

EXTENSIONS OF REMARKS

CONSUMER PROTECTION AGENCY

HON. CHET HOLIFIELD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 3, 1973

Mr. HOLIFIELD. Mr. Speaker, the bill to establish a Consumer Protection Agency has been reintroduced in the 93d Congress as H.R. 21. It is titled "The Consumer Protection Act of 1973." This bill is identical to H.R. 10835, which passed the House on October 14, 1971, by a vote of 344 to 44, after having been reported by the Committee on Government Operations by a vote of 27 to 4.

H.R. 21 has bipartisan support. Representative FRANK HORTON of New York, the ranking minority member on the committee, has joined in sponsoring the bill, as have other members of the committee from both parties.

Although the bill to establish the Consumer Protection Agency received overwhelming support in the House during the 92d Congress, unfortunately the Senate failed to act. The bill was filibustered to death in the other body during the closing days of the 92d Congress and, hence, we were unable to go to conference.

Our bill will create a Consumer Protection Agency which will provide representation for consumers and consumer interests before departments and agencies of the Federal Government and the courts. Such representation is sorely needed as the extensive hearings which we held amply demonstrated. The bill will also provide a statutory base for the Office of Consumer Affairs, now headed by Mrs. Virginia Knauer and located in the Executive Office of the President. It will also create a Consumer Advisory Council so that consumers themselves and persons familiar with their needs can provide advice and guidance to the two bodies referred to above.

We feel the House-passed bill will provide the best basis for our consideration of consumer protection legislation in the 93d Congress, inasmuch as it was hammered out after considerable study and deliberation on the part of our committee. Of course, the bill as introduced is not frozen and new information and ideas may result in some modifications. I am certain, however, that this Congress recognizes the importance of providing the type of representation that we seek here and of giving further assurance to the consumers of our Nation that the Congress is aware of and responsive to their problems.

We will welcome additional cosponsors and those who desire to join with us may call my office or that of Representative HORTON.

There follows a section-by-section analysis of the bill:

SECTION-BY-SECTION ANALYSIS OF H.R. 21, THE CONSUMER PROTECTION ACT OF 1973

(Identical to H.R. 10835 as Passed by the House October 14, 1971)

Section 1

The short title will be the "Consumer Protection Act of 1973."

Section 2—Statement of findings

The Congress finds that the interests of consumers are inadequately represented and protected within the Federal Government; and that vigorous representation and protection of consumer interests are essential to the fair and efficient functioning of a free market economy.

TITLE I. OFFICE OF CONSUMER AFFAIRS

Section 101—Establishment

An Office of Consumer Affairs is established within the Executive Office of the President to be headed by a Director and seconded by a Deputy Director, both to be appointed by the President and confirmed by the Senate. This section would give a statutory foundation to the existing Office of Consumer Affairs, established under Executive Order 11583, dated February 24, 1971.

Section 102—Powers and duties of the Director

The Director is given the administrative powers and responsibilities ordinarily conferred upon agency heads, such as appointment and supervision of personnel, including experts and consultants, in accordance with the civil service and administrative expense laws; appointment of advisory committees; promulgation of rules necessary to carry out his functions; delegation of authority; making agreements with and obtaining the support of other Federal, State and private agencies.

The Director is required to submit annually to the President and to the Congress a comprehensive report of activities of the Office, including recommendations for additional legislation and an evaluation of selected major consumer programs of each Federal agency.

Federal agencies, upon request of the Director, are to provide to the Office services and other support, and are to supply information to the Office as may be necessary and appropriate. Reimbursement for such assistance will be governed by existing provisions of law.

Section 103—Functions of the office

The functions of the Office of Consumer Affairs will be to—

(1) assist the President in coordinating the programs of all Federal agencies relating to consumer interests;

(2) encourage and assist in the development and implementation of Federal consumer programs;

(3) assure that the interests of consumers are considered by Federal agencies both in the formulation of policies and the operation of programs;

(4) cooperate with and assist the Administrator of the Consumer Protection Agency;

(5) advise Federal agencies on programs and activities relating to the interests of consumers;

(6) recommend to the Congress and the President means by which consumer programs can be improved;

(7) conduct conferences and investigations on consumer problems not duplicative of other Federal agencies;

(8) encourage and participate in consumer education and counseling programs;

(9) support and coordinate research leading to improved products, services and consumer information;

(10) provide technical assistance to State and local governments in protection of consumer interests;

(11) cooperate with and assist private enterprise in the promotion and protection of consumer interests;

(12) publish in a Consumer Register or in other suitable form the actions of Federal agencies and other useful information in non-technical language; and

(13) keep the appropriate committees of the Congress fully and currently informed of all its activities.

Section 104—Transfer of assets and personnel

The personnel and other assets of the Office of Consumer Affairs and of the Consumer Advisory Committee, both established by Executive Order 11583 dated February 24, 1971, as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with any function granted to the Office or to the Council established by this legislation are transferred respectively to said Office or Council.

TITLE II. CONSUMER PROTECTION AGENCY

Section 201—Establishment

The Consumer Protection Agency is established as an independent agency in the Executive Branch to be headed by an Administrator and seconded by a Deputy Administrator both to be appointed by the President and confirmed by the Senate. Employees of the Agency may not engage in business or employment or have interests inconsistent with their official responsibilities.

Section 202—Powers and duties of the administrator

The Administrator is given the usual administrative powers and responsibilities conferred upon other Federal agency heads, such as appointment and supervision of personnel including experts and consultants, in accordance with the civil service and administrative expense laws; appointment of members of advisory committees, promulgation of rules necessary to carry out his functions; delegation of responsibilities; entering into contracts; and obtaining the support of other Federal, State and private agencies.

The Administrator shall transmit annually to the President and the Congress a comprehensive report of activities of the Agency, including recommendations for legislation and an evaluation of selected major consumer programs of each Federal agency.

Federal agencies, upon request of the Administrator, are to provide to the Agency services and other support, and are to furnish information to the Agency as may be necessary and appropriate. Reimbursement for such assistance is subject to existing provisions of law.

Section 203—Functions of the Agency

The functions of the Consumer Protection Agency will be to advise the Congress and the President, to promote and protect the interests of consumers, and to—

(1) represent the interests of consumers before Federal agencies and the courts as authorized;

(2) in the exercise of its responsibilities under section 207 (relating to product testing), support and encourage research studies and testing leading to better understanding and improved products, services, and information;

(3) make recommendations to the Congress and the President;

(4) publish and distribute material developed pursuant to the exercise of its responsibilities which is of interest to consumers;

(5) conduct conferences, surveys and investigations concerning the needs, interests

and problems of consumers which do not significantly duplicate similar activities conducted by other Federal agencies;

(6) keep appropriate committees of Congress fully and currently informed of all its activities; and

(7) cooperate with and assist the Director of the Office of Consumer Affairs.

Section 204—Representation of consumers

This section authorizes the Consumer Protection Agency to represent the interests of consumers in proceedings conducted by other Federal agencies under the provisions of the Administrative Procedures Act (5 U.S.C. 551, et seq.) and in actions pending before courts of the United States under the following circumstances:

Rulemaking and Adjudications

If the Agency finds that the result of such a proceeding before a Federal agency may substantially affect the interests of consumers and that the interests of consumers may not be adequately protected unless the Agency does participate or intervene, and if the Agency files in the proceeding and issues publicly a written statement setting forth such findings and also stating concisely the specific interests of consumers to be protected, then the Agency as a matter of right may—

(1) participate in any rulemaking proceeding (other than one for internal operations);

(2) intervene as a party and enter an appearance (in accordance with the Federal agency's rules of practice and procedure) in any adjudicatory proceeding if it is not one seeking primarily to impose a fine, penalty, or forfeiture.

Adjudications Primarily Leading to Fines, Penalties or Forfeitures and Court Actions When Federal Government a Party

With respect to an adjudicatory proceeding before a Federal agency which does seek primarily to impose a fine, penalty or forfeiture, or to an action before a court of the United States in which the U.S. or a Federal agency is a party and which in either case it is the opinion of the Agency that the interests of consumers may be substantially affected, the Agency may, upon its own motion or at the request of the officer charged with presenting the case for the Federal agency or the United States, transmit relevant information or evidence. Furthermore, in the discretion of the agency or court, the Agency may appear as *amicus curiae*.

Court Review of Agency Decisions

The Agency is also authorized (1) to intervene as a party in a court review of a rulemaking or an adjudicatory proceeding where it had already participated or intervened in the Federal agency proceeding; and (2) to institute a review in a competent court of such a Federal agency proceeding if a judicial review is otherwise accorded by law. If the Agency had not intervened or participated in the Federal agency proceeding it may also intervene in or to the extent that a right of judicial review or intervention is otherwise accorded institute an action for court review of the Federal agency's action if the court finds that (1) the agency actions may adversely affect consumers and (2) the interests of consumers are not otherwise adequately represented in the actions. If law or Federal agency rules so require, the Agency must petition for a rehearing or reconsideration before seeking to institute a review proceeding.

Request To Initiate a Proceeding

The Administrator of the Agency is further authorized to request another Federal agency to initiate a proceeding or take such other actions as it may be authorized to take when he determines it to be in the interests of consumers. If the Federal agency fails to take the action requested, it is required to notify

the Agency promptly of the reasons for its failure to do so and such notification shall be a matter of public record. The CPA may seek court review of this decision if such review is otherwise accorded by law.

Orders for Witnesses and Information

In order to assist the Agency in its functions involving representation and to provide it with necessary information when the Agency has become a party to a proceeding before another Federal agency, it may request that Federal agency to issue and the Federal agency shall issue orders within its powers and subject to the usual rules of relevance and scope for the copying of documents, papers and records, summoning of witnesses, production of books and papers, and submission of information in writing.

Appearances by Agency

Appearances by the Consumer Protection Agency in Federal agency or court proceedings shall be in the Agency's name and shall be made by qualified representatives designated by the Administrator of the Agency. It is the intent of this legislation that the Agency direct and control its own representation of the interests of consumers.

No Interventions in State or Local Proceedings

This legislation gives the Agency no authority to "intervene" in proceedings before State or local agencies and courts. But the Agency is not prohibited from communicating with Federal, State or local agencies in other manners not inconsistent with law or agency rules.

Section 205—Processing consumer complaints

The Agency shall receive, evaluate, develop, act on and transmit to the appropriate Federal or non-Federal entities complaints concerning actions or practices which may be detrimental to the interests of consumers. Whenever the Agency may (a) receive or (b) develop on its own initiative such complaints or other information that may involve the violation of Federal laws, agency rules or court decrees, it shall (a) take such action as may be within its authority (for example, investigation) or (b) promptly transmit such complaints or other information to the appropriate Federal agency. If the latter, it shall ascertain the action taken by that agency. It shall also promptly notify the party against whom the complaint has been made.

The Agency shall maintain a public document room in which the complaints will be available for inspection. However, a complaint would only be listed and available for inspection (a) if the complainant had not requested confidentiality, and (b) after the party complained against has had 60 days to comment on the complaint and such comment, when received, is displayed together with the complaint, and (c) the entity to which it has been referred has had 60 days to notify the Agency what action it intends to take on the complaint.

Section 206—Consumer information and services

The Agency is authorized to develop on its own initiative, gather from other sources—both Federal and non-Federal—and disseminate in effective form to the public, information concerning its own functions; information about consumer products and services and information about problems encountered by consumers generally, including annual reports on interest rates and commercial and trade practices which adversely affect consumers.

All Federal agencies which possess information which would be useful to consumers are authorized and directed to cooperate with both the Agency and the Office in making such information available to the public.

Section 207—Product testing and results

The Agency is directed to encourage and support through both public and private entities the development and application of methods and techniques for testing materials, mechanisms, components, structures and processes used in consumer products and for improving consumer services. It shall make recommendations to other Federal agencies on research which would be useful and beneficial to consumers.

The Agency is also directed to investigate and report to Congress on the desirability and feasibility of establishing a National Consumer Information Foundation which would administer a voluntary, self-supporting tag program (similar to the "Tel-Tag" program of Great Britain) under which any manufacturer of a non-perishable consumer product to be sold at retail could be authorized to attach to each product such a tag, standard in form, on which would be found information based on uniform standards, relating to the performance, safety, durability and care of the product.

This section directs all Federal agencies possessing testing facilities to perform promptly to the greatest practicable extent within their capabilities such tests as the Administrator may require in connection with his representation function or the protection of consumer safety. Under these circumstances expeditious handling of testing requests would clearly be required. The provisions of law usually governing reimbursement for services would apply.

This bill forbids a Federal agency engaged in testing products under this section or the Administrator from declaring one product to be better, or a better buy, than any other product.

The Administrator is directed to review periodically products which have been tested to assure that such products and resulting information conform to the test results. Note, however, that section 209 below prohibits certain disclosures and protects trade secrets and other confidential business and financial data.

Section 208—Consumer safety

The Agency shall conduct studies and investigations of the scope and adequacy of measures employed to protect consumers against unreasonable risks or injuries which may be caused by hazardous household products. It should consider identifying categories of hazardous household products and the extent to which industry self-regulation affords protection. Such studies and investigations should not duplicate activities of other Federal agencies.

Section 209—Prohibition against certain disclosures

Any agency or instrumentality created by this legislation is forbidden to disclose to the public:

(1) information (other than complaints listed and available for inspection under section 205 of this Act) in a form which would reveal trade secrets and commercial or financial information obtained from a person and privileged and confidential; or

(2) information received from a Federal agency when such agency has notified either of the instrumentalities created by this Act that the information is within the exceptions to the availability of information in 5 U.S.C. 552 and the Federal agency has determined that the information should not be made available to the public. This latter prohibition would make it clear that no agency or instrumentality created by this Act could serve either purposely or inadvertently as a conduit for information which would not otherwise be made available to the public.

This legislation does not require Federal agencies to release any information to instrumentalities created by the Act the disclosure of which is prohibited by law.

In releasing information, except in court or agency proceedings, three provisions are applicable:

(1) Data concerning consumer products and services is to be made public only after it has been determined to be accurate and not within the categories enumerated in 5 U.S.C. 552.

(2) In disseminating test results or other information where product names may be disclosed, it shall be made clear that not all products of a competitive nature have been tested, if such is the case, and that there is no intent to rate the products tested over those which were not tested or to imply that products tested are superior to those not tested.

(3) Additional information which would affect the fairness of information previously disseminated will be promptly disseminated in a similar manner.

Section 210—Procedural fairness requirements

In the exercise of various powers conferred the Agency shall act pursuant to rules issued, after notice and opportunity for comment by interested persons in accordance with administrative procedures required by 5 U.S.C. 553 relating to administrative procedures—rulemaking. This is to assure fairness to all affected parties and provide opportunity for comment on the proposed release of product test data, containing product names, prior to such release.

TITLE III

Section 301—Consumer Advisory Council

A Consumer Advisory Council will be established, composed of 15 members appointed for staggered terms of 5 years by the President. It will not be a constituent part of either the Agency or the Office but will work closely with them both.

The Council, whose members are to be experienced in consumer affairs and will be compensated when actually performing their duties, will advise the Administrator and the Director on matters relating to the consumer interest, including means for improving the

effectiveness of the Agency and Office and the effectiveness of Federal consumer programs and operations.

The President shall designate the Chairman of the Council and the Administrator of the Agency or his designee will serve as Executive Director of the Council and provide needed staff assistance and facilities.

Section 302—Protection of consumer interest in administrative proceedings

Every Federal agency which takes any action substantially affecting the interests of consumers must give notice of such action to the Office and the Agency at such time as notice is given to the public or upon the request of the Agency; and consistent with its statutory responsibilities take such action with due consideration to the interests of consumers.

In taking such action the agency concerned shall, upon the request of the Agency or in those cases where a public announcement would normally be made, indicate concisely in a public announcement of such action the consideration given to the interests of consumers. To make certain that the failure of Federal agencies to make the required announcement would not result in a proliferation of collateral attacks by private parties on the decisions of the agencies, only the Agency itself may act to enforce this provision in a court.

Section 303—Saving provisions

Nothing in this legislation shall alter or impair the authority of the Administrator of General Services to represent executive agencies in negotiations with carriers and other public utilities and in proceedings involving carriers or other public utilities before Federal and State regulatory bodies. Nor does this legislation alter or impair any provision of the anti-trust laws or any act providing for the regulation of the trade or commerce of the United States or the administration or enforcement of any such provision of law.

However, nothing in the legislation shall be construed as relieving any Federal agency of any authority or responsibility to protect and promote the interests of consumers.

Section 304—Definitions

1. "Agency" means the Consumer Protection Agency.

2. "Office" means the Office of Consumer Affairs.

3. "agency," "agency action," "party," "rule-making," "adjudication," and "agency proceeding" shall have the same meaning as in the Administrative Procedures Act, now codified as 5 U.S.C. 551.

4. A "consumer" is any person who uses for personal, family or household purposes goods and services offered or furnished for a consideration.

5. The term "interests of consumers" means the cost, quality, purity, safety, durability, performance, effectiveness, dependability and availability, and adequacy of choice of goods and services offered or furnished to consumers; and the adequacy and accuracy of information relating to consumer goods and services (including labelling, packaging and advertising of contents, qualities and terms of sale).

Section 305—Conforming amendments

The Director of the Office and the Administrator of the Agency are both placed on the Executive Schedule at Level III (\$40,000 per annum).

The Deputy Director of the Office and the Deputy Administrator of the Agency are placed on the Executive Schedule at Level IV (\$38,000 per annum).

Section 306—Appropriations

Authorizes the appropriation of such sums as may be required to carry out the provisions of this Act. No limitation is placed and fixing the amount will be in accordance with the annual appropriations process.

Section 307—Effective date

The legislation takes effect 90 days after it has been approved, or earlier if the President so prescribes.

HOUSE OF REPRESENTATIVES—Saturday, January 6, 1973

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

If any man will come after Me, let him deny himself and take up his cross daily and follow Me.—Luke 9: 23.

New every morning is the love
Our wakening and uprising prove;
Through sleep and darkness safely brought,

Restored to life and power and thought.

The trivial round, the common task,
Will furnish all we ought to ask;
Room to deny ourselves, a road
To bring us daily nearer God.

Only, O Lord, in Thy dear love
Fit us for perfect life above;
And help us this and every day,
To live more nearly as we pray.

Guided by Thy spirit may we accept
the challenge of this hour to build a
world where righteousness, justice, and
good will may prevail for the good of
man and to the glory of Thy holy name.
Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed a concurrent resolution of the House of the following title:

H. Con. Res. 1. Concurrent resolution making the necessary arrangements for the inauguration of the President-elect and Vice President-elect of the United States.

The message also announced that the Vice President, pursuant to Public Law 92-352, appointed Mr. MANSFIELD as a member of the Commission on the Organization of the Government for the Conduct of Foreign Policy in lieu of Mr. Spang.

The message also announced that the Vice President, pursuant to title 20,

United States Code, sections 42 and 43, appointed Mr. JACKSON as a member of the Board of Regents of the Smithsonian Institution in lieu of Mr. Anderson.

The message also announced that the President pro tempore, pursuant to Public Law 92-599, appointed Mr. LONG, Mr. FULBRIGHT, Mr. TALMADGE, Mr. HARTKE, Mr. BENNETT, Mr. CURTIS, Mr. FANNIN, Mr. MCCLELLAN, Mr. STENNIS, Mr. PASTORE, Mr. BIBLE, Mr. YOUNG, Mr. HRUSKA, Mr. COTTON, Mr. PROXMIRE, and Mr. ROTH as members, on the part of the Senate, of the Joint Committee To Review Operation of Budget Ceiling and To Recommend Procedures for Improving Congressional Control Over Budgetary Outlay and Receipt Totals.

The message also announced that the President pro tempore, pursuant to Public Law 92-489, appointed Mr. MCCLELLAN, Mr. BURDICK, Mr. HRUSKA, and Mr. GURNEY as members, on the part of the Senate, of the Commission on Revision of the Federal Court Appellate System.

The message also announced that the President pro tempore, pursuant to Public Law 92-484, appointed Mr. CASE as a member of the Technology Assessment Board in lieu of Mr. Allott.