

Calendar No. 517

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-256 }

A BILL TO EXTEND THE UNDERTAKING
SPAM, SPYWARE, AND FRAUD ENFORCE-
MENT WITH ENFORCERS BEYOND BOR-
DERS ACT OF 2006, AND FOR OTHER PUR-
POSES

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3132



AUGUST 12, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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A BILL TO EXTEND THE UNDERTAKING SPAM, SPYWARE, AND FRAUD ENFORCEMENT WITH ENFORCERS BEYOND BORDERS ACT OF 2006, AND FOR OTHER PURPOSES

—————
AUGUST 12, 2020.—Ordered to be printed
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Mr. WICKER, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 3132]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3132) to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to extend the foreign law enforcement authorities provided to the Federal Trade Commission (FTC or Commission) in the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (U.S. SAFE WEB Act of 2006)¹ from September 30, 2020, to September 30, 2027. This bill would ensure the FTC continues to have cross-border enforcement authority and the international cooperation tools it needs to protect American consumers from unfair or deceptive acts or practices that originate abroad.

BACKGROUND AND NEEDS

The U.S. SAFE WEB Act was enacted into law on December 22, 2006. The Act amended the FTC Act and is intended to improve

¹Public Law 109-455.

the Commission's ability to combat unfair or deceptive acts or practices that are international in scope.²

Prior to the enactment of the U.S. SAFE WEB Act of 2006, the FTC reported to Congress that the globalization of trade, improvements in international telecommunications, and the advent of the internet led to a rapid growth in fraudulent and deceptive cross-border marketing scams that harmed American consumers.³ These scams included the proliferation of spam, spyware, pyramid schemes, false product claims, and other fraudulent activities originating outside of the United States.⁴ To combat fraud, the FTC sought to improve its cooperation with its international counterparts but was challenged by domestic laws that prevented information sharing and effective coordination with foreign governments and impeded investigations across borders.⁵

In June 2005, the FTC submitted legislative recommendations to Congress based on the Commission's experiences in its cross-border investigations and cases.⁶ The FTC's recommendations included proposals that would strengthen the FTC's ability to fight cross-border fraud.⁷ On December 8, 2006, Congress passed the U.S. SAFE WEB Act.

S. 3132 would ensure that the FTC maintains its authority, in appropriate consumer protection matters, to share information and coordinate with foreign law enforcement agencies to protect American consumers from unfair or deceptive acts or practices that originate abroad.

SUMMARY OF PROVISIONS

S. 3132 would do the following:

- Amend the sunset date of the U.S. SAFE WEB Act from September 30, 2020 to September 30, 2027.
- Extend the FTC's authority to:
 - Share compelled and confidential information with foreign law enforcement agencies in appropriate consumer protection matters;
 - Provide investigative assistance in consumer protection matters to foreign law enforcement agencies;
 - Initiate a proceeding under an existing Federal statute to obtain testimony, documents, or other evidence or information for use in foreign or international proceedings;
 - Obtain information it would not otherwise receive from foreign entities that were previously concerned about public disclosure of their information;
 - Assist the Attorney General in connection with litigation in foreign courts on relevant matters; and
 - Enter into binding international consumer protection agreements (with the approval of the Department of State) when such agreements are required as a condition for providing information or reciprocal assistance.

²Federal Trade Commission, *The U.S. SAFE WEB Act: The First Three Years. A Report to Congress*, Dec. 2009 (<https://www.ftc.gov/sites/default/files/attachments/international-consumer-protection/p035303safewebact2009.pdf>) (accessed Jun. 29, 2020).

³Id.

⁴Id.

⁵Id.

⁶Id.

⁷Id.

- Require the FTC to issue a report to Congress within 3 years after the date of enactment on the Commission's use and experience with the authority granted by the U.S. SAFE WEB Act.

LEGISLATIVE HISTORY

S. 3132 was introduced on December 19, 2019, by Senator Moran (for himself and Senator Blumenthal) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On March 11, 2020, the Committee met in open Executive Session and, by voice vote, ordered S. 3132 reported favorably without amendment.

S. 3132 is identical to H.R. 4779, introduced on October 22, 2019, by Representative McMorris Rodgers (for herself and Representatives Kelly [of Illinois] and Bucshon) and referred to the Committee on Energy and Commerce of the House of Representatives. On December 16, 2019, H.R. 4779 passed the House, as amended, by voice vote.

Congress last reauthorized the U.S. SAFE WEB Act on December 4, 2012.⁸

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

| S. 3132, a bill to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006, and for other purposes | | | |
|---|------|-------------------------------------|-----------------------------|
| As ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 11, 2020 | | | |
| By Fiscal Year, Millions of Dollars | 2020 | 2020-2025 | 2020-2030 |
| Direct Spending (Outlays) | 0 | 0 | 0 |
| Revenues | 0 | 0 | 0 |
| Increase or Decrease (-) in the Deficit | 0 | 0 | 0 |
| Spending Subject to Appropriation (Outlays) | 0 | * | not estimated |
| Statutory pay-as-you-go procedures apply? | No | Mandate Effects | |
| Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031? | No | Contains intergovernmental mandate? | Yes, Under Threshold |
| | | Contains private-sector mandate? | Yes, Under Threshold |
| * = between zero and \$500,000. | | | |

Under current law, the Federal Trade Commission (FTC) has the authority to share confidential information with foreign agencies and provide investigative assistance to those agencies to combat illegal activities originating outside the United States. That authority will expire on September 30, 2020; S. 3132 would extend the au-

⁸Public Law 112-203.

thority through September 30, 2027. In addition, S. 3132 would authorize the appropriation of \$100,000 each year from 2021 through 2027 for the FTC to collaborate with foreign governments and to participate in multinational organizations related to law enforcement.

Assuming appropriation of the authorized amounts, CBO estimates that implementing the bill would cost less than \$500,000 over the 2021–2025 period.

S. 3132 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of the mandates would not exceed the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$84 million and \$168 million in 2020, respectively, adjusted annually for inflation).

By extending preemptions of state and local liability laws, S. 3132 would impose an intergovernmental mandate. Specifically, current law preempts laws that prohibit people from disclosing information to the FTC and that require people to notify third parties if they disclose information to the FTC. Those preemptions expire on September 30, 2020; S. 3132 would extend them through September 30, 2027. Although the preemptions would limit the application of state and local law, CBO estimates that they would impose no duty on state, local, or tribal governments that would result in additional spending.

S. 3132 also would extend an existing mandate that exempts from liability private entities that voluntarily provide certain information about third parties to the FTC. The extension of such protection constitutes a mandate on those third-party entities because it limits their ability to file a claim for damages related to the disclosure. The cost of the mandate would be the forgone net value of settlements and damages that would have been awarded. Using information from the FTC, CBO expects that few such lawsuits would be filed and the cost of the mandate would be small.

On February 14, 2020, CBO transmitted a cost estimate for H.R. 4779, an act to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers Beyond Borders Act of 2006, and for other purposes, as passed by the House of Representatives on December 16, 2019. S. 3132 is similar to H.R. 4779 and CBO's estimate of the budgetary effects and mandates are the same for both pieces of legislation.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 3132 would not authorize any new regulations and would not subject any individuals or businesses to new regulations. To the extent a U.S. business maintains international operations, the FTC

could bring an enforcement action against a U.S. company engaging in unfair or deceptive acts or practices outside of the United States.

ECONOMIC IMPACT

S. 3132 would not have an adverse economic impact on the Nation. It is expected that extending the ability of the FTC to cooperate with international law enforcement entities to combat fraud will bolster legitimate global economic activity.

PRIVACY

S. 3132 would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 3132 would not increase paperwork requirements for private individuals or businesses. The bill would require a report from the FTC describing its use of and experience with the authority granted by the Act. The report would be due to Congress not later than 3 years after the date of enactment of the Act.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Extension of the U.S. SAFE WEB Act of 2006

This section extends the sunset date of the U.S. SAFE WEB Act from September 30, 2020, to September 30, 2027.

Section 2. Report

This section would require the FTC to issue a report not later than 3 years after the date of enactment of the Act on the Commission's use and experience with the authority granted by the U.S. SAFE WEB Act. It further specifies that the report shall include the following:

- the number of cross-border complaints received and acted upon by the Commission;
- identification of the foreign agencies with which the Commission has cooperated and the results of such cooperation;
- a description of Commission litigation brought in foreign courts and the results of such litigation; and
- any recommendations for legislation that may advance the mission of the Commission in carrying out the U.S. SAFE WEB Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

U.S. SAFE WEB ACT OF 2006

* * * * *

[Public Law 109-455; 15 U.S.C. 44 note]

SEC. 13. SUNSET.

Effective **【September 30, 2020】** *September 30, 2027*, this Act [enacting sections 57b-2a, 57b-2b, 57c-1, and 57c-2 of this title, amending this section, sections 45, 46, 56, 57b-2, and 58 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section and section 58 of this title], and the amendments made by this Act, are repealed, and any provision of law amended by this Act shall be amended to read as if this Act had not been enacted into law.

* * * * *