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108TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 108–5

AMERICAN SPIRIT FRAUD PREVENTION ACT

FEBRUARY 4, 2003.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 346]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 346) to amend the Federal Trade Commission Act to increase civil penalties for violations involving certain proscribed acts or practices that exploit popular reaction to an emergency or major disaster declared by the President, and to authorize the Federal Trade Commission to seek civil penalties for such violations in actions brought under section 13 of that Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 346 is to amend the Federal Trade Commission Act to increase civil penalties for violations involving unfair or deceptive acts or practices that exploit popular reaction to a national emergency or natural disaster.

BACKGROUND AND NEED FOR LEGISLATION

During times of national emergency or natural disaster, Americans generously give financial assistance to their fellow citizens in need. For example, it has been estimated that charities have received in excess of $1 billion for those affected by the September 11th terrorist acts. Unfortunately, such emergencies are often an invitation for unscrupulous persons to manipulate the emotions of generous citizens to fraudulently line their own pockets. Scam artists will use the telephone and Internet to prey on emotions—for example, by being rude when asked for specific information or insinuating that people who decline to give are unpatriotic. H.R. 346, the American Spirit Fraud Prevention Act, takes measures to prevent scam artists from capitalizing on national tragedies and takes additional steps to penalize those practices.

HEARINGS

The Committee on Energy and Commerce did not hold hearings on H.R. 346.

COMMITTEE CONSIDERATION

On Wednesday, January 29, 2003, the Full Committee on Energy and Commerce met in open markup session and ordered H.R. 346 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 346 reported. A motion by Mr. Tauzin to order H.R. 346 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held legislative or oversight hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 346 is to provide the Federal Trade Commission (FTC) with the authority to increase penalties for those who perpetuate frauds that capitalize on national emergencies or natural disasters.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 346, the American Spirit Fraud Prevention Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 30, 2003.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 346, the American Spirit Fraud Prevention Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson.

Sincerely,

WILLIAM J. GAINER
(For Barry B. Anderson, Acting Director).

Enclosure.

H.R. 346—American Spirit Fraud Prevention Act

H.R. 346 would authorize the Federal Trade Commission (FTC) to seek higher civil penalties for unfair or deceptive business practices if businesses exploit the popular reaction to a national emergency. This authority would apply to violations committed within a year after the President has declared a national emergency.

Based on information from the FTC, CBO estimates that implementing H.R. 346 would increase the agency's enforcement costs by less than $500,000 a year. Any such costs would be subject to the availability of appropriated funds. Under the bill, the FTC also may collect more civil fines, which are classified in the budget as governmental receipts (revenues). However, CBO estimates that any such increase in receipts would be negligible.

H.R. 346 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Ken Johnson. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill as the "American Spirit Fraud Prevention Act."

Section 2. Increase in penalties for unfair or deceptive acts or practices exploiting reaction to certain emergencies and major disasters

Subsection (a) of section 2 makes changes to section 5(m) of the FTC Act. If the FTC brings an administrative action under section 5 for an unfair or deceptive act or practice committed during an emergency period or disaster period, and the act or practice exploits popular reaction to the emergency or disaster, the civil penalties provided under section 5(m) are doubled from $11,000 to $22,000 per violation.

Subsection (b) of this section makes changes to section 13 of the FTC Act. If the FTC brings an action in Federal district court under section 13 for an unfair or deceptive act or practice committed during an emergency period or disaster period, and the act or practice exploits popular reaction to the emergency or disaster, after awarding any equitable relief, subsection (b) requires the court to impose civil penalties in the amount of $22,000 per violation. The civil penalties collected under section 13 are not intended to preempt any equitable relief the court may otherwise deem necessary.

For actions brought under section 5 or section 13 of the FTC Act, an "emergency period" is defined as the period of time that begins

when the President declares an emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.) and ends one year after the emergency is terminated. A "disaster period" is defined as the one year period beginning on the date the President declares an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

FEDERAL TRADE COMMISSION ACT

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SEC. 5. (a) * * *

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(m)(1)(A) * * *

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(D) In the case of a violation involving an unfair or deceptive act or practice in an emergency period or disaster period, the amount of the civil penalty under this paragraph shall be double the amount otherwise provided in this paragraph, if the act or practice exploits popular reaction to the national emergency, major disaster, or emergency that is the basis for such period.

(E) In this paragraph—

(i) the term "emergency period" means the period that—

(I) begins on the date the President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.); and

(II) ends on the expiration of the 1-year period beginning on the date of the termination of the national emergency; and

(ii) the term "disaster period" means the 1-year period beginning on the date the President declares an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

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SEC. 13. (a) * * *

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(e)(1) If a person, partnership, or corporation is found, in an action under subsection (b), to have committed a violation involving an unfair or deceptive act or practice in an emergency period or a disaster period, and if the act or practice exploits popular reaction to the national emergency, major disaster, or emergency that is the basis for such period, the court, after awarding equitable relief (if any) under any other authority of the court, shall hold the person, partnership, or corporation liable for a civil penalty of not more than $22,000 for each such violation.

(2) In this subsection—

(A) the term "emergency period" means the period that—

(i) begins on the date the President declares a national emergency under the National Emergencies Act (50 U.S.C. 1601 et seq.); and

(ii) ends on the expiration of the 1-year period beginning on the date of the termination of the national emergency; and

(B) the term "disaster period" means the 1-year period beginning on the date the President declares an emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

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