

Calendar No. 372

109TH CONGRESS }
2d Session }

SENATE

{ REPORT
109-219

UNDERTAKING SPAM, SPYWARE, AND
FRAUD ENFORCEMENT WITH ENFORCERS
BEYOND BORDERS ACT OF 2005

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1608



MARCH 14, 2006.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

49-010

WASHINGTON : 2006

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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UNDERTAKING SPAM, SPYWARE, AND FRAUD ENFORCE- MENT WITH ENFORCERS BEYOND BORDERS ACT OF 2005

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

R E P O R T

[To accompany S. 1608]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1608) to enhance Federal Trade Commission enforcement against illegal spam, spyware, cross-border fraud and deception, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 1608 would amend the Federal Trade Commission Act (FTCA) (15 U.S.C. 41 et seq.) to improve the Federal Trade Commission's (FTC or Commission) ability to provide more timely and effective international consumer protection. The bill also includes a provision authorizing the FTC to accept gifts and services under certain circumstances.

BACKGROUND AND NEEDS

The FTC is an independent Federal agency established by statute in 1914 to protect American consumers. The Commission's mandate has two distinct provisions: first, to protect consumers from unfair or deceptive acts or practices in or affecting commerce, and second, to protect consumers from unfair methods of competition. The agency enforces at least 50 statutes and is the only Federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.

The Commission has proposed legislative changes to the FTCA seeking authorization to expand its authority under section 5 of the FTCA to protect consumers from fraudulent and deceptive trade practices perpetrated outside the United States.

The FTC reports that cross-border consumer complaints registered in the Consumer Sentinel consumer complaint database have risen from 11 percent of all complaints received in 2000, to 16 percent in 2004. The Commission attributes this increase primarily to the global proliferation of the Internet and improvements in telecommunications technologies. S. 1608 would improve the Commission's ability to protect consumers from illegal spyware, spam, cross-border fraud and deception, and other consumer protection law violations.¹

According to the FTC, the Commission's cross-border fraud language, which is contained in S. 1608, is the product of negotiations between the FTC and various other governmental entities including, among others, the Department of Justice (DOJ), the Department of State, the Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve. These negotiations were designed to properly define the scope of the FTC's jurisdiction vis-a-vis the functions of those agencies.

The bill also would allow the FTC to accept reimbursement for services undertaken on behalf of any domestic or foreign law enforcement agency. FTC staff members occasionally provide investigative or other services to a requesting law enforcement agency with no expectation that the Commission will be reimbursed for any expenses incurred. The FTC also may work in conjunction with staff of other law enforcement agencies to investigate or prosecute a matter. Thus, the Commission has requested authority to accept reimbursement if offered. Such authority would be useful in instances where expense-sharing arrangements have not been resolved in advance. The Securities Exchange Act of 1934 provides similar authority to the Securities and Exchange Commission.

The bill also would authorize the FTC to accept gifts and services under certain circumstances. Occasionally, the Commission is offered gifts, donations, bequests, and volunteer services, but such receipt is prohibited by law. For example, volunteer services are prohibited, as is the acceptance of even a trade regulation publication that might be useful in the Commission's library. In order to legally accept such gifts or other items, the Commission would need to receive statutory authority. The Federal Communications Commission (FCC) and the Consumer Product Safety Commission (CPSC) have similar authority to accept gifts and services.

¹See FTC testimony from Chairman Majoras to United States Senate Committee on Commerce, Science, and Transportation, Subcommittee on Trade, Tourism, and Economic Development, October 5, 2005—in which the FTC states: "The FTC's ability to pursue distributors of spyware, spam, and other Internet threats to consumers would be significantly improved if the Congress were to pass the U.S. SAFE WEB Act, introduced by Chairman Smith in the Senate as S. 1608. The Act makes it easier for the FTC to share information and otherwise cooperate with foreign law enforcement officials. The Internet knows no boundaries, and it is critical to improve the FTC's ability to work with the officials of other countries to prevent online conduct that undermines consumer confidence in the Internet as a medium of communication and commerce."

SUMMARY OF PROVISIONS

S. 1608 would amend the FTCA to authorize the FTC to: (1) share information involving cross-border fraud with foreign consumer protection agencies; (2) secure confidential information from those foreign consumer protection agencies; (3) take fraud-based legal action in foreign jurisdictions; (4) seek redress on behalf of foreign consumers victimized by United States-based wrongdoers; (5) make criminal referrals for cross-border criminal activity; (5) strengthen its relationship with foreign consumer protection agencies; (6) provide investigative and other services to a requesting law enforcement agency and accept payment of reimbursement from that agency for the Commission's involvement; and (7) receive gifts or other items that would be useful to the Commission as long as a conflict of interest is not created by such receipt.

LEGISLATIVE HISTORY

During the 108th Congress, the Competition, Foreign Commerce, and Infrastructure Subcommittee held a hearing on June 11, 2003, to examine possible changes to the FTCA and discuss key issues before the FTC. Subsequent to the hearing, Senators McCain and Smith introduced the Federal Trade Commission Reauthorization Act of 2003 (S. 1234). On June 19, 2003, the Committee met in open Executive Session to consider an amendment in the nature of a substitute to S. 1234 offered by Senators McCain and Smith. The substitute amendment was adopted, and the bill was ordered by voice vote to be reported as amended.

S. 1234 was placed on the Senate legislative calendar on August 26, 2003. On September 15, 2004, the Senate amended and passed S. 1234 by unanimous consent.

On July 29, 2005, Senators Smith, McCain, Inouye, and Nelson of Florida introduced S. 1608, the Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers Beyond Borders Act of 2005. S. 1608 is virtually identical to S. 1234. The Trade, Tourism, and Economic Development Subcommittee held a hearing on October 5, 2005, to discuss the Commission's efforts to combat spyware, including its views on S. 1608.

On December 15, 2005, the Committee met in open Executive Session and, by voice vote, ordered S. 1608 reported without amendment.

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:

JANUARY 31, 2006.

Hon. TED STEVENS,
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. 1608, the Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers Beyond Borders Act of 2005.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

S. 1608—Undertaking Spam, Spyware, and Fraud Enforcement With Enforcers Beyond Borders Act of 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 Estimate: 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 pro-

vided 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 estab-

lished 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.

Estimate prepared by: Federal Costs: Melissa Z. Petersen. Impact on the State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Because S. 1608 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; findings; purpose

This section describes Congress' findings that cross-border fraud is a growing international problem that affects American consumers and businesses. The proliferation of Internet and telecommunications technologies has accentuated the problem of such fraud. Increasingly, foreign consumers are affected. The Commission's ability to obtain effective consumer fraud relief is impeded by its limited authority. Improving the Commission's ability to share information with its foreign counterparts is expected to allow for more timely and effective consumer fraud relief.

Section 2. Foreign law enforcement agency defined

This section would amend section 4 of the FTCA to include the definition of "foreign law enforcement agency."

Section 3. Availability of remedies

This section would amend section 5(a) of the FTCA by adding to the term "unfair or deceptive acts or practices" involving foreign commerce to include those that cause or are likely to cause injury within the United States or involve material conduct within the United States.

This section also would make all remedies available to the Commission with respect to unfair and deceptive acts involving foreign commerce that may cause injury within the United States.

Section 4. Powers of the Commission

This section would amend Section 6(f) of the FTCA by inserting Subsection (j) that would add investigative assistance for foreign law enforcement agencies, including the criteria for international agreements determining such assistance. This new subsection also would provide that the FTC, with approval from the Secretary of State, may negotiate and conclude an international agreement in order to obtain foreign assistance. The authority granted to the FTC in this subsection would not apply to financial institutions, such as banks, savings and loan institutions, or federal credit unions.

When the Commission receives a request for assistance from a foreign law enforcement agency, the Commission would be required to ensure that it agrees to such a request only when the request relates to a provision of foreign law that prohibits a fraudulent or deceptive commercial practice or other practice that is “substantially similar” to a practice that is prohibited by a law administered by the Commission. Examples of foreign laws that do not meet the “substantially similar” requirement include a foreign restriction against non-misleading and substantiated comparative advertising, or a restriction on freedom of expression in a foreign law that would be protected expression under the First Amendment of the U.S. Constitution.

This section also would prohibit the Commission from providing investigative assistance to a foreign law enforcement agency from a foreign state that has supported acts of international terrorism.

Subsection (k) relates to the referral of evidence for criminal proceedings, specifying that the FTC would be required to share domestic and foreign evidence with the Attorney General that may be relevant to a violation of Federal criminal law.

Subsection (l) would allow for expenditures for cooperative arrangements for operating expenses and other costs of bilateral and multilateral law enforcement groups conducting activities of interest to the FTC.

This section would authorize \$100,000 per fiscal year to the FTC for operating costs and other costs of bilateral and multilateral cooperative law enforcement agencies.

Section 5. Representation in foreign litigation

This section would amend section 16 of the FTCA to authorize the FTC to retain foreign counsel to assist the Department of Justice’s Office of Foreign Litigation in pursuing cases in foreign jurisdictions.

Section 6. Sharing information with foreign law enforcement agencies

This section would amend section 21(b)(6) of the FTCA to allow the FTC to share information with other agencies and expand existing authority to share compelled or confidential information with foreign law enforcers in consumer protection cases. Currently, information that is confidential or that has been compelled cannot be shared with foreign law enforcement agencies without the consent of the entity submitting the information. This section exempts the FTC from public disclosure of material received in the course of an investigation obtained from either domestic or foreign sources.

The Committee expects that the Commission will use discretion when determining whether, when, and how to agree to a foreign law enforcement agency's request for assistance. In particular, the Committee underscores its belief that requests to investigate consumer protection-related violations affecting U.S. residents are the most appropriate types of requests for providing assistance to foreign law enforcement agencies.

Before granting a request to provide investigative assistance to a foreign law enforcement agency, the FTC would need to be satisfied that the requesting entity is a legitimate law enforcement agency as defined in the Act, and that the request relates to an appropriate investigation or enforcement proceeding of that agency. Before the FTC can provide assistance, the foreign law enforcement agency must make a written request for assistance and must include a statement that it is investigating or enforcing against possible fraudulent or deceptive commercial practices or violations of a law substantially similar to a consumer protection law enforced by the Commission. The Committee believes that the Commission should require that the foreign law enforcement agency provide more information when the Commission has not worked with the foreign law enforcement agency before or when the foreign legal prohibition at issue is complex.

Section 7. Confidentiality; delayed notice of process

This section would create a new section 21A in the FTCA to authorize the FTC to provide delayed notice to suspected perpetrators of fraud (currently entitled to such notice under the Right to Financial Privacy Act (RFPA) (12 U.S. C. 3401 et seq.)) that the FTC is requesting information about them from financial institutions.

Under this section, the FTC would be able to apply for an ex parte application in the event neither notification nor delayed notification is required under the RFPA. All judicial proceedings initiated by the FTC under the RFPA may be brought to the United States District Court and be held in camera. This section would not apply to antitrust investigations or proceedings.

Section 8. Protection for voluntary provision of information

This section would create a new section 21B in the FTCA to authorize the FTC to delay notice to individuals being investigated by allowing third parties to keep Civil Investigative Demands (CIDs) confidential notwithstanding Federal or State law. The FTC often obtains information when investigating fraud by issuing CIDs to third parties. This section also protects entities from liability under applicable Federal and State laws for voluntary disclosures they make to the FTC concerning consumer fraud, or concerning recovery of assets for consumer redress.

Section 9. Staff exchanges

This section would create a new section 25A of the FTCA to authorize the FTC to participate in foreign staff exchange programs, and to make and accept full or partial reimbursement in such exchanges.

Section 10. Information sharing with financial regulators

This section amends Section 1112(e) of the RFPA to allow the FTC to share appropriate information with financial and market regulators.

Section 11. Authority to accept reimbursements, gifts, and voluntary and uncompensated services

This section would amend the FTCA by redesignating section 26 as section 28 and by creating a new section 26 and 27 that would authorize the FTC to accept reimbursement from other agencies for assistance provided in investigations or otherwise, and accept gifts, donations and voluntary services consistent with ethical guidelines, respectively.

Section 12. Preservation of existing authority

This section states that the authority provided in this Act would add to the authority currently vested in the FTC, and would not replace any existing authorities.

Section 13. Report

This section would require that, within three years of the enactment date, the FTC shall transmit a report to Congress describing its experience with the authority granted by this Act, along with any recommendations for additional legislation.

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):

FINANCIAL PRIVACY ACT OF 1978

SEC. 1112. USE OF INFORMATION.

[12 U.S.C. 3412]

(a) **TRANSFER OF FINANCIAL RECORDS TO OTHER AGENCIES OR DEPARTMENTS; CERTIFICATION.**—Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, or intelligence or counterintelligence activity, investigation or analysis related to international terrorism within the jurisdiction of the receiving agency or department.

(b) **MAILING OF COPY OF CERTIFICATION AND NOTICE TO CUSTOMER.**—When financial records subject to this title are transferred pursuant to subsection (a), the transferring agency or department shall, within fourteen days, send to the customer a copy of the certification made pursuant to subsection (a) and the following notice, which shall state the nature of the law enforcement inquiry with reasonable specificity: “Copies of, or information contained in, your financial records lawfully in possession of ----- have been furnished to ----- pursuant to the Right of Financial Privacy Act of 1978 for the following purpose: ----- . If you believe that this

transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.”

(c) COURT-ORDERED DELAYS IN MAILING.—Notwithstanding subsection (b), notice to the customer may be delayed if the transferring agency or department has obtained a court order delaying notice pursuant to section 1109(a) and (b) and that order is still in effect, or if the receiving agency or department obtains a court order authorizing a delay in notice pursuant to section 1109(a) and (b). Upon the expiration of any such period of delay, the transferring agency or department shall serve to the customer the notice specified in subsection (b) above and the agency or department that obtained the court order authorizing a delay in notice pursuant to section 1109(a) and (b) shall serve to the customer the notice specified in section 1109(b).

(d) EXCHANGES OF EXAMINATION REPORTS BY SUPERVISORY AGENCIES; TRANSFER OF FINANCIAL RECORDS TO DEFEND CUSTOMER ACTION; WITHHOLDING OF INFORMATION.—Nothing in this title prohibits any supervisory agency from exchanging examination reports or other information with another supervisory agency. Nothing in this title prohibits the transfer of a customer’s financial records needed by counsel for a Government authority to defend an action brought by the customer. Nothing in this title shall authorize the withholding of information by any officer or employee of a supervisory agency from a duly authorized committee or subcommittee of the Congress.

(e) FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL SUPERVISORY AGENCIES; AUTHORIZATION OF EXCHANGE OF FINANCIAL RECORDS OR OTHER INFORMATION.—Notwithstanding section 1101(6) or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or any subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securities and Exchange Commission, *the Federal Trade Commission*, and the Commodity Futures Trading Commission is permitted.

(f) TRANSFER TO ATTORNEY GENERAL.—

(1) IN GENERAL.—Nothing in this title shall apply when financial records obtained by an agency or department of the United States are disclosed or transferred to the Attorney General or the Secretary of the Treasury upon the certification by a supervisory level official of the transferring agency or department that—

(A) there is reason to believe that the records may be relevant to a violation of Federal criminal law; and

(B) the records were obtained in the exercise of the agency’s or department’s supervisory or regulatory functions.

(2) LIMITATION ON USE.—Records so transferred shall be used only for criminal investigative or prosecutive purposes, for civil actions under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, or for forfeiture under sections 981 or 982 of title 18, United States Code, by the Department of Justice and only for criminal investigative purposes relating to money laundering and other financial crimes

by the Department of the Treasury and shall, upon completion of the investigation or prosecution (including any appeal), be returned only to the transferring agency or department. No agency or department so transferring such records shall be deemed to have waived any privilege applicable to those records under law.

FEDERAL TRADE COMMISSION ACT

SEC. 4. DEFINITIONS.

[15 U.S.C. 44]

The words defined in this section shall have the following meaning when found in this Act, to wit: "Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. "Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members. "Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records. "Acts to regulate commerce" means the Act entitled "An Act to regulate commerce," approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto. "Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890; also sections 73 to 76 inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76, of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," approved October 15, 1914. "Banks" means the types of banks and other financial institutions referred to in section 18(f)(2).

"Foreign law enforcement agency" means—

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).

SEC. 5. UNFAIR METHODS OF COMPETITION UNLAWFUL; PREVENTION BY COMMISSION.

[15 U.S.C. 45]

(a) **DECLARATION OF UNLAWFULNESS; POWER TO PROHIBIT UNFAIR PRACTICES; INAPPLICABILITY TO FOREIGN TRADE.**—

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph. If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)(A) *For purposes of subsection (a), the term “unfair or deceptive acts or practices” includes such acts or practices involving foreign commerce that—*

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

(b) **PROCEEDING BY COMMISSION; MODIFYING AND SETTING ASIDE ORDERS.**—Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that

respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after the service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

(c) REVIEW OF ORDER; REHEARING.—Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the

act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors *pendente lite*. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

(d) JURISDICTION OF COURT.—Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) EXTENSION FROM LIABILITY.—No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) SERVICE OF COMPLAINTS, ORDERS AND OTHER PROCESSES; RETURN.—Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or

place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(g) FINALITY OF ORDER.—An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) and of section 19(a)(2), if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(h) MODIFICATION OR SETTING ASIDE OF ORDER BY SUPREME COURT.—If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) MODIFICATION OR SETTING ASIDE OF ORDER BY COURT OF APPEALS.—If the order of the Commission is modified or set aside by the court of appeals, and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) REHEARING UPON ORDER OR REMAND.—If the Supreme Court orders a rehearing; or if the case is remanded by the court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) “MANDATE” DEFINED.—As used in this section the term “mandate,” in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) PENALTY FOR VIOLATION OF ORDER; INJUNCTIONS AND OTHER APPROPRIATE EQUITABLE RELIEF.—Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) CIVIL ACTIONS FOR RECOVERY OF PENALTIES FOR KNOWING VIOLATIONS OF RULES AND CEASE AND DESIST ORDERS RESPECTING UNFAIR OR DECEPTIVE ACTS OR PRACTICES; JURISDICTION; MAXIMUM AMOUNT OF PENALTIES; CONTINUING VIOLATIONS; DE NOVO DETERMINATIONS; COMPROMISE OR SETTLEMENT PROCEDURE.—

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1)) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with section 5(a)(1), each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a).

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(n) DEFINITION OF UNFAIR ACTS OR PRACTICES.—The Commission shall have no authority under this section or section 18 to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

SEC. 6. ADDITIONAL POWERS OF COMMISSION.

[15 U.S.C 46]

The commission shall also have power—

(a) INVESTIGATION OF PERSONS, PARTNERSHIPS, OR CORPORATIONS.—To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) REPORTS OF PERSONS, PARTNERSHIPS, AND CORPORATIONS.—To require, by general or special orders, persons, partnerships, and corporations engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the commission in such form as the commission may prescribe annual or special, or both annual and special, reports, or answers in writing to specific questions, furnishing to the commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the commission may prescribe, and shall be filed with the commission within such reasonable period as the commission may prescribe, unless additional time be granted in any case by the commission.

(c) INVESTIGATION OF COMPLIANCE WITH ANTITRUST DECREES.—Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the commission.

(d) INVESTIGATIONS OF VIOLATIONS OF ANTITRUST STATUTES.—Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) READJUSTMENT OF BUSINESS OF CORPORATIONS VIOLATING ANTITRUST STATUTES.—Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) PUBLICATION OF INFORMATION; REPORTS.—To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: Provided, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information (1) to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement [purposes.] purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b).

(g) CLASSIFICATION OF CORPORATIONS; REGULATIONS.—From time to time to classify corporations and (except as provided in section 18(a)(2) of this Act) to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) INVESTIGATIONS OF FOREIGN TRADE CONDITIONS; REPORTS.—To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

(i) With respect to the International Antitrust Enforcement Assistance Act of 1994, to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act).

(j) INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.—

(1) IN GENERAL.—Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

(2) *TYPE OF ASSISTANCE.*—*In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—*

(A) *conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and*

(B) *when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28, United States Code.*

(3) *CRITERIA FOR DETERMINATION.*—*In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—*

(A) *whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;*

(B) *whether compliance with the request would prejudice the public interest of the United States; and*

(C) *whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.*

(4) *INTERNATIONAL AGREEMENTS.*—*If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—*

(A) *provide assistance using the powers set forth in this subsection;*

(B) *disclose materials and information in accordance with subsection (f) and section 21(b); and*

(C) *engage in further cooperation, and protect materials and information received from disclosure, as authorized by this Act.*

(5) *ADDITIONAL AUTHORITY.*—*The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.*

(6) *LIMITATION.*—*The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C.*

57a(f)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of section 6 (15 U.S.C. 46).

(7) ASSISTANCE TO CERTAIN COUNTRIES.—The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

(k) REFERRAL OF EVIDENCE FOR CRIMINAL PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

(2) INTERNATIONAL INFORMATION.—The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

(l) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—To expend appropriated funds for—

(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

(A) such incidental expenses as meals taken in the course of such attendance;

(B) any travel and transportation to or from such meetings; and

(C) any other related lodging or subsistence.

Provided, That the exception of “banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce” from the Commission's powers defined in [clauses (a) and (b)] subsections (a), (b), and (j) of this section, shall not be

construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on the date of the enactment of the Federal Trade Commission Improvements Act of 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made. Section 16 of the Federal Trade Commission Act

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SEC. 16. COMMENCEMENT, DEFENSE, INTERVENTION AND SUPERVISION OF LITIGATION AND APPEAL BY COMMISSION OR ATTORNEY GENERAL.

[15 U.S.C. 56]

(a) PROCEDURE FOR EXERCISE OF AUTHORITY TO LITIGATE OR APPEAL.—

- (1) Except as otherwise provided in paragraph (2) or (3), if—
- (A) before commencing, defending, or intervening in, any civil action involving this Act (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and
- (B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action; the Commission may commence, defend, or intervene in, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.
- (2) Except as otherwise provided in paragraph (3), in any civil action—
- (A) under section 13 of this Act (relating to injunctive relief);
- (B) under section 19 of this Act (relating to consumer redress);
- (C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 5 of this Act; **[or]**
- (D) under the second paragraph of section 9 of this Act (relating to enforcement of a subpoena) and under the fourth paragraph of such section (relating to a compliance with section 6 of this Act); *or*
- (E) *under section 21A of this Act;*
- the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.
- (3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—
- (i) the Attorney General concurs with such request; or
- (ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—
- (a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or
- (b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, United States Code, or any other provision of law.

(b) CERTIFICATION BY COMMISSION TO ATTORNEY GENERAL FOR CRIMINAL PROCEEDINGS.—Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this Act, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

(c) FOREIGN LITIGATION.—

(1) COMMISSION ATTORNEYS.—*With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.*

(2) REIMBURSEMENT FOR FOREIGN COUNSEL.—*The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.*

(3) LIMITATION ON USE OF FUNDS.—*Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.*

(4) OTHER AUTHORITY.—*The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General."*

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SEC. 21. CONFIDENTIALITY.

[15 U.S.C. 57b-2]

(a) DEFINITIONS.—For purposes of this section:

(1) The term “material” means documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony.

(2) The term “Federal agency” has the meaning given it in section 552(e) of title 5, United States Code.

(b) PROCEDURES RESPECTING DOCUMENTS, TANGIBLE THINGS, OR TRANSCRIPTS OF ORAL TESTIMONY RECEIVED PURSUANT TO COMPULSORY PROCESS IN INVESTIGATION.—

(1) With respect to any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, tangible things, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct pursuant to section 20(h)) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(3)(A) The custodian to whom any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony, and may make tangible things available, as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material, things, and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, tangible things, reports or answers to questions, and transcripts of oral

testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material, things, or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material, tangible things, or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation; then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence

and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. *The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—*

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

(C) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4)); and

(D) the foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until

such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or employee of a foreign law enforcement agency.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this Act, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated. Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

(c) INFORMATION CONSIDERED CONFIDENTIAL.—

(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f), then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f), before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The doc-

uments shall not be disclosed until the court has ruled on the application for a stay.

(d) PARTICULAR DISCLOSURES ALLOWED.—

(1) The provisions of subsection (c) shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512 of title 44, United States Code, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(e) EFFECT ON OTHER STATUTORY PROVISIONS LIMITING DISCLOSURE.—Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

[(f) EXEMPTION FROM DISCLOSURE.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5, United States Code.]

(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

(1) *IN GENERAL.*—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is pro-

vided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

(2) MATERIAL OBTAINED FROM A FOREIGN SOURCE.—

(A) IN GENERAL.—*Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—*

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material;

or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(B) SAVINGS PROVISION.—*Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.*

SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.

(a) APPLICATION WITH OTHER LAWS.—*The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, shall apply with respect to the Commission, except as otherwise provided in this section.*

(b) PROCEDURES FOR DELAY OF NOTIFICATION OR PROHIBITION OF DISCLOSURE.—*The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—*

(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18, United States Code, (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

(2) if notification would otherwise be required under chapter 121 of title 18, United States Code, the Commission may delay notification (including extending such a delay) upon the execu-

tion of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

(c) *EX PARTE APPLICATION BY COMMISSION.*—

(1) *IN GENERAL.*—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

(2) *APPLICATION.*—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) *LIMITATION.*—No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

(d) *NO LIABILITY FOR FAILURE TO NOTIFY.*—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

(1) the underlying conduct reported;

(2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or

(3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

(e) *VENUE AND PROCEDURE.*—

(1) *IN GENERAL.*—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 *et seq.*), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All *ex parte* applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

(2) *IN CAMERA PROCEEDINGS.*—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held *in camera* and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(f) *SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.*—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211).

(g) *ADVERSE RESULT DEFINED.*—For purposes of this section the term “adverse result” means—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) the destruction of, or tampering with, evidence;
- (4) the intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices; or

(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.

SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

(a) *IN GENERAL.*—

(1) *NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.*—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such

provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

(2) *LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—*

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

(b) *CERTAIN FINANCIAL INSTITUTIONS.—An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, United States Code, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—*

(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

(A) related to possibly fraudulent or deceptive commercial practices;

(B) related to persons involved in such practices; or

(C) otherwise subject to recovery by the Commission; or

(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

(c) *CONSUMER COMPLAINTS.—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.*

(d) *APPLICATION.—This section applies to the following entities, whether foreign or domestic:*

(1) A financial institution as defined in section 5312 of title 31, United States Code.

(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

* * * * *

SEC. 25A. STAFF EXCHANGES.

(a) *IN GENERAL.—The Commission may—*

(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Com-

mission pursuant to section 2 of this Act or section 3101 or section 3109 of title 5, United States Code; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

(b) **RECIPROCITY AND REIMBURSEMENT.**—The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

(c) **STANDARDS OF CONDUCT.**—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.

SEC. 26. REIMBURSEMENT OF EXPENSES.

The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED SERVICES.

(a) **IN GENERAL.**—In furtherance of its functions the Commission may accept, hold, administer, and use unconditional gifts, donations, and bequests of real, personal, and other property and, notwithstanding section 1342 of 10 title 31, United States Code, accept voluntary and uncompensated services.

(b) **LIMITATIONS.**—

(1) **CONFLICTS OF INTEREST.**—The Commission shall establish written guidelines setting forth criteria to be used in determining whether the acceptance, holding, administration, or use of a gift, donation, or bequest pursuant to subsection (a) would reflect unfavorably upon the ability of the Commission or any employee to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(2) **VOLUNTARY SERVICES.**—A person who provides voluntary and uncompensated service under subsection (a) shall be considered a Federal employee for purposes of—

(A) chapter 81 of title 5, United States Code, (relating to compensation for injury); and

(B) the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees.

(3) **TORT LIABILITY OF VOLUNTEERS.**—A person who provides voluntary and uncompensated service under subsection (a), while assigned to duty, shall be deemed a volunteer of a non-profit organization or governmental entity for purposes of the

Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.). Subsection (d) of section 4 of such Act (42 U.S.C. 14503(d)) shall not apply for purposes of any claim against such volunteer.

SEC. [26] 28. SHORT TITLE.

This Act may be cited as the “Federal Trade Commission Act.”

