



The Daily Whip

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WEDNESDAY, OCTOBER 19, 2005

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

**** IMPORTANT VOTES ARE EXPECTED TOMORROW AND MEMBER ATTENDANCE IS CRITICAL. PLEASE CALL THE WHIP'S OFFICE IF A MEMBER ANTICIPATES NOT BEING IN ATTENDANCE.**

FLOOR SCHEDULE AND BILL SUMMARY

H.R. 554 – Personal Responsibility in Food Consumption Act of 2005 (*Rep. Keller – Judiciary*) (*Restrictive Rule – One Hour of General Debate*). 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 supersede state law. This bill would not block weight-related civil liability actions in three instances: 1) in an action for breach of express contract or warranty; 2) 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; and 3) actions brought by the Federal Trade Commission or the Food and Drug Administration.

HR554 is similar to a bill adopted by the House last Congress (3/10/04), HR339, on a 276-139 vote. This Congress, this bill was adopted on a party line vote (16-8) by the Judiciary Committee, on May 25, 2005. 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"); due to its retroactive application; and the bill's preempting of state laws. Judiciary Democrats also believe that HR554 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.

The five amendments made in order by the restrictive rule adopted yesterday, which are debatable for 10 minutes each, are:

- **Sensenbrenner Manager's Amendment.** To make technical changes to the section of the bill that sets out the types of information a plaintiff must provide to a judge to allow the court to determine whether the lawsuit should proceed or be dismissed; clarify that the pleading provision in HR554 is meant to apply to all cases seeking obesity-related damages; and add the phrase "for each defendant and cause of action" to clarify that a judge must apply HR554's pleading requirements to each specific claim.
- **Jackson-Lee Amendment.** To prohibit the food industry from initiating lawsuits against any person for damages or other relief due to injury or potential injury based on a person's consumption of a qualified food product and weight gain, obesity, or any health condition that is associated with a person's weight gain or obesity.
- **Filner Amendment.** To exempt those who are age eight and under from the provisions of this Act as it relates to large chain outlets.
- **Scott (VA) Amendment.** To exempt State law enforcement actions from the impact of the legislation to ensure that Attorneys General and State agencies can enforce State consumer protection laws concerning mislabeling or other unfair and deceptive trade practices.
- **Waxman Amendment.** To exempt lawsuits involving a dietary supplement relating to a person's weight gain, obesity or any health condition associated with weight gain or obesity.

Motion to go to Conference on H.R. 2744 - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY06. **Democratic Motion to Instruct Conferees.**

Motion to go to Conference on H.R. 3199 - USA PATRIOT and Terrorism Prevention Reauthorization Act of 2005. **Democratic Motion to Instruct Conferees.** The motion instructs conferees to recede to the Senate and create three 4-year sunsets on the most controversial provisions of the Patriot Act: 1) Section 215: allows the secret Foreign Intelligence Surveillance Court to issue orders for any tangible thing to anyone, as long as it is relevant to a terror investigation; 2) Section 216: allows blank wiretap orders that name neither a person nor a place to be tapped; 3) Lone Wolf: allows the government to surveil so called "agents of a foreign power." **Democrats are urged to VOTE YES.**



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S. 397 – Protection of Lawful Commerce in Arms Act (*Sen. Craig – Judiciary*) (*Closed Rule – One Hour of General Debate*). This bill prohibits the bringing of a qualified civil liability action against manufacturers, distributors, dealers, and importers of firearms or ammunition products for the harm caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended. The bill also prohibits such suits from being brought against trade associations. Any lawsuit now pending would be immediately dismissed upon enactment of this law. Civil actions could be brought against a person convicted of knowingly transferring a firearm, knowing that the firearm would be used to commit a violent crime or drug trafficking crime, when the suit is brought by an individual directly harmed by the conduct of the person convicted under those laws. S397 requires all handguns to be sold with a secure gun-storage or with safety devices (a child safety lock). If gun manufacturers or dealers sell handguns without such safety devices, they would face a suspension of license for up to six months, and fines of up to \$2,500. The bill also prohibits the manufacture or sale of armor-piercing ammunition — unless it is for the use of the federal or state government, for export only, or has been approved by the Justice Department for testing and experimentation uses. It increases penalties for individuals who use or carry armor-piercing ammunition in a violent or drug-trafficking crime to a minimum prison sentence of 15 years; or, if the crime results in any deaths, a sentence of execution or life imprisonment. S397 passed the Senate on July 29th by a vote of 65 to 31.

Suspensions (2 bills):

- 1) **H.R. 3971** - Medicare Cost Sharing and Welfare Extension Act of 2005 (House Amendment to the Senate Amendment) (*Rep. Deal - Ways and Means*)
- 2) **H.Con.Res. 252** - Expressing the sense of Congress that the Government of the United States should actively support the aspirations of the democratic political and social forces in the Republic of Nicaragua toward an immediate and full restoration of functioning democracy in that country (*Rep. Burton - International Relations*)

TOMORROW'S OUTLOOK

The GOP Leadership has announced the following schedule: on Thursday, the House will meet at 10:00 a.m. for legislative business and is expected to consider **H.Con.Res. ____ – To make amendments to H.Con.Res. 95, the congressional budget for the United States Government for fiscal year 2006** (*Rep. Nussle – Budget*) (*Subject to a Rule*).

Daily Quote...

"As they navigate turbulent political seas, President Bush and congressional Republicans find themselves in a boat leaking from both ends. Amid public discontent over the war in Iraq, high gas prices, the response to Hurricane Katrina and ethical controversies in Washington, approval ratings for Bush and the GOP-led Congress have tumbled to ominously low levels among independent and moderate voters. But the White House and congressional leaders also are facing widespread dissatisfaction among conservative leaders antagonized by Bush's spending policies and his nomination of White House Counsel Harriet E. Miers to the Supreme Court. This two-front war complicates the challenge for the GOP as Bush tries to regain the initiative in Washington and the party prepares for the 2006 midterm elections."

- Ron Brownstein in today's *Los Angeles Times*