

Public Law 103-312
103d Congress

An Act

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

Aug. 26, 1994
[H.R. 2243]

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

SECTION 1. SHORT TITLE; REFERENCE.

(a) **SHORT TITLE.**—This Act may be cited as the “Federal Trade Commission Act Amendments of 1994”.

(b) **REFERENCE.**—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Trade Commission Act.

SEC. 2. AGRICULTURAL COOPERATIVES.

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by redesignating sections 24 and 25 as sections 25 and 26, respectively, and by inserting immediately after section 23 the following new section:

“SEC. 24. (a) The Commission shall not have any authority to conduct any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Act entitled ‘An Act to authorize association of producers of agricultural products’, approved February 18, 1922 (7 U.S.C. 291 et seq., commonly known as the Capper-Volstead Act), is not a violation of any of the antitrust Acts or this Act.

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

SEC. 3. COMPENSATION IN PROCEEDINGS.

(a) **REPEAL.**—Subsection (h) of section 18 (15 U.S.C. 57a) is repealed and subsections (i), (j), and (k) of section 18 are redesignated as subsections (h), (i), and (j), respectively.

(b) **CONFORMING AMENDMENT.**—Section 18(a)(1) (15 U.S.C. 57a(a)(1)) is amended by striking “subsection (i)” and inserting “subsection (h)”.

SEC. 4. PROCEEDINGS SUBSEQUENT TO VIOLATIONS OF ORDERS.

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

(b) **DETERMINATIONS OF LAW.**—Section 5(m)(2) (15 U.S.C. 45(m)(2)) is amended by adding at the end the following: “Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by

Federal Trade
Commission Act
Amendments of
1994.
15 USC 58 note.

15 USC 57c, 58.

15 USC 57b-5.

Courts.

the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a).”.

SEC. 5. PREVALENCE OF UNLAWFUL ACTS OR PRACTICES.

Section 18(b) (15 U.S.C. 57a(b)) is amended by adding at the end the following new paragraph:

Proposed rule.

“(3) The Commission shall issue a notice of proposed rulemaking pursuant to paragraph (1)(A) only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent. The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if—

“(A) it has issued cease and desist orders regarding such acts or practices, or

“(B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.”.

SEC. 6. EFFECTIVE DATE OF ORDERS.

(a) ORDERS SUBJECT TO PETITION FOR REVIEW.—Section 5(g)(2) (15 U.S.C. 45(g)(2)) is amended to read as follows:

“(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

“(A) the Commission;

“(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

“(C) the Supreme Court, if an applicable petition for certiorari is pending.”.

(b) ORDERS SUBJECT TO SECTIONS 5(m)(1)(B) AND 19(a)(2).—Section 5(g)(3) (15 U.S.C. 45(g)(3)) is amended to read as follows:

“(3) For purposes of subsection (m)(1)(B) and of section 19(a)(2), if a petition for review of the order of the Commission has been filed—

“(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

“(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

“(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.”.

(c) **DIVESTITURE ORDERS.**—Section 5(g)(4) (15 U.S.C. 45(g)(4)) is amended to read as follows:

“(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

“(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

“(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

“(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.”.

(d) **TECHNICAL.**—Paragraph (1) of section 5(g) (15 U.S.C. 45(g)(1)) is amended by striking “; or” and inserting a period.

SEC. 7. CIVIL INVESTIGATIVE DEMANDS.

(a) **DEFINITIONS.**—Section 20(a) (15 U.S.C. 57b-1(a)) is amended—

(1) in paragraph (2), by inserting “or in any antitrust violations” immediately after “section 5(a)(1)”;

(2) in paragraph (3), by inserting “or any provisions relating to antitrust violations” immediately after “section 5(a)(1)”;

(3) in paragraph (7), by inserting “or any antitrust violation” immediately after “section 5(a)(1)”;

(4) by adding at the end the following new paragraph:

“(8) The term ‘antitrust violation’ means any unfair method of competition (within the meaning of section 5(a)(1)), any violation of the Clayton Act, any violation of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce, or any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in such an unfair method of competition or violation.”.

(b) **ISSUANCE OF DEMAND.**—(1) Section 20(c)(1) (15 U.S.C. 57b-1(c)(1)) is amended—

(A) by inserting “or tangible things” immediately after “documentary material” the first place it appears;

(B) by inserting “or to antitrust violations,” immediately after “section 5(a)(1)”; and

(C) by inserting “to submit such tangible things,” immediately after “copying or reproduction.”.

(2) Section 20(c) (15 U.S.C. 57b-1(c)) is amended—

(A) by redesignating paragraphs (4), (5), (6), (7), (8), (9), (10), (11), and (12) as paragraphs (5), (6), (7), (8), (9), (10), (11), (13), and (14), respectively;

(B) by inserting immediately after paragraph (3) the following new paragraph:

“(4) Each civil investigative demand for the submission of tangible things shall—

“(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

“(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

“(C) identify the custodian to whom such things shall be submitted.”; and

(C) by inserting immediately after paragraph (11), as so redesignated, the following new paragraph:

“(12) The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.”.

(c) SECTION 20(g).—Section 20(g) (15 U.S.C. 57b-1(g)) is amended by inserting “, tangible things” immediately after “documentary material”.

(d) APPLICABILITY OF SECTION 20.—Section 20(j)(1) (15 U.S.C. 57b-1(j)(1)) is amended by inserting immediately before the semicolon the following: “, any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law”.

SEC. 8. COMMISSION CUSTODY OF TANGIBLE THINGS.

Section 21 (15 U.S.C. 57b-2) is amended—

(1) in subsection (a)(1), by inserting “tangible things,” immediately after “documentary material,”;

(2) in subsection (b)(1), by inserting “, tangible thing,” immediately after “document”;

(3) in subsection (b)(2)(A), by inserting “tangible things,” immediately after “documentary material,”;

(4) in subsection (b)(3)—

(A) in subparagraph (A), by inserting “tangible things,” immediately after “documentary material,”;

(B) in subparagraph (B), by inserting “, and may make tangible things available,” immediately after “oral testimony”; and by inserting “, things,” immediately after “such material”;

(C) in subparagraph (C), by inserting “tangible things,” immediately after “documentary material,” and by inserting “, things,” immediately after “material”; and

(D) in subparagraph (D), by inserting “, tangible things,” immediately after “documentary material”;

(5) in subsection (b)(4), by inserting “tangible things,” immediately after “documentary material,”;

(6) in subsection (b)(5), by inserting “tangible things,” immediately after “documentary material,”;

(7) in subsection (b)(6)—

(A) by inserting immediately after the first sentence the following new sentence: “The custodian of any tangible things may make such things available for inspection to such persons on the same basis.”; and

- (B) by inserting "results of inspections of tangible things," immediately after "Such documentary material,";
and
(8) in subsection (b)(7), by inserting "tangible things," immediately after "documentary material,".

SEC. 9. DEFINITION OF UNFAIR ACTS OR PRACTICES.

Section 5 (15 U.S.C. 45) is amended by adding at the end the following:

"(n) The Commission shall have no authority under this section or section 18 to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination."

SEC. 10. PROCESS.

(a) AUTHORITY.—

(1) ADVERTISEMENTS IN VIOLATION OF SECTION 12.—Section 13(a) (15 U.S.C. 53(a)) is amended by striking the last sentence and inserting the following: "Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found."

(2) PROVISIONS ENFORCED BY COMMISSION.—Section 13(b) (15 U.S.C. 53(b)) is amended by striking the last sentence and inserting the following: "Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found."

(b) PROCEDURES.—Section 13 (15 U.S.C. 53) is amended—

- (1) by redesignating subsection (c) as subsection (d); and
(2) by inserting immediately after subsection (b) the following new subsection:

"(c) Any process of the Commission under this section may be served by any person duly authorized by the Commission—

"(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;

“(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or

“(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.

The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.”.

15 USC 57c note.

SEC. 11. INTERVENTION BY COMMISSION IN CERTAIN PROCEEDINGS.

(a) **LIMITATION ON USE OF AUTHORIZED FUNDS.**—The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal years 1994, 1995, and 1996 for the purpose of submitting statements to, appearing before, or intervening in the proceedings of, any Federal or State agency or State legislative body concerning proposed rules or legislation that the agency or legislative body is considering unless the Commission advises the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding such action as soon as possible.

(b) **CONTENTS OF NOTICE TO CONGRESS.**—The notice required in subsection (a) shall include the name of the agency or legislator involved, the date of such action, and a concise statement regarding the nature and purpose of such action.

SEC. 12. RESOURCE ALLOCATION STUDY.

The Federal Trade Commission shall conduct an evaluation of the level of its personnel resources and the manner in which such resources are allocated. The Commission shall study—

(1) whether overall resources at the Commission are adequate to fulfill the Commission's responsibilities in the areas of competition and consumer protection;

(2) the distribution of personnel to individual offices of commissioners, departments, bureaus, and other units within the Commission, and whether the current allocation of personnel most efficiently enables the Commission to fulfill its statutory mandate;

(3) the number of personnel in supervisory positions, contrasted with those personnel in nonsupervisory positions; and

(4) whether the amount of workyears devoted to research activities should be increased and what results (if any) such an increase would produce.

The Commission shall transmit the results of such study, together with any recommendations that the Commission determines appropriate, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives not later than 6 months after the date of enactment of this Act.

SEC. 13. FEDERAL-STATE COOPERATION.

The Federal Trade Commission shall review its statutory responsibilities to identify those matters within its jurisdiction where Federal enforcement is particularly necessary or desirable and those areas that might more effectively be enforced at the

State or local level. In identifying such areas, the Commission shall—

(1) consider the resources available to the Commission and the States, as well as particular rules that have been promulgated by the Commission;

(2) consult with the attorneys general of the States, representatives of consumers and industry, and other interested parties; and

(3) consider such other issues as will result in more efficient implementation of the statutory responsibilities of the Commission.

Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives the information identified in paragraphs (1) through (3), together with specific recommendations for methods of achieving greater cooperation between the Commission and the States.

SEC. 14. AUTHORIZATION OF APPROPRIATIONS.

Section 25 (15 U.S.C. 57c), as so redesignated by section 2 of this Act, is amended to read as follows:

"SEC. 25. There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$92,700,000 for fiscal year 1994; not to exceed \$99,000,000 for fiscal year 1995; and not to exceed \$102,000,000 for fiscal year 1996."

SEC. 15. EFFECTIVE DATE; APPLICABILITY.

15 USC 45 note.

(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the provisions of this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY OF SECTION 5.—The amendment made by section 5 of this Act shall apply only to rulemaking proceedings initiated after the date of enactment of this Act. Such amendment shall not be construed to affect in any manner a rulemaking proceeding which was initiated before the date of enactment of this Act.

(c) APPLICABILITY OF SECTION 6.—The amendments made by section 6 of this Act shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) after the date of enactment of this Act. These amendments shall not be construed to affect in any manner a cease and desist order which was issued before the date of enactment of this Act.

(d) APPLICABILITY OF SECTIONS 7 AND 8.—The amendments made by sections 7 and 8 of this Act shall apply only with respect to compulsory process issued after the date of enactment of this Act.

(e) APPLICABILITY OF SECTION 9.—The amendments made by section 9 of this Act shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), or to rules promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) after the date of enactment of this Act. These amendments shall not be construed to affect in any manner a cease and desist order which was issued, or a rule which was promulgated, before the date of enactment of this Act. These amendments shall not be

construed to affect in any manner a cease and desist order issued after the date of enactment of this Act, if such order was issued pursuant to remand from a court of appeals or the Supreme Court of an order issued by the Federal Trade Commission before the date of enactment of this Act.

Approved August 26, 1994.

LEGISLATIVE HISTORY—H.R. 2243 (S. 1179):

HOUSE REPORTS: Nos. 103-138 (Comm. on Energy and Commerce) and 103-617 (Comm. of Conference).

SENATE REPORTS: No. 103-180 accompanying S. 1179 (Comm. on Commerce, Science, and Transportation).

CONGRESSIONAL RECORD:

Vol. 139 (1993): June 21, considered and passed House.

Sept. 22, considered and passed Senate, amended, in lieu of S. 1179.

Vol. 140 (1994): July 25, House agreed to conference report.

Aug. 11, Senate agreed to conference report.