

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

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Jurisdictional Cer-
3 tainty Over Digital Commerce Act”.

4 **SEC. 2. CONGRESSIONAL FINDINGS.**

5 The Congress finds that—

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

9 (2) jurisdictional certainty is an important cata-
10 lyst to further advancement of electronic commerce;

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

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

17 (5) State regulation of digital commercial trans-
18 actions in digital goods and digital services will seri-
19 ously impede the growth of such transactions, de-
20 creasing the viability of electronic commerce as an
21 alternative instrument or channel of commerce; and

22 (6) while other types of transactions may de-
23 serve similar treatment, digital commercial trans-
24 actions in digital goods and digital services are the
25 type of transactions that most clearly deserve protec-
26 tion from disparate, uncoordinated, and inconsistent

1 efforts by the States to regulate Interstate com-
2 merce.

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

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

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

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

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

21 (1) to modify, impair, or supersede, or to au-
22 thorize the modification, impairment, or superseding
23 of, any authority that any State or any political sub-
24 division thereof may have to regulate any commer-

1 cial transaction that is not a digital commercial
2 transaction; or

3 (2) to establish any authority for a State or po-
4 litical subdivision of a State to regulate any commer-
5 cial transaction that is not a digital commercial
6 transaction, in contravention of any limitation on
7 such authority established under law (including any
8 statute, regulation, rule, or judicial decision).

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

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

14 (1) DIGITAL GOOD.—The term “digital good”
15 means any good or product that is transferred or de-
16 livered by means of the Internet.

17 (2) DIGITAL COMMERCIAL TRANSACTION.—The
18 term “digital commercial transaction” means a com-
19 mercial transaction for a digital good or digital serv-
20 ice that is carried out in its entirety by means of the
21 Internet.

22 (3) DIGITAL SERVICE.—The term “digital serv-
23 ice” means any service that is conducted or provided
24 by means of the Internet. Such term does not in-
25 clude any telecommunications service, as such term

1 is defined in section 3 of the Communications Act of
2 1934 (47 U.S.C. 153), or the business of insurance.

3 (4) INTERNET.—The term “Internet” means
4 collectively the myriad of computer and tele-
5 communications facilities, including equipment and
6 operating software, which comprise the inter-
7 connected world-wide network of networks that em-
8 ploy the Transmission Control Protocol/Internet
9 Protocol, or any predecessor or successor protocols
10 to such protocol, to communicate information of all
11 kinds by wire or radio.

12 (5) REGULATE.—

13 (A) IN GENERAL.—The term “regulate”
14 includes, with respect to a digital commercial
15 transaction, taking any governmental action
16 that restricts, prohibits, limits, or burdens, or
17 imposes any obstacle or interference with, such
18 a transaction.

19 (B) EXCLUSION.—Notwithstanding sub-
20 paragraph (A), such term does not include tak-
21 ing any government action, pursuant only to
22 specific statutory authority for such action
23 under the laws of such State and only on an in-
24 dividual case-by-case basis, in order to protect

1 a party to a digital commercial transaction
2 from—

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

6 (ii) fraudulent or criminal activity
7 against such party.

8 This subparagraph may not be used by a State
9 or political subdivision thereof to regulate, in a
10 general manner, the parties to a digital com-
11 mercial transaction.

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