CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

January 31, 2006

S. 1608

Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2005

As ordered reported by the Senate Committee on Commerce, Science, and Transportation on December 15, 2005

SUMMARY

S. 1608 would provide new administrative tools to the Federal Trade Commission (FTC) to support enforcement of federal laws related to unfair and deceptive trade practices. The bill would enhance the FTC's ability to pursue violations that affect domestic commerce but are committed outside the United States—such as the use of computer software (known as spyware) to collect personal information without a user's consent and the use of unsolicited email (known as spam) that is deceptive.

CBO estimates that implementing S. 1608 would cost $1 million in 2006 and $9 million over the 2006-2011 period, assuming appropriation of the amounts specified and estimated to be necessary. Enacting the bill would not have a significant effect on direct spending or revenues.

S. 1608 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that costs, if any, would be small and would not exceed the threshold established by UMRA for intergovernmental mandates ($64 million in 2006, adjusted annually for inflation).

S. 1608 would impose a private-sector mandate, as defined in UMRA, by limiting the ability of certain third parties to sue. CBO expects that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 1608 is shown in the following table. The cost of this legislation falls within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars					
	2006	2007	2008	2009	2010	2011
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	1	1	1	2	2	2
Estimated Outlays	1	1	1	2	2	2

BASIS OF ESTIMATED

For this estimate, CBO assumes that the specified and estimated amounts needed to implement S. 1608 will be appropriated for each year and that outlays will follow historical patterns for similar programs.

Spending Subject to Appropriation

Implementing S. 1608 would increase spending by the FTC for enforcing laws related to unfair and deceptive trade practices, subject to the availability of appropriated funds. S. 1608 also would authorize the appropriation of $100,000 a year for collaborating with foreign governments and participating in multinational organizations related to law enforcement. Based on information provided by the FTC, CBO estimates that implementing the bill would cost about $1 million in 2006 and about $9 million over the 2006-2011 period, assuming appropriation of the amounts specified and estimated to be necessary.

The bill would allow the FTC to accept reimbursements for expenses made on behalf of foreign or domestic law enforcement agencies. Such reimbursements would be recorded as an offset to the agency's discretionary spending. Based on information provided by the FTC, CBO estimates that any reimbursements would be minimal and would not have a significant effect on spending subject to appropriation.

Revenues and Direct Spending

Enacting S. 1608 could increase federal revenues and direct spending as a result of additional civil and criminal penalties assessed for violations of laws relating to unfair and deceptive practices in commerce. 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, however, that any additional revenues and direct spending that would result from enacting the bill would not be significant because of the relatively small number of cases likely to be involved.

Finally, a provision in S. 1608 would authorize the FTC to accept and use donations of cash, property, and other gifts. Monetary gifts are classified in the budget as revenues, and spending of such sums would constitute direct spending. Based on information provided by the FTC, CBO estimates that any collections and subsequent spending would be minimal, and that enacting this provision would not have a significant effect on revenues or direct spending.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Sections 7 and 8 of S. 1608 would authorize the FTC to request that a judge order the recipient of a summons, subpoena, or other compulsory process to delay giving notice to anyone that they have been required to appear as a witness before, or to produce documents in, an FTC proceeding. The order could be issued, notwithstanding any state or local laws or regulations, if there is reason to believe that notification would cause certain adverse results. Further, the recipient would not be liable under any state or local laws or regulations for disclosing information or for failure to provide notice. The bill also would protect certain entities that voluntarily provide specified material to the FTC from liability under any state or local law or regulation that precludes disclosure of information or requires notification to the interested third party.

To the extent that state and local governments have laws that contradict these provisions, the legislation would preempt those laws and thereby impose mandates under UMRA. CBO estimates that the cost of complying with these mandates would be minimal and would not exceed the threshold established in UMRA ($64 million in 2006, adjusted for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

S. 1608 would impose a private-sector mandate, as defined in UMRA, by limiting the ability of certain third parties to sue. CBO expects that the direct cost of the mandate would fall well below the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation).

By exempting from liability entities that voluntarily provide information about third parties to the Federal Trade Commission, S. 1608 would limit the ability of those third parties to sue for the disclosure or for failure to provide notice of disclosure. Such a limitation would constitute a private-sector mandate under UMRA. The direct cost of the mandate would be the forgone net value of settlements and damage awards. According to the FTC, no such third-party lawsuits have been filed, and they expect that it is unlikely there will be any new cases filed under current law. Consequently, CBO expects that costs to the private sector would be small relative to UMRA's threshold.

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