

lic Health Service Act (42 U.S.C. 247d) as a result of confirmed cases of the 2019 novel coronavirus (COVID-19), including any renewal thereof, it shall be unlawful for any person, partnership, or corporation to engage in a deceptive act or practice in or affecting commerce in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) that is associated with—

“(1) the treatment, cure, prevention, mitigation, or diagnosis of COVID-19; or

“(2) a government benefit related to COVID-19.

“(c) ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.—

“(1) VIOLATION.—A violation of subsection (b) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

“(2) POWERS OF THE FEDERAL TRADE COMMISSION.—

“(A) IN GENERAL.—The Federal Trade Commission shall enforce subsection (b) 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 incorporated into and made a part of this Act [probably means “this section”].

“(B) PRIVILEGES AND IMMUNITIES.—Any person who violates this Act [probably means “this section”] shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

“(3) EFFECT ON OTHER LAWS.—Nothing in this Act [probably means “this section”] shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

“(d) SEVERABILITY.—If any provision of this Act [probably means “this section”], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.”

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF

Pub. L. 93-153, § 408(a), (b), Nov. 16, 1973, 87 Stat. 591, provided that:

“(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpoenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

“(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

“(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission administers by granting statutory authority to directly enforce subpoenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices.”

PURPOSE OF ACT JULY 14, 1952

Act July 14, 1952, ch. 745, § 1, 66 Stat. 631, provided: “That it is the purpose of this Act [amending this section] to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the

resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce.”

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 45a. Labels on products

To the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a “Made in the U.S.A.” or “Made in America” label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 45 of this title. This section only applies to such labels. Nothing in this section shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 45 of this title and may from time to time issue rules pursuant to section 553 of title 5 for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after September 13, 1994.

(Pub. L. 103-322, title XXXII, § 320933, Sept. 13, 1994, 108 Stat. 2135.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, and not as part of the Federal Trade Commission Act which comprises this subchapter.

§ 45b. Consumer review protection

(a) Definitions

In this section:

(1) Commission

The term “Commission” means the Federal Trade Commission.

(2) Covered communication

The term “covered communication” means a written, oral, or pictorial review, performance

assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party.

(3) Form contract

(A) In general

Except as provided in subparagraph (B), the term “form contract” means a contract with standardized terms—

- (i) used by a person in the course of selling or leasing the person’s goods or services; and
- (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

(B) Exception

The term “form contract” does not include an employer-employee or independent contractor contract.

(4) Pictorial

The term “pictorial” includes pictures, photographs, video, illustrations, and symbols.

(b) Invalidity of contracts that impede consumer reviews

(1) In general

Except as provided in paragraphs (2) and (3), a provision of a form contract is void from the inception of such contract if such provision—

- (A) prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication;
- (B) imposes a penalty or fee against an individual who is a party to the form contract for engaging in a covered communication; or
- (C) transfers or requires an individual who is a party to the form contract to transfer to any person any intellectual property rights in review or feedback content, with the exception of a non-exclusive license to use the content, that the individual may have in any otherwise lawful covered communication about such person or the goods or services provided by such person.

(2) Rule of construction

Nothing in paragraph (1) shall be construed to affect—

- (A) any duty of confidentiality imposed by law (including agency guidance);
- (B) any civil cause of action for defamation, libel, or slander, or any similar cause of action;
- (C) any party’s right to remove or refuse to display publicly on an Internet website or webpage owned, operated, or otherwise controlled by such party any content of a covered communication that—
 - (i) contains the personal information or likeness of another person, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
 - (ii) is unrelated to the goods or services offered by or available at such party’s Internet website or webpage; or

(iii) is clearly false or misleading; or

(D) a party’s right to establish terms and conditions with respect to the creation of photographs or video of such party’s property when those photographs or video are created by an employee or independent contractor of a commercial entity and solely intended for commercial purposes by that entity.

(3) Exceptions

Paragraph (1) shall not apply to the extent that a provision of a form contract prohibits disclosure or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments to remove—

- (A) trade secrets or commercial or financial information obtained from a person and considered privileged or confidential;
- (B) personnel and medical files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (C) records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (D) content that is unlawful or otherwise meets the requirements of paragraph (2)(C); or
- (E) content that contains any computer viruses, worms, or other potentially damaging computer code, processes, programs, applications, or files.

(c) Prohibition

It shall be unlawful for a person to offer a form contract containing a provision described as void in subsection (b).

(d) Enforcement by Commission

(1) Unfair or deceptive acts or practices

A violation of subsection (c) by a person with respect to which the Commission is empowered under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed 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 incorporated into and made a part of this Act.

(B) Privileges and immunities

Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(e) Enforcement by States

(1) Authorization

Subject to paragraph (2), in any case in which the attorney general of a State has rea-

son 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 (c) 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 to obtain appropriate relief.

(2) Rights of Federal Trade Commission

(A) Notice to Federal Trade Commission

(i) In general

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person described in subsection (d)(1).

(ii) Contents

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) Exception

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(B) Intervention by Federal Trade Commission

The Commission may—

- (i) intervene in any civil action brought by the attorney general of a State under paragraph (1) against a person described in subsection (d)(1); and
- (ii) upon intervening—
 - (I) be heard on all matters arising in the civil action; and
 - (II) file petitions for appeal of a decision in the civil action.

(3) Investigatory powers

Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(4) Preemptive action by Federal Trade Commission

If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(5) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in—

(i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28; or

(ii) another court of competent jurisdiction.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

- (i) is an inhabitant; or
- (ii) may be found.

(6) Actions by other State officials

(A) In general

In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) Savings provision

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(f) Education and outreach for businesses

Not later than 60 days after December 14, 2016, the Commission shall commence conducting education and outreach that provides businesses with non-binding best practices for compliance with this Act.

(g) Relation to State causes of action

Nothing in this section shall be construed to affect any cause of action brought by a person that exists or may exist under State law.

(h) Savings provision

Nothing in this section shall be construed to limit, impair, or supersede the operation of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any other provision of Federal law.

(i) Effective dates

This section shall take effect on December 14, 2016, except that—

(1) subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after December 14, 2016; and

(2) subsections (d) and (e) shall apply with respect to contracts in effect on or after the date that is 1 year after December 14, 2016.

(Pub. L. 114-258, §2, Dec. 14, 2016, 130 Stat. 1355.)

Editorial Notes

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (d)(2) and (h), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to this subchapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This Act, referred to in subsecs. (d)(2)(A) and (f), is Pub. L. 114-258, Dec. 14, 2016, 130 Stat. 1355, known as

the Consumer Review Fairness Act of 2016, which enacted this section and provisions set out as a note under section 58 of this title. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 58 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Review Fairness Act of 2016, and not as part of the Federal Trade Commission Act which comprises this subchapter.

§ 45c. Unfair and deceptive acts and practices relating to circumvention of ticket access control measures

(a) Conduct prohibited

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person—

(A) to circumvent a security measure, access control system, or other technological control or measure on an Internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules; or

(B) to sell or offer to sell any event ticket in interstate commerce obtained in violation of subparagraph (A) if the person selling or offering to sell the ticket either—

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

(ii) knew or should have known that the event ticket was acquired in violation of subparagraph (A).

(2) Exception

It shall not be unlawful under this section for a person to create or use any computer software or system—

(A) to investigate, or further the enforcement or defense, of any alleged violation of this section or other statute or regulation; or

(B) to engage in research necessary to identify and analyze flaws and vulnerabilities of measures, systems, or controls described in paragraph (1)(A), if these research activities are conducted to advance the state of knowledge in the field of computer system security or to assist in the development of computer security product.

(b) Enforcement by the Federal Trade Commission

(1) Unfair or deceptive acts or practices

A violation of subsection (a) shall be treated as a violation of a rule defining an unfair or a deceptive 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 pro-

visions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this section.

(B) Privileges and immunities

Any person who violates subsection (a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(C) Authority preserved

Nothing in this section shall be construed to limit the authority of the Federal Trade 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

(A) Notice to Federal Trade Commission

(i) In general

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) not later than 10 days before initiating the civil action.

(ii) Contents

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) Exception

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(B) Intervention by Federal Trade Commission

The Commission may—

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

(ii) upon intervening—

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

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