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4 MARKUP OF

5 H.R. 985, THE CONCRETE MASONRY PRODUCTS, RESEARCH, EDUCATION
6 AND PROMOTION ACT OF 2015;

7 H.R. 3154, THE E-WARRANTY ACT OF 2015; AND

8 DISCUSSION DRAFT H.R. _____, THE CHILD NICOTINE POISONING
9 PREVENTION ACT OF 2015

10 THURSDAY, JULY 23, 2015

11 House of Representatives,

12 Subcommittee on Commerce, Manufacturing, and Trade

13 Committee on Energy and Commerce

14 Washington, D.C.

15 The subcommittee met, pursuant to call, at 2:22 p.m., in
16 Room 2123 of the Rayburn House Office Building, Hon. Michael
17 C. Burgess [Chairman of the Subcommittee] presiding.

18 Members present: Representatives Burgess, Lance,

19 Blackburn, Harper, Guthrie, Olson, Bilirakis, Brooks, Mullin,
20 Upton (ex officio), Kennedy, Welch, and Pallone (ex officio).

21 Staff present: Will Batson, Legislative Clerk; Karen
22 Christian, General Counsel; James Decker, Policy Coordinator,
23 Commerce, Manufacturing, and Trade; Andy Duberstein, Deputy
24 Press Secretary; Graham Dufault, Counsel, Commerce,
25 Manufacturing, and Trade; Melissa Froelich, Counsel,
26 Commerce, Manufacturing, and Trade; Kirby Howard, Legislative
27 Clerk; Peter Kielty, Deputy General Counsel; Paul Nagle,
28 Chief Counsel, Commerce, Manufacturing, and Trade; Charlotte
29 Savercool, Legislative Clerk; Olivia Trusty, Professional
30 Staff, Commerce, Manufacturing, and Trade; Michelle Ash,
31 Democratic Chief Counsel, Commerce, Manufacturing, and Trade;
32 Jen Berenholz, Democratic Chief Clerk; Christine Brennan,
33 Democratic Press Secretary; Jeff Carroll, Democratic Staff
34 Director; Elizabeth Ertel, Democratic Deputy Clerk; Lisa
35 Goldman, Democratic Counsel; Ashley Jones, Democratic
36 Director of Communications, Member Services and Outreach; and
37 Adam Lowenstein, Democratic Policy Analyst.

|
38 Mr. {Burgess.} The subcommittee will come to order.

39 The chair will recognize himself for an opening
40 statement. And I do want to welcome everyone to today's
41 subcommittee markup on three legislative proposals; H.R. 985,
42 the Concrete and Masonry Products, Research, Education, and
43 Promotion Act of 2015, introduced by Representative Guthrie;
44 the E-Warranty Act of 2015, sponsored by Representative
45 Mullin; and the Child Nicotine Poisoning Prevention Act of
46 2015.

47 I ask unanimous consent to have my opening statement
48 placed into the record.

49 Without objection, so ordered.

50 [The prepared statement of Mr. Burgess follows:]

51 ***** COMMITTEE INSERT *****

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52 Mr. {Burgess.} I yield back my time.

53 I recognize the gentlelady from Illinois for an opening
54 statement.

55 Ms. {Schakowsky.} Thank you, Mr. Chairman. I
56 appreciate holding today's markup on three different but
57 important pieces of legislation. Glad that we have gotten to
58 a point where each of these bills will receive broad
59 bipartisan support. Two weeks ago, we held a hearing on H.R.
60 985, the Concrete and Masonry Products, Research, Education,
61 and Promotion Act. As I said then, I have heard from
62 contractors, workers, and my colleagues about the importance
63 of the Concrete Masonry Check-off Program. I want to promote
64 all of the benefits of a Concrete Masonry Check-off, all
65 avoiding the pitfalls we have seen in earlier check-off
66 programs such as PRC and NORA. With the changes in the
67 Managers Amendment we can better ensure that this program is
68 effective in terms of both management and oversight.

69 I thank Representative Guthrie, Castor, and others who
70 have fought for this bill, and for their willingness to
71 incorporate those changes.

72 We will also consider a discussion draft of the Child
73 Nicotine Poisoning Prevention Act, a bill to improve the
74 safety of liquid nicotine packages. This would create an

75 important safeguard for children who are most at risk for
76 ingesting liquid nicotine packages that can poison and even
77 kill. I thank Representative Elizabeth Esty for her
78 leadership on this.

79 It is important that this bill undermine other--any
80 other protections being considered regarding liquid nicotine
81 packaging. I appreciate the majority's willingness to
82 include language that clarifies the authority of the
83 Department of Health and Human Services, and the Food and
84 Drug Administration, to act in this area.

85 The last bill we will markup is the E-Warranty Act,
86 legislation to provide consumers with online access to
87 product warranties. This legislation would bring warranties
88 into the 21st century, recognizing that an estimated one in
89 seven Americans are still without regular internet access.
90 The rule-making established by this bill will ensure that
91 consumers can also get warranties in paper form when they
92 purchase a product.

93 I thank the chairman for holding this markup, and I look
94 forward to sending these bills to the full committee for
95 consideration.

96 And at this point, I would like to yield to
97 Representative Kennedy.

98 [The prepared statement of Ms. Schakowsky follows:]

99 ***** COMMITTEE INSERT *****

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100 Mr. {Kennedy.} Thank you very much, Ranking Member.

101 And I want to thank the chairman of the subcommittee as well,
102 Dr. Burgess, for calling the important hearing, and for
103 having--calling these three bills up.

104 I wanted to add my voice to--in support of the Child
105 Nicotine Poisoning Prevention Act. Legislation has been
106 championed by my colleague from New England, Congresswoman
107 Elizabeth Esty, through her time here in Congress.

108 The dangers of liquid nicotine are real, especially when
109 children are able to open its containers with ease. This
110 bill would provide critical safeguards in packaging that
111 would protect those kids from accessing bottles that include
112 flavors like cotton candy and bubblegum, with colors that are
113 even more enticing.

114 I thank Chairman Burgess and Upton for providing a path
115 forward on this bill, as well as Ranking Member Pallone and
116 Schakowsky for their leadership on this issue. And I look
117 forward to the passage to the committee.

118 Thanks very much, and I yield back.

119 [The prepared statement of Mr. Kennedy follows:]

120 ***** COMMITTEE INSERT *****

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121 Mr. {Burgess.} And does the gentlelady yield back her
122 time?

123 Ms. {Schakowsky.} I am sorry. And I yield back, Mr.
124 Chairman.

125 Mr. {Burgess.} The gentlelady yields back.

126 The chair recognizes the vice chairwoman of the full
127 committee, the gentlelady from Tennessee, Mrs. Blackburn, 3
128 minutes please.

129 Mrs. {Blackburn.} Thank you, Mr. Chairman.

130 And I want to commend those that are bringing the bills
131 forward today. And my only comment is to take this
132 opportunity to recognize the concrete industry management
133 program at Middle Tennessee State University. We discussed
134 this during the hearing. This is a program that I helped to
135 begin when I was in the state Senate in Tennessee. It has
136 done a stellar job in education in that industry, and we look
137 forward to the Check-off Program.

138 With that, I yield my time back to the chairman.

139 [The prepared statement of Mrs. Blackburn follows:]

140 ***** COMMITTEE INSERT *****

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141 Mr. {Burgess.} The chair thanks the gentlelady. The
142 gentlelady yields back.

143 The chair now recognizes the ranking member of the full
144 committee, Mr. Pallone, 5 minutes for your opening statement
145 please.

146 Mr. {Pallone.} Thank you, Mr. Chairman.

147 Today, we are marking-up three bills; the Concrete and
148 Masonry Products, Research, Education, and Promotion bill,
149 the Child Nicotine Poisoning Prevention Act, and the E-
150 Warranty Act.

151 H.R. 985 would establish the Concrete Masonry Products
152 Board that would require the collection of small fees from
153 manufacturers of concrete masonry products to fund programs
154 and activities that will promote the concrete masonry
155 industry, and educate consumers about the benefits of
156 concrete masonry products.

157 As I mentioned at the hearing, we have heard some
158 concerns regarding this bill, however, I am pleased with the
159 progress that has been made, and won't be opposing its
160 passage today. And I want to thank Chairman Upton, Chairman
161 Burgess, Ranking Member Schakowsky, and the bill's authors,
162 Mr. Guthrie and Ms. Castor, for working with me so diligently
163 to address many of the concerns we heard. In particular, a

164 Manager's Amendment will be offered. That will ensure
165 fairness within the industry by giving manufacturers an equal
166 say in the creation of the program and the terms of the order
167 establishing the program. The amendment will also increase
168 accountability by requiring the Board to establish goals of
169 the program, and then conduct evaluations of whether the
170 Board met those goals. In addition, the amendment will
171 ensure that this new Check-off Program does not adverse
172 affect others in the construction product industry by
173 requiring the Department of Commerce to conduct a study on
174 whether a more comprehensive program similar to the program
175 operated through the Department of Agriculture can be
176 feasibly established at commerce.

177 Second, we are also considering a draft bill that would
178 require liquid nicotine containers to be childproof, enforced
179 by the Consumer Product Safety Commission. This bill is
180 similar to one introduced by Representative Esty both in this
181 and last Congress, and she should be commended for her
182 efforts to raise awareness of this issue. Poisoning by
183 liquid nicotine is on the rise and must be addressed. This
184 increase in poisoning is parallel to the rise in use of
185 electronic cigarettes and other electronic nicotine delivery
186 systems, also an issue that is troubling and should be
187 addressed.

188 Again, thanks, Chairman Burgess and Upton, for working
189 with us to draft--on this draft to ensure that its movement
190 through the committee process does not adversely affect the
191 current and important work that is occurring at the FDA on
192 the same issue of requiring childproof packaging of e-liquid
193 or e-juice. As childproofing packaging requirements for e-
194 liquid make its way through the legislative process, I look
195 forward to hearing from the CPSC and the FDA about how best
196 to deal with the possible concurrent jurisdiction.

197 And third and finally, we will consider the E-Warranty
198 Act of 2015, introduced by Representatives Mullin and
199 Loeb sack. This bipartisan bill will help modernize the rule
200 regarding presale warranty notice. The bill directs the FTC
201 to amend its current rules on warranty notice to allow the
202 presale notice requirements to be fulfilled by making
203 warrantee info available online. I support this commonsense
204 proposal, however, I would like to highlight one point that
205 the bill rightly acknowledges, that there are many consumers
206 and small business owners without internet access. While
207 this bill requires that contact info or the product
208 manufacturer be made available, I ask my colleagues to work
209 with me to ensure that the FTC requires consumers be provided
210 with a toll-free phone number, and warrantors respond to non-
211 internet requests for free and in a timely manner. Moreover,

212 I expect that when the FTC changes its rules pursuant to this
213 bill, it will maintain the protections that currently exist
214 for consumers and small business owners who do not have
215 internet access, including requiring manufacturers to ensure
216 sellers can fulfill their obligations under the bill and
217 under the rules.

218 And again, we look forward to continuing to work with
219 our colleagues on all of these measures. And I yield back.
220 Thank you, Mr. Chairman.

221 [The prepared statement of Mr. Pallone follows:]

222 ***** COMMITTEE INSERT *****

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223 Mr. {Burgess.} The chair thanks the gentleman. The
224 gentleman yields back.

225 The chair reminds members that, pursuant to committee
226 rules, all members' opening statements will be made part of
227 the record.

228 Are there further opening statements? Are there
229 requests for time on the Republican side? Requests for time
230 on the Democratic side?

231 Seeing none, this will conclude the opening statements.

|

232 H.R. 985

233 Mr. {Burgess.} The chair calls up H.R. 985, and asks

234 the clerk to report.

235 The {Clerk.} H.R. 985, to enable concrete masonry

236 products manufacturers to establish, finance, and carry out a

237 coordinated program of research, education, and promotion to

238 improve, maintain, and develop markets for concrete masonry

239 products.

240 [The bill follows:]

241 ***** INSERT 1 *****

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242 Mr. {Burgess.} Without objection, the first reading of
243 the bill is dispensed with, and the bill will be open for
244 amendment at any point. So ordered.

245 The chair recognizes Mr. Guthrie for the purpose of
246 offering a bipartisan amendment to the nature of a
247 substitute.

248 Mr. {Guthrie.} Thank you, Mr. Chairman. I have an
249 amendment at the desk.

250 Mr. {Burgess.} The clerk will report.

251 The {Clerk.} Amendment in the nature of a substitute to
252 H.R. 985, offered by Mr. Guthrie and Mr. Butterfield.

253 [The amendment of Mr. Guthrie and Mr. Butterfield
254 follows:]

255 ***** INSERT 2 *****

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256 Mr. {Burgess.} Without objection, the reading of the
257 amendment is dispensed with, and the gentleman is recognized
258 for 5 minutes in support of the amendment.

259 Mr. {Guthrie.} Thank you, Mr. Chairman.

260 I am pleased to offer this amendment in the nature of a
261 substitute for the Concrete and Masonry Products, Research,
262 Education, and Promotion Act of 2015.

263 H.R. 985, of which I am proud to coauthor with
264 Congresswoman Kathy Castor, has always benefitted from strong
265 bipartisan support. So along with Ms. Castor, I would like
266 to thank Chairman Burgess for all of his help and assistance,
267 Ms. Schakowsky for her work, and a special thanks to Mr.
268 Butterfield, who is cosponsoring today.

269 This bill would create a Commodity, Research, and
270 Education Program for concrete masonry products that would
271 allow for nationwide cooperation and accelerated job growth.

272 Every state in the country is home to concrete masonry
273 products or contractors. I know that most of my colleagues
274 in this room, if not all, have been visited by concrete
275 masonry producers or contractors from their congressional
276 districts. These are small, usually locally owned
277 businesses, that are greatly entwined with their communities.
278 By allowing block producers to pool their resources,

279 manufacturers and the community will benefit from greater
280 energy, efficiency, increased safety, and additional
281 marketing options.

282 This bipartisan job-creating bill is a long time coming,
283 and I am hopeful that today we will have cleared the way for
284 moving this legislation forward.

285 Again, I would like to thank Ms. Castor for all of her
286 work and dedication.

287 Mr. Chairman, I greatly appreciate you making time on
288 the schedule for this bill to move forward. I must thank the
289 committee staffs from both sides for all their work, and
290 particularly from my staff, Joel Miller, who spent countless
291 hours working with a lot of people to make sure--including
292 late into yesterday, that this bill is ready for today. And
293 finally, the industry supporters who have made effort to
294 visit and educate their Members of Congress.

295 So I thank you so much. I urge my colleagues to support
296 this amendment and the bill. And I yield back the balance of
297 my time.

298 Mr. {Burgess.} The chair thanks the gentleman. The
299 gentleman yields back.

300 Is there further discussion on the amendment?

301 If there is no further discussion, the vote will occur
302 on the amendment in the nature of a substitute.

303 All those in favor shall signify by saying aye.

304 All those opposed, nay.

305 The ayes have it, and the amendment is agreed to.

306 The question now occurs on forwarding H.R. 985, as
307 amended, to the full committee.

308 All those in favor, say aye.

309 All opposed, nay.

310 The ayes appear to have it. The ayes have it. The bill
311 is favorably reported, and the bill is agreed to.

|

312 H.R. 3154

313 Mr. {Burgess.} The chair now calls up the--calls up

314 H.R. 3154, entitled the E-Warranty Act of 2015, and asks the

315 clerk to report.

316 The {Clerk.} H.R. 3154, to allow manufacturers to meet

317 warrantee and labeling requirements for consumer products by

318 displaying the terms of warranties on internet Web sites, and

319 for other purposes.

320 [The bill follows:]

321 ***** INSERT 3 *****

|
322 Mr. {Burgess.} Without objection, the first reading of
323 the bill is dispensed with, and the bill will be open for
324 amendment at any point. So ordered.

325 Are there bipartisan amendments to the bill?

326 Are there--the gentleman from Oklahoma, do you seek to
327 be recognized?

328 Mr. {Mullin.} I can be if I need to talk on it. If I
329 don't need to talk on it, we are good to go.

330 Mr. {Burgess.} The chair appreciates the gentleman's
331 observation.

332 The question now occurs on forwarding the committee
333 print to the full committee.

334 All those in favor, say aye.

335 All those opposed, nay.

336 The ayes have it, and the bill is favorably reported.

|

337 H.R. _____

338 Mr. {Burgess.} The chair asks unanimous consent that

339 the subcommittee adopt and favorably forward to the full

340 committee the committee print entitled Child Nicotine

341 Poisoning Prevention Act of 2015, with the amendment in the

342 nature of a substitute filed 22 July, and timestamped July

343 22, 2015, 10--11:10 a.m.

344 The clerk will report--

345 {Voice.} No, you said--

346 Mr. {Burgess.} Okay. Without objection, so ordered.

347 [The bill follows:]

348 ***** INSERT 4 *****

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349 Mr. {Burgess.} Without objection, the staff is
350 authorized to make technical and conforming changes to the
351 legislation approved by the subcommittee today. So ordered.
352 Without objection, the subcommittee stands adjourned.
353 [Whereupon, at 2:36 p.m., the Subcommittee was
354 adjourned.]