

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

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**MEMORANDUM**

**July 27, 2015**

**To: Committee on Energy and Commerce Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Full Committee Markup of Six Bills: H.R. 985, “Concrete Masonry Products Research, Education, and Promotion Act of 2015;” HR. 1344, “Early Hearing Detection and Intervention Act of 2015;” H.R. 1462, “Protecting Our Infants Act of 2015;” H.R. 1725, “National All Schedules Prescription Electronic Reporting Authorization Act of 2015;” H.R. 2820, “Stem Cell Therapeutic and Research Reauthorization Act of 2015;” and H.R. 3154, “E-Warranty Act of 2015.”**

On Tuesday, July 28, 2015, at 5:00 p.m. in room 2123 of the Rayburn House Office Building, the full Committee on Energy and Commerce will meet to conduct opening statements for the markup of the above-referenced six legislative bills. The Committee will reconvene on Wednesday, July 29, at 10:00 a.m. in 2123 Rayburn House Office Building.

**I. BACKGROUND - HEALTH LEGISLATION**

The Subcommittee on Health held a legislative hearing on H.R. 1725 on January 27, 2015. The subcommittee held a separate legislative hearing on H.R. 1344, H.R. 1462, and H.R. 2820 on June 25, 2015. For additional background, please see the memos, available [here](#) and [here](#).

The Subcommittee held a markup on these bills on July 23, 2015. Each of these four bills was favorably forwarded to the full Committee by voice vote.

**A. H.R. 1344, Early Hearing Detection and Intervention Act**

Representatives Lois Capps (D-CA) and Brett Guthrie (R-KY) introduced H.R. 1344, the Early Hearing Detection and Intervention (EHDI) Act, on March 10, 2015. The bill would reauthorize the EHDI Program from 2017 through 2022. It would expand the focus of the program to include young children and strengthen the efforts intended to prevent infants and young children from being lost to follow-up. Under the legislation, the federal grant program

that supports state EHDI programs would be reauthorized at \$17.8 million for each of fiscal years 2016 through 2020. It would also reauthorize the program for technical assistance, data management, and applied research at \$10.8 million for each of fiscal years 2016 through 2020.

**B. H.R. 1462, Protecting Our Infants Act**

Representatives Katherine Clark (D-MA) and Steve Stivers (R-OH) introduced H.R. 1462, Protecting Our Infants Act, on March 19, 2015. The bill would require the Secretary of the Department of Health and Human Services (HHS), acting through the Agency for Healthcare Research and Quality (AHRQ), to develop recommendations for preventing and treating prenatal opioid abuse and Neonatal Abstinence Syndrome (NAS). The bill would also require HHS to develop a strategy to coordinate its efforts and to close gaps in research and programming, as recommended by GAO. Finally, it would require the CDC to assist states in collecting public health data relative to prenatal opioid abuse and NAS.

**C. H.R. 1725, National All Schedules Prescription Electronic Reporting Reauthorization Act**

Representatives Ed Whitfield (R-KY), Frank Pallone, Jr. (D-NJ), Larry Bucschon (R-IN), and Joseph Kennedy III (D-MA) introduced H.R. 1725, National All Schedules Prescription Electronic Reporting Reauthorization Act (NASPER). The NASPER Reauthorization Act would reauthorize the federal grant program that supports state prescription drug monitoring programs (PDMP) that was first authorized in 2005, and is administered by the Substance Abuse and Mental Health Services Administration (SAMHSA). The program would be reauthorized at \$10 million for each of fiscal years 2016 through 2020. Among other provisions, the NASPER Reauthorization Act seeks to strengthen the interoperability of SAMHSA-supported PDMPs.

**D. H.R. 2820, Stem Cell Therapeutic and Research Reauthorization Act of 2015**

Representatives Chris Smith (R-NJ) and Doris Matsui (D-CA) introduced H.R. 2820, Stem Cell Therapeutic and Research Reauthorization Act of 2015, on June 18, 2015. The bill would reauthorize existing programs that help individuals in need of bone marrow transplants find matching bone marrow donors or cord blood units. The bill would reauthorize the C.W. Bill Young Cell Transplantation Program at \$30 million for each of fiscal years 2016 through 2020. The bill would reauthorize the National Cord Blood Inventory (NCBI) at \$23 million for each of fiscal years 2016 through 2020.

**II. BACKGROUND - COMMERCE, MANUFACTURING, AND TRADE LEGISLATION**

A legislative hearing on H.R. 985, the Concrete Masonry Products Research, Education, and Promotion Act of 2015 was held on July 10, 2015. For additional background, please see the memo from the July 10, 2015 hearing available [here](#).

No legislative hearing was held on H.R. 3154, the E-Warranty Act of 2015.

The Subcommittee on Commerce, Manufacturing, and Trade held a markup on H.R. 985 and H.R. 3154 on July 23, 2015. At that time, an amendment in the nature of a substitute to H.R. 985 was adopted by voice vote. The amendment made a number of technical and substantive changes intended to ensure accountability and fairness, including requiring the Concrete Masonry Products Board to establish goals and performance metrics, and to report on its progress in meeting the program's established goals. The Government Accountability Office would also assess the program.

The amendment added a Department of Commerce study on the feasibility of creating a program that would allow other construction product industries to create similar programs through the Department of Commerce. The amendment also changed the terms for voting in referenda to ensure that a true majority of manufacturers are in favor of the program before its creation. And the amendment added provisions to reduce conflicts of interest, prohibit the Board from influencing elections, and ensure the program operated smoothly.

H.R. 985 was favorably forwarded to the full Committee, as amended, by voice vote. H.R. 3154 was favorably forwarded to the full Committee, with no amendments.

**A. H.R. 985, The Concrete Masonry Products Research, Education, and Promotion Act of 2015**

**1. Establishment of the Concrete Masonry Products Board**

H.R. 985 would create a “check-off” program for the concrete masonry industry. The bill directs the Secretary of Commerce to prepare an order establishing a Concrete Masonry Products Board (the Board) to carry out a program of generic promotion, research, and education relating to concrete masonry products. Promotion is defined as actions to advance the image and desirability of masonry products with the express intent of improving the competitive position of masonry products in the marketplace. Education is defined as programs to communicate any environmental benefits and advancements in concrete masonry technology and which are designed to generate increased demand for projects using concrete masonry products. Research is defined as studies testing the effectiveness of the promotion efforts as well as studies relating to improvement of the products and testing the performance of the products.

The proposed order establishing the Board and check-off program will be open for public comment before the order is finalized. The final order will only become effective if it is approved by a majority of the votes cast in an industry referendum.

The Board, which may have up to 25 members, must be made up of concrete masonry manufacturers reflecting geographic and product diversity within the industry. Board members are appointed by the Secretary of Commerce from nominations submitted by manufacturers. A nomination procedure will be established by the order. Board members will not be paid for their service, but may receive reimbursement for travel expenses for occasions on which they are away from home to perform services for the Board.

## **2. Assessments on Check-off Program Members**

H.R. 985 sets the initial rate of assessment for the check-off at \$0.01 per concrete masonry unit sold, but the rate may be changed by a two-thirds majority of voting members of the Board. The assessment rate under this program is capped at \$0.05 per unit sold. At least 50% of the assessments paid by a manufacturer must be spent on promotion, research, or education programs in that manufacturer's geographic area. In addition, the statute prohibits the use of assessment funds to influence legislation or governmental action. Beginning three years after the program's creation, administrative expenses cannot exceed 10% of the Board's income.

## **3. Oversight and Enforcement**

The bill provides for oversight of the activities of the Board by the Secretary of Commerce. The Board's budget must be submitted to the Secretary of Commerce for approval at least once per year. At the end of each fiscal year, the Board's records must be audited by an independent auditor. All research, education, and promotion projects and all contacts entered into by the Board to carry out those projects must be approved by the Secretary.

The order, including the collection of assessments and all Board activities, may be suspended or terminated by a majority of all votes cast in an industry referendum, which may be conducted at least five years after the approval of the original order or at five-year intervals thereafter. Any such subsequent referenda will only occur at the request of 25 percent or more of the number of manufacturers eligible to vote.

The bill allows any manufacturer subject to an order to petition for review of an order and requires the petitioner have an opportunity for a hearing on the petition. The petitioner may appeal the Secretary's ruling in U.S. district court. The Secretary must suspend or terminate any order or provision that obstructs or does not tend to effectuate the purposes of this Act.

The bill also provides that a U.S. district court will have jurisdiction to enforce, prevent, and restrain any person from violating the Act or an order or regulation issued under the Act. And it authorizes the Secretary of Commerce to assess a fine of up to \$5,000 on a person for each willful violation of an order or regulation issued under the statute. The Secretary may conduct appropriate investigations necessary to administer this Act.

## **B. H.R. 3154, THE E-WARRANTY ACT OF 2015**

### **1. Consumer Product Warranties and the FTC Pre-Sale Availability Rule**

A warranty is a promise by a seller or manufacturer to stand behind its product.<sup>1</sup> There are two basic kinds of warranties—express warranties and implied warranties.<sup>2</sup> Express

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<sup>1</sup> Federal Trade Commission, *Businessperson's Guide to Federal Warranty Law* (Dec. 2006) (online at [www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law#intro](http://www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law#intro)).

<sup>2</sup> *Id.*

warranties are not required by law, but if a manufacturer elects to provide a warranty, the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act requires that warranties be available for consumers to review before making a purchase.<sup>3</sup>

The Federal Trade Commission (FTC) has promulgated a rule, known as the Pre-Sale Availability Rule, which requires written warranties on consumer products costing more than \$15 be available to consumers before they buy the product.<sup>4</sup> The rule specifies the obligations on sellers and manufacturers, including the obligations of manufacturers to ensure that sellers can meet their obligations.<sup>5</sup>

## 2. Summary

The E-Warranty Act of 2015 requires the FTC to amend the Pre-Sale Availability Rule to allow manufacturers and sellers to satisfy their pre-sale warranty obligations by posting warranties online. Manufacturers would also have to provide the website and other non-Internet-based contact information for the manufacturer on the product or product packaging. The terms of written warranties must be made available to the consumer at the location of sale.

The bill gives the FTC one year from the date of enactment to revise the Pre-Sale Availability Rule, but allows the FTC to waive the statutory requirement in the Magnuson-Moss Act to give interested parties an opportunity for oral presentations if providing that opportunity for oral presentation delays the final passage of the revisions to the Rule.

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<sup>3</sup> 15 U.S.C. §2302; Federal Trade Commission, *Warranties* (Oct. 2001) (online at [www.consumer.ftc.gov/articles/0252-warranties](http://www.consumer.ftc.gov/articles/0252-warranties)).

<sup>4</sup> Federal Trade Commission, *Businessperson's Guide to Federal Warranty Law* (Dec. 2006) (online at [www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law#intro](http://www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law#intro)).

<sup>5</sup> *Id.*