

114TH CONGRESS
2D SESSION

H. R. 5115

To amend the Federal Trade Commission Act to include requirements for declaring an unlawful act or practice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2016

Mr. MULLIN (for himself, Mr. LANCE, and Mr. HARPER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Trade Commission Act to include requirements for declaring an unlawful act or practice, 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 “Statement on Unfair-
5 ness Reinforcement and Emphasis Act” or the “SURE
6 Act”.

7 **SEC. 2. UNLAWFUL ACT OR PRACTICE.**

8 Section 5(n) of the Federal Trade Commission Act
9 (15 U.S.C. 45(n)) is amended to read as follows:

10 “(n) UNLAWFUL ACT OR PRACTICE.—

1 “(1) SUBSTANTIAL INJURY REQUIRED.—

2 “(A) IN GENERAL.—The Commission shall
3 have no authority under this section or section
4 18 to declare unlawful an act or practice on the
5 grounds that such act or practice is unfair un-
6 less the act or practice causes or is likely to
7 cause substantial injury to consumers which is
8 not reasonably avoidable by consumers them-
9 selves and not outweighed by countervailing
10 benefits to consumers or to competition.

11 “(B) SUBSTANTIAL INJURY TO CON-
12 SUMERS.—For purposes of this subsection, an
13 act or practice does not cause and is not likely
14 to cause substantial injury to consumers if the
15 injury or harm resulting from such act or prac-
16 tice is trivial or merely speculative. An injury
17 may be sufficiently substantial if the injury
18 does a small harm to a large number of people.
19 An act or practice may be likely to cause a sub-
20 stantial injury if the act or practice raises a sig-
21 nificant risk of concrete harm.

22 “(C) CONSIDERATIONS REQUIRED.—In de-
23 termining whether an act or practice causes or
24 is likely to cause substantial injury to con-

1 sumers under this subsection, the Commission
2 shall consider the following:

3 “(i) Whether the act or practice re-
4 sults in monetary harm.

5 “(ii) Whether the act or practice re-
6 sults in unwarranted health or safety risk.

7 “(iii) Whether the act or practice re-
8 sults only in emotional or other more sub-
9 jective harm.

10 “(2) NET EFFECTS OF INJURY REQUIRED.—

11 “(A) CONSIDERATIONS REQUIRED.—An
12 act or practice is not unfair unless the act or
13 practice is injurious in its net effects. In deter-
14 mining whether an act or practice is injurious
15 in its net effects, the Commission shall consider
16 the following:

17 “(i) The various costs for a remedy,
18 including the costs to the parties directly
19 before the Commission.

20 “(ii) The burdens on society in gen-
21 eral in the form of increased paperwork,
22 increased regulatory burdens on the flow of
23 information, reduced incentives to innova-
24 tion and capital formation, and other simi-
25 lar matters.

1 “(B) CONSUMER DECISIONS.—The Com-
2 mission may not second-guess the wisdom of
3 particular consumer decisions, but may consider
4 whether the act or practice unreasonably cre-
5 ates or takes advantage of an obstacle to the
6 free exercise of consumer decisionmaking.

7 “(3) PUBLIC POLICY CONSIDERATIONS.—In de-
8 termining whether an act or practice is unfair, the
9 Commission may consider established public policies
10 as evidence to be considered with all other evidence.
11 Such public policy considerations may not serve as
12 a primary basis for such determination.”.

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