

116TH CONGRESS
2D SESSION

S. 4385

To prohibit unfair or deceptive acts or practices in connection with the public health emergency resulting from COVID–19, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2020

Mr. UDALL (for himself, Mr. TESTER, Mr. BLUMENTHAL, Ms. KLOBUCHAR, Mr. CASEY, Mrs. FEINSTEIN, Mr. BROWN, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit unfair or deceptive acts or practices in connection with the public health emergency resulting from COVID–19, 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 COVID
5 Scams Act of 2020”.

6 **SEC. 2. ENFORCEMENT OF THE FEDERAL TRADE COMMIS-** 7 **SION ACT RELATED TO COVID-19.**

8 (a) AUTHORITY OF THE FTC.—

1 (1) AUTHORITY.—Notwithstanding any other
2 provision of law, any conduct described in paragraph
3 (2) that the Commission finds to be an unfair or de-
4 ceptive act or practice, shall be treated as a violation
5 of a regulation under section 18(a)(1)(B) of the
6 Federal Trade Commission Act (15 U.S.C.
7 57a(a)(1)(B)) regarding unfair or deceptive acts or
8 practices.

9 (2) CONDUCT DESCRIBED.—The conduct de-
10 scribed in this paragraph is any conduct, act, or
11 practice that occurs during the public health emer-
12 gency declared on January 31, 2020, pursuant to
13 section 319 of the Public Health Service Act (42
14 U.S.C. 247d) as a result of confirmed cases of
15 COVID–19, or any renewal thereof.

16 (b) CONSIDERATIONS.—In determining whether un-
17 fair or deceptive acts or practices are associated with the
18 public health emergency in subsection (a), the Commission
19 shall consider—

20 (1) whether the acts or practices involve goods
21 or services explicitly advertised as related to the
22 public health emergency;

23 (2) whether the acts or practices involve goods
24 or services for which consumer demand significantly
25 increased in the time period beginning 30 days be-

1 fore the declaration of the public health emergency
2 until the public health emergency ends; or

3 (3) whether the acts or practices relate to Fed-
4 eral or State Government responses to the COVID-
5 19 pandemic, including public health response, such
6 as testing and treatment of the disease, and eco-
7 nomic response, such as unemployment insurance or
8 stimulus checks.

9 (c) ENFORCEMENT.—

10 (1) ENFORCEMENT BY FEDERAL TRADE COM-
11 MISSION.—

12 (A) POWERS OF COMMISSION.—The Com-
13 mission shall enforce a violation described in
14 subsection (a) in the same manner, by the same
15 means, and with the same jurisdiction, powers,
16 and duties as though all applicable terms and
17 provisions of the Federal Trade Commission
18 Act (15 U.S.C. 41 et seq.) were incorporated
19 into and made a part of this Act. Any person
20 who violates such subsection shall be subject to
21 the penalties and entitled to the privileges and
22 immunities provided in the Federal Trade Com-
23 mission Act.

24 (B) EFFECT ON OTHER LAWS.—Nothing
25 in this Act shall be construed in any way to

1 limit the authority of the Commission under
2 any other provision of law.

3 (2) ENFORCEMENT BY STATE ATTORNEYS GEN-
4 ERAL.—

5 (A) IN GENERAL.—If the chief law en-
6 forcement officer of a State, or an official or
7 agency designated by a State, has reason to be-
8 lieve that any person has violated or is violating
9 subsection (a), the attorney general, official, or
10 agency of the State, in addition to any author-
11 ity it may have to bring an action in State
12 court under its consumer protection law, may
13 bring a civil action in any appropriate United
14 States district court or in any other court of
15 competent jurisdiction, including a State court,
16 to—

17 (i) enjoin further such violation by
18 such person;

19 (ii) enforce compliance with such sub-
20 section;

21 (iii) obtain civil penalties; and

22 (iv) obtain damages, restitution, or
23 other compensation on behalf of residents
24 of the State.

(B) NOTICE AND INTERVENTION BY THE FTC.—The attorney general of a State shall provide prior written notice of any action under subparagraph (A) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action. The Commission shall have the right—

(i) to intervene in the action;

(ii) upon so intervening, to be heard on all matters arising therein; and

(iii) to file petitions for appeal.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this paragraph during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this Act alleged in the complaint.

(D) RELATIONSHIP WITH STATE-LAW CLAIMS.—If the attorney general of a State has

1 authority to bring an action under State law di-
2 rected at acts or practices that also violate this
3 Act, the attorney general may assert the State-
4 law claim and a claim under this Act in the
5 same civil action.

6 (3) SAVINGS CLAUSE.—Nothing in this Act
7 shall preempt or otherwise affect any State or local
8 law.

9 (d) DEFINITIONS.—In this section:

10 (1) COMMISSION.—The term “Commission”
11 means the Federal Trade Commission.

12 (2) STATE.—The term “State” means each of
13 the several States, the District of Columbia, each
14 commonwealth, territory, or possession of the United
15 States, and each federally recognized Indian Tribe.

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