

115TH CONGRESS
2D SESSION

S. _____

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

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

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. SHORT TITLE.**

4 This Act may be cited as the [“_____ Act
5 _____”.]

6 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
7 **LATING TO CIRCUMVENTION OF ONLINE AC-**
8 **CESS CONTROL MEASURES.**

9 (a) CONDUCT PROHIBITED.—

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

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

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

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

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

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

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

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

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

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

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

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
10 TICES.—A violation of subsection (a) shall be treated
11 as a violation of a rule defining an unfair or a de-
12 ceptive act or practice under section 18(a)(1)(B) of
13 the Federal Trade Commission Act (15 U.S.C.
14 57a(a)(1)(B)).

15 (2) POWERS OF COMMISSION.—

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

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

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

3 (C) **AUTHORITY PRESERVED.**—Nothing in
4 this Act shall be construed to limit the author-
5 ity of the Commission under any other provi-
6 sion of law.

7 (c) **ENFORCEMENT BY STATES.**—

8 (1) **IN GENERAL.**—In any case in which the at-
9 torney general of a State has reason to believe that
10 an interest of the residents of the State has been or
11 is threatened or adversely affected by the engage-
12 ment of any person subject to subsection (a) in a
13 practice that violates such subsection, the attorney
14 general of the State may, as *parens patriae*, bring
15 a civil action on behalf of the residents of the State
16 in an appropriate district court of the United
17 States—

18 (A) to enjoin further violation of such sub-
19 section by such person;

20 (B) to compel compliance with such sub-
21 section; and

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

24 (2) **RIGHTS OF FEDERAL TRADE COMMIS-**
25 **SION.**—

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 aris-
3 ing in the civil action; and

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

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

14 (4) ACTION BY FEDERAL TRADE COMMIS-
15 SION.—If the Commission institutes a civil action or
16 an administrative action with respect to a violation
17 of subsection (a), the attorney general of a State
18 may not, during the pendency of such action, bring
19 a civil action under paragraph (1) against any de-
20 fendant named in the complaint of the Commission
21 for the violation with respect to which the Commis-
22 sion instituted such action.

23 (5) VENUE; SERVICE OF PROCESS.—

24 (A) VENUE.—Any action brought under
25 paragraph (1) may be brought in—

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. 3. 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.