2007, which would be credited as offsetting collections to the FTC's salaries and expenses account. The FTC could spend the collected amounts only for activities and services related to the implementation and enforcement of the Telemarketing Sales Rule (and other activities resulting from such implementation and enforcement). The House Committee on Energy and Commerce estimates the registry to cost \$16 million per year.

H.R. 395 would also direct the Federal Communications Commission (FCC) to finalize its do-not-call regulations (for which its rule-making procedures began in September 2002) within 180 days of the enactment of this legislation and in consultation with the FTC. Within 45 days of the FCC's issuance of its regulations, both the FCC and the FTC would have to report to Congress on any inconsistencies between their respective regulations and how to rectify such inconsistencies. Since the FTC has limited jurisdiction over the telemarketing industry, the FCC regulations would fill in the gaps not addressed by the FTC.

For each of the next five years, both the FTC and the FCC would have to submit annual reports to Congress covering the following information:

- the effectiveness of the do-not-call registry as a national registry;
- the number of consumers who have placed their telephone numbers on the registry;
- the number of persons paying fees for access to the registry and the amount of such fees;
- the progress of coordinating the national registry with similar registries established and maintained by the states;
- the progress of coordinating the FTC's operation and enforcement of the national registry with the FCC's enforcement activities; and
- a review of the enforcement proceedings under the Telemarketing Sales Rule (16 C.F.R. 310), in the case of the FTC, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the FCC.

Additional Background: According to the FTC, consumers would be able to begin signing up for the national do-not-call registry about four months after fees can start to be collected. About three months after that, the FTC would begin enforcing the registry, and consumers who have signed up would start receiving fewer calls. Consumers would be able to register for free online or by calling a toll-free number. The exact weblink and phone number for registration would be posted on <http://www.ftc.gov>.

To read the complete text of the Telemarketing Sales Rule referenced above, please visit this website: <http://congressback.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=9778577542+9+0+0&WAISaction=retrieve>.

Committee Action: The House Energy and Commerce Committee reported the bill without amendment by voice vote on January 29, 2003. To read a Committee press release on the reporting of this bill, please visit this website: http://energycommerce.house.gov/108/news/01292003_773.htm.

To read a *National Journal* report on the markup of H.R. 395, please visit this website: <http://nationaljournal.com/members/markups/2003/01/200302905.htm>.

Administration Position: The FTC is fully supportive of implementing and enforcing a national do-not-call registry. FTC Chairman, Timothy Muris, says many state do-not-call registries have been challenged as unconstitutional and have held up in court. Muris believes the FTC proposals will also hold up to any legal challenges. To read more information from the FTC, please visit this website: <http://www.ftc.gov/bcp/online/edcams/donotcall/index.html>.

Cost to Taxpayers: The national registry would be funded by fees collected from sellers and telemarketers and would thus require no separate appropriation once the fees have kicked in. Congress will likely have to appropriate some start-up funds (perhaps \$16 million—the estimated annual cost of the registry). No CBO cost estimate is available.

Does the Bill Create New Federal Programs or Rules?: Yes—the bill would give the FTC the authorization to implement and enforce a national, fee-based do-not-call registry.

Constitutional Authority: Though a committee report citing constitutional authority is unavailable, Article I, Section 8, Clause 3 of the Constitution grants Congress the power to “regulate Commerce...among the several States....”

Outside Organizations: The telemarketing industry is opposed to the legislation. For more information, please visit this website: <http://www.the-dma.org/government/>.

Consumer groups are in strong support of this bill.

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