



# The Daily Whip

democraticwhip.house.gov • (202) 225-3130

**WEDNESDAY, FEBRUARY 16, 2005**

House Meets At...	Last Vote Predicted At...
<b>10:00 a.m.: Legislative Business</b> <b>Unlimited "One Minutes"</b>	<b>3:00 – 4:00 p.m.</b>

**FLOOR SCHEDULE AND BILL SUMMARY**

**H.Res. 95 - Rule providing for consideration of H.R. 310 - Broadcast Decency Enforcement Act of 2005 (*Rep. Capito/Rules*).** The Rules Committee has recommended a rule that provides one hour of general debate, waives all points of order against consideration of the bill, and makes in order one amendment to be offered by Rep. Upton.

- **Upton/Markey Manager's Amendment (20 minutes of debate).** This amendment makes the following changes: (1) clarifies that the liability standard for non-licensees (performers, networks) is "willful and intentional"; (2) clarifies that for non-licensees to be found liable, the indecent statement must have been made "knowing or having a reason to know" that the statement would be broadcast; (3) changes the reference to the "General Accounting Office" to its new name of "Government Accountability Office"; (4) provides that if a violator of the provisions of the Act is an individual, the financial impact of a penalty can be taken into account; (5) requires the FCC's annual indecency enforcement report to include data going back to 2000; (6) requires the GAO's indecency enforcement report to include data going back to 2000; and (7) requires the FCC to promptly, and regularly thereafter, update its Policy Statement that provides guidance on the Indecency Standard. With an increase in penalties on those who are bound to this standard, it is important that they have a clear understanding of the precedents affecting them.

**H.Res. 96 - Rule providing for consideration of S. 5 - Class Action Fairness Act of 2005 (*Rep. Gingrey / Rules*).** The Rules Committee has recommended a rule that provides 90 minutes of general debate, waives all points of order against consideration of the bill, and makes in order one substitute amendment to be offered by Rep. Conyers (Democratic Substitute).

- **Democratic Substitute (40 minutes).** The Democratic Substitute makes several changes to the underlying bill including:
  - Attorney General Carve-Out.** Clarifies that cases brought by state attorneys general are excluded from the provisions of the class action bill and are not forced into federal court;
  - Protecting the Integrity of the Courts.** Limits the court's ability to seal or make subject to a protective order records unless it is necessary to protect trade confidentiality and is consistent with the protection of public health and safety; OR the disclosure of the information is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information;
  - Civil Rights Carve-Out.** Carves out State civil rights claims in order to make sure that civil rights plaintiffs, especially those seeking immediate injunctive relief, can have their grievances addressed in a timely manner;
  - Wage and Hour Carve-Out.** Carves out State civil rights claims to allow wage and hour class action members to have their grievances addressed in a timely manner;
  - Prohibits Tax Expatriate Benefits.** Prohibits domestic corporations that reincorporate abroad in order to avoid U.S. taxes and legal liability from benefiting from the new class action rules. Such corporations will retain citizenship they had prior to their reincorporation;

# The Daily Whip

democraticwhip.house.gov • (202) 225-3130

**Excludes Non-Class Action Cases Involving Physical Injuries.** Removes the mass torts language included in the underlying bill;

**Federal Court Certification.** Prohibits a federal judge from denying certification on the basis that more than one state law applies to the class action.

**H.R. 310 – Broadcast Decency Enforcement Act 2005 (Rep. Upton – Energy & Commerce) (Subject to a Rule).** This bill would increase the fines the Federal Communications Commission (FCC) may levy for the broadcast of obscene, indecent, or profane material against licensees and non-licensees. The maximum fines to licensees would be increased from \$32,500 to \$500,000 per violation and to non-licensees from \$11,000 to \$500,000 per violation. The fines would apply to radio and television operators that hold a broadcast license (or other FCC authorization) but not to cable and satellite television or radio. This bill also requires the FCC to consider mitigating factors in the imposition of penalties including: whether the material uttered by the violator was live or recorded, scripted or unscripted; whether the violator had a reasonable opportunity to review recorded or scripted programming; in the case of live or unscripted programming, whether a time delay blocking mechanism was implemented for the programming; and the size of the viewing or listening audience. This bill also amends the Communications Act of 1934 to require the FCC to commence a hearing to consider license revocation if, during the term of the license, a licensee accrues three or more obscenity, indecency, or profanity violations. A similar bill was adopted by the House last year with 391 members voting for the bill, 22 voting against it, and 1 member voting present. The Energy and Commerce Committee reported this bill last week on a 46-2 vote.

## Suspensions (2 bills):

- 1) **H.J.Res. 18** – Recognizing the historic commitment of the U.S. to the recovery of and full accounting for Americans who are prisoners of war or in a missing status (*Rep. Franks – Armed Services*)
- 2) **H.Res. 91** - Honoring the life and legacy of former Lebanese Prime Minister Rafik Hariri (*Rep. Rahall / Armed Services*)

## 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. The House will consider **S. 5 – Class Action Fairness Act of 2005 (Sen. Grassley – Judiciary)**.

### Daily Quote...

"[The American people] sense there's a [Social Security] problem, that there will be insolvency," says pollster John Zogby, who has surveyed the issue for the libertarian Cato Institute. "But they also have a sense that this is not the time for Paul Revere. He did not go through the streets of Boston saying, 'The British are coming - 37 years from now!'"

- *The Christian Science Monitor*, February 15, 2005