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2D SESSION

# S. 1888

To establish a moratorium on exactions that would interfere with the flow of commerce via the Internet, to establish a commission to develop a uniform set of definitions and principles for State and local jurisdictions to utilize regarding regulation and taxation of commercial transaction on the Internet, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 31, 1998

Mr. GREGG (for himself and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To establish a moratorium on exactions that would interfere with the flow of commerce via the Internet, to establish a commission to develop a uniform set of definitions and principles for State and local jurisdictions to utilize regarding regulation and taxation of commercial transaction on the Internet, 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.**

4 This Act may be cited as the “Internet Fairness and  
5 Interstate Responsibility Act” or “Net FAIR Act”.

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) By exercising its authority under article I,  
4 section 8, clause 3 of the United States Constitu-  
5 tion, Congress may best achieve a consistent and co-  
6 herent national policy regarding regulation and tax-  
7 ation of Internet activity and the concomitant uni-  
8 formity, simplicity, and fairness that is needed to  
9 avoid burdening this evolving form of interstate and  
10 foreign commerce.

11 (2) Because the Federal Government and State  
12 and local governments will have numerous reasons to  
13 interact over the Internet with the individuals and  
14 companies that use it, a lexicon of terms relating to  
15 the Internet and its use is vital.

16 (3) A limited number of States have already  
17 adopted by law or regulation various forms of taxes  
18 that apply to commercial activity that are unique to  
19 the Internet or to providers of Internet services.

20 (4) There are approximately 30,000 separate  
21 taxing jurisdictions in the United States, thus pre-  
22 senting the potential for an enormous variety of  
23 taxes and tax rates on Internet activity.

24 (5) The unique character of the Internet tran-  
25 scends physical and political boundaries and permits  
26 commercial and intellectual communications to move

1 from city to city, State to State, and nation to na-  
2 tion without any set path in a manner that is vir-  
3 tually unparalleled in history.

4 (6) The Internet is a global network that offers  
5 the potential for entrepreneurial individuals and  
6 small businesses throughout the United States to  
7 reach customers and markets throughout the world  
8 with their products and services.

9 (7) The United States must create an example  
10 for the rest of the world by preventing discrimina-  
11 tory taxation on Internet activities so that the  
12 United States can persuade our trading partners to  
13 resist the temptation to tax such activities and  
14 thereby limit the potential growth of such activities.

15 (8) The innovation and creativity that has  
16 helped computer technology evolve into the present-  
17 day Internet has thrived in a tax-free environment  
18 and should be granted protection from local, State,  
19 and Federal taxation in order to permit this new  
20 medium to reach its fullest potential.

21 (9) The President should seek bilateral and  
22 multilateral agreements through the World Trade  
23 Organization, the Organization for Economic Co-  
24 operation and Development, the Asia Pacific Eco-  
25 nomic Cooperation Council, and other appropriate

1 international organizations and fora to establish that  
 2 commercial transactions using the Internet are free  
 3 from tariff and discriminatory taxation.

4 **SEC. 3. MORATORIUM ON IMPOSITION OF TAXES ON INTER-**  
 5 **NET AND INTERNET-RELATED COMPUTER**  
 6 **SERVICES.**

7 (a) MORATORIUM.—Except as otherwise provided in  
 8 this section, no State or political subdivision thereof may  
 9 impose, assess, or attempt to collect a tax directly or indi-  
 10 rectly on—

11 (1) the Internet or Internet-related services; or  
 12 (2) the use of the Internet or Internet-related  
 13 services.

14 (b) PRESERVATION OF STATE AND LOCAL TAXING  
 15 AUTHORITY.—Subsection (a)—

16 (1) does not apply to taxes imposed on or meas-  
 17 ured by net income derived from the Internet or  
 18 Internet-related services if such taxes are applied  
 19 uniformly to all businesses;

20 (2) does not apply to fairly apportioned busi-  
 21 ness license taxes applied to businesses having a  
 22 business location in the taxing jurisdiction if such  
 23 taxes are applied uniformly to all businesses;

24 (3) does not affect the authority of a State or  
 25 political subdivision to impose a sales or use tax on

1 sales or other transactions effected by use of the  
 2 Internet or Internet-related services if—

3 (A) the tax is the same as the tax gen-  
 4 erally imposed and collected by that State or  
 5 political subdivision thereof on sales or trans-  
 6 actions effected by mail order, telephone, or  
 7 other remote means within its taxing jurisdic-  
 8 tion; and

9 (B) the obligation to collect the tax from  
 10 sales or other transactions effected by use of  
 11 the Internet or Internet-related services is im-  
 12 posed on the same person or entity as in the  
 13 case of sales or transactions affected by mail  
 14 order, telephone, or other remote means; and

15 (4) does not apply to taxes on real or personal  
 16 property used in connection with the providing of  
 17 Internet or Internet-related services if such taxes are  
 18 applied to all businesses using real or personal prop-  
 19 erty in connection with their businesses.

20 (c) TERMINATION.—The moratorium set forth under  
 21 subsection (a) shall terminate on December 31, 2001.

22 **SEC. 4. COMMISSION ON INTERNET TAXATION AND**  
 23 **REGULATION.**

24 (a) ESTABLISHMENT.—

1           (1) IN GENERAL.—There is established a com-  
2           mission to be known as the Commission on Internet  
3           Taxation and Regulation (hereafter in this section  
4           referred to as the “Commission”).

5           (2) MEMBERSHIP.—The Commission shall be  
6           composed of 15 members of whom—

7                   (A) one shall be the Secretary of Com-  
8           merce;

9                   (B) one shall be the Secretary of State;

10                  (C) one shall be the Secretary of the  
11       Treasury; and

12                  (D) twelve shall be appointed by the Presi-  
13       dent without regard to political affiliation, of  
14       whom—

15                   (i) three shall be the chief executive  
16       officer of a State (including at least one  
17       who is the chief executive officer of a State  
18       that does not impose a sales tax);

19                   (ii) three shall be the chief executive  
20       officer of a political subdivision of a State  
21       (including at least one who is the chief ex-  
22       ecutive officer of a political subdivision  
23       that does not impose a sales tax);

24                   (iii) three shall be individuals em-  
25       ployed by or affiliated with companies en-

1           gaged in computer manufacturing activi-  
 2           ties, software activities, or activities relat-  
 3           ing to the Internet or the provision of  
 4           Internet-related services; and

5           (iv) three shall be individuals em-  
 6           ployed by or affiliated with companies en-  
 7           gaged in electronic commerce (including at  
 8           least one who is employed by or affiliated  
 9           with a company engaged in mail order  
 10          commerce).

11           (3) PERIOD OF APPOINTMENT; VACANCIES.—

12          Members shall be appointed for the life of the Com-  
 13          mission. Any vacancy in the Commission shall not  
 14          affect its powers, but shall be filled in the same  
 15          manner as the original appointment.

16           (4) CHAIRMAN AND VICE CHAIRMAN.—The

17          Commission shall select a Chairman and Vice Chair-  
 18          man from among its members.

19           (5) MEETINGS.—The Commission shall meet at

20          the call of the Chairman.

21           (6) QUORUM.—A majority of the members of

22          the Commission shall constitute a quorum, but a  
 23          lesser number of members may hold hearings.

24           (b) DUTIES.—

1           (1) IN GENERAL.—The Commission shall have  
2 as its duties the following:

3           (A) To conduct a thorough study of tax-  
4 ation and regulation of the Internet and Inter-  
5 net-related services under State and local law  
6 and identify any inconsistencies in such tax-  
7 ation or regulation.

8           (B) To consider the effect of current Fed-  
9 eral statutes and regulations on the Internet  
10 and Internet-related services and recommend  
11 appropriate modifications of such statutes and  
12 regulations.

13           (C) To propose model legislation (a so-  
14 called “Uniform Internet Commercial Code”)   
15 relating to commercial transactions on the  
16 Internet and to Internet-related services in  
17 order to facilitate uniform treatment of such  
18 transactions and such services under Federal  
19 law and State law.

20           (2) MODEL LEGISLATION.—The model legisla-  
21 tion under paragraph (1)(C) shall—

22           (A) provide terminology applicable to com-  
23 mercial transactions on the Internet and to  
24 Internet-related services;



1 (B) define the transactions, services, and  
2 other activities covered by the legislation; and

3 (C) establish regulatory structures and  
4 mechanisms applicable to such transactions,  
5 services, and other activities.

6 (3) ADOPTION OF POSITIONS.—The Commis-  
7 sion may not adopt a position with respect to a mat-  
8 ter under this subsection unless the position is ap-  
9 proved by at least 10 members of the Commission.

10 (c) REPORT.—Not later than December 31, 2000, the  
11 Commission shall submit to Congress and the President  
12 a report on its activities under this section. The report  
13 shall—

14 (1) set forth the findings of the Commission  
15 under subsection (b)(1)(A);

16 (2) set forth any findings of the Commission  
17 under subsection (b)(1)(B), including any rec-  
18 ommendations relating to such findings;

19 (3) set forth the model legislation proposed  
20 under subsection (b)(1)(C); and

21 (4) include any additional findings and rec-  
22 ommendations that the Commission considers appro-  
23 priate.

24 (d) POWERS OF COMMISSION.—

1           (1) HEARINGS.—The Commission may hold  
2           such hearings, sit and act at such times and places,  
3           take such testimony, and receive such evidence as  
4           the Commission considers advisable to carry out the  
5           purposes of this section.

6           (2) INFORMATION FROM FEDERAL AGENCIES.—  
7           The Commission may secure directly from any Fed-  
8           eral department or agency such information as the  
9           Commission considers necessary to carry out the  
10          provisions of this section. Upon request of the Chair-  
11          man of the Commission, the head of such depart-  
12          ment or agency shall furnish such information to the  
13          Commission.

14          (3) POSTAL SERVICES.—The Commission may  
15          use the United States mails in the same manner and  
16          under the same conditions as other departments and  
17          agencies of the Federal Government.

18          (4) GIFTS.—The Commission may accept, use,  
19          and dispose of gifts or donations of services or prop-  
20          erty.

21          (e) COMMISSION PERSONNEL MATTERS.—

22                (1) COMPENSATION OF MEMBERS.—Each mem-  
23                ber of the Commission who is not an officer or em-  
24                ployee of the Federal Government shall be com-  
25                pensated at a rate equal to the daily equivalent of

1 the annual rate of basic pay prescribed for level IV  
2 of the Executive Schedule under section 5315 of title  
3 5, United States Code, for each day (including travel  
4 time) during which such member is engaged in the  
5 performance of the duties of the Commission. All  
6 members of the Commission who are officers or em-  
7 ployees of the United States shall serve without com-  
8 pensation in addition to that received for their serv-  
9 ices as officers or employees of the United States.

10 (2) TRAVEL EXPENSES.—The members of the  
11 Commission shall be allowed travel expenses, includ-  
12 ing per diem in lieu of subsistence, at rates author-  
13 ized for employees of agencies under subchapter I of  
14 chapter 57 of title 5, United States Code, while  
15 away from their homes or regular places of business  
16 in the performance of services for the Commission.

17 (3) STAFF.—

18 (A) IN GENERAL.—The Chairman of the  
19 Commission may, without regard to the civil  
20 service laws and regulations, appoint and termi-  
21 nate an executive director and such other addi-  
22 tional personnel as may be necessary to enable  
23 the Commission to perform its duties. The em-  
24 ployment of an executive director shall be sub-  
25 ject to confirmation by the Commission.

1           (B) COMPENSATION.—The Chairman of  
2           the Commission may fix the compensation of  
3           the executive director and other personnel with-  
4           out regard to the provisions of chapter 51 and  
5           subchapter III of chapter 53 of title 5, United  
6           States Code, relating to classification of posi-  
7           tions and General Schedule pay rates, except  
8           that the rate of pay for the executive director  
9           and other personnel may not exceed the rate  
10          payable for level V of the Executive Schedule  
11          under section 5316 of such title.

12          (4) DETAIL OF GOVERNMENT EMPLOYEES.—  
13          Any Federal Government employee may be detailed  
14          to the Commission without reimbursement, and such  
15          detail shall be without interruption or loss of civil  
16          service status or privilege.

17          (5) PROCUREMENT OF TEMPORARY AND INTER-  
18          MITTENT SERVICES.—The Chairman of the Commis-  
19          sion may procure temporary and intermittent serv-  
20          ices under section 3109(b) of title 5, United States  
21          Code, at rates for individuals which do not exceed  
22          the daily equivalent of the annual rate of basic pay  
23          prescribed for level V of the Executive Schedule  
24          under section 5316 of such title.

1 (f) TERMINATION.—The Commission shall terminate  
2 90 days after the date on which the Commission submits  
3 its report under subsection (c).

4 **SEC. 5. DEFINITIONS.**

5 In this Act:

6 (1) INTERNET.—The term “Internet” means  
7 the computer facilities and telecommunications fa-  
8 cilities, and related equipment and software, com-  
9 prising the interconnected world-wide network of  
10 computer networks that employ the Transmission  
11 Control Protocol/Internet Protocol, or any prede-  
12 cessor or successor protocol, to transmit information  
13 by wire or radio.

14 (2) INTERNET-RELATED SERVICES.—The term  
15 “Internet-related services” includes the following:

16 (A) Internet access services, including the  
17 storage, processing, and transmission of infor-  
18 mation that enables an individual to make use  
19 of the resources found via the Internet.

20 (B) Online services, including the informa-  
21 tion, information processing, electronic com-  
22 merce, and other services available to an indi-  
23 vidual as part of a package of services that are  
24 combined with Internet access service and of-  
25 fered to the user for a single price.

1           (3) TAX.—The term “tax” includes any tax, li-  
2       cense, or fee that is imposed by any governmental  
3       entity, and includes the imposition on the seller of  
4       an obligation to collect and remit a tax imposed on  
5       the buyer.

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