

TITLE IV—MISCELLANEOUS PROVISIONS**SEC. 401. ENFORCEMENT OF REGULATIONS REGARDING CITIZENS BAND RADIO EQUIPMENT.**

Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following:

“(f)(1) Except as provided in paragraph (2), a State or local government may enforce the following regulations of the Commission under this section:

“(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

“(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

“(2) Possession of a station license issued by the Commission pursuant to section 301 in any radio service for the operation at issue shall preclude action by a State or local government under this subsection.

“(3) The Commission shall provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

“(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government enforcing a regulation under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, acted outside the authority provided in this subsection.

“(B) A person shall submit an appeal on a decision of a State or local government to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government becomes final.

“(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

“(D) If the Commission determines under subparagraph (C) that a State or local government has acted outside its authority in enforcing a regulation, the Commission shall reverse the decision enforcing the regulation.

“(5) The enforcement of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

“(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.”.

SEC. 402. MODIFICATION OF EXCEPTION TO PROHIBITION ON INTERCEPTION OF COMMUNICATIONS.

(a) MODIFICATION.—Section 2511(2)(d) of title 18, United States Code, is amended by adding at the end the following: “Notwithstanding the previous sentence, it shall not be unlawful under this chapter for a person not acting under the color of law to intercept a wire, oral, or electronic communication between a health insurance issuer or health plan and a subscriber of such issuer or plan, or between a health care provider and a patient, only if all of the parties to the communication have given prior express consent to such interception. For purposes of the preceding sentence, the term ‘health insurance issuer’ has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), the term ‘health plan’ means a group health plan, as defined in such section of such Act, an individual or self-insured health plan, the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et

seq.), the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.), the State children’s health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.), and the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, and the term ‘health care provider’ means a physician or other health care professional.”.

(b) RECORDING AND MONITORING OF COMMUNICATIONS WITH HEALTH INSURERS.—

(1) COMMUNICATION WITHOUT RECORDING OR MONITORING.—Notwithstanding any other provision of law, a health insurance issuer, health plan, or health care provider that notifies any customer of its intent to record or monitor any communication with such customer shall provide the customer the option to conduct the communication without being recorded or monitored by the health insurance issuer, health plan, or health care provider.

(2) DEFINITIONS.—In this subsection:

(A) HEALTH CARE PROVIDER.—The term “health care provider” means a physician or other health care professional.

(B) HEALTH INSURANCE ISSUER.—The term “health insurance issuer” has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b).

(C) HEALTH PLAN.—The term “health plan” means—

(i) a group health plan, as defined in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b);

(ii) an individual or self-insured health plan;

(iii) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(iv) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.);

(v) the State children’s health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.); and

(vi) the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, United States Code.

SEC. 403. CONSUMER TRUTH IN BILLING DISCLOSURE ACT.

(a) FINDINGS.—Congress makes the following findings:

(1) Billing practices by telecommunications carriers may not reflect accurately the cost or basis of the additional telecommunications services and benefits that consumers receive as a result of the enactment of the Telecommunications Act of 1996 (Public Law 104-104) and other Federal regulatory actions taken since the enactment of that Act.

(2) The Telecommunications Act of 1996 was not intended to allow providers of telecommunications services to misrepresent to customers the costs of providing services or the services provided.

(3) Certain providers of telecommunications services have established new, specific charges on customer bills commonly known as “line-item charges”.

(4) Certain providers of telecommunications services have described such charges as “Federal Universal Service Fees” or similar fees.

(5) Such charges have generated significant confusion among customers regarding the nature of and scope of universal service and of the fees associated with universal service.

(6) The State of New York is considering action to protect consumers by requiring telecommunications carriers to disclose fully in the bills of all classes of customers the fee increases and fee reductions resulting from the enactment of the Telecommunications Act of 1996 and other regulatory actions taken since the enactment of that Act.

(7) The National Association of Regulatory Utility Commissioners adopted a resolution in February 1998 supporting action by the Federal Communications Commission and the Federal Trade Commission to protect consumers of telecommunications services by assuring accurate cost reporting and billing practices by telecommunications carriers nationwide.

(b) REQUIREMENTS.—Any telecommunications carrier that includes any change resulting from Federal regulatory action shall specify in such bill—

(1) the reduction in charges or fees for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers) resulting from any regulatory action of the Federal Communications Commission;

(2) total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers);

(3) notify consumers one billing cycle in advance of any changes in existing charges or imposition of new charges; and

(4) disclose, upon subscription, total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including residential basic service, customers of other residential service, small business customers, and other business customers).

The PRESIDING OFFICER. Who seeks recognition?

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

THE EXECUTIVE CALENDAR

Mr. LEAHY. Mr. President, I was just thinking, while we are all here, I know we continue to have a number of names on the Executive Calendar on nominations, and we have, let’s see, nine judges, all of whom have been voted out of the Judiciary Committee, I think in most cases unanimously. We have close to 100 vacancies in the Federal judiciary. Among those who are on here is Sonia Sotomayor of the second circuit. This has been out for some time now. She has been before the Senate for a couple of years now, I believe. This is a circuit where the Chief Judge has declared a judicial emergency. I believe it is the first time a circuit court has declared a judicial emergency, I think maybe the first time in history that they have done that.

But what that means is that if you go before the second circuit, you don’t even have a panel made up of second circuit judges. You have one second circuit court of appeals judge and two visiting judges. And yet we have two nominees for the second circuit on the Executive Calendar, both of whom could be voted on in the next 5 minutes—they went out of the Judiciary Committee very easily—and it would stop this judicial emergency.

The reason I mention this, Mr. President, is that with 100 vacancies in the Federal judiciary, nearly 100 vacancies, we are finding around the country that prosecutors have to lower charges; they have to nol-pros cases; they have

to plea bargain because they cannot give a speedy trial. So the police go through all the work, the Federal agencies and everybody, to apprehend somebody, and then because we can't guarantee a speedy trial because there are so many vacancies in the Federal court, somebody who has been charged with a crime suddenly sees their charge lowered. If you are a taxpayer and you pay the bill, as we all are for these courts, and you have a case, a civil case, you cannot get it heard for sometimes 2, 3, 4, 5 years. Justice delayed is justice denied. I mention this, Mr. President; I certainly, and I understand everybody on this side of the aisle, would be ready to go ahead and vote up or down every one of these nine judges right now and clear this up.

Mr. FORD. Mr. President, will the Senator yield for a question?

Mr. LEAHY. I yield without losing my right to the floor. Of course, I yield to the distinguished Senator from Kentucky.

Mr. FORD. When the Senator said we had other nominees, and he only listed the judicial, there are other nominees on the Executive Calendar who have no reason to be held. For instance, we have a woman who has been serving for 4 years on the Uranium Enrichment Corporation. She came before the Energy Committee on February 11. She was given the greatest of accolades for the tremendous job she had done, and she is caught up in the holds on everything else. And now 90 days have passed since she was unanimously reported out of the Energy Committee.

The Uranium Enrichment Corporation is about to privatize. There is \$2 billion, approximately, in this budget that will have to be voted on by that particular individual. They said—the "they" being the majority—let her have a contract, just a consultant's contract. And that means she can sit there and listen but cannot say a word or cast a vote. We are about ready to close the deal.

So not only do we have the judicial problem, we have other nominations that are vitally important to my State and the State of Ohio of which we have a vital interest. I want to encourage the Senator. I am about to make a unanimous consent request that we bring Margaret Greene up so we might try to do something here to get her moving and on the board so she can continue to make decisions and do the good work she has been complimented for by the Energy Committee. So I thank the Senator.

Mr. LEAHY. If I might say to my friend from Kentucky, the irony is that Margaret Hornbeck Greene, if there was to be a vote on her, would get every vote in this place. So instead, what you have is somebody in the back recesses of a cloakroom somewhere holding this woman up, as are a whole lot of other women on this list being held up by people who say, "We won't vote on these women. We just won't let them come to a vote."

Nobody is going to vote them down. They are all going to be confirmed, if we have a vote. But these women are all being held up by somebody who will not come in the Chamber and say who it is holding them up. But just do it. Frankly, I would like to see all of these people—the committees have passed on them. The committees have given them, in most cases, unanimous recommendations and some overwhelming recommendations.

Let the Senate work its will. I think it is wrong to hold them up but especially in the courts. The courts now face an enormous problem. People are declining appointments to the Federal judiciary because they say they are not going to sit around for 2 or 3 years while their law practices fall apart waiting for the Senate to do what we are paid to do.

We have, as I said earlier, in the second circuit, my own circuit, a judicial emergency, the first time ever, and yet we have two second circuit court of appeals judges voted out of the committee sitting on the calendar and cannot be voted upon. It is wrong, Mr. President, for the Senate to try to diminish the Federal bench.

One of the most important parts of our democracy is the fact that we have an independent judiciary. No other nation on Earth has the ability to appoint to a judiciary, handling as complex and varied items as ours does, and still retain its independence. Some, I am afraid to say, on the other side of the aisle and in the other body feel that we must start intimidating these judges—their words, that we must start holding up these judges—their words.

That is wrong. This democracy is maintained and is able to remain a democracy, even though it is the most powerful nation on Earth, because of an independent judiciary. We hurt all Americans. We hurt the criminal justice system; we allow people to escape for their misdeeds if we do not have the judges there to try the cases. And if you are a private litigant, you cannot be heard. Even though you pay the taxes, you pay the bills, you cannot be heard because the judges are not there.

I see the distinguished senior Senator from Arizona in the Chamber. I know he is seeking recognition.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I would like to thank the Senator from Vermont for his courtesy. I know he is addressing a very important issue and I appreciate his forbearance while I propound a unanimous consent request.

UNANIMOUS CONSENT
AGREEMENT—S. 1260

Mr. MCCAIN. Mr. President, I ask unanimous consent that the majority leader, after consultation with the Democratic leader, may proceed to the consideration of S. 1260. I further ask consent there be 2 hours of general de-

bate on the bill equally divided in the usual form. I further ask that the only first-degree amendments, other than the committee-reported substitute, be the following: That first-degree amendments be subject to relevant second-degree amendments—Sarbanes-Bryan, securities market; Sarbanes-Bryan, securities market—three Sarbanes-Bryan, securities market; Cleland, class-action lawsuits; Biden, relevant amendment; Wellstone, State laws; Feingold, dispute resolution; D'Amato, relevant; and Dodd, relevant; that upon the disposition of the listed amendments, the committee substitute be agreed to, the bill be read a third time, and the Senate then vote on passage of S. 1260, with no intervening action or debate, provided that Senator REID of Nevada be recognized to speak for up to 10 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

UNANIMOUS CONSENT
AGREEMENT—S. 2037

Mr. MCCAIN. Mr. President, I ask unanimous consent the majority leader, after consultation with the Democratic leader, may proceed to the consideration of S. 2037. I further ask that there be 60 minutes for debate equally divided between Senator HATCH and Senator LEAHY, with 15 minutes of Senator HATCH's time controlled by Senator ASHCROFT. I further ask that the only amendment in order be the managers' technical amendment. I finally ask consent that following the expiration or yielding back of time, the bill be read a third time and the Senate then proceed to a vote on passage of S. 2037, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I would like to say now we have also only one remaining concern about the H-1 B bill of Senator ABRAHAM. We would like to move to it tonight. I understand that on the Democratic side of the aisle there is no objection. We are working on it now.

So I would like to inform my colleagues that we may move to the Abraham bill, which has been cleared on the Democratic side, if we can clear it on the Republican side, and, if so, then there will be amendments considered tonight.

MORNING BUSINESS

Mr. MCCAIN. While that is being worked out, I now ask unanimous consent that there be a period for the transaction of routine morning business until 7:15 p.m., with Senators permitted to speak for up to 10 minutes.

Mr. LEAHY. Reserving the right to object, and I shall not object, does that statement by the distinguished acting leader mean there will be no more roll-call votes tonight?