

Union Calendar No. 76

103D CONGRESS
1ST SESSION

H. R. 2243

[Report No. 103-1381]

A BILL

To amend the Federal Trade Commission Act to extend the authorization of appropriations in such Act, and for other purposes.

JUNE 17, 1993

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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[Report No. 103-138]

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IN THE HOUSE OF REPRESENTATIVES

MAY 24, 1993

Mr. SWIFT (for himself and Mr. DINGELL) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To amend the Federal Trade Commission Act to extend the authorization of appropriations in such Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Federal Trade Commission Act Amendments of 1993”.

1 (b) REFERENCE.—Whenever in this Act an amend-
2 ment or repeal is expressed in terms of an amendment
3 to, or repeal of, a section or other provision, the reference
4 shall be considered to be made to a section or other provi-
5 sion of the Federal Trade Commission Act.

6 **SEC. 2. EFFECTIVE DATE OF ORDERS.**

7 Section 5(g) (15 U.S.C. 45(g)) is amended to read
8 as follows:

9 “(g) An order of the Commission to cease and desist
10 shall become final as follows:

11 “(1) Upon the expiration of the time allowed
12 for filing a petition under subsection (c) for review
13 if no such petition has been duly filed within such
14 time, except that the Commission may after the
15 order becomes final modify or set it aside to the ex-
16 tent provided in the last sentence of subsection (b).

17 “(2) Except as to any order provision subject to
18 paragraph (4), upon the 60th day after such order
19 is served if a petition under subsection (c) for review
20 has been duly filed, except that any such order may
21 be stayed, in whole or in part and subject to such
22 conditions as may be appropriate, by—

23 “(A) the Commission,

24 “(B) an appropriate court of appeals of
25 the United States if (i) a petition for review of

1 such order is pending in such court, and (ii) an
2 application for such a stay was previously sub-
3 mitted to the Commission and the Commission,
4 within the 30-day period beginning on the date
5 the application was received by the Commission,
6 either denied the application or did not grant or
7 deny the application, or

8 “(C) the Supreme Court if an applicable
9 petition for a writ of certiorari is pending.

10 “(3) For purposes of subsection (m)(1)(B) and
11 section 19(a)(2)—

12 “(A) if a petition under subsection (c) for
13 review of the order of the Commission has been
14 filed and if the order of the Commission has
15 been affirmed or the petition for review has
16 been dismissed by a court of appeals of the
17 United States and no petition for certiorari has
18 been duly filed, upon the expiration of the time
19 allowed for filing a petition to the Supreme
20 Court for a writ of certiorari,

21 “(B) if a petition under subsection (c) for
22 review of the order of the Commission has been
23 filed and if the order of the Commission has
24 been affirmed or the petition for review has
25 been dismissed by a court of appeals of the

1 United States, upon the denial of a petition for
2 a writ of certiorari, or

3 “(C) if a petition under subsection (c) for
4 review of the order of the Commission has been
5 filed, upon the expiration of 30 days from the
6 date of issuance of a mandate of the Supreme
7 Court directing that the order of the Commis-
8 sion be affirmed or the petition for review be
9 dismissed.

10 “(4) In the case of an order provision requiring
11 a person, partnership, or corporation to divest itself
12 of stock, other share capital, or assets—

13 “(A) if a petition under subsection (c) for
14 review of such order of the Commission has
15 been filed and if the order of the Commission
16 has been affirmed or the petition for review has
17 been dismissed by a court of appeals of the
18 United States and no petition for certiorari has
19 been duly filed, upon the expiration of the time
20 allowed for filing a petition to the Supreme
21 Court for a writ of certiorari,

22 “(B) if a petition under subsection (c) for
23 review of such order of the Commission has
24 been filed and if the order of the Commission
25 has been affirmed or the petition for review has

1 been dismissed by a court of appeals of the
2 United States upon the denial of a petition for
3 a writ of certiorari, or

4 “(C) if a petition under subsection (c) for
5 review of such order of the Commission has
6 been filed, upon the expiration of 30 days from
7 the date of issuance of a mandate of the Su-
8 preme Court directing that the order of the
9 Commission be affirmed or the petition for re-
10 view be dismissed.”.

11 **SEC. 3. PROCEEDINGS SUBSEQUENT TO VIOLATIONS OF**
12 **ORDERS.**

13 (a) CIVIL PENALTIES.—Section 5(m)(1)(B) (15
14 U.S.C. 45(m)(1)(B)) is amended by inserting “, other
15 than a consent order,” immediately after “order” the first
16 time it appears.

17 (b) DETERMINATIONS OF LAW.—Section 5(m)(2) (15
18 U.S.C. 45(m)(2)) is amended by adding at the end the
19 following: “Upon request of any party to such an action
20 against such defendant, the court shall also review the de-
21 termination of law made by the Commission in the pro-
22 ceeding under subsection (b) that the act or practice which
23 was the subject of such proceeding constituted an unfair
24 or deceptive act or practice in violation of subsection (a).”.

1 **SEC. 4. CIVIL INVESTIGATIVE DEMANDS.**

2 (a) SECTION 20(a).—Section 20(a) (15 U.S.C. 57b–
3 1(a)) is amended—

4 (1) in paragraph (2), by striking “unfair or de-
5 ceptive acts or practices in or affecting commerce
6 (within the meaning of section 5(a)(1))” and insert-
7 ing in lieu thereof “act or practice or method of
8 competition declared unlawful by a law administered
9 by the Commission”;

10 (2) in paragraph (3), by striking “unfair or de-
11 ceptive acts or practices in or affecting commerce
12 (within the meaning of section 5(a)(1))” and insert-
13 ing in lieu thereof “acts or practices or methods of
14 competition declared unlawful by a law administered
15 by the Commission”; and

16 (3) in paragraph (7), by striking “unfair or de-
17 ceptive act or practice in or affecting commerce
18 (within the meaning of section 5(a)(1))” and insert-
19 ing in lieu thereof “act or practice or method of
20 competition declared unlawful by a law administered
21 by the Commission”.

22 (b) SECTION 20(c).—Section 20(c)(1) (15 U.S.C.
23 57b–1(c)) is amended by striking “unfair or deceptive acts
24 or practices in or affecting commerce (within the meaning
25 of section 5(a)(1))” and inserting in lieu thereof “any act

1 or practice or method of competition declared unlawful by
2 a law administered by the Commission”.

3 (c) SECTION 20(j).—Section 20(j) (15 U.S.C. 57b–
4 1(j)) is amended by inserting immediately before the semi-
5 colon the following: “, any proceeding under section 11(b)
6 of the Clayton Act, or any adjudicative proceeding under
7 any other provision of law”.

8 **SEC. 5. AGRICULTURAL COOPERATIVES.**

9 The Federal Trade Commission Act is amended by
10 redesignating sections 24 and 25 as sections 25 and 26,
11 respectively, and by inserting after section 23 the follow-
12 ing:

13 “SEC. 24. (a) The Commission shall not have any au-
14 thority to conduct any study, investigation, or prosecution
15 of any agricultural cooperative for any conduct which, be-
16 cause of the provisions of the Act entitled ‘An Act to au-
17 thorize association of producers of agricultural products’,
18 approved February 18, 1922 (7 U.S.C. 291 et seq., com-
19 monly known as the Capper-Volstead Act), is not a viola-
20 tion of any of the antitrust Acts or this Act.

21 “(b) The Commission shall not have any authority
22 to conduct any study or investigation of any agricultural
23 marketing orders.”.

1 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 25 (15 U.S.C. 57c) (as so redesignated by
3 section 5) is amended to read as follows:

4 “SEC. 25. To carry out the functions, powers, and
5 duties of the Commission there are authorized to be appro-
6 priated \$88,000,000 for fiscal year 1993, \$92,000,000 for
7 fiscal year 1994, and \$99,000,000 for fiscal year 1995.”.

8 **SEC. 7. ACTION OF COMMISSION RESPECTING CERTAIN**
9 **PROCEEDINGS.**

10 (a) IN GENERAL.—The Federal Trade Commission
11 shall not have any authority to use any funds which are
12 authorized under section 25 to be appropriated to carry
13 out the Federal Trade Commission Act (15 U.S.C. 41 et
14 seq.) for fiscal years 1993, 1994, or 1995 for the purpose
15 of submitting statements to, appearing before, or interven-
16 ing in the proceedings of, any Federal or State agency
17 unless the Commission notifies the Committee on Energy
18 and Commerce of the House of Representatives and the
19 Committee on Commerce, Science, and Transportation of
20 the Senate of such action as soon as possible.

21 (b) NOTICE.—The notice required by subsection (a)
22 with respect to Federal Trade Commission action shall in-
23 clude—

- 24 (1) the name of the agency involved,
25 (2) the date of such action, and

1 (3) a concise statement regarding the nature
2 and purpose of such action.

3 **SEC. 8. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as provided in subsections
5 (b) and (c), the amendments made by this Act and this
6 Act shall take effect on the date of enactment of this Act.

7 (b) SECTION 2.—

8 (1) IN GENERAL.—The amendment made by
9 section 2 shall apply only with respect to cease and
10 desist orders issued under section 5 of the Federal
11 Trade Commission Act (15 U.S.C. 45) after the date
12 of enactment of this Act.

13 (2) CONSTRUCTION.—The amendment made by
14 section 2 shall not be construed to affect in any
15 manner a cease and desist order which was issued
16 before the date of enactment of this Act. Such
17 amendment shall not be construed to affect in any
18 manner a cease and desist order issued after the
19 date of enactment of this Act, if such order was is-
20 sued pursuant to remand from a court of appeals or
21 the Supreme Court of an order issued by the Fed-
22 eral Trade Commission before the date of enactment
23 of this Act.

1 (c) SECTION 4.—The amendments made by section
2 4 shall apply only with respect to compulsory process is-
3 sued after the date of enactment of this Act.