

115TH CONGRESS
2D SESSION

S. 3639

To prohibit the circumvention of control measures used by Internet retailers to ensure equitable consumer access to products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 15, 2018

Mr. BLUMENTHAL (for himself, Mr. SCHUMER, and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit the circumvention of control measures used by Internet retailers to ensure equitable consumer access to products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. UNFAIR AND DECEPTIVE ACTS AND PRACTICES**

4 **RELATING TO CIRCUMVENTION OF ONLINE**
5 **ACCESS CONTROL MEASURES.**

6 (a) CONDUCT PROHIBITED.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), it shall be unlawful for any person—

1 (A) to circumvent a security measure, ac-
2 cess control system, or other technological con-
3 trol or measure on an Internet website or online
4 service to enforce posted purchasing limits or to
5 manage inventory; or

6 (B) to sell or offer to sell any product or
7 service in interstate commerce obtained in viola-
8 tion of subparagraph (A) if the person selling
9 or offering to sell the product or service—

10 (i) participated directly in or had the
11 ability to control the conduct in violation of
12 subparagraph (A); or

13 (ii) knew or should have known that
14 the product or service was acquired in vio-
15 lation of subparagraph (A).

16 (2) EXCEPTION.—It shall not be unlawful
17 under this section for a person to create or use any
18 computer software or system—

19 (A) to investigate, or further the enforce-
20 ment or defense, of any alleged violation of this
21 section or other statute or regulation; or

22 (B) to engage in research necessary to
23 identify and analyze flaws and vulnerabilities of
24 measures, systems, or controls described in

paragraph (1)(A), if these research activities
are conducted—

- (i) to advance the state of knowledge
in the field of computer system security; or
- (ii) to assist in the development of
computer security product.

(b) ENFORCEMENT BY THE FEDERAL TRADE COM-
MISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
TICES.—A violation of subsection (a) shall be treated
as a violation of a rule defining an unfair or a de-
ceptive act or practice under section 18(a)(1)(B) of
the Federal Trade Commission Act (15 U.S.C.
57a(a)(1)(B)).

(2) POWERS OF COMMISSION.—

(A) IN GENERAL.—The Commission shall
enforce this section in the same manner, by the
same means, and with the same jurisdiction,
powers, and duties as though all applicable
terms and provisions of the Federal Trade
Commission Act (15 U.S.C. 41 et seq.) were in-
corporated into and made a part of this section.

(B) PRIVILEGES AND IMMUNITIES.—Any
person who violates subsection (a) shall be sub-
ject to the penalties and entitled to the privi-

leges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(C) AUTHORITY PRESERVED.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.

(c) ENFORCEMENT BY STATES.—

(1) IN GENERAL.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (a) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

(A) to enjoin further violation of such subsection by such person;

(B) to compel compliance with such subsection; and

(C) to obtain damages, restitution, or other compensation on behalf of such residents.

(2) RIGHTS OF FEDERAL TRADE COMMISSION.—

1 (A) NOTICE TO FEDERAL TRADE COMMIS-
2 SION.—

3 (i) IN GENERAL.—Except as provided
4 in clause (iii), the attorney general of a
5 State shall notify the Commission in writ-
6 ing that the attorney general intends to
7 bring a civil action under paragraph (1)
8 not later than 10 days before initiating the
9 civil action.

10 (ii) CONTENTS.—The notification re-
11 quired by clause (i) with respect to a civil
12 action shall include a copy of the complaint
13 to be filed to initiate the civil action.

14 (iii) EXCEPTION.—If it is not feasible
15 for the attorney general of a State to pro-
16 vide the notification required by clause (i)
17 before initiating a civil action under para-
18 graph (1), the attorney general shall notify
19 the Commission immediately upon insti-
20 tuting the civil action.

21 (B) INTERVENTION BY FEDERAL TRADE
22 COMMISSION.—The Commission may—

23 (i) intervene in any civil action
24 brought by the attorney general of a State
25 under paragraph (1); and

1 (ii) upon intervening—

2 (I) be heard on all matters arising in the civil action; and

3 (II) file petitions for appeal of a
4 decision in the civil action.

5 (3) INVESTIGATORY POWERS.—Nothing in this
6 subsection may be construed to prevent the attorney
7 general of a State from exercising the powers conferred on the attorney general by the laws of the
8 State to conduct investigations, to administer oaths
9 or affirmations, or to compel the attendance of witnesses or the production of documentary or other
10 evidence.

11 (4) ACTION BY FEDERAL TRADE COMMISSION.—If the Commission institutes a civil action or
12 an administrative action with respect to a violation
13 of subsection (a), the attorney general of a State
14 may not, during the pendency of such action, bring
15 a civil action under paragraph (1) against any defendant named in the complaint of the Commission
16 for the violation with respect to which the Commission instituted such action.

17 (5) VENUE; SERVICE OF PROCESS.—

18 (A) VENUE.—Any action brought under
19 paragraph (1) may be brought in—
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1 (i) the district court of the United
 2 States that meets applicable requirements
 3 relating to venue under section 1391 of
 4 title 28, United States Code; or

5 (ii) another court of competent juris-
 6 diction.

7 (B) SERVICE OF PROCESS.—In an action
 8 brought under paragraph (1), process may be
 9 served in any district in which the defendant—

10 (i) is an inhabitant; or

11 (ii) may be found.

12 (6) ACTIONS BY OTHER STATE OFFICIALS.—

13 (A) IN GENERAL.—In addition to civil ac-
 14 tions brought by attorneys general under para-
 15 graph (1), any other consumer protection offi-
 16 cer of a State who is authorized by the State
 17 to do so may bring a civil action under para-
 18 graph (1), subject to the same requirements
 19 and limitations that apply under this subsection
 20 to civil actions brought by attorneys general.

21 (B) SAVINGS PROVISION.—Nothing in this
 22 subsection may be construed to prohibit an au-
 23 thorized official of a State from initiating or
 24 continuing any proceeding in a court of the

1 State for a violation of any civil or criminal law
2 of the State.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) COMMISSION.—The term “Commission”
6 means the Federal Trade Commission.

7 (2) POSTED.—The term “posted” means clearly
8 and conspicuously published on an Internet website.

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