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108TH CONGRESS
1ST SESSION

H. R. 945

To exercise authority under article I, section 8, clause 3 of the Constitution of the United States to clearly establish jurisdictional boundaries over the commercial transactions of digital goods and services conducted through the Internet, and to foster stability and certainty over the treatment of such transactions.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2003

Mr. STEARNS (for himself, Mr. TOWNS, Mr. BASS, Mr. DEAL of Georgia, and Mr. WALDEN of Oregon) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To exercise authority under article I, section 8, clause 3 of the Constitution of the United States to clearly establish jurisdictional boundaries over the commercial transactions of digital goods and services conducted through the Internet, and to foster stability and certainty over the treatment of such transactions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Jurisdictional Certainty Over Digital Commerce Act''.

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) the Internet is increasingly used to conduct commercial transactions in digital goods and digital services wholly deliverable by and on the Internet;

(2) jurisdictional certainty is an important catalyst to further advancement of electronic commerce;

(3) digital commercial transactions in digital goods and digital services are inherently interstate in nature;

(4) State regulation of such digital commercial transactions creates significant and harmful burdens on interstate commerce;

(5) State regulation of digital commercial transactions in digital goods and digital services will seriously impede the growth of such transactions, decreasing the viability of electronic commerce as an alternative instrument or channel of commerce; and

(6) while other types of transactions may deserve similar treatment, digital commercial transactions in digital goods and digital services are the type of transactions that most clearly deserve protection from disparate, uncoordinated, and inconsistent

efforts by the States to regulate Interstate commerce.

SEC. 3. FEDERAL AUTHORITY TO REGULATE COMMERCE IN DIGITAL GOODS AND SERVICES.

(a) IN GENERAL.—Responsibility and authority to regulate digital commercial transactions is reserved solely to the Federal Government.

(b) PROHIBITION OF STATE REGULATION.—No State or political subdivision thereof may enact or enforce any law, rule, regulation, standard, or other provision having the force or effect of law that regulates, or has the effect of regulating, digital commercial transactions.

(c) PROHIBITION OF DELEGATION TO STATES.—Any responsibility or authority to regulate digital commercial transactions that, pursuant to subsection (a), is retained by the Federal government may not be delegated, by any Federal agency or officer, to any State or political subdivision thereof.

(d) INAPPLICABILITY TO NON-DIGITAL COMMERCIAL TRANSACTIONS.—This Act may not be construed—

(1) to modify, impair, or supersede, or to authorize the modification, impairment, or superseding of, any authority that any State or any political subdivision thereof may have to regulate any commer-

cial transaction that is not a digital commercial transaction; or

(2) to establish any authority for a State or political subdivision of a State to regulate any commercial transaction that is not a digital commercial transaction, in contravention of any limitation on such authority established under law (including any statute, regulation, rule, or judicial decision).

(e) INAPPLICABILITY TO STATE COMMERCIAL CODE.—This Act may not be construed to limit, alter, supersede, or otherwise affect any requirement under the Uniform Commercial Code, as in effect in any State.

(f) DEFINITIONS.—For purposes of this section:

(1) DIGITAL GOOD.—The term ''digital good'' means any good or product that is transferred or delivered by means of the Internet.

(2) DIGITAL COMMERCIAL TRANSACTION.—The term ''digital commercial transaction'' means a commercial transaction for a digital good or digital service that is carried out in its entirety by means of the Internet.

(3) DIGITAL SERVICE.—The term ''digital service'' means any service that is conducted or provided by means of the Internet. Such term does not include any telecommunications service, as such term

is defined in section 3 of the Communications Act of 1934 (47 U.S.C. 153), or the business of insurance.

(4) INTERNET.—The term ''Internet'' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(5) REGULATE.—

(A) IN GENERAL.—The term ''regulate'' includes, with respect to a digital commercial transaction, taking any governmental action that restricts, prohibits, limits, or burdens, or imposes any obstacle or interference with, such a transaction.

(B) EXCLUSION.—Notwithstanding subparagraph (A), such term does not include taking any government action, pursuant only to specific statutory authority for such action under the laws of such State and only on an individual case-by-case basis, in order to protect

a party to a digital commercial transaction from—

(i) a specific and identified threat to the health or physical safety of such party; or

(ii) fraudulent or criminal activity against such party.

This subparagraph may not be used by a State or political subdivision thereof to regulate, in a general manner, the parties to a digital commercial transaction.

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