

# Calendar No. 673

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 4110

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 7, 2006

Mr. SMITH (for himself, Mr. INOUE, Mr. MCCAIN, Mr. NELSON of Florida, Mr. BURNS, and Mr. PRYOR) introduced the following bill; which was read the first time

DECEMBER 8, 2006

Read the second time and placed on the calendar

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## A BILL

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Undertaking Spam, Spyware, And Fraud Enforcement

1 With Enforcers beyond Borders Act of 2006” or the “U.S.  
2 SAFE WEB Act of 2006”.

3 (b) TABLE OF CONTENTS.—The table of contents for  
4 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Foreign law enforcement agency defined.
- Sec. 3. Availability of remedies.
- Sec. 4. Powers of the Commission.
- Sec. 5. Representation in foreign litigation.
- Sec. 6. Sharing information with foreign law enforcement agencies.
- Sec. 7. Confidentiality; Delayed notice of process.
- Sec. 8. Protection for voluntary provision of information.
- Sec. 9. Staff exchanges.
- Sec. 10. Information sharing with financial regulators.
- Sec. 11. Authority to accept reimbursements.
- Sec. 12. Preservation of existing authority.
- Sec. 13. Sunset.
- Sec. 14. Report.

5 **SEC. 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

6 Section 4 of the Federal Trade Commission Act (15  
7 U.S.C. 44) is amended by adding at the end the following:

8 “‘Foreign law enforcement agency’ means—

9 “(1) any agency or judicial authority of a for-  
10 eign government, including a foreign state, a polit-  
11 ical subdivision of a foreign state, or a multinational  
12 organization constituted by and comprised of foreign  
13 states, that is vested with law enforcement or inves-  
14 tigative authority in civil, criminal, or administrative  
15 matters; and

16 “(2) any multinational organization, to the ex-  
17 tent that it is acting on behalf of an entity described  
18 in paragraph (1).”.

1 **SEC. 3. AVAILABILITY OF REMEDIES.**

2 Section 5(a) of the Federal Trade Commission Act  
3 (15 U.S.C. 45(a)) is amended by adding at the end the  
4 following:

5 “(4)(A) For purposes of subsection (a), the  
6 term ‘unfair or deceptive acts or practices’ includes  
7 such acts or practices involving foreign commerce  
8 that—

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

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

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

18 **SEC. 4. POWERS OF THE COMMISSION.**

19 (a) PUBLICATION OF INFORMATION; REPORTS.—Sec-  
20 tion 6(f) of the Federal Trade Commission Act (15 U.S.C.  
21 46(f)) is amended—

22 (1) by inserting “(1)” after “such information”  
23 the first place it appears; and

24 (2) by striking “purposes.” and inserting “pur-  
25 poses, and (2) to any officer or employee of any for-  
26 eign law enforcement agency under the same cir-

1        cumstances that making material available to foreign  
2        law enforcement agencies is permitted under section  
3        21(b).”.

4        (b) OTHER POWERS OF THE COMMISSION.—Section  
5        6 of the Federal Trade Commission Act (15 U.S.C. 46)  
6        is further amended by inserting after subsection (i) and  
7        before the proviso the following:

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

10        “(1) IN GENERAL.—Upon a written request  
11        from a foreign law enforcement agency to provide  
12        assistance in accordance with this subsection, if the  
13        requesting agency states that it is investigating, or  
14        engaging in enforcement proceedings against, pos-  
15        sible violations of laws prohibiting fraudulent or de-  
16        ceptive commercial practices, or other practices sub-  
17        stantially similar to practices prohibited by any pro-  
18        vision of the laws administered by the Commission,  
19        other than Federal antitrust laws (as defined in sec-  
20        tion 12(5) of the International Antitrust Enforce-  
21        ment Assistance Act of 1994 (15 U.S.C. 6211(5))),  
22        to provide the assistance described in paragraph (2)  
23        without requiring that the conduct identified in the  
24        request constitute a violation of the laws of the  
25        United States.

1           “(2) TYPE OF ASSISTANCE.—In providing as-  
2           sistance to a foreign law enforcement agency under  
3           this subsection, the Commission may—

4                   “(A) conduct such investigation as the  
5           Commission deems necessary to collect informa-  
6           tion and evidence pertinent to the request for  
7           assistance, using all investigative powers au-  
8           thorized by this Act; and

9                   “(B) when the request is from an agency  
10          acting to investigate or pursue the enforcement  
11          of civil laws, or when the Attorney General re-  
12          fers a request to the Commission from an agen-  
13          cy acting to investigate or pursue the enforce-  
14          ment of criminal laws, seek and accept appoint-  
15          ment by a United States district court of Com-  
16          mission attorneys to provide assistance to for-  
17          eign and international tribunals and to litigants  
18          before such tribunals on behalf of a foreign law  
19          enforcement agency pursuant to section 1782 of  
20          title 28, United States Code.

21           “(3) CRITERIA FOR DETERMINATION.—In de-  
22          ciding whether to provide such assistance, the Com-  
23          mission shall consider all relevant factors, includ-  
24          ing—

1           “(A) whether the requesting agency has  
2           agreed to provide or will provide reciprocal as-  
3           sistance to the Commission;

4           “(B) whether compliance with the request  
5           would prejudice the public interest of the  
6           United States; and

7           “(C) whether the requesting agency’s in-  
8           vestigation or enforcement proceeding concerns  
9           acts or practices that cause or are likely to  
10          cause injury to a significant number of persons.

11          “(4) INTERNATIONAL AGREEMENTS.—If a for-  
12          eign law enforcement agency has set forth a legal  
13          basis for requiring execution of an international  
14          agreement as a condition for reciprocal assistance,  
15          or as a condition for provision of materials or infor-  
16          mation to the Commission, the Commission, with  
17          prior approval and ongoing oversight of the Sec-  
18          retary of State, and with final approval of the agree-  
19          ment by the Secretary of State, may negotiate and  
20          conclude an international agreement, in the name of  
21          either the United States or the Commission, for the  
22          purpose of obtaining such assistance, materials, or  
23          information. The Commission may undertake in  
24          such an international agreement to—

1           “(A) provide assistance using the powers  
2 set forth in this subsection;

3           “(B) disclose materials and information in  
4 accordance with subsection (f) and section  
5 21(b); and

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

9           “(5) ADDITIONAL AUTHORITY.—The authority  
10 provided by this subsection is in addition to, and not  
11 in lieu of, any other authority vested in the Commis-  
12 sion or any other officer of the United States.

13           “(6) LIMITATION.—The authority granted by  
14 this subsection shall not authorize the Commission  
15 to take any action or exercise any power with re-  
16 spect to a bank, a savings and loan institution de-  
17 scribed in section 18(f)(3) (15 U.S.C. 57a(f)(3)), a  
18 Federal credit union described in section 18(f)(4)  
19 (15 U.S.C. 57a(f)(4)), or a common carrier subject  
20 to the Act to regulate commerce, except in accord-  
21 ance with the undesignated proviso following the last  
22 designated subsection of section 6 (15 U.S.C. 46).

23           “(7) ASSISTANCE TO CERTAIN COUNTRIES.—  
24 The Commission may not provide investigative as-  
25 sistance under this subsection to a foreign law en-

1 enforcement agency from a foreign state that the Sec-  
2 retary of State has determined, in accordance with  
3 section 6(j) of the Export Administration Act of  
4 1979 (50 U.S.C. App. 2405(j)), has repeatedly pro-  
5 vided support for acts of international terrorism, un-  
6 less and until such determination is rescinded pursu-  
7 ant to section 6(j)(4) of that Act (50 U.S.C. App.  
8 2405(j)(4)).

9 “(k) REFERRAL OF EVIDENCE FOR CRIMINAL PRO-  
10 CEEDINGS.—

11 “(1) IN GENERAL.—Whenever the Commission  
12 obtains evidence that any person, partnership, or  
13 corporation, either domestic or foreign, has engaged  
14 in conduct that may constitute a violation of Federal  
15 criminal law, to transmit such evidence to the Attor-  
16 ney General, who may institute criminal proceedings  
17 under appropriate statutes. Nothing in this para-  
18 graph affects any other authority of the Commission  
19 to disclose information.

20 “(2) INTERNATIONAL INFORMATION.—The  
21 Commission shall endeavor to ensure, with respect to  
22 memoranda of understanding and international  
23 agreements it may conclude, that material it has ob-  
24 tained from foreign law enforcement agencies acting  
25 to investigate or pursue the enforcement of foreign

1 criminal laws may be used for the purpose of inves-  
2 tigation, prosecution, or prevention of violations of  
3 United States criminal laws.

4 “(1) EXPENDITURES FOR COOPERATIVE ARRANGE-  
5 MENTS.—To expend appropriated funds for—

6 “(1) operating expenses and other costs of bi-  
7 lateral and multilateral cooperative law enforcement  
8 groups conducting activities of interest to the Com-  
9 mission and in which the Commission participates;  
10 and

11 “(2) expenses for consultations and meetings  
12 hosted by the Commission with foreign government  
13 agency officials, members of their delegations, ap-  
14 propriate representatives and staff to exchange views  
15 concerning developments relating to the Commis-  
16 sion’s mission, development and implementation of  
17 cooperation agreements, and provision of technical  
18 assistance for the development of foreign consumer  
19 protection or competition regimes, such expenses to  
20 include necessary administrative and logistic ex-  
21 penses and the expenses of Commission staff and  
22 foreign invitees in attendance at such consultations  
23 and meetings including—

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

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

3           “(C) any other related lodging or subsist-  
4           ence.”.

5           (c) AUTHORIZATION OF APPROPRIATIONS.—The  
6 Federal Trade Commission is authorized to expend appro-  
7 priated funds not to exceed \$100,000 per fiscal year for  
8 purposes of section 6(l) of the Federal Trade Commission  
9 Act (15 U.S.C. 46(l)) (as added by subsection (b) of this  
10 section), including operating expenses and other costs of  
11 the following bilateral and multilateral cooperative law en-  
12 forcement agencies and organizations:

13           (1) The International Consumer Protection and  
14           Enforcement Network.

15           (2) The International Competition Network.

16           (3) The Mexico-U.S.-Canada Health Fraud  
17           Task Force.

18           (4) Project Emptor.

19           (5) The Toronto Strategic Partnership and  
20           other regional partnerships with a nexus in a Cana-  
21           dian province.

22           (d) CONFORMING AMENDMENT.—Section 6 of the  
23 Federal Trade Commission Act (15 U.S.C. 46) is amended  
24 by striking “clauses (a) and (b)” in the proviso following

1 subsection (l) (as added by subsection (b) of this section)  
2 and inserting “subsections (a), (b), and (j)”.

3 **SEC. 5. REPRESENTATION IN FOREIGN LITIGATION.**

4 Section 16 of the Federal Trade Commission Act (15  
5 U.S.C. 56) is amended by adding at the end the following:

6 “(c) FOREIGN LITIGATION.—

7 “(1) COMMISSION ATTORNEYS.—With the con-  
8 currence of the Attorney General, the Commission  
9 may designate Commission attorneys to assist the  
10 Attorney General in connection with litigation in for-  
11 eign courts on particular matters in which the Com-  
12 mission has an interest.

13 “(2) REIMBURSEMENT FOR FOREIGN COUN-  
14 SEL.—The Commission is authorized to expend ap-  
15 propriated funds, upon agreement with the Attorney  
16 General, to reimburse the Attorney General for the  
17 retention of foreign counsel for litigation in foreign  
18 courts and for expenses related to litigation in for-  
19 eign courts in which the Commission has an interest.

20 “(3) LIMITATION ON USE OF FUNDS.—Nothing  
21 in this subsection authorizes the payment of claims  
22 or judgments from any source other than the perma-  
23 nent and indefinite appropriation authorized by sec-  
24 tion 1304 of title 31, United States Code.

1           “(4) OTHER AUTHORITY.—The authority pro-  
2           vided by this subsection is in addition to any other  
3           authority of the Commission or the Attorney Gen-  
4           eral.”.

5 **SEC. 6. SHARING INFORMATION WITH FOREIGN LAW EN-**  
6 **FORCEMENT AGENCIES.**

7           (a) MATERIAL OBTAINED PURSUANT TO COMPUL-  
8           SORY PROCESS.—Section 21(b)(6) of the Federal Trade  
9           Commission Act (15 U.S.C. 57b–2(b)(6)) is amended by  
10          adding at the end “The custodian may make such material  
11          available to any foreign law enforcement agency upon the  
12          prior certification of an appropriate official of any such  
13          foreign law enforcement agency, either by a prior agree-  
14          ment or memorandum of understanding with the Commis-  
15          sion or by other written certification, that such material  
16          will be maintained in confidence and will be used only for  
17          official law enforcement purposes, if—

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

21                 “(B) the materials are to be used for purposes  
22                 of investigating, or engaging in enforcement pro-  
23                 ceedings related to, possible violations of—

24                         “(i) foreign laws prohibiting fraudulent or  
25                         deceptive commercial practices, or other prac-

1           tices substantially similar to practices prohib-  
2           ited by any law administered by the Commis-  
3           sion;

4           “(ii) a law administered by the Commis-  
5           sion, if disclosure of the material would further  
6           a Commission investigation or enforcement pro-  
7           ceeding; or

8           “(iii) with the approval of the Attorney  
9           General, other foreign criminal laws, if such  
10          foreign criminal laws are offenses defined in or  
11          covered by a criminal mutual legal assistance  
12          treaty in force between the government of the  
13          United States and the foreign law enforcement  
14          agency’s government;

15          “(C) the appropriate Federal banking agency  
16          (as defined in section 3(q) of the Federal Deposit  
17          Insurance Act (12 U.S.C. 1813(q)) or, in the case  
18          of a Federal credit union, the National Credit Union  
19          Administration, has given its prior approval if the  
20          materials to be provided under subparagraph (B)  
21          are requested by the foreign law enforcement agency  
22          for the purpose of investigating, or engaging in en-  
23          forcement proceedings based on, possible violations  
24          of law by a bank, a savings and loan institution de-  
25          scribed in section 18(f)(3) of the Federal Trade

1 Commission Act (15 U.S.C. 57a(f)(3)), or a Federal  
2 credit union described in section 18(f)(4) of the Fed-  
3 eral Trade Commission Act (15 U.S.C. 57a(f)(4));  
4 and

5 “(D) the foreign law enforcement agency is not  
6 from a foreign state that the Secretary of State has  
7 determined, in accordance with section 6(j) of the  
8 Export Administration Act of 1979 (50 U.S.C. App.  
9 2405(j)), has repeatedly provided support for acts of  
10 international terrorism, unless and until such deter-  
11 mination is rescinded pursuant to section 6(j)(4) of  
12 that Act (50 U.S.C. App. 2405(j)(4)).

13 Nothing in the preceding sentence authorizes the disclo-  
14 sure of material obtained in connection with the adminis-  
15 tration of the Federal antitrust laws or foreign antitrust  
16 laws (as defined in paragraphs (5) and (7), respectively,  
17 of section 12 of the International Antitrust Enforcement  
18 Assistance Act of 1994 (15 U.S.C. 6211)) to any officer  
19 or employee of a foreign law enforcement agency.”.

20 (b) INFORMATION SUPPLIED BY AND ABOUT FOR-  
21 EIGN SOURCES.—Section 21(f) of the Federal Trade Com-  
22 mission Act (15 U.S.C. 57b–2(f)) is amended to read as  
23 follows:

24 “(f) EXEMPTION FROM PUBLIC DISCLOSURE.—

1           “(1) IN GENERAL.—Any material which is re-  
2           ceived by the Commission in any investigation, a  
3           purpose of which is to determine whether any person  
4           may have violated any provision of the laws adminis-  
5           tered by the Commission, and which is provided pur-  
6           suant to any compulsory process under this Act or  
7           which is provided voluntarily in place of such com-  
8           pulsory process shall not be required to be disclosed  
9           under section 552 of title 5, United States Code, or  
10          any other provision of law, except as provided in  
11          paragraph (2)(B) of this section.

12           “(2) MATERIAL OBTAINED FROM A FOREIGN  
13          SOURCE.—

14           “(A) IN GENERAL.—Except as provided in  
15          subparagraph (B) of this paragraph, the Com-  
16          mission shall not be required to disclose under  
17          section 552 of title 5, United States Code, or  
18          any other provision of law—

19                   “(i) any material obtained from a for-  
20                   eign law enforcement agency or other for-  
21                   eign government agency, if the foreign law  
22                   enforcement agency or other foreign gov-  
23                   ernment agency has requested confidential  
24                   treatment, or has precluded such disclosure

1 under other use limitations, as a condition  
2 of providing the material;

3 “(ii) any material reflecting a con-  
4 sumer complaint obtained from any other  
5 foreign source, if that foreign source sup-  
6 plying the material has requested confiden-  
7 tial treatment as a condition of providing  
8 the material; or

9 “(iii) any material reflecting a con-  
10 sumer complaint submitted to a Commis-  
11 sion reporting mechanism sponsored in  
12 part by foreign law enforcement agencies  
13 or other foreign government agencies.

14 “(B) SAVINGS PROVISION.—Nothing in  
15 this subsection shall authorize the Commission  
16 to withhold information from the Congress or  
17 prevent the Commission from complying with  
18 an order of a court of the United States in an  
19 action commenced by the United States or the  
20 Commission.”.

21 **SEC. 7. CONFIDENTIALITY; DELAYED NOTICE OF PROCESS.**

22 (a) IN GENERAL.—The Federal Trade Commission  
23 Act (15 U.S.C. 41 et seq.) is amended by inserting after  
24 section 21 the following:



1       sure may cause an adverse result as defined in sub-  
2       section (g) of this section; and

3               “(2) if notification would otherwise be required  
4       under chapter 121 of title 18, United States Code,  
5       the Commission may delay notification (including ex-  
6       tending such a delay) upon the execution of a writ-  
7       ten certification in accordance with the procedures  
8       of section 2705 of that title if the Commission finds  
9       that there is reason to believe that notification may  
10      cause an adverse result as defined in subsection (g)  
11      of this section.

12      “(c) EX PARTE APPLICATION BY COMMISSION.—

13               “(1) IN GENERAL.—If neither notification nor  
14      delayed notification by the Commission is required  
15      under the Right to Financial Privacy Act (12 U.S.C.  
16      3401 et seq.) or chapter 121 of title 18, United  
17      States Code, the Commission may apply ex parte to  
18      a presiding judge or magistrate judge for an order  
19      prohibiting the recipient of compulsory process  
20      issued by the Commission from disclosing to any  
21      other person the existence of the process, notwith-  
22      standing any law or regulation of the United States,  
23      or under the constitution, or any law or regulation,  
24      of any State, political subdivision of a State, terri-  
25      tory of the United States, or the District of Colum-

1       bia. The presiding judge or magistrate judge may  
2       enter such an order granting the requested prohibi-  
3       tion of disclosure for a period not to exceed 60 days  
4       if there is reason to believe that disclosure may  
5       cause an adverse result as defined in subsection (g).  
6       The presiding judge or magistrate judge may grant  
7       extensions of this order of up to 30 days each in ac-  
8       cordance with this subsection, except that in no  
9       event shall the prohibition continue in force for more  
10      than a total of 9 months.

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

16           “(3) LIMITATION.—No order issued under this  
17      subsection shall prohibit any recipient from dis-  
18      closing to a Federal agency that the recipient has re-  
19      ceived compulsory process from the Commission.

20           “(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If  
21      neither notification nor delayed notification by the Com-  
22      mission is required under the Right to Financial Privacy  
23      Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18,  
24      United States Code, the recipient of compulsory process  
25      issued by the Commission under this Act shall not be lia-

1 ble under any law or regulation of the United States, or  
2 under the constitution, or any law or regulation, of any  
3 State, political subdivision of a State, territory of the  
4 United States, or the District of Columbia, or under any  
5 contract or other legally enforceable agreement, for failure  
6 to provide notice to any person that such process has been  
7 issued or that the recipient has provided information in  
8 response to such process. The preceding sentence does not  
9 exempt any recipient from liability for—

10           “(1) the underlying conduct reported;

11           “(2) a failure to comply with the record reten-  
12           tion requirements under section 1104(c) of the  
13           Right to Financial Privacy Act (12 U.S.C. 3404),  
14           where applicable; or

15           “(3) any failure to comply with any obligation  
16           the recipient may have to disclose to a Federal agen-  
17           cy that the recipient has received compulsory process  
18           from the Commission or intends to provide or has  
19           provided information to the Commission in response  
20           to such process.

21           “(e) VENUE AND PROCEDURE.—

22           “(1) IN GENERAL.—All judicial proceedings ini-  
23           tiated by the Commission under the Right to Finan-  
24           cial Privacy Act (12 U.S.C. 3401 et seq.), chapter  
25           121 of title 18, United States Code, or this section

1       may be brought in the United States District Court  
2       for the District of Columbia or any other appro-  
3       priate United States District Court. All ex parte ap-  
4       plications by the Commission under this section re-  
5       lated to a single investigation may be brought in a  
6       single proceeding.

7               “(2) IN CAMERA PROCEEDINGS.—Upon applica-  
8       tion by the Commission, all judicial proceedings pur-  
9       suant to this section shall be held in camera and the  
10      records thereof sealed until expiration of the period  
11      of delay or such other date as the presiding judge  
12      or magistrate judge may permit.

13              “(f) SECTION NOT TO APPLY TO ANTITRUST INVES-  
14      TIGATIONS OR PROCEEDINGS.—This section shall not  
15      apply to an investigation or proceeding related to the ad-  
16      ministration of Federal antitrust laws or foreign antitrust  
17      laws (as defined in paragraphs (5) and (7), respectively,  
18      of section 12 of the International Antitrust Enforcement  
19      Assistance Act of 1994 (15 U.S.C. 6211).

20              “(g) ADVERSE RESULT DEFINED.—For purposes of  
21      this section the term ‘adverse result’ means—

22                      “(1) endangering the life or physical safety of  
23                      an individual;

24                      “(2) flight from prosecution;

1           “(3) the destruction of, or tampering with, evi-  
2           dence;

3           “(4) the intimidation of potential witnesses; or

4           “(5) otherwise seriously jeopardizing an inves-  
5           tigation or proceeding related to fraudulent or de-  
6           ceptive commercial practices or persons involved in  
7           such practices, or unduly delaying a trial related to  
8           such practices or persons involved in such practices,  
9           including, but not limited to, by—

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

15           “(B) impeding the ability of the Commis-  
16           sion to identify persons involved in fraudulent  
17           or deceptive commercial practices, or to trace  
18           the source or disposition of funds related to  
19           such practices; or

20           “(C) the dissipation, fraudulent transfer,  
21           or concealment of assets subject to recovery by  
22           the Commission.”.

23           (b) CONFORMING AMENDMENT.—Section 16(a)(2) of  
24           the Federal Trade Commission Act (15 U.S.C. 56(a)(2))  
25           is amended—

1           (1) in subparagraph (C) by striking “or” after  
2           the semicolon;

3           (2) in subparagraph (D) by inserting “or” after  
4           the semicolon; and

5           (3) by inserting after subparagraph (D) the fol-  
6           lowing:

7                         “(E) under section 21A of this Act;”.

8   **SEC. 8. PROTECTION FOR VOLUNTARY PROVISION OF IN-**  
9                         **FORMATION.**

10          The Federal Trade Commission Act (15 U.S.C. 41  
11   et seq.) is further amended by adding after section 21A  
12   (as added by section 7 of this Act) the following:

13   **“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF**  
14                         **INFORMATION.**

15          “(a) IN GENERAL.—

16                 “(1) NO LIABILITY FOR PROVIDING CERTAIN  
17                 MATERIAL.—An entity described in paragraphs (2)  
18                 or (3) of subsection (d) that voluntarily provides ma-  
19                 terial to the Commission that such entity reasonably  
20                 believes is relevant to—

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

1           “(B) assets subject to recovery by the  
2           Commission, including assets located in foreign  
3           jurisdictions;  
4           shall not be liable to any person under any law or  
5           regulation of the United States, or under the con-  
6           stitution, or any law or regulation, of any State, po-  
7           litical subdivision of a State, territory of the United  
8           States, or the District of Columbia, for such provi-  
9           sion of material or for any failure to provide notice  
10          of such provision of material or of intention to so  
11          provide material.

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

15                   “(A) for the underlying conduct reported;

16                   or

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

22           “(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity  
23          described in paragraph (1) of subsection (d) shall, in ac-  
24          cordance with section 5318(g)(3) of title 31, United States  
25          Code, be exempt from liability for making a voluntary dis-

1 closure to the Commission of any possible violation of law  
2 or regulation, including—

3 “(1) a disclosure regarding assets, including as-  
4 sets located in foreign jurisdictions—

5 “(A) related to possibly fraudulent or de-  
6 ceptive commercial practices;

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

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

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

14 “(c) CONSUMER COMPLAINTS.—Any entity described  
15 in subsection (d) that voluntarily provides consumer com-  
16 plaints sent to it, or information contained therein, to the  
17 Commission shall not be liable to any person under any  
18 law or regulation of the United States, or under the con-  
19 stitution, or any law or regulation, of any State, political  
20 subdivision of a State, territory of the United States, or  
21 the District of Columbia, for such provision of material  
22 or for any failure to provide notice of such provision of  
23 material or of intention to so provide material. This sub-  
24 section shall not provide any exemption from liability for  
25 the underlying conduct.

1       “(d) APPLICATION.—This section applies to the fol-  
2       lowing entities, whether foreign or domestic:

3               “(1) A financial institution as defined in section  
4       5312 of title 31, United States Code.

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

11              “(3) A courier service, a commercial mail re-  
12       ceiving agency, an industry membership organiza-  
13       tion, a payment system provider, a consumer report-  
14       ing agency, a domain name registrar or registry act-  
15       ing as such, and a provider of alternative dispute  
16       resolution services.

17              “(4) An Internet service provider or provider of  
18       telephone services.”.

19       **SEC. 9. STAFF EXCHANGES.**

20       The Federal Trade Commission Act (15 U.S.C. 41  
21       et seq.) is amended by adding after section 25 the fol-  
22       lowing new section:

23       **“SEC. 25A. STAFF EXCHANGES.**

24       “(a) IN GENERAL.—The Commission may—

1           “(1) retain or employ officers or employees of  
2 foreign government agencies on a temporary basis as  
3 employees of the Commission pursuant to section 2  
4 of this Act or section 3101 or section 3109 of title  
5 5, United States Code; and

6           “(2) detail officers or employees of the Commis-  
7 sion to work on a temporary basis for appropriate  
8 foreign government agencies.

9           “(b) RECIPROCITY AND REIMBURSEMENT.—The  
10 staff arrangements described in subsection (a) need not  
11 be reciprocal. The Commission may accept payment or re-  
12 imbursement, in cash or in kind, from a foreign govern-  
13 ment agency to which this section is applicable, or pay-  
14 ment or reimbursement made on behalf of such agency,  
15 for expenses incurred by the Commission, its members,  
16 and employees in carrying out such arrangements.

17           “(c) STANDARDS OF CONDUCT.—A person appointed  
18 under subsection (a)(1) shall be subject to the provisions  
19 of law relating to ethics, conflicts of interest, corruption,  
20 and any other criminal or civil statute or regulation gov-  
21 erning the standards of conduct for Federal employees  
22 that are applicable to the type of appointment.”.

1 **SEC. 10. INFORMATION SHARING WITH FINANCIAL REGU-**  
2 **LATORS.**

3 Section 1112(e) of the Right to Financial Privacy Act  
4 of 1978 (12 U.S.C. 3412(e)) is amended by inserting “the  
5 Federal Trade Commission,” after “the Securities and Ex-  
6 change Commission,”.

7 **SEC. 11. AUTHORITY TO ACCEPT REIMBURSEMENTS.**

8 The Federal Trade Commission Act (15 U.S.C. 41  
9 et seq.) is amended—

10 (1) by redesignating section 26 as section 28;

11 and

12 (2) by inserting after section 25A, as added by  
13 section 9 of this Act, the following:

14 **“SEC. 26. REIMBURSEMENT OF EXPENSES.**

15 “The Commission may accept payment or reimburse-  
16 ment, in cash or in kind, from a domestic or foreign law  
17 enforcement agency, or payment or reimbursement made  
18 on behalf of such agency, for expenses incurred by the  
19 Commission, its members, or employees in carrying out  
20 any activity pursuant to a statute administered by the  
21 Commission without regard to any other provision of law.  
22 Any such payments or reimbursements shall be considered  
23 a reimbursement to the appropriated funds of the Com-  
24 mission.”.

1 **SEC. 12. PRESERVATION OF EXISTING AUTHORITY.**

2 The authority provided by this Act, and by the Fed-  
3 eral Trade Commission Act (15 U.S.C. 41 et seq.) and  
4 the Right to Financial Privacy Act (12 U.S.C. 3401 et  
5 seq.), as such Acts are amended by this Act, is in addition  
6 to, and not in lieu of, any other authority vested in the  
7 Federal Trade Commission or any other officer of the  
8 United States.

9 **SEC. 13. SUNSET.**

10 This Act, and the amendments made by this Act,  
11 shall cease to have effect on the date that is 7 years after  
12 the date of enactment of this Act.

13 **SEC. 14. REPORT.**

14 Not later than 3 years after the date of enactment  
15 of this Act, the Federal Trade Commission shall transmit  
16 to Congress a report describing its use of and experience  
17 with the authority granted by this Act, along with any rec-  
18 ommendations for additional legislation. The report shall  
19 include—

20 (1) the number of cross-border complaints re-  
21 ceived by the Commission;

22 (2) identification of the foreign agencies to  
23 which the Commission has provided nonpublic inves-  
24 tigative information under this Act;

25 (3) the number of times the Commission has  
26 used compulsory process on behalf of foreign law en-

1 enforcement agencies pursuant to section 6 of the Fed-  
2 eral Trade Commission Act (15 U.S.C. 46), as  
3 amended by section 4 of this Act;

4 (4) a list of international agreements and  
5 memoranda of understanding executed by the Com-  
6 mission that relate to this Act;

7 (5) the number of times the Commission has  
8 sought delay of notice pursuant to section 21A of  
9 the Federal Trade Commission Act, as added by sec-  
10 tion 7 of this Act, and the number of times a court  
11 has granted a delay;

12 (6) a description of the types of information  
13 private entities have provided voluntarily pursuant to  
14 section 21B of the Federal Trade Commission Act,  
15 as added by section 8 of this Act;

16 (7) a description of the results of cooperation  
17 with foreign law enforcement agencies under section  
18 21 of the Federal Trade Commission Act (15 U.S.C.  
19 57-2) as amended by section 6 of this Act;

20 (8) an analysis of whether the lack of an ex-  
21 emption from the disclosure requirements of section  
22 552 of title 5, United States Code, with regard to  
23 information or material voluntarily provided relevant  
24 to possible unfair or deceptive acts or practices, has  
25 hindered the Commission in investigating or engag-

1       ing in enforcement proceedings against such prac-  
2       tices; and

3               (9) a description of Commission litigation  
4       brought in foreign courts.

**Calendar No. 673**

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 4110**

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**A BILL**

To enhance Federal Trade Commission enforcement against illegal spam, spyware, and cross-border fraud and deception, and for other purposes.

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DECEMBER 8, 2006

Read the second time and placed on the calendar