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106th Congress *2d Session*	SENATE	REPORT 106–385

FEDERAL TRADE COMMISSION REAUTHORIZATION ACT OF 1999

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

on

S. 1687

AUGUST 25, 2000.—Ordered to be printed

Filed, under authority of the order of the Senate of July 26, 2000

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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

REPORT

[To accompany S. 1687]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1687) "A Bill to amend the Federal Trade Commission Act to authorize appropriations for the Federal Trade Commission", having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 1687 is to reauthorize the Federal Trade Commission (FTC) for fiscal years 2001 and 2002 and to make revisions to the process for reviewing merger applications.

BACKGROUND AND NEEDS

The FTC was last reauthorized in 1996 by Public Law 104–216 which provided $107 million for fiscal year 1997 and $111 million for fiscal year 1998. The Commission was not authorized for fiscal years 1999 and 2000. It now seeks an authorization level of $164 million for fiscal year 2001 and $177 million for fiscal year 2002. The FTC argues that the additional funding is necessary to address a series of issues involving the Internet such as privacy and fraud. The FTC would also use the additional funding to police an ever increasing number of mergers and acquisitions.

During the hearing for S. 1687, the FTC discussed the types of fraudulent activity that occur online and its efforts to prevent fraud. The range of illegal activity includes bogus investments,

sure-fire cures and "guaranteed" money making opportunities. In addition to those traditional scams, criminals have developed new methods such as webcramming and hijacking modems to charge consumers for services they have neither requested nor approved. In response to these online scams, Chairman Pitofsky of the FTC testified that it has brought more than 100 law enforcement actions on behalf of millions of online consumers, created a database of consumer fraud complaints (Consumer Sentinel) for use by law enforcement, and used "surf days" to identify more than 4,000 sites with dubious claims or online scams.[1]

During the hearing, the FTC also discussed the growing number of merger reviews conducted each year. Chairman Pitofsky testified that there were three times as many merger filings in 1999 as in 1991 and that the total value of assets acquired through acquisition was 11 times as great as just 8 years ago.[2]

The Committee also heard testimony regarding the FTC's premerger review process. Under the Hart-Scott-Rodino Act (15 U.S.C. 18), merging companies of a certain size must file premerger notifications with the Antitrust Division of the Department of Justice and the FTC. The purpose of the Act is to provide federal agencies with the opportunity to review mergers for anti-competitive effects before they become final. The Act also allows the agency to request more detailed information through a second request process before approving a merger. During the hearing the Committee heard testimony from several antitrust experts expressing their concerns about the merger review process and the second request process.

Attorneys representing the U.S. Chamber of Commerce and the National Association of Manufacturers expressed their concerns that the second request process is extremely burdensome and requires reform. In short, they believe that in many instances second requests are overly broad requiring the costly production of documents that are not relevant to the review.

Albert Foer of the American Antitrust Institute testified that the institute did not agree that the second request process was overly burdensome. However, he stated that if reforms are necessary the Committee should encourage the agencies to build upon internal reforms perhaps creating a more formally defined route for appeal within each agency structure.[3]

The Antitrust Section of the American Bar Association recently reviewed the Hart-Scott-Rodino Act. In an April report, the Section noted that while second requests are generally less than 3 percent of all transactions, they are a significant step increasing the costs to both the agency and the parties.[4] The report encouraged the agency to move forward with internal reforms to the process and was supportive of Congressional action to ensure that reforms were lasting and practical.[5]

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[1] Hearing on the Reauthorization of the Federal Trade Commission, S. 1687, before the Subcommittee on Consumer Affairs, Foreign Commerce and Tourism, Senate Commerce Committee, 106th Cong. (February 9, 2000) (Statement of Robert Pitofsky, Chairman of the Federal Trade Commission).

[2] Id.

[3] Hearing, Supra note 1 (testimony of Albert Foer of the American Antitrust Institute).

[4] Rep. of the Sec. Of the Antitrust Law on Proposed Hart-Scott-Rodino Antitrust Improvement Act Amendments, A.B.A. Sec. Antitrust Law 11 (2000).

[5] Id.

LEGISLATIVE HISTORY

On October 5, 1999, S. 1687 was introduced by Chairman McCain. On February 9, 2000, Senator Ashcroft, Chairman of the Subcommittee on Consumer Affairs, held a hearing on S. 1687. On June 15, 2000, the bill was amended and reported from the Committee.

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:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2000.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1687, the Federal Trade Commission Reauthorization Act of 2000.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1687—Federal Trade Commission Reauthorization Act of 2000

Summary: S. 1687 would authorize appropriations for the Federal Trade Commission (FTC) for fiscal years 2001 and 2002. The bill also would direct the FTC and the Department of Justice (DOJ) to examine the process each agency uses to review merging businesses and to eliminate reporting burdens, duplication and delays where possible. Finally, the bill would require the FTC and the DOJ to report on the burden to private industry caused by the agencies' review of mergers.

Based on the historical spending patterns of the FTC, CBO estimates that implementing S. 1687 would cost $339 million over the 2001–2005 period. S. 1687 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 1687 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: For this estimate CBO assumes that the amounts authorized by the bill will be appropriated near the start of each year. The estimated budgetary impact of S. 1687 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars					
	2000	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION						
Gross FTC spending under current law:						
Estimated budget authority [1]	125	3	0	0	0	0
Estimated outlays	123	13	0	0	0	0
Proposed changes:						
Authorization level	0	162	177	0	0	0
Estimated outlays	0	149	176	14	0	0
Gross FTC Spending Under S. 1687:						
Authorization level	125	165	177	0	0	0
Estimated outlays	123	162	176	14	0	0

[1] The 2000 level is the gross amount appropriated for that year. Such spending is offset by collections of fees that cover most of the agency's costs. The 2001 amount is the CBO estimate of the funds provided as an advance appropriation for that year.

Basis of estimate: Companies considering merging with another firm or acquiring another firm must file notice of their intentions with the Federal Trade Commission (FTC). Companies pay fees of $45,000 for each such filing. In 1999 and 2000, these collections were recorded as an offset to the appropriated spending of the FTC and the Antitrust Division of the Department of Justice, with one-half of the collections credited to each agency. Each agency collected about $97 million in 1999. Because the FTC is authorized to collect and spend these fees without further appropriation action, they are not shown in the table.

S. 1687 would authorize appropriations for the FTC totaling about $165 million in 2001 and $177 million in 2002. Based on the historical spending pattern of the FTC, CBO estimates S. 1687 would cost $339 over the 2001–2005 period. Based on information from the FTC, CBO estimates that the other provisions would have no significant budgetary impact.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 1687 contains no intergovernmental or private sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Mark Hadley; Impact on State, Local, and Tribal Governments: Shelley Finlayson; and Impact on the Private Sector: Jean Wooster.

Estimate approved by: Peter H. Fontaine, 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:

While S. 1687 does not create any new programs, it does require the FTC and the Department of Justice to review and reform the merger review process. The purpose of the review is to eliminate unnecessary burdens, costly duplication and undue delay, in order to achieve a more effective and more efficient merger review process. Since the purpose of the Act is to streamline the process, the Committee does not expect the legislation will have additional regulatory impact, or result in additional reporting requirements for businesses regulated by both agencies. In fact, the legislation could result in less paperwork for businesses complying with the merger review process. The legislation will have no further effect on the

number or types of individuals and businesses regulated, the economic impact of such regulation, or the personal privacy of affected individuals.

SUMMARY OF MAJOR PROVISIONS

S. 1687 will authorize the FTC at $164 million for fiscal year 2001 and $177 million for fiscal year 2002. It would also direct the FTC to work with the Attorney General to conduct an internal review of the merger review process and make changes to eliminate unnecessary procedures and streamline the process. The FTC and the Attorney General would be directed to appoint an official outside of the review process to review second requests by the FTC and the Attorney General to ensure that the information is not burdensome or duplicative. Finally, the bill would require the agency as part of an existing annual report to provide information which would help Congress measure the effectiveness of the reforms.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the bill may be cited as the "Federal Trade Commission Reauthorization Act of 2000".

Section 2. Reauthorization

Section 2 authorizes expenditures by the FTC of $164.6 million in FY 2001 and $177.46 in FY 2002.

Section 3. Information and documentary requests

Subsection (a) requires the Attorney General and the FTC to designate a senior official not directly involved in the merger review process to review second requests and hear petitions to determine if the requested material is unreasonably burdensome or duplicative and if the request has been fulfilled.

Subsection (b) directs the Attorney General and the FTC to establish reasonable deadlines for expedited review of petitions.

Subsection (c) directs the Attorney General and the FTC to conduct an internal review of the merger review process and implement reforms to eliminate unnecessary burdens and achieve a more effective and efficient merger review process.

Subsection (d) requires the Attorney General and the FTC to amend their respective guidelines and agency rules where appropriate to implement the reforms developed from the review within 129 days of enactment.

Subsection (e) requires the Attorney General and the FTC to report to Congress on the reforms adopted, steps taken to implement the reforms and the effect of the reforms within 180 days of enactment.

Section 4. Annual reports

Section 4 requires the Attorney General and the FTC to include additional material to monitor the effectiveness of these reforms in annual reports to Congress. The information includes: the number of second request petitions filed; the time it takes for parties to comply with a second request; the number of petitions for review

filed; the amount of material submitted pursuant to second request; and the number of second requests made but not complied with prior to resolution of the case.

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):

FEDERAL TRADE COMMISSION ACT

[15 U.S.C. 57C]

AUTHORIZATION OF APPROPRIATIONS

SEC. 25. There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed $92,700,000 for fiscal year 1994; not to exceed $99,000,000 for fiscal year 1995; not to exceed $102,000,000 for fiscal year 1996; not to exceed $107,000,000 for fiscal year 1997; [and] not to exceed $111,000,000 for fiscal year [1998.] *1998: not to exceed $164,600,000 for fiscal year 2001; and not to exceed $177,460,000 for fiscal year 2002.*

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