



Legislative Bulletin.....Wednesday, March 14, 2001

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H.R. 809—Antitrust Technical Corrections Act (Sensenbrenner)

Order of Business: The bill is scheduled to be considered under a motion to suspend the rules on Wednesday March 14.

Summary: The bill makes a variety of technical changes to current Antitrust law, including:

- 1) Repeal of a provision enacted in 1913 requiring that all depositions taken in antitrust cases be made public (under the modern practice of broad discovery, this provision presents particular problems related to the protection of proprietary information that is never used in court),
- 2) Repeal of a provision prohibiting any vessel owned by someone violating the antitrust laws of the United States from passing through the Panama Canal (with the transfer of the Panama Canal, this provision is outdated), and
- 3) Clarifies that antitrust provisions related to monopolies applies to the District of Columbia.

A similar bill in the 106th Congress, H.R. 1801, passed the House by voice vote on November 2, 1999, but was never acted on by the Senate.

Cost to Taxpayers: CBO estimated that a similar piece of legislation from the 106th Congress would have only a negligible impact on federal receipts.

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

Constitutional Authority: The Committee previously cited Article I, Section 8, but failed to cite a specific power.

Staff Contact: Neil Bradley, x6-9717

H.R. 741—Madrid Protocol Implementation Act (Coble)

Order of Business: The bill is scheduled to be considered under a motion to suspend the rules on Wednesday March 14.

Summary: The bill would facilitate implementation of the Madrid Protocol, which provides that a trademark registered in one country is protected in every nation that signs the treaty. Under current law, companies must separately apply for protection in every country. Currently 49 countries have ratified the Madrid Protocol. The U.S. signed the Protocol in 1989, but the Senate has yet to ratify the treaty due to a continuing dispute over the Bacardi trademark. H.R. 741 specifies the administrative procedures that would be followed by companies applying for international trademark protection. If enacted, H.R. 741 would become effective upon ratification of the Madrid Protocol by the Senate.

A similar bill in the 106th Congress, H.R. 769, passed the House by voice vote on April 13, 1999, but was never acted on by the Senate.

Cost to Taxpayers: CBO previously estimated that similar legislation would cost less than \$500,000.

Does the Bill Create New Federal Programs or Rules?: YES, the bill creates new procedures related to the trademark application process.

Constitutional Authority: The Committee previously identified authority under Article I, section 8, clause 8 (providing for the establishment of patents, trademarks, etc), of the Constitution.

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H.R. 725—Made in America Information Act (Traficant)

Order of Business: H.R. 725 will be considered on Wednesday, March 14, 2001, under suspension of the rules.

Summary: This bill would direct the Secretary of Commerce to determine whether there is sufficient interest among manufacturers to warrant the creation of a three-year pilot program for a toll-free number to help inform consumers whether a product (with a retail value of at least \$250) is "Made in America." [The "Made in America" standard enforced by the Federal Trade Commission means that a product is "all or virtually all" made in the United States.] The toll-free number program would be supported by fees set by the Secretary of Commerce and paid by manufacturers. When consumers call the toll-free number, they would be informed that the government does not endorse any product and that the Secretary of

Commerce has not confirmed whether products on the line are actually “Made in America” or whether they are 100% American.

No manufacturer would be *required* to participate in the program. Any manufacturer who knowingly registers a product that is not “Made in America” for the toll-free line shall be subject to a civil penalty of not more than \$7500 and shall not be able to sell the relevant product to the federal government.

Additional Background: An identical bill, H.R. 754, passed the House by a vote of 390-2 on October 25, 1999 (R.C. #534). The Senate has taken no action on the legislation.

Cost to Taxpayers: For H.R. 754, the CBO estimated that this bill would not result in any significant cost to the taxpayer (because the toll-free line would be supported by fees paid by participating manufacturers). This legislation might increase revenues through the collection of penalty fees for the misrepresentation of products “Made in America.”

The CBO estimated that the Department of Commerce would need ten million dollars to start the pilot program and between one and four million dollars each of four years to maintain the program. But the CBO estimated that the collection of fees would offset all such appropriations, resulting in no net cost to the taxpayer.

Does the Bill Create New Federal Programs or Rules?: YES. The bill would authorize the creation of the Made-In America hotline administered by the Department of Commerce but funded from fees assessed to manufacturers who participate in the program. It would further provide for the assessment of penalties against manufacturers who falsely list their product as being “Made in America.”

Constitutional Authority: The committee report for H.R. 754 cites Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

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H.R. 861—Technical Amendments to Section 10 of Title 9, United States Code (Gekas)

Order of Business: H.R. 861 will be considered on Wednesday, March 14, 2001, under suspension of the rules.

Summary: The bill would make technical, non-substantive changes to section 10 of title 9, United States Code, which itself addresses the conditions for vacating a court award in bankruptcy arbitration.

Cost to Taxpayers: None.

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

Constitutional Authority: Article I, Section 8, Clause 4 grants Congress the authority to “establish uniform Laws on the subject of Bankruptcies throughout the United States.”

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H.R. 802— Public Safety Officer Medal of Valor Act of 2001 (Smith, Lamar)

Order of Business: H.R. 802 will be considered on Wednesday, March 14, 2001, under suspension of the rules.

Summary: This bill would authorize the creation of a Public Safety Medal of Valor to be awarded as the nation’s highest honor to public safety officers (including paid or unpaid firefighters, law enforcement officers—such as court or civil defense officers, and emergency services officers) who exhibit extraordinary behavior “beyond the call of duty” (as cited by the Attorney General). The bill would also establish a Medal of Valor Review Board whose members would be appointed by Congress and the president to choose the medal recipients. Within the Department of Justice, there would also be established a Medal of Valor office to support the work of the Review Board. H.R. 802 would also eliminate the “President’s Award For Outstanding Public Safety Service.”

An identical bill, H.R. 46, passed the House by a vote of 412 to 2 (R.C. # 81) on April 13, 1999, and passed the Senate with an amendment by unanimous consent on December 15, 2000. The Senate and the House never reconciled the two versions of the bill.

Cost to Taxpayers: For H.R. 46, the CBO estimated that the implementation of this legislation would cost about \$250,000 annually. Most of this cost is associated with the Board’s hearings and the administrative services of the support office in the Department of Justice.

Does the Bill Create New Federal Programs or Rules?: YES:

- A Medal of Valor Review Board
 - The Board may hold hearings and pay for the per diem and travel expenses of witnesses
 - Non-government members of the Board will be paid daily in accordance with level IV of the Executive Schedule for federal employees and may be compensated for travel expenses.
- A National Medal of Valor Office within the Justice Department to provide administrative support

Constitutional Authority: The committee report for H.R. 46 finds constitutional authority in Article I, section 8, but does not cite a specific clause.

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H.R. 860— Mutidistrict, Multiparty, Multiform Trial Jurisdiction Act of 2001 (Sensenbrenner)

Order of Business: The bill will be considered under suspension of the rules.

Summary: This bill is largely in response to a Supreme Court interpretation of a federal law 28 U.S.C. Sec. 1407, the Federal multidistrict litigation statute. Prior to the Supreme Court case (*Lexecon v. Milberg Weiss Bershad Hynes & Lerach, et. al.*, 118 S. Ct. 956 (1998)), cases that had one or more questions of fact pending in federal judicial districts (such as multiple victims of an airplane crash) were consolidated before one federal judge as a transferred case. Since the judge knew the facts of the cases, the cases were kept in his jurisdiction for trial. This meant that an Arizona family suing American Airlines (based in Texas) over a crash in Virginia may have the pretrial proceedings and the trial itself transferred from a Texas state court to a federal court in Virginia and consolidated with other victims' families. The Supreme Court decision essentially said only the pretrial proceedings could be consolidated in one transferred court and then the originating jurisdiction (the residence of the defendant, i.e. Texas) would have a chance to take the case back to its state or waive authority to leave the case in the transferred jurisdiction.

The Administrative Office of the U.S. Courts is concerned this extended process is detrimental, inefficient, and costly to all involved. H.R. 860 will allow the federal district court to keep the case for trial "in the interest of justice" and convenience for parties and witnesses. The bill requires the case be remanded to the original court of jurisdiction (i.e. Texas state court where the family first sued) for compensatory damages, unless "in the interest of justice" the federal district court finds the case should not be remanded.

The bill also specifies that a U.S. district court can claim original jurisdiction in civil cases if 1) the defendant resides in a state and a substantial part of the accident took place in another state which resulted in the death or injury (exceeding \$150,000 per person) of at least 25 people or 2) any two defendants reside in a different state, unless a substantial majority of the plaintiffs are from one state. This is intended to reduce the likelihood of forum shopping by trial lawyers in single-accident mass tort cases (i.e. plane crashes). The bill allows the U.S. district court judge (i.e. the US district court in Virginia) the ability to determine liability and punitive damages but requires the case be remanded to the originating state court to determine non-punitive damages, unless "in the interest of justice" the cases should not be remanded. The bill further allows subpoenas to be served at any place within the US for these types of cases.

A similar bill (H.R.2112), passed the House by voice vote on 9/13/99 and passed the Senate by unanimous consent, but died in conference during the 106th Congress.

Cost to Taxpayers: CBO estimates that enacting H.R. 860 would result in no significant impact on the federal budget. CBO also expects the bill to result in a more efficient use of federal judicial resources, though any savings realized by the federal court system would be negligible and might be offset by increased court costs arising from additional cases being moved from state court to federal court.

Constitutional Authority: The Committee finds authority in Article III, section 1 of the Constitution (Judicial Powers).

Does the Bill Create New Federal Programs or Rules: YES, the bill changes the law with respect to assigning jurisdiction in multiparty or multistate cases, and allows more cases to be consolidated and tried in the federal court system, instead of trying the same case many times in different state courts.

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S. 320— Intellectual Property and High Technology Technical Amendments Act of 2001 (Hatch)

Order of Business: The bill will be considered under suspension of the rules.

Summary: This bill makes these remedial changes in four primary areas: patent law, trademark law, copyright law, and the organization of the U.S. Patent and Trademark Office (PTO).

On February 14, 2001, the Senate passed a similar version of S. 320 by a vote of 98-0.

Cost to Taxpayers: CBO estimates that the bill would “have no significant impact on the federal budget because its provisions are technical in nature.”

Constitutional Authority: The Committee finds authority under Article I, section 8, clause 8 (inventors rights) of the Constitution.

Does the Bill Create New Federal Programs or Rules: No, the bill makes technical corrections to the U.S. Code and the Intellectual Property and Communications Omnibus Reform Act (IPCORA), and to title IV of the American Inventor's Protection Act (AIPA). Most of the changes are very minor in nature, for instance changing “Director” to “Commissioner.” Some of the clarifications, while minor, are important to U.S. inventors. For instance, the change to Sec. 4505 to clarifying that foreign patents shall have the effect of being filed in the U.S. (therefore the ability to disqualify U.S. patent-applicants for the same invention) only if the US is “designated” in the international application and if it is published “in English.” The previous language left some confusion because of the way it was drafted.

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