



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 25, 1999

H.R. 1858

Consumer and Investor Access to Information Act of 1999

As ordered reported by the House Committee on Commerce on August 5, 1999

SUMMARY

CBO estimates that implementing H.R. 1858 would cost the Federal Trade Commission (FTC) \$1 million to \$2 million a year over the 2000-2004 period, subject to appropriation of the necessary amounts. H.R. 1858 would allow the FTC to collect civil fines for violators of the bill's provisions. CBO estimates that receipts from civil fines would begin in 2002 and would be less than \$500,000 in any year. Because the bill would affect receipts, pay-as-you-go procedures would apply.

H.R. 1858 would attempt to protect substantial investments made in the collecting of information or the establishing of databases with commercial value. Databases that lack a modest amount of original creative expression are not eligible for copyright protection. For example, the Supreme Court held in *Feist Publications v. Rural Telephone Service Co.*, 449 U.S. 340 (1991), that the white pages of standard telephone directories lack sufficient creative expression to sustain a copyright. To provide some protection of investments in such databases and other collections of information, H.R. 1858 generally would prohibit extracting information from a database and then selling or distributing a database that is substantially the same as the original. H.R. 1858 would define such behavior as an unfair or deceptive act under the Federal Trade Commission Act.

The bill would require the FTC to submit a report within three years on the impact of H.R. 1858 on electronic commerce and the database industry. Finally, the bill would amend securities laws to prohibit the misappropriation of real-time information about securities markets.

H.R. 1858 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt state laws regarding the protection of collections of information. However, CBO estimates that the costs of complying with this mandate would not be significant.

The bill also would create a new private-sector mandate by prohibiting the unauthorized duplication and sale of certain private databases. CBO cannot estimate the mandate's total cost because we do not have enough information to determine the scope and impact of the new protections.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

Spending Subject to Appropriation

Because H.R. 1858 would expand the definition of an unfair or deceptive practice to include selling or distributing a duplicate of a database in competition with the original, CBO anticipates that the FTC would be able to bring cases that it otherwise would be unable to pursue. Based on information from the FTC, CBO estimates that enforcing H.R. 1858 and conducting the required study would cost between \$1 million and \$2 million a year over the 2000-2004 period, subject to appropriation of the necessary amounts. Based on information from the Securities and Exchange Commission, CBO estimates that the changes in securities law would have no significant budgetary impact.

Revenues

Enacting H.R. 1858 could increase governmental receipts from civil fines, but we estimate that any such increase would be less than \$500,000 annually. CBO estimates that there would be no additional receipts in 2000 or 2001 because it would take some time for suits to be initiated and resolved.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. H.R. 1858 would increase receipts by less than \$500,000 a year beginning in 2002.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1858 contains an intergovernmental mandate as defined in UMRA because it would preempt state laws regarding the protection of collections of information. However, CBO estimates that complying with this mandate would not have a significant impact on state budgets primarily because states do not generally regulate in this area of law.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1858 would create a new private-sector mandate by prohibiting the unauthorized duplication and sale of certain private databases. Currently, databases that lack sufficient original creative expression are not protected by copyright law and may be reproduced, modified, and sold without the permission of the owner. H.R. 1858 would make any firm selling an unauthorized duplicate of such a database subject to FTC fines and penalties. In order to avoid these penalties, a firm would need to obtain the consent of the database owner through a licensing or similar agreement. The cost to the firm of complying with the mandate would be either the cost of the license or the revenue foregone by ending production of the duplicate database. The firm's ability to obtain a license from the database owner would depend in part on the potential effects on competition with the owner's products.

CBO cannot estimate the mandate's total cost because we do not have enough information to determine scope and impact of the new protections. While court decisions have identified collections that failed to meet the creative expression standard under existing copyright law, these decisions are of limited use in identifying all of the types of collections to which H.R. 1858 would extend protection. Owners may have been unaware of unauthorized duplication or, even if aware of such activity, may not have chosen to test their rights in court.

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