

114TH CONGRESS
1ST SESSION

S. 2413

To prohibit unfair or deceptive acts or practices relating to the prices of products and services sold online, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2015

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit unfair or deceptive acts or practices relating to the prices of products and services sold online, 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 “Tallying of the Actual
5 Liabilities Act of 2015” or the “TOTAL Act of 2015”.

6 **SEC. 2. PROHIBITION ON CERTAIN UNFAIR OR DECEPTIVE**
7 **ACTS OR PRACTICES RELATING TO PRICES**
8 **OF PRODUCTS AND SERVICES SOLD ONLINE.**

9 (a) RETAILER DEFINED.—In this section, the term
10 “retailer” means a person—

1 (1) over whom the Federal Trade Commission
2 has jurisdiction under section 5(a) of the Federal
3 Trade Commission Act (15 U.S.C. 45(a)); and

4 (2) whose business includes selling products or
5 services.

6 (b) REQUIREMENT FOR PRICE TRANSPARENCY.—A
7 retailer may not sell a product or a service to a person
8 through the use of an Internet website without presenting
9 the person with the total amount that the retailer expects
10 to collect from the person as part of the transaction of
11 selling the product or service to the person, including all
12 fees, taxes, and shipping and handling charges, before the
13 person commits to purchasing the product or service.

14 (c) ENFORCEMENT BY FEDERAL TRADE COMMIS-
15 SION.—

16 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
17 TICE.—A violation of subsection (b) shall be treated
18 as a violation of a rule defining an unfair or decep-
19 tive act or practice described under section
20 18(a)(1)(B) of the Federal Trade Commission Act
21 (15 U.S.C. 57a(a)(1)(B)).

22 (2) POWERS OF COMMISSION.—

23 (A) IN GENERAL.—The Federal Trade
24 Commission shall enforce this section in the
25 same manner, by the same means, and with the

1 same jurisdiction, powers, and duties as though
2 all applicable terms and provisions of the Fed-
3 eral Trade Commission Act (15 U.S.C. 41 et
4 seq.) were incorporated into and made a part of
5 this section.

6 (B) PRIVILEGES AND IMMUNITIES.—Any
7 person who violates this section shall be subject
8 to the penalties and entitled to the privileges
9 and immunities provided in the Federal Trade
10 Commission Act (15 U.S.C. 41 et seq.).

11 (C) RULEMAKING.—The Federal Trade
12 Commission may promulgate standards and
13 rules to carry out this section in accordance
14 with section 553 of title 5, United States Code.

15 (d) ENFORCEMENT BY STATES.—

16 (1) IN GENERAL.—In any case in which the at-
17 torney general of a State has reason to believe that
18 an interest of the residents of the State has been or
19 is threatened or adversely affected by the engage-
20 ment of any person subject to subsection (b) or a
21 standard or rule promulgated under this section in
22 a practice that violates such subsection, standard, or
23 rule, the attorney general of the State may, as
24 *parens patriae*, bring a civil action on behalf of the

1 residents of the State in an appropriate district
 2 court of the United States—

3 (A) to enjoin further violation of such sub-
 4 section, standard, or rule by such person;

5 (B) to compel compliance with such sub-
 6 section, standard, or rule; or

7 (C) to obtain such other injunctive relief as
 8 the court considers appropriate.

9 (2) RIGHTS OF FEDERAL TRADE COMMIS-
 10 SION.—

11 (A) NOTICE TO FEDERAL TRADE COMMIS-
 12 SION.—

13 (i) IN GENERAL.—Except as provided
 14 in clause (iii), the attorney general of a
 15 State shall notify the Federal Trade Com-
 16 mission in writing that the attorney gen-
 17 eral intends to bring a civil action under
 18 paragraph (1) before initiating the civil ac-
 19 tion.

20 (ii) CONTENTS.—The notification re-
 21 quired by clause (i) with respect to a civil
 22 action shall include a copy of the complaint
 23 to be filed to initiate the civil action.

24 (iii) EXCEPTION.—If it is not feasible
 25 for the attorney general of a State to pro-

1 vide the notification required by clause (i)
2 before initiating a civil action under para-
3 graph (1), the attorney general shall notify
4 the Federal Trade Commission imme-
5 diately upon instituting the civil action.

6 (B) INTERVENTION BY FEDERAL TRADE
7 COMMISSION.—The Federal Trade Commission
8 may—

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

12 (ii) upon intervening—

13 (I) be heard on all matters aris-
14 ing in the civil action; and

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

17 (3) INVESTIGATORY POWERS.—Nothing in this
18 subsection may be construed to prevent the attorney
19 general of a State from exercising the powers con-
20 ferred on the attorney general by the laws of the
21 State to conduct investigations, to administer oaths
22 or affirmations, or to compel the attendance of wit-
23 nesses or the production of documentary or other
24 evidence.

1 (4) PREEMPTIVE ACTION BY FEDERAL TRADE
2 COMMISSION.—If the Federal Trade Commission in-
3 stitutes a civil action or an administrative action
4 with respect to a violation of subsection (b) or a
5 standard or rule promulgated under this section, the
6 attorney general of a State may not, during the
7 pendency of such action, bring a civil action under
8 paragraph (1) against any defendant named in the
9 complaint of the Commission for the violation with
10 respect to which the Commission instituted such ac-
11 tion.

12 (5) VENUE; SERVICE OF PROCESS.—

13 (A) VENUE.—Any action brought under
14 paragraph (1) may be brought in—

15 (i) the district court of the United
16 States that meets applicable requirements
17 relating to venue under section 1391 of
18 title 28, United States Code; or

19 (ii) another court of competent juris-
20 diction.

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

24 (i) is an inhabitant; or

25 (ii) may be found.

1 (6) ACTIONS BY OTHER STATE OFFICIALS.—

2 (A) IN GENERAL.—In addition to civil ac-
3 tions brought by attorneys general under para-
4 graph (1), any other officer of a State who is
5 authorized by the State to do so may bring a
6 civil action under paragraph (1), subject to the
7 same requirements and limitations that apply
8 under this subsection to civil actions brought by
9 attorneys general.

10 (B) SAVINGS PROVISION.—Nothing in this
11 subsection may be construed to prohibit an au-
12 thorized official of a State from initiating or
13 continuing any proceeding in a court of the
14 State for a violation of any civil or criminal law
15 of the State.

16 (e) RULE OF CONSTRUCTION.—Nothing in this sec-
17 tion shall be construed to limit the authority of the Fed-
18 eral Trade Commission under any other provision of law.

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