

115TH CONGRESS
2D SESSION

H. R. 7160

To prohibit the circumvention of control measures used by Internet retailers to ensure equitable consumer access to products, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 16, 2018

Mr. TONKO introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the circumvention of control measures used by Internet retailers to ensure equitable consumer access to products, 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 “Stopping Grinch Bots
5 Act of 2018”.

6 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
7 **LATING TO CIRCUMVENTION OF ONLINE AC-**
8 **CESS CONTROL MEASURES.**

9 (a) CONDUCT PROHIBITED.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), it shall be unlawful for any person—

3 (A) to circumvent a security measure, ac-
4 cess control system, or other technological con-
5 trol or measure on an Internet website or online
6 service to enforce posted purchasing limits or to
7 manage inventory; or

8 (B) to sell or offer to sell any product or
9 service in interstate commerce obtained in viola-
10 tion of subparagraph (A) if the person selling
11 or offering to sell the product or service—

12 (i) participated directly in or had the
13 ability to control the conduct in violation of
14 subparagraph (A); or

15 (ii) knew or should have known that
16 the product or service was acquired in vio-
17 lation of subparagraph (A).

18 (2) EXCEPTION.—It shall not be unlawful
19 under this section for a person to create or use any
20 computer software or system—

21 (A) to investigate, or further the enforce-
22 ment or defense, of any alleged violation of this
23 section or other statute or regulation; or

24 (B) to engage in research necessary to
25 identify and analyze flaws and vulnerabilities of

measures, systems, or controls described in paragraph (1)(A), if these research activities are conducted—

(i) to advance the state of knowledge in the field of computer system security; or

(ii) to assist in the development of computer security product.

(b) ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of subsection (a) shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—The Commission shall enforce this section in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(B) PRIVILEGES AND IMMUNITIES.—Any person who violates subsection (a) shall be sub-

1 ject to the penalties and entitled to the privi-
2 leges and immunities provided in the Federal
3 Trade Commission Act (15 U.S.C. 41 et seq.).

4 (C) AUTHORITY PRESERVED.—Nothing in
5 this Act shall be construed to limit the author-
6 ity of the Commission under any other provi-
7 sion of law.

8 (c) ENFORCEMENT BY STATES.—

9 (1) IN GENERAL.—In any case in which the at-
10 torney general of a State has reason to believe that
11 an interest of the residents of the State has been or
12 is threatened or adversely affected by the engage-
13 ment of any person subject to subsection (a) in a
14 practice that violates such subsection, the attorney
15 general of the State may, as *parens patriae*, bring
16 a civil action on behalf of the residents of the State
17 in an appropriate district court of the United
18 States—

19 (A) to enjoin further violation of such sub-
20 section by such person;

21 (B) to compel compliance with such sub-
22 section; and

23 (C) to obtain damages, restitution, or other
24 compensation on behalf of such residents.

1 (2) RIGHTS OF FEDERAL TRADE COMMIS-
2 SION.—

3 (A) NOTICE TO FEDERAL TRADE COMMIS-
4 SION.—

5 (i) IN GENERAL.—Except as provided
6 in clause (iii), the attorney general of a
7 State shall notify the Commission in writ-
8 ing that the attorney general intends to
9 bring a civil action under paragraph (1)
10 not later than 10 days before initiating the
11 civil action.

12 (ii) CONTENTS.—The notification re-
13 quired by clause (i) with respect to a civil
14 action shall include a copy of the complaint
15 to be filed to initiate the civil action.

16 (iii) EXCEPTION.—If it is not feasible
17 for the attorney general of a State to pro-
18 vide the notification required by clause (i)
19 before initiating a civil action under para-
20 graph (1), the attorney general shall notify
21 the Commission immediately upon insti-
22 tuting the civil action.

23 (B) INTERVENTION BY FEDERAL TRADE
24 COMMISSION.—The Commission may—

1 (i) intervene in any civil action
2 brought by the attorney general of a State
3 under paragraph (1); and

4 (ii) upon intervening—

5 (I) be heard on all matters arising in the civil action; and

7 (II) file petitions for appeal of a
8 decision in the civil action.

9 (3) INVESTIGATORY POWERS.—Nothing in this
10 subsection may be construed to prevent the attorney
11 general of a State from exercising the powers conferred on the attorney general by the laws of the
12 State to conduct investigations, to administer oaths
13 or affirmations, or to compel the attendance of witnesses or the production of documentary or other
14 evidence.
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17 (4) ACTION BY FEDERAL TRADE COMMISSION.—If the Commission institutes a civil action or
18 an administrative action with respect to a violation
19 of subsection (a), the attorney general of a State
20 may not, during the pendency of such action, bring
21 a civil action under paragraph (1) against any defendant named in the complaint of the Commission
22 for the violation with respect to which the Commission instituted such action.
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1 (5) VENUE; SERVICE OF PROCESS.—

2 (A) VENUE.—Any action brought under
3 paragraph (1) may be brought in—

4 (i) the district court of the United
5 States that meets applicable requirements
6 relating to venue under section 1391 of
7 title 28, United States Code; or

8 (ii) another court of competent juris-
9 diction.

10 (B) SERVICE OF PROCESS.—In an action
11 brought under paragraph (1), process may be
12 served in any district in which the defendant—

13 (i) is an inhabitant; or

14 (ii) may be found.

15 (6) ACTIONS BY OTHER STATE OFFICIALS.—

16 (A) IN GENERAL.—In addition to civil ac-
17 tions brought by attorneys general under para-
18 graph (1), any other consumer protection offi-
19 cer of a State who is authorized by the State
20 to do so may bring a civil action under para-
21 graph (1), subject to the same requirements
22 and limitations that apply under this subsection
23 to civil actions brought by attorneys general.

24 (B) SAVINGS PROVISION.—Nothing in this
25 subsection may be construed to prohibit an au-

1 thorized official of a State from initiating or
2 continuing any proceeding in a court of the
3 State for a violation of any civil or criminal law
4 of the State.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) COMMISSION.—The term “Commission”
8 means the Federal Trade Commission.

9 (2) POSTED.—The term “posted” means clearly
10 and conspicuously published on an Internet website.

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