

Calendar No. 479

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-248 }

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

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 3410



DECEMBER 5, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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DECEMBER 5, 2012.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 3410]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 3410) 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 S. 3410, a bill to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006 (known as the “U.S. SAFE WEB Act of 2006” or “SAFE WEB”), is to extend the authority and provisions of the U.S. SAFE WEB Act of 2006 for seven additional years.

BACKGROUND AND NEEDS

In December 2006, Congress passed the U.S. SAFE WEB Act of 2006, which provides the Federal Trade Commission (FTC) with enforcement tools that allow the Commission to pursue fraud perpetrated by actors outside of the United States. In so doing, SAFE WEB enhances the FTC’s authority to deal with cross-border fraud in four key ways:

- *Information Sharing.*—SAFE WEB authorizes the FTC to reciprocally exchange confidential information with foreign law enforcement to aid foreign and domestic investigations.

- *Investigative Assistance.*—SAFE WEB permits the FTC to provide investigative assistance to and conduct discovery for foreign law enforcement in appropriate cases which in turn, allows the FTC to receive similar foreign investigative assistance.

- *Cross-border Jurisdiction Authority.*—The law provides the FTC with litigation authority to redress harm in the United States caused by foreign actors, as well as harm caused by U.S. actors abroad. This provision allows the FTC to avoid challenges to its cross-border jurisdiction and helps encourage the availability of all remedies for U.S. consumer victims in foreign courts.

- *Enforcement Relationships.*—The law authorizes the FTC to retain employees from foreign agencies on a temporary basis, which fosters the establishment of trust and understanding between agencies and facilitates more meaningful case cooperation.

SAFE WEB has a seven-year sunset provision that is scheduled to expire in December 2013. All five Commissioners on the FTC, which enforces the law, support the extension of SAFE WEB.

SUMMARY OF PROVISIONS

S. 3410 extends the sunset provision in SAFE WEB by another seven years to September 2020. The bill does not change any substantive provisions in the law.

LEGISLATIVE HISTORY

On July 19, 2012, Senator Pryor introduced S. 3410, which was referred to the Committee for consideration. The bill is co-sponsored by Senator Ayotte. On July 31, 2012, in an open Executive Session, the Committee considered S. 3410 and favorably reported the bill by voice vote.

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. 3410—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 S. 3410 would have no significant effect on discretionary spending over the 2013–2017 period. Enacting S. 3410 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.

S. 3410 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 S. 3410 could change the types of fraud cases the agency investigates but would not change the agency's workload. Therefore, CBO estimates that implementing S. 3410 would not have a significant effect on discretionary costs over the 2013–2017 period.

Enacting S. 3410 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.

S. 3410 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.

S. 3410 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).

On August 16, 2012, CBO transmitted a cost estimate for H.R. 6131, a bill to extend the Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006, as ordered reported by the House Committee on Energy and Commerce on July 31, 2012. The language extending the act is identical in both the House and Senate bills, and the CBO estimates of the cost for each bill are the same.

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 pri-

vate sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for 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

Because S. 3410 does not create any new programs and only extends existing law, the legislation will have no impact on the number or types of individuals or businesses regulated.

ECONOMIC IMPACT

S. 3410 will have no further impact on the Nation's economy.

PRIVACY

S. 3410 will not have any adverse impact on the personal privacy of affected individuals.

PAPERWORK

S. 3410 will not increase paperwork requirements for private individuals or businesses.

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

Section 1 establishes the new sunset date for SAFE WEB as September 30, 2020.

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):

UNDERTAKING SPAM, SPYWARE, AND FRAUD ENFORCEMENT WITH ENFORCERS BEYOND BORDERS ACT OF 2006

SEC. 13. SUNSET.

[15 U.S.C. 44 note]

[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.]

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.

