



The Daily Whip

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WEDNESDAY, MARCH 10, 2004

House Meets At...	Last Vote Predicted At...
10:00 a.m.: Legislative Business Unlimited "One Minutes"	5:00 – 6:00 p.m.

**** DEMOCRATS ARE URGED TO SIGN THE HILL DISCHARGE PETITION TO ALLOW CONSIDERATION OF THE BIPARTISAN MANUFACTURING TAX BILL.**

FLOOR SCHEDULE AND BILL SUMMARY

There will be a Journal Vote after one minutes.

Postponed Suspension Votes (2 bills):

- 1) **S. 1881** - Medical Devices Technical Corrections Act (*Sen. Alexander - Energy & Commerce*)
- 2) **H.Con.Res. 373** - Expressing the sense of Congress that "Kids Love a Mystery Month" should be established (*Rep. George Miller {CA} - Education and the Workforce*)

H.Res. 552 - Rule providing for consideration of H.R. 339 - Personal Responsibility in Food Consumption Act (Rep. Sessions / Rules Committee). The Rules Committee has recommended a modified open rule that provides one hour of general debate; provides that the amendment in the nature of a substitute recommended by the Judiciary Committee shall be considered as an original bill for the purpose of amendment and shall be considered as read; makes in order only those amendments to the committee amendment that are pre-printed in the Congressional Record; and provides one motion to recommit with or without instructions. Amendments will be considered under the five-minute rule.

H.R. 339 - Personal Responsibility in Food Consumption Act (Rep. Keller - Judiciary) (Subject to a Rule). This bill prohibits civil liability actions in Federal or State court against a food manufacturer, distributor, or seller that are based on the claim that a person's food consumption resulted in weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity. This bill would terminate all pending litigation and the ban would supercede state law. This bill would not block weight-related civil liability actions in three instances: 1) if the federal government chooses to bring a suit under the FDA Act; 2) in an action for breach of express contract or warranty; and 3) when the food manufacturer or seller knowingly and willfully violates Federal or State laws and the violation is the proximate cause of injury related to a person's weight gain, obesity, or any health condition associated with a person's weight gain or obesity.

Although this bill was adopted by a voice vote in the Judiciary Committee, Committee Democrats oppose H.R. 339. Judiciary Democrats oppose this bill because its broad language would bar lawsuits that would hold food producers accountable for their negligent and reckless behavior (the bill only permits lawsuits where the law is broken "knowingly and willfully"). This leaves two loopholes in the law: 1) if a defendant commits simple negligence or recklessness which is not otherwise prohibited by statute; and 2) if a defendant actually violates a Federal or State law, but does not do so intentionally. By requiring an intent to violate the law, this bill holds the food industry to a lower standard of conduct than other industries. In addition,

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Committee Democrats oppose H.R. 339 due to its retroactive application and the bill's preempting of state laws. Judiciary Democrats also believe that this bill is a misguided effort since the judiciary has ably handled the limited number of cases that have come before the courts -- deeming some cases frivolous while allowing meritorious claims to move forward which has resulted in positive changes in food industry policies.

Suspensions (5 bills):

- 1) **H.R. 2714** - State Justice Institute Reauthorization Act (*Rep. Smith {TX} - Judiciary*)
- 2) **H.R. 2391** - Cooperative Research and Technology Enhancement (CREATE) Act (*Rep. Smith {TX} - Judiciary*)
- 3) **H.Con.Res. 15** - Commending India on its celebration of Republic Day (*Rep. Wilson {SC} - International Relations*)
- 4) **H.Res. 540** - Expressing the condolences and deepest sympathies of the House of Representatives for the untimely death of Macedonian President Boris Trajkovski (*Rep. Souder - International Relations*)
- *5) **H.R. 3915** - To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through May 21, 2004 (*Rep. Manzullo - Small Business*). Small Business Ranking Member Velazquez is opposed to this bill because it fails to address the most pressing problem at SBA - the Administration's restrictions on the programs that are blocking billions of dollars that could be going to small business.

TOMORROW'S OUTLOOK

The GOP Leadership has announced the following schedule: On Thursday, the House will meet at 10:00 a.m. to consider: **H.R. 3717 - Broadcast Decency Enforcement Act of 2004** (*Rep. Upton - Energy & Commerce*) (*Subject to a Rule*)

Daily Quote...

"Alarm over looming deficits has hit fiscal conservatives. Good - although the alarm has just now hit people who supported every tax cut proposed in the past three years and called for more, who wrote the tax-cut plan in 2001 to have phony expiration dates for many of the cuts so that their long-term fiscal cost would be disguised and so they could avoid tougher budget rules, who papered over the looming problem of the Alternative Minimum Tax triggered by the 2001 tax cuts and made sure it would not be addressed until after the 2004 election, who supported all the spending increases in entitlements, defense and many domestic programs, and who supported a Medicare prescription drug plan that clearly had costs ballooning into the trillions after the first 10 years."

- Norman Ornstein in *Roll Call* today