

May 9, 1977

CONSUMER PROTECTION ACT

H.R. 6805

Background

Versions of this legislation have been considered by the Congress since 1970. The Senate passed a Consumer Protection Act in the 91st Congress by a vote of 74-4. The House bill died in the Rules Committee. In the 92nd Congress, a bill passed the House 344-44, but failed to survive a filibuster in the Senate. During the 93rd Congress, the House again passed a version of the bill 61-28 in the 94th Congress, and the House narrowly approved its version with a vote of 208-199. The measure never went to conference as President Ford had stated that he would veto it if it reached his desk.

Status

After intense lobbying in favor of H.R. 6805, the bill received a favorable vote in full Committee by the narrow margin of 22-21. Observers feel that the addition of a sunset provision which calls for a review of the Agency in 1982 was the deciding factor in the final vote. On the Senate side, their version -- S. 1262 -- received a favorable report by a vote of 10-2. The bill is expected to come to the floor during the third week in May. There remains the possibility of a Senate filibuster, but the chances for favorable action in the House appear to be fairly strong at this time. The Carter Administration made the Agency a major campaign issue, and so there is considerable lobbying anticipated by the White House over the next few days.

Provisions

This year's bill is essentially the same as the one introduced in the 94th Congress which set up a super agency with the power to intervene in any regulatory procedure, fund consumer activist groups and appoint advisory committees, hire experts, promulgate regulations, encourage supporting research in consumer affairs and other related activities. While this year's version retains the controversial exemption for labor disputes, it does make a change in the exemption for the Nuclear Regulatory Commission, effectively making all commercial proceedings subject to the agency's intervention. This has been the cause of some concern among observers who fear that the agency may add to the already considerable delay experienced in licensing new nuclear facilities. There also is a name change from Consumer Protection Agency to Agency for Consumer Advocacy. The change resulted from complaints by certified public accountants that the initials of the agency would lead to confusion with regard to the agency's function.

Pro

Advocates of the measure contend that the new agency is necessary because existing agencies are not doing their job. Ralph Nader has indicated that he considers this bill the most important piece of consumer legislation in the history of the nation. Benjamin Rosenthal has said that the agency would be a "vital component of regulatory reform."

Essentially, the crux of the advocates' argument is that over the years, relationships have formed between members of the regulatory agencies and the major U. S. industries which make these agencies effectively the tool of those industries. They feel that the consumer does not have the resources to oppose the well-financed lobbying efforts of special interests, and must, therefore, have some sort of advocate. Private consumer organizations do not have the resources either according to the bill's proponents. They see the new agency as a combination of watchdog, clearinghouse for information, and source of funds for private consumer groups.

Con

Basic objections to the bill itself come from three basic assumptions which opponents of the measure see as the bill's underlying premises. These assumptions are (1) the consumer is gullible, (2) business is avaricious and criminal by its nature, and (3) government is infallible.

Opponents of the new agency point out that the plethora of federal regulatory bodies were created to serve the public interest. If these agencies are failing to perform this function efficiently, then the proper remedy

is more diligent oversight by Congress, not the creation of another "super agency" to act as a watchdog for the watchdogs. One member stated, "It is a strange argument that, if federal agencies are the problem, adding another federal agency would be the solution." In the minority views section of the report on the 94th Congress' version of the bill, the members quoted from a letter President Ford sent to the Congress regarding the proposed agency.

I do not believe that we need yet another federal bureaucracy in Washington, with its attendant costs of \$60 million for the first three years, and hundreds of additional federal employees, in government. At a time when we are trying to cut down both the size and the cost of government, it would be unsound to add another layer of bureaucracy instead of trying to improve the underlying structure. It is my conviction that the best way to protect the consumer is to improve the existing institutions of government, not to add more government.

Opponents of this year's measure contend that in light of President Carter's stated goal of reducing the size and cost of the federal bureaucracy, the same arguments put forth by President Ford still apply. They further contend that it may be an indication of President Carter's sincerity in his advocacy of smaller, more efficient government that one of his first actions is to propose yet another addition to the bureaucracy. A second concern of members opposing this measure is how the term "consumer" will be defined, and, likewise, what the term "consumer interest" will come to mean.

The truth is, we don't believe a government agency could protect consumers. This point has been underlined by the growth in recent years of a variety of public-interest groups, each voicing a different consumer concern... which consumer shall be heard? The environmentalist? The conservationist? The poor? The taxpayer? The middle class? The homeowner? The renter? The large family? The widow?

This government consumer agency would mean inevitably that some consumers -- and perhaps most -- would find their points of view badly represented, that the promise of consumer protection would not be truth in government. More people would become more disillusioned with government.

A third concern which has been widely expressed among those in opposition to the measure is that one sure result will come from the creation

of this super agency. "...is that the processes of government will be slower. Government decisions will not necessarily be more nearly just, nor more sensitively attuned to the betterment of society, just slower." One of the areas of particular concern in this regard, as has been mentioned earlier, is the change in the exemption regarding the proceedings of the Nuclear Regulatory Commission. Opponents of the measure envision, with some considerable evidential support, that already tedious proceedings will be further lengthened for approval of new nuclear facilities at a time when they are likely to be desperately needed to provide heat and power to areas suffering from natural gas curtailments and shortages of oil. Speaking in opposition to this particular portion of the legislation, one commentator noted that we frequently use the expression, "justice delayed is justice denied", in connection with proceedings before the bench; however, the same is true in proceedings before regulatory commissions. Former Attorney General Levi's statement on the bill before the 94th Congress made reference to a similar concern. "A decision which might be expected in a week would be made in a month or perhaps three months, while consumer advocates wind a few more spools of red tape around it."

Conclusion

With the strong support enjoyed by this bill from the Administration, there is likely to be intense lobbying over the next week on behalf of its passage. It has already moved much faster than in previous Congresses under the impetus of the new Congressional Budget Act. As yet, however, there is some question as to its status in the House Government Operations Committee, and the markup session will likely give some indication of the bill's overall popularity within the House.

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