

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

SEPTEMBER 10, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 6131]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 6131) to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 6131 is bipartisan legislation to renew the Federal Trade Commission's (FTC) authority to combat cross-border spam, spyware, and fraud through reauthorization of the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act (U.S. SAFE WEB Act) of 2006 (P.L. 109-455). The Act and the authorities it grants the FTC will expire on December 22, 2013. H.R. 6131 extends the expiration date an additional seven years to September 30, 2020.

BACKGROUND AND NEED FOR LEGISLATION

Beginning in the early 2000s, the FTC encountered increasing difficulties in effectively combatting Internet scams and fraud perpetrated against U.S. citizens by foreign operators. In 2005, an estimated 20 percent of the consumer complaints the FTC received involved fraud originating outside of the United States. Additionally, according to the FTC's analysis of consumer complaints in the Consumer Sentinel Network database, consumers suffered losses to foreign companies of almost \$219 million in 2006.

The FTC identified limitations in its authority relative to that of other U.S. regulators. Among the most important limitations identified was the Commission's lack of authority to share information with and provide investigative assistance to foreign law enforcers. The FTC sent Congress legislative recommendations in 2005 seeking additional administrative authorities to fill this gap. Congress passed the U.S. SAFE WEB Act on December 6, 2006, and President Bush signed the Act into law on December 22, 2006.

Among other things, U.S. SAFE WEB amended the FTC Act to authorize the Commission to share information involving cross border fraud with foreign consumer protection agencies; secure confidential information from those foreign consumer protection agencies by protecting such information from public disclosure; take fraud-based legal action by specifying that the term "unfair or deceptive acts or practices" in Section 5 of the FTC Act includes practices involving foreign commerce with reasonably foreseeable injury in the U.S. or material misconduct occurring within the U.S.; seek redress on behalf of U.S. and foreign consumers victimized by cross-border scams; and make referrals to the U.S. Attorney General for criminal prosecution when the FTC obtains evidence of conduct that also violates U.S. criminal law.

Pursuant to the Act, the FTC issued a report, "*The U.S. SAFE WEB Act: The First Three Years*," in December 2009 detailing its use of and experience with the authority granted by the Act. The FTC reported that, over the three year period of 2006–2008, it received more than 260,000 cross-border complaints.¹ The FTC also reported it shared compelled or confidential information in response to 38 requests from 14 foreign agencies in six countries resulting in several enforcement proceedings.²

The U.S. SAFE WEB Act and its grant of authorities to the FTC will expire on December 22, 2013, without reauthorization. H.R. 6131 extends the authorization of the Act from 2013 to 2020, and specifies that the provisions of the Act will cease to be effective after the date of expiration absent further reauthorization.

HEARINGS

The Subcommittee on Commerce, Manufacturing, and Trade convened a legislative hearing on Thursday, July 12, 2012, entitled "H.R. ____, a bill to renew the Federal Trade Commission's authority to combat cross-border spam, spyware and fraud through reauthorization of the U.S. SAFE WEB Act of 2006." Mr. Hugh Stevenson, Deputy Director for International Consumer Protection of the FTC's Office of International Affairs, testified.

COMMITTEE CONSIDERATION

On Tuesday, July 31, 2012, the full Committee met in open markup session and favorably reported H.R. 6131 to the House by a voice vote.

¹ Federal Trade Commission, *The U.S. SAFE WEB Act: The First Three Years, A Report to Congress*, (Washington, DC, December, 2009) p. ii, (available at <http://www.ftc.gov/os/2009/12/P035303safewebact2009.pdf>), accessed July 5, 2012.

² *Ibid.*

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. No recorded votes were requested.

COMMITTEE OVERSIGHT FINDINGS

Regarding clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the oversight findings of the Committee regarding H.R. 6131 are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 6131 is to reauthorize the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 for an additional 7 years, the period of initial authorization.

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 adopts as its own the estimate of budget authority and revenues prepared by the Director of the Congressional Budget Office pursuant to section 308(a) of the Congressional Budget Act of 1974. The Committee finds that H.R. 6131 would result in no new or increased entitlement authority or tax expenditures.

EARMARKS AND TAX AND TARIFF BENEFITS

Regarding compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 6131 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

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:

AUGUST 16, 2012.

Hon. FRED UPTON,
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. 6131, a bill to extend the Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers beyond Borders Act of 2006, and for other purposes.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 6131—A bill to extend the Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers beyond Borders Act of 2006, and for other purposes

CBO estimates that implementing H.R. 6131 would have no significant effect on discretionary spending over the 2013–2017 period. Enacting H.R. 6131 could result in collections of additional civil and criminal penalties, which would affect both revenues and direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that those effects also would be insignificant.

H.R. 6131 would reauthorize the Undertaking Spam, Spyware, and Fraud Enforcement with Enforcers beyond Borders Act, which will expire on December 22, 2013. The act provides administrative tools to the Federal Trade Commission (FTC) that augment its authority to enforce federal laws related to unfair and deceptive trade practices, such as sharing information with foreign agencies and investigating fraud that originates outside of the United States. The bill also would extend an authorization to appropriate \$100,000 each year for the FTC to collaborate with foreign governments and to participate in multinational organizations related to law enforcement. Based on information from the FTC, CBO expects that enacting H.R. 6131 could change the types of fraud cases the agency investigates but would not change the agency's workload. Therefore, CBO estimates that implementing H.R. 6131 would not have a significant effect on discretionary costs over the 2013–2017 period.

Enacting H.R. 6131 could increase federal revenues and direct spending as a result of additional criminal and civil penalties assessed for violations of laws related to unfair and deceptive trade practices. Collections of civil penalties are recorded in the budget as revenues. Collections of criminal penalties are recorded in the budget as revenues, deposited in the Crime Victims Fund, and later spent. CBO estimates that the net effects of those transactions would be insignificant for each year because of the relatively small number of cases likely to be involved.

H.R. 6131 would impose intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), by extending preemptions of state and local laws that prohibit individuals from disclosing information to the FTC and that require individuals to notify third parties if they disclose information to the FTC. Under current law, the preemptions would expire at the end of 2013; the bill would extend them until September 30, 2020. While 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.

H.R. 6131 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 protections constitutes a mandate on those third-party entities because it limits their ability to file a claim for the disclosure or failure to provide notice of disclosure. The cost of the mandate would

be the forgone net value of settlements and damages that would have been awarded. Based on information from the FTC, few such lawsuits would probably be filed. Therefore, CBO expects that the cost of the mandate would fall below the annual threshold for private-sector mandates established in UMRA (\$146 million, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs), Elizabeth Cove Delisle (for the impact on state and local governments), and Marin Randall (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 6131 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 would be created by H.R. 6131.

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 of 1995.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

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

Section 1 amends section 13 of the U.S. SAFE WEB Act of 2006 by striking existing language and replacing with a sunset date of September 30, 2020, and clarifying that after such date the changes made by the Act are repealed.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

U.S. SAFE WEB ACT OF 2006

* * * * *

[SEC. 13. SUNSET.

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

SEC. 13. SUNSET.

Effective September 30, 2020, this Act, 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.

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