

In the House of Representatives, U. S.,

December 9 (legislative day, December 8), 2006.

Resolved, That the bill from the Senate (S. 1608) entitled “An Act to enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Undertaking Spam,*
3 *Spyware, And Fraud Enforcement With Enforcers beyond*
4 *Borders Act of 2006” or the “U.S. SAFE WEB Act of*
5 *2006”.*

6 ***SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.***

7 *Section 4 of the Federal Trade Commission Act (15*
8 *U.S.C. 44) is amended by adding at the end the following:*

9 *“‘Foreign law enforcement agency’ means—*

10 *“(1) any agency or judicial authority of a for-*
11 *ign government, including a foreign state, a political*
12 *subdivision of a foreign state, or a multinational or-*
13 *ganization constituted by and comprised of foreign*

1 *states, that is vested with law enforcement or inves-*
 2 *tigative authority in civil, criminal, or administra-*
 3 *tive matters; and*

4 *“(2) any multinational organization, to the ex-*
 5 *tent that it is acting on behalf of an entity described*
 6 *in paragraph (1).”.*

7 **SEC. 3. AVAILABILITY OF REMEDIES.**

8 *Section 5(a) of the Federal Trade Commission Act (15*
 9 *U.S.C. 45(a)) is amended by adding at the end the fol-*
 10 *lowing:*

11 *“(4)(A) For purposes of subsection (a), the term*
 12 *‘unfair or deceptive acts or practices’ includes such*
 13 *acts or practices involving foreign commerce that—*

14 *“(i) cause or are likely to cause reasonably*
 15 *foreseeable injury within the United States; or*

16 *“(ii) involve material conduct occurring*
 17 *within the United States.*

18 *“(B) All remedies available to the Commission*
 19 *with respect to unfair and deceptive acts or practices*
 20 *shall be available for acts and practices described in*
 21 *this paragraph, including restitution to domestic or*
 22 *foreign victims.”.*

1 **SEC. 4. POWERS OF THE COMMISSION.**

2 (a) *PUBLICATION OF INFORMATION; REPORTS.*—Sec-
 3 tion 6(f) of the Federal Trade Commission Act (15 U.S.C.
 4 46(f)) is amended—

5 (1) by inserting “(1)” after “such information”
 6 the first place it appears; and

7 (2) by striking “purposes.” and inserting “pur-
 8 poses, and (2) to any officer or employee of any for-
 9 eign law enforcement agency under the same cir-
 10 cumstances that making material available to foreign
 11 law enforcement agencies is permitted under section
 12 21(b).”.

13 (b) *OTHER POWERS OF THE COMMISSION.*—Section 6
 14 of the Federal Trade Commission Act (15 U.S.C. 46) is fur-
 15 ther amended by inserting after subsection (i) and before
 16 the proviso the following:

17 “(j) *INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW*
 18 *ENFORCEMENT AGENCIES.*—

19 “(1) *IN GENERAL.*—Upon a written request from
 20 a foreign law enforcement agency to provide assist-
 21 ance in accordance with this subsection, if the re-
 22 questing agency states that it is investigating, or en-
 23 gaging in enforcement proceedings against, possible
 24 violations of laws prohibiting fraudulent or deceptive
 25 commercial practices, or other practices substantially
 26 similar to practices prohibited by any provision of

1 *the laws administered by the Commission, other than*
2 *Federal antitrust laws (as defined in section 12(5) of*
3 *the International Antitrust Enforcement Assistance*
4 *Act of 1994 (15 U.S.C. 6211(5))), to provide the as-*
5 *sistance described in paragraph (2) without requiring*
6 *that the conduct identified in the request constitute a*
7 *violation of the laws of the United States.*

8 “(2) *TYPE OF ASSISTANCE.*—*In providing assist-*
9 *ance to a foreign law enforcement agency under this*
10 *subsection, the Commission may—*

11 “(A) *conduct such investigation as the Com-*
12 *mission deems necessary to collect information*
13 *and evidence pertinent to the request for assist-*
14 *ance, using all investigative powers authorized*
15 *by this Act; and*

16 “(B) *when the request is from an agency*
17 *acting to investigate or pursue the enforcement of*
18 *civil laws, or when the Attorney General refers*
19 *a request to the Commission from an agency act-*
20 *ing to investigate or pursue the enforcement of*
21 *criminal laws, seek and accept appointment by*
22 *a United States district court of Commission at-*
23 *torneys to provide assistance to foreign and*
24 *international tribunals and to litigants before*
25 *such tribunals on behalf of a foreign law enforce-*

1 *ment agency pursuant to section 1782 of title 28,*
2 *United States Code.*

3 “(3) *CRITERIA FOR DETERMINATION.—In decid-*
4 *ing whether to provide such assistance, the Commis-*
5 *sion shall consider all relevant factors, including—*

6 “(A) *whether the requesting agency has*
7 *agreed to provide or will provide reciprocal as-*
8 *sistance to the Commission;*

9 “(B) *whether compliance with the request*
10 *would prejudice the public interest of the United*
11 *States; and*

12 “(C) *whether the requesting agency’s inves-*
13 *tigation or enforcement proceeding concerns acts*
14 *or practices that cause or are likely to cause in-*
15 *jury to a significant number of persons.*

16 “(4) *INTERNATIONAL AGREEMENTS.—If a foreign*
17 *law enforcement agency has set forth a legal basis for*
18 *requiring execution of an international agreement as*
19 *a condition for reciprocal assistance, or as a condi-*
20 *tion for provision of materials or information to the*
21 *Commission, the Commission, with prior approval*
22 *and ongoing oversight of the Secretary of State, and*
23 *with final approval of the agreement by the Secretary*
24 *of State, may negotiate and conclude an international*
25 *agreement, in the name of either the United States or*

1 *the Commission, for the purpose of obtaining such as-*
2 *sistance, materials, or information. The Commission*
3 *may undertake in such an international agreement*
4 *to—*

5 *“(A) provide assistance using the powers set*
6 *forth in this subsection;*

7 *“(B) disclose materials and information in*
8 *accordance with subsection (f) and section 21(b);*
9 *and*

10 *“(C) engage in further cooperation, and*
11 *protect materials and information received from*
12 *disclosure, as authorized by this Act.*

13 *“(5) ADDITIONAL AUTHORITY.—The authority*
14 *provided by this subsection is in addition to, and not*
15 *in lieu of, any other authority vested in the Commis-*
16 *sion or any other officer of the United States.*

17 *“(6) LIMITATION.—The authority granted by*
18 *this subsection shall not authorize the Commission to*
19 *take any action or exercise any power with respect to*
20 *a bank, a savings and loan institution described in*
21 *section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal cred-*
22 *it union described in section 18(f)(4) (15 U.S.C.*
23 *57a(f)(4)), or a common carrier subject to the Act to*
24 *regulate commerce, except in accordance with the un-*

1 *designated proviso following the last designated sub-*
2 *section of section 6 (15 U.S.C. 46).*

3 “(7) *ASSISTANCE TO CERTAIN COUNTRIES.—The*
4 *Commission may not provide investigative assistance*
5 *under this subsection to a foreign law enforcement*
6 *agency from a foreign state that the Secretary of*
7 *State has determined, in accordance with section 6(j)*
8 *of the Export Administration Act of 1979 (50 U.S.C.*
9 *App. 2405(j)), has repeatedly provided support for*
10 *acts of international terrorism, unless and until such*
11 *determination is rescinded pursuant to section 6(j)(4)*
12 *of that Act (50 U.S.C. App. 2405(j)(4)).*

13 “(k) *REFERRAL OF EVIDENCE FOR CRIMINAL PRO-*
14 *CEEDINGS.—*

15 “(1) *IN GENERAL.—Whenever the Commission*
16 *obtains evidence that any person, partnership, or cor-*
17 *poration, either domestic or foreign, has engaged in*
18 *conduct that may constitute a violation of Federal*
19 *criminal law, to transmit such evidence to the Attor-*
20 *ney General, who may institute criminal proceedings*
21 *under appropriate statutes. Nothing in this para-*
22 *graph affects any other authority of the Commission*
23 *to disclose information.*

24 “(2) *INTERNATIONAL INFORMATION.—The Com-*
25 *mission shall endeavor to ensure, with respect to*

1 *memoranda of understanding and international*
 2 *agreements it may conclude, that material it has ob-*
 3 *tained from foreign law enforcement agencies acting*
 4 *to investigate or pursue the enforcement of foreign*
 5 *criminal laws may be used for the purpose of inves-*
 6 *tigation, prosecution, or prevention of violations of*
 7 *United States criminal laws.*

8 *“(l) EXPENDITURES FOR COOPERATIVE ARRANGE-*
 9 *MENTS.—To expend appropriated funds for—*

10 *“(1) operating expenses and other costs of bilat-*
 11 *eral and multilateral cooperative law enforcement*
 12 *groups conducting activities of interest to the Com-*
 13 *mission and in which the Commission participates;*
 14 *and*

15 *“(2) expenses for consultations and meetings*
 16 *hosted by the Commission with foreign government*
 17 *agency officials, members of their delegations, appro-*
 18 *priate representatives and staff to exchange views con-*
 19 *cerning developments relating to the Commission’s*
 20 *mission, development and implementation of coopera-*
 21 *tion agreements, and provision of technical assistance*
 22 *for the development of foreign consumer protection or*
 23 *competition regimes, such expenses to include nec-*
 24 *essary administrative and logistic expenses and the*
 25 *expenses of Commission staff and foreign invitees in*

1 *attendance at such consultations and meetings includ-*
 2 *ing—*

3 *“(A) such incidental expenses as meals*
 4 *taken in the course of such attendance;*

5 *“(B) any travel and transportation to or*
 6 *from such meetings; and*

7 *“(C) any other related lodging or subsist-*
 8 *ence.”.*

9 *(c) AUTHORIZATION OF APPROPRIATIONS.—The Fed-*
 10 *eral Trade Commission is authorized to expend appro-*
 11 *priated funds not to exceed \$100,000 per fiscal year for pur-*
 12 *poses of section 6(l) of the Federal Trade Commission Act*
 13 *(15 U.S.C. 46(l)) (as added by subsection (b) of this sec-*
 14 *tion), including operating expenses and other costs of the*
 15 *following bilateral and multilateral cooperative law enforce-*
 16 *ment agencies and organizations:*

17 *(1) The International Consumer Protection and*
 18 *Enforcement Network.*

19 *(2) The International Competition Network.*

20 *(3) The Mexico-U.S.-Canada Health Fraud Task*
 21 *Force.*

22 *(4) Project Emptor.*

23 *(5) The Toronto Strategic Partnership and other*
 24 *regional partnerships with a nexus in a Canadian*
 25 *province.*

1 (d) *CONFORMING AMENDMENT.*—Section 6 of the Fed-
 2 eral Trade Commission Act (15 U.S.C. 46) is amended by
 3 striking “clauses (a) and (b)” in the proviso following sub-
 4 section (l) (as added by subsection (b) of this section) and
 5 inserting “subsections (a), (b), and (j)”.

6 **SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.**

7 Section 16 of the Federal Trade Commission Act (15
 8 U.S.C. 56) is amended by adding at the end the following:

9 “(c) *FOREIGN LITIGATION.*—

10 “(1) *COMMISSION ATTORNEYS.*—With the concur-
 11 rence of the Attorney General, the Commission may
 12 designate Commission attorneys to assist the Attorney
 13 General in connection with litigation in foreign
 14 courts on particular matters in which the Commis-
 15 sion has an interest.

16 “(2) *REIMBURSEMENT FOR FOREIGN COUN-*
 17 *SEL.*—The Commission is authorized to expend ap-
 18 propriated funds, upon agreement with the Attorney
 19 General, to reimburse the Attorney General for the re-
 20 tention of foreign counsel for litigation in foreign
 21 courts and for expenses related to litigation in foreign
 22 courts in which the Commission has an interest.

23 “(3) *LIMITATION ON USE OF FUNDS.*—Nothing
 24 in this subsection authorizes the payment of claims or
 25 judgments from any source other than the permanent

1 *and indefinite appropriation authorized by section*
 2 *1304 of title 31, United States Code.*

3 “(4) *OTHER AUTHORITY.*—*The authority pro-*
 4 *vided by this subsection is in addition to any other*
 5 *authority of the Commission or the Attorney Gen-*
 6 *eral.”.*

7 **SEC. 6. SHARING INFORMATION WITH FOREIGN LAW EN-**
 8 **FORCEMENT AGENCIES.**

9 (a) *MATERIAL OBTAINED PURSUANT TO COMPULSORY*
 10 *PROCESS.*—*Section 21(b)(6) of the Federal Trade Commis-*
 11 *sion Act (15 U.S.C. 57b–2(b)(6)) is amended by adding at*
 12 *the end “The custodian may make such material available*
 13 *to any foreign law enforcement agency upon the prior cer-*
 14 *tification of an appropriate official of any such foreign law*
 15 *enforcement agency, either by a prior agreement or memo-*
 16 *randum of understanding with the Commission or by other*
 17 *written certification, that such material will be maintained*
 18 *in confidence and will be used only for official law enforce-*
 19 *ment purposes, if—*

20 “(A) *the foreign law enforcement agency has set*
 21 *forth a bona fide legal basis for its authority to main-*
 22 *tain the material in confidence;*

23 “(B) *the materials are to be used for purposes of*
 24 *investigating, or engaging in enforcement proceedings*
 25 *related to, possible violations of—*

1 “(i) foreign laws prohibiting fraudulent or
2 deceptive commercial practices, or other practices
3 substantially similar to practices prohibited by
4 any law administered by the Commission;

5 “(ii) a law administered by the Commis-
6 sion, if disclosure of the material would further
7 a Commission investigation or enforcement pro-
8 ceeding; or

9 “(iii) with the approval of the Attorney
10 General, other foreign criminal laws, if such for-
11 eign criminal laws are offenses defined in or cov-
12 ered by a criminal mutual legal assistance treaty
13 in force between the government of the United
14 States and the foreign law enforcement agency’s
15 government;

16 “(C) the appropriate Federal banking agency (as
17 defined in section 3(q) of the Federal Deposit Insur-
18 ance Act (12 U.S.C. 1813(q)) or, in the case of a Fed-
19 eral credit union, the National Credit Union Admin-
20 istration, has given its prior approval if the materials
21 to be provided under subparagraph (B) are requested
22 by the foreign law enforcement agency for the purpose
23 of investigating, or engaging in enforcement pro-
24 ceedings based on, possible violations of law by a
25 bank, a savings and loan institution described in sec-

1 *tion 18(f)(3) of the Federal Trade Commission Act*
 2 *(15 U.S.C. 57a(f)(3)), or a Federal credit union de-*
 3 *scribed in section 18(f)(4) of the Federal Trade Com-*
 4 *mission Act (15 U.S.C. 57a(f)(4)); and*

5 *“(D) the foreign law enforcement agency is not*
 6 *from a foreign state that the Secretary of State has*
 7 *determined, in accordance with section 6(j) of the Ex-*
 8 *port Administration Act of 1979 (50 U.S.C. App.*
 9 *2405(j)), has repeatedly provided support for acts of*
 10 *international terrorism, unless and until such deter-*
 11 *mination is rescinded pursuant to section 6(j)(4) of*
 12 *that Act (50 U.S.C. App. 2405(j)(4)).*

13 *Nothing in the preceding sentence authorizes the disclosure*
 14 *of material obtained in connection with the administration*
 15 *of the Federal antitrust laws or foreign antitrust laws (as*
 16 *defined in paragraphs (5) and (7), respectively, of section*
 17 *12 of the International Antitrust Enforcement Assistance*
 18 *Act of 1994 (15 U.S.C. 6211)) to any officer or employee*
 19 *of a foreign law enforcement agency.”.*

20 *(b) INFORMATION SUPPLIED BY AND ABOUT FOREIGN*
 21 *SOURCES.—Section 21(f) of the Federal Trade Commission*
 22 *Act (15 U.S.C. 57b–2(f)) is amended to read as follows:*

23 *“(f) EXEMPTION FROM PUBLIC DISCLOSURE.—*

24 *“(1) IN GENERAL.—Any material which is re-*
 25 *ceived by the Commission in any investigation, a*

1 *purpose of which is to determine whether any person*
 2 *may have violated any provision of the laws adminis-*
 3 *tered by the Commission, and which is provided pur-*
 4 *suant to any compulsory process under this Act or*
 5 *which is provided voluntarily in place of such com-*
 6 *pulsory process shall not be required to be disclosed*
 7 *under section 552 of title 5, United States Code, or*
 8 *any other provision of law, except as provided in*
 9 *paragraph (2)(B) of this section.*

10 “(2) *MATERIAL OBTAINED FROM A FOREIGN*
 11 *SOURCE.—*

12 “(A) *IN GENERAL.—Except as provided in*
 13 *subparagraph (B) of this paragraph, the Com-*
 14 *mission shall not be required to disclose under*
 15 *section 552 of title 5, United States Code, or any*
 16 *other provision of law—*

17 “(i) *any material obtained from a for-*
 18 *eign law enforcement agency or other for-*
 19 *eign government agency, if the foreign law*
 20 *enforcement agency or other foreign govern-*
 21 *ment agency has requested confidential*
 22 *treatment, or has precluded such disclosure*
 23 *under other use limitations, as a condition*
 24 *of providing the material;*

1 “(ii) any material reflecting a con-
 2 sumer complaint obtained from any other
 3 foreign source, if that foreign source sup-
 4 plying the material has requested confiden-
 5 tial treatment as a condition of providing
 6 the material; or

7 “(iii) any material reflecting a con-
 8 sumer complaint submitted to a Commis-
 9 sion reporting mechanism sponsored in part
 10 by foreign law enforcement agencies or other
 11 foreign government agencies.

12 “(B) SAVINGS PROVISION.—Nothing in this
 13 subsection shall authorize the Commission to
 14 withhold information from the Congress or pre-
 15 vent the Commission from complying with an
 16 order of a court of the United States in an ac-
 17 tion commenced by the United States or the
 18 Commission.”.

19 **SEC. 7. CONFIDENTIALITY; DELAYED NOTICE OF PROCESS.**

20 (a) IN GENERAL.—The Federal Trade Commission Act
 21 (15 U.S.C. 41 et seq.) is amended by inserting after section
 22 21 the following:

1 **“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**
 2 **COMPULSORY PROCESS FOR CERTAIN THIRD**
 3 **PARTIES.**

4 “(a) *APPLICATION WITH OTHER LAWS.—The Right to*
 5 *Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter*
 6 *121 of title 18, United States Code, shall apply with respect*
 7 *to the Commission, except as otherwise provided in this sec-*
 8 *tion.*

9 “(b) *PROCEDURES FOR DELAY OF NOTIFICATION OR*
 10 *PROHIBITION OF DISCLOSURE.—The procedures for delay*
 11 *of notification or prohibition of disclosure under the Right*
 12 *to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chap-*
 13 *ter 121 of title 18, United States Code, including procedures*
 14 *for extensions of such delays or prohibitions, shall be avail-*
 15 *able to the Commission, provided that, notwithstanding any*
 16 *provision therein—*

17 “(1) *a court may issue an order delaying notifi-*
 18 *cation or prohibiting disclosure (including extending*
 19 *such an order) in accordance with the procedures of*
 20 *section 1109 of the Right to Financial Privacy Act*
 21 *(12 U.S.C. 3409) (if notification would otherwise be*
 22 *required under that Act), or section 2705 of title 18,*
 23 *United States Code, (if notification would otherwise*
 24 *be required under chapter 121 of that title), if the*
 25 *presiding judge or magistrate judge finds that there*
 26 *is reason to believe that such notification or disclosure*

1 *may cause an adverse result as defined in subsection*
2 *(g) of this section; and*

3 “(2) *if notification would otherwise be required*
4 *under chapter 121 of title 18, United States Code, the*
5 *Commission may delay notification (including ex-*
6 *tending such a delay) upon the execution of a written*
7 *certification in accordance with the procedures of sec-*
8 *tion 2705 of that title if the Commission finds that*
9 *there is reason to believe that notification may cause*
10 *an adverse result as defined in subsection (g) of this*
11 *section.*

12 “(c) *EX PARTE APPLICATION BY COMMISSION.—*

13 “(1) *IN GENERAL.—If neither notification nor*
14 *delayed notification by the Commission is required*
15 *under the Right to Financial Privacy Act (12 U.S.C.*
16 *3401 et seq.) or chapter 121 of title 18, United States*
17 *Code, the Commission may apply ex parte to a pre-*
18 *siding judge or magistrate judge for an order prohib-*
19 *iting the recipient of compulsory process issued by the*
20 *Commission from disclosing to any other person the*
21 *existence of the process, notwithstanding any law or*
22 *regulation of the United States, or under the constitu-*
23 *tion, or any law or regulation, of any State, political*
24 *subdivision of a State, territory of the United States,*
25 *or the District of Columbia. The presiding judge or*

1 *magistrate judge may enter such an order granting*
2 *the requested prohibition of disclosure for a period not*
3 *to exceed 60 days if there is reason to believe that dis-*
4 *closure may cause an adverse result as defined in sub-*
5 *section (g). The presiding judge or magistrate judge*
6 *may grant extensions of this order of up to 30 days*
7 *each in accordance with this subsection, except that in*
8 *no event shall the prohibition continue in force for*
9 *more than a total of 9 months.*

10 “(2) *APPLICATION.—This subsection shall apply*
11 *only in connection with compulsory process issued by*
12 *the Commission where the recipient of such process is*
13 *not a subject of the investigation or proceeding at the*
14 *time such process is issued.*

15 “(3) *LIMITATION.—No order issued under this*
16 *subsection shall prohibit any recipient from disclosing*
17 *to a Federal agency that the recipient has received*
18 *compulsory process from the Commission.*

19 “(d) *NO LIABILITY FOR FAILURE TO NOTIFY.—If nei-*
20 *ther notification nor delayed notification by the Commis-*
21 *sion is required under the Right to Financial Privacy Act*
22 *(12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United*
23 *States Code, the recipient of compulsory process issued by*
24 *the Commission under this Act shall not be liable under*
25 *any law or regulation of the United States, or under the*

1 *constitution, or any law or regulation, of any State, polit-*
 2 *ical subdivision of a State, territory of the United States,*
 3 *or the District of Columbia, or under any contract or other*
 4 *legally enforceable agreement, for failure to provide notice*
 5 *to any person that such process has been issued or that the*
 6 *recipient has provided information in response to such*
 7 *process. The preceding sentence does not exempt any recipi-*
 8 *ent from liability for—*

9 “(1) *the underlying conduct reported;*

10 “(2) *a failure to comply with the record reten-*
 11 *tion requirements under section 1104(c) of the Right*
 12 *to Financial Privacy Act (12 U.S.C. 3404), where ap-*
 13 *plicable; or*

14 “(3) *any failure to comply with any obligation*
 15 *the recipient may have to disclose to a Federal agency*
 16 *that the recipient has received compulsory process*
 17 *from the Commission or intends to provide or has*
 18 *provided information to the Commission in response*
 19 *to such process.*

20 “(e) *VENUE AND PROCEDURE.—*

21 “(1) *IN GENERAL.—All judicial proceedings ini-*
 22 *tiated by the Commission under the Right to Finan-*
 23 *cial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121*
 24 *of title 18, United States Code, or this section may*
 25 *be brought in the United States District Court for the*

1 *District of Columbia or any other appropriate United*
 2 *States District Court. All ex parte applications by the*
 3 *Commission under this section related to a single in-*
 4 *vestigation may be brought in a single proceeding.*

5 “(2) *IN CAMERA PROCEEDINGS.*—*Upon applica-*
 6 *tion by the Commission, all judicial proceedings pur-*
 7 *suant to this section shall be held in camera and the*
 8 *records thereof sealed until expiration of the period of*
 9 *delay or such other date as the presiding judge or*
 10 *magistrate judge may permit.*

11 “(f) *SECTION NOT TO APPLY TO ANTITRUST INVES-*
 12 *TIGATIONS OR PROCEEDINGS.*—*This section shall not apply*
 13 *to an investigation or proceeding related to the administra-*
 14 *tion of Federal antitrust laws or foreign antitrust laws (as*
 15 *defined in paragraphs (5) and (7), respectively, of section*
 16 *12 of the International Antitrust Enforcement Assistance*
 17 *Act of 1994 (15 U.S.C. 6211).*

18 “(g) *ADVERSE RESULT DEFINED.*—*For purposes of*
 19 *this section the term ‘adverse result’ means—*

20 “(1) *endangering the life or physical safety of an*
 21 *individual;*

22 “(2) *flight from prosecution;*

23 “(3) *the destruction of, or tampering with, evi-*
 24 *dence;*

25 “(4) *the intimidation of potential witnesses; or*

1 “(5) otherwise seriously jeopardizing an inves-
2 tigation or proceeding related to fraudulent or decep-
3 tive commercial practices or persons involved in such
4 practices, or unduly delaying a trial related to such
5 practices or persons involved in such practices, in-
6 cluding, but not limited to, by—

7 “(A) the transfer outside the territorial lim-
8 its of the United States of assets or records re-
9 lated to fraudulent or deceptive commercial prac-
10 tices or related to persons involved in such prac-
11 tices;

12 “(B) impeding the ability of the Commis-
13 sion to identify persons involved in fraudulent or
14 deceptive commercial practices, or to trace the
15 source or disposition of funds related to such
16 practices; or

17 “(C) the dissipation, fraudulent transfer, or
18 concealment of assets subject to recovery by the
19 Commission.”.

20 (b) CONFORMING AMENDMENT.—Section 16(a)(2) of
21 the Federal Trade Commission Act (15 U.S.C. 56(a)(2)) is
22 amended—

23 (1) in subparagraph (C) by striking “or” after
24 the semicolon;

1 (2) in subparagraph (D) by inserting “or” after
2 the semicolon; and

3 (3) by inserting after subparagraph (D) the fol-
4 lowing:

5 “(E) under section 21A of this Act;”.

6 **SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF IN-**
7 **FORMATION.**

8 *The Federal Trade Commission Act (15 U.S.C. 41 et*
9 *seq.) is further amended by adding after section 21A (as*
10 *added by section 7 of this Act) the following:*

11 **“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF**
12 **INFORMATION.**

13 “(a) *IN GENERAL.*—

14 “(1) *NO LIABILITY FOR PROVIDING CERTAIN MA-*
15 *TERIAL.*—An entity described in paragraphs (2) or
16 (3) of subsection (d) that voluntarily provides mate-
17 rial to the Commission that such entity reasonably
18 believes is relevant to—

19 “(A) a possible unfair or deceptive act or
20 practice, as defined in section 5(a) of this Act;
21 or

22 “(B) assets subject to recovery by the Com-
23 mission, including assets located in foreign juris-
24 dictions;

1 *shall not be liable to any person under any law or*
 2 *regulation of the United States, or under the constitu-*
 3 *tion, or any law or regulation, of any State, political*
 4 *subdivision of a State, territory of the United States,*
 5 *or the District of Columbia, for such provision of ma-*
 6 *terial or for any failure to provide notice of such pro-*
 7 *vision of material or of intention to so provide mate-*
 8 *rial.*

9 “(2) *LIMITATIONS.—Nothing in this subsection*
 10 *shall be construed to exempt any such entity from li-*
 11 *ability—*

12 “(A) *for the underlying conduct reported; or*

13 “(B) *to any Federal agency for providing*
 14 *such material or for any failure to comply with*
 15 *any obligation the entity may have to notify a*
 16 *Federal agency prior to providing such material*
 17 *to the Commission.*

18 “(b) *CERTAIN FINANCIAL INSTITUTIONS.—An entity*
 19 *described in paragraph (1) of subsection (d) shall, in ac-*
 20 *cordance with section 5318(g)(3) of title 31, United States*
 21 *Code, be exempt from liability for making a voluntary dis-*
 22 *closure to the Commission of any possible violation of law*
 23 *or regulation, including—*

24 “(1) *a disclosure regarding assets, including as-*
 25 *sets located in foreign jurisdictions—*

1 “(A) *related to possibly fraudulent or decep-*
2 *tive commercial practices;*

3 “(B) *related to persons involved in such*
4 *practices; or*

5 “(C) *otherwise subject to recovery by the*
6 *Commission; or*

7 “(2) *a disclosure regarding suspicious chargeback*
8 *rates related to possibly fraudulent or deceptive com-*
9 *mercial practices.*

10 “(c) *CONSUMER COMPLAINTS.—Any entity described*
11 *in subsection (d) that voluntarily provides consumer com-*
12 *plaints sent to it, or information contained therein, to the*
13 *Commission shall not be liable to any person under any*
14 *law or regulation of the United States, or under the con-*
15 *stitution, or any law or regulation, of any State, political*
16 *subdivision of a State, territory of the United States, or*
17 *the District of Columbia, for such provision of material or*
18 *for any failure to provide notice of such provision of mate-*
19 *rial or of intention to so provide material. This subsection*
20 *shall not provide any exemption from liability for the un-*
21 *derlying conduct.*

22 “(d) *APPLICATION.—This section applies to the fol-*
23 *lowing entities, whether foreign or domestic:*

24 “(1) *A financial institution as defined in section*
25 *5312 of title 31, United States Code.*

1 “(2) To the extent not included in paragraph
 2 (1), a bank or thrift institution, a commercial bank
 3 or trust company, an investment company, a credit
 4 card issuer, an operator of a credit card system, and
 5 an issuer, redeemer, or cashier of travelers’ checks,
 6 money orders, or similar instruments.

7 “(3) A courier service, a commercial mail receiv-
 8 ing agency, an industry membership organization, a
 9 payment system provider, a consumer reporting agen-
 10 cy, a domain name registrar or registry acting as
 11 such, and a provider of alternative dispute resolution
 12 services.

13 “(4) An Internet service provider or provider of
 14 telephone services.”.

15 **SEC. 9. STAFF EXCHANGES.**

16 *The Federal Trade Commission Act (15 U.S.C. 41 et*
 17 *seq.) is amended by adding after section 25 the following*
 18 *new section:*

19 **“SEC. 25A. STAFF EXCHANGES.**

20 “(a) *IN GENERAL.*—*The Commission may—*

21 “(1) *retain or employ officers or employees of*
 22 *foreign government agencies on a temporary basis as*
 23 *employees of the Commission pursuant to section 2 of*
 24 *this Act or section 3101 or section 3109 of title 5,*
 25 *United States Code; and*

1 “(2) detail officers or employees of the Commis-
 2 sion to work on a temporary basis for appropriate
 3 foreign government agencies.

4 “(b) *RECIPROCITY AND REIMBURSEMENT.*—The staff
 5 arrangements described in subsection (a) need not be recip-
 6 rocal. The Commission may accept payment or reimburse-
 7 ment, in cash or in kind, from a foreign government agency
 8 to which this section is applicable, or payment or reim-
 9 bursement made on behalf of such agency, for expenses in-
 10 curred by the Commission, its members, and employees in
 11 carrying out such arrangements.

12 “(c) *STANDARDS OF CONDUCT.*—A person appointed
 13 under subsection (a)(1) shall be subject to the provisions of
 14 law relating to ethics, conflicts of interest, corruption, and
 15 any other criminal or civil statute or regulation governing
 16 the standards of conduct for Federal employees that are ap-
 17 plicable to the type of appointment.”.

18 **SEC. 10. INFORMATION SHARING WITH FINANCIAL REGU-**
 19 **LATORS.**

20 Section 1112(e) of the Right to Financial Privacy Act
 21 of 1978 (12 U.S.C. 3412(e)) is amended by inserting “the
 22 Federal Trade Commission,” after “the Securities and Ex-
 23 change Commission,”.

1 **SEC. 11. AUTHORITY TO ACCEPT REIMBURSEMENTS.**

2 *The Federal Trade Commission Act (15 U.S.C. 41 et*
 3 *seq.) is amended—*

4 *(1) by redesignating section 26 as section 28;*

5 *and*

6 *(2) by inserting after section 25A, as added by*
 7 *section 9 of this Act, the following:*

8 **“SEC. 26. REIMBURSEMENT OF EXPENSES.**

9 *“The Commission may accept payment or reimburse-*
 10 *ment, in cash or in kind, from a domestic or foreign law*
 11 *enforcement agency, or payment or reimbursement made on*
 12 *behalf of such agency, for expenses incurred by the Commis-*
 13 *sion, its members, or employees in carrying out any activ-*
 14 *ity pursuant to a statute administered by the Commission*
 15 *without regard to any other provision of law. Any such*
 16 *payments or reimbursements shall be considered a reim-*
 17 *bursement to the appropriated funds of the Commission.”.*

18 **SEC. 12. PRESERVATION OF EXISTING AUTHORITY.**

19 *The authority provided by this Act, and by the Federal*
 20 *Trade Commission Act (15 U.S.C. 41 et seq.) and the Right*
 21 *to Financial Privacy Act (12 U.S.C. 3401 et seq.), as such*
 22 *Acts are amended by this Act, is in addition to, and not*
 23 *in lieu of, any other authority vested in the Federal Trade*
 24 *Commission or any other officer of the United States.*

1 **SEC. 13. SUNSET.**

2 *This Act , and the amendments made by this Act ,*
 3 *shall cease to have effect on the date that is 7 years after*
 4 *the date of enactment of this Act.*

5 **SEC. 14. REPORT.**

6 *Not later than 3 years after the date of enactment of*
 7 *this Act, the Federal Trade Commission shall transmit to*
 8 *Congress a report describing its use of and experience with*
 9 *the authority granted by this Act, along with any rec-*
 10 *ommendations for additional legislation. The report shall*
 11 *include—*

12 *(1) the number of cross-border complaints re-*
 13 *ceived by the Commission;*

14 *(2) identification of the foreign agencies to which*
 15 *the Commission has provided nonpublic investigative*
 16 *information under this Act;*

17 *(3) the number of times the Commission has used*
 18 *compulsory process on behalf of foreign law enforce-*
 19 *ment agencies pursuant to section 6 of the Federal*
 20 *Trade Commission Act (15 U.S.C. 46), as amended*
 21 *by section 4 of this Act;*

22 *(4) a list of international agreements and memo-*
 23 *randa of understanding executed by the Commission*
 24 *that relate to this Act;*

25 *(5) the number of times the Commission has*
 26 *sought delay of notice pursuant to section 21A of the*

1 *Federal Trade Commission Act, as added by section*
2 *7 of this Act, and the number of times a court has*
3 *granted a delay;*

4 *(6) a description of the types of information pri-*
5 *ivate entities have provided voluntarily pursuant to*
6 *section 21B of the Federal Trade Commission Act, as*
7 *added by section 8 of this Act;*

8 *(7) a description of the results of cooperation*
9 *with foreign law enforcement agencies under section*
10 *21 of the Federal Trade Commission Act (15 U.S.C.*
11 *57–2) as amended by section 6 of this Act;*

12 *(8) an analysis of whether the lack of an exemp-*
13 *tion from the disclosure requirements of section 552 of*
14 *title 5, United States Code, with regard to informa-*
15 *tion or material voluntarily provided relevant to pos-*
16 *sible unfair or deceptive acts or practices, has hin-*
17 *dered the Commission in investigating or engaging in*
18 *enforcement proceedings against such practices; and*

19 *(9) a description of Commission litigation*
20 *brought in foreign courts.*

Attest:

Clerk.

109TH CONGRESS
2D SESSION

S. 1608

AMENDMENT