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108TH CONGRESS
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S. 1234

[Report No. 108-127]

To reauthorize the Federal Trade Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 2003

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

AUGUST 26, 2003

Reported under authority of the order of the Senate of July 29 (legislative day, July 21), 2003, by Mr. MCCAIN with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To reauthorize the Federal Trade Commission, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Trade Com-
3 mission Reauthorization Act of 2003”.

4 **TITLE I—REAUTHORIZATION**

5 **SEC. 101. REAUTHORIZATION.**

6 The text of section 25 of the Federal Trade Commis-
7 sion Act (15 U.S.C. 57e) is amended to read as follows:

8 “There are authorized to be appropriated to carry out
9 the functions, powers, and duties of the Commission not
10 to exceed \$194,742,000 for fiscal year 2004,
11 \$224,695,000 for fiscal year 2005, and \$235,457,000 for
12 fiscal year 2006.”

13 **SEC. 102. AUTHORITY TO ACCEPT REIMBURSEMENTS,**
14 **GIFTS, AND VOLUNTARY AND UNCOMPEN-**
15 **SATED SERVICES.**

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

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

19 and

20 (2) by inserting after section 25 the following:

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

22 “The Commission may accept payment or reimburse-
23 ment, in cash or in kind, from a domestic or foreign law
24 enforcement authority, or payment or reimbursement
25 made on behalf of such authority, for expenses incurred
26 by the Commission, its members, or employees in carrying

1 out any activity pursuant to a statute administered by the
 2 Commission without regard to any other provision of law.
 3 Any such payments or reimbursements shall be considered
 4 a reimbursement to the appropriated funds of the Com-
 5 mission.

6 **“SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED**
 7 **SERVICES.**

8 “(a) IN GENERAL.—In furtherance of its functions
 9 the Commission may accept, hold, administer, and use un-
 10 conditional gifts, donations, and bequests of real, personal,
 11 and other property and, notwithstanding section 1342 of
 12 title 31, United States Code, accept voluntary and uncom-
 13 pensated services.

14 “(b) LIMITATIONS.—

15 “(1) CONFLICTS OF INTEREST.—Notwith-
 16 standing subsection (a), the Commission may not ac-
 17 cept, hold, administer, or use a gift, donation, or be-
 18 quest if the acceptance, holding, administration, or
 19 use would create a conflict of interest or the appear-
 20 ance of a conflict of interest.

21 “(2) VOLUNTARY SERVICES.—A person who
 22 provides voluntary and uncompensated service under
 23 subsection (a) shall not be considered a Federal em-
 24 ployee for any purpose other than for purposes of
 25 chapter 81 of title 5, United States Code, (relating

1 to compensation for injury) and section 2671
2 through 2680 of title 28, United States Code, (relat-
3 ing to tort claims).”.

4 **TITLE II—INTERNATIONAL** 5 **CONSUMER PROTECTION**

6 **SEC. 201. FINDINGS.**

7 The Congress finds the following:

8 (1) The Federal Trade Commission protects
9 consumers from fraud and deception. Cross-border
10 fraud and deception are growing international prob-
11 lems that affect American consumers and busi-
12 nesses.

13 (2) The development of the Internet and im-
14 provements in telecommunications technologies have
15 brought significant benefits to consumers. At the
16 same time, they have also provided unprecedented
17 opportunities for those engaged in fraud and decep-
18 tion to establish operations in one country and vic-
19 timize a large number of consumers in other coun-
20 tries.

21 (3) An increasing number of consumer com-
22 plaints collected in the Consumer Sentinel database
23 maintained by the Commission, and an increasing
24 number of cases brought by the Commission, involve
25 foreign consumers, foreign businesses or individuals,

1 or assets or evidence located outside the United
2 States.

3 (4) The Commission has legal authority to rem-
4 edy law violations involving domestic and foreign
5 wrongdoers, pursuant to the Federal Trade Commis-
6 sion Act. The Commission's ability to obtain effec-
7 tive relief using this authority, however, may face
8 practical impediments when wrongdoers, victims,
9 other witnesses, documents, money and third parties
10 involved in the transaction are widely dispersed in
11 many different jurisdictions. Such circumstances
12 make it difficult for the Commission to gather all
13 the information necessary to detect injurious prac-
14 tices, to recover offshore assets for consumer re-
15 dress, and to reach conduct occurring outside the
16 United States that affects United States consumers.

17 (5) Improving the ability of the Commission
18 and its foreign counterparts to share information
19 about cross-border fraud and deception, to conduct
20 joint and parallel investigations, and to assist each
21 other is critical to achieve more timely and effective
22 enforcement in cross-border cases.

23 (6) Consequently, Congress should enact legis-
24 lation to provide the Commission with more tools to
25 protect consumers across borders.

1 **SEC. 202. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

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

4 “‘Foreign law enforcement agency’ means—

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

12 “(2) any multinational organization, to the ex-
13 tent that it is acting on behalf of an entity described
14 in paragraph (1); or

15 “(3) any organization that is vested with au-
16 thority, as a principal mission, to enforce laws
17 against fraudulent, deceptive, misleading, or unfair
18 commercial practices affecting consumers, in accord-
19 ance with criteria laid down by law, by a foreign
20 state or a political subdivision of a foreign state.”.

21 **SEC. 203. SHARING INFORMATION WITH FOREIGN LAW EN-
22 FORCEMENT AGENCIES.**

23 (a) **IN GENERAL.**—Section 21(b)(6) of the Federal
24 Trade Commission Act (15 U.S.C. 57b–2(b)(6)) is amend-
25 ed by adding at the end “The custodian may make such
26 material available to any foreign law enforcement agency

1 upon the prior certification of any officer of any such for-
2 eign law enforcement agency that such material will be
3 maintained in confidence and will be used only for official
4 law enforcement purposes, provided that the foreign law
5 enforcement agency has set forth a legal basis for its au-
6 thority to maintain the material in confidence. Nothing
7 in the preceding sentence authorizes disclosure of material
8 obtained in connection with the administration of Federal
9 antitrust laws or foreign antitrust laws (within the mean-
10 ing of section 12 of the International Antitrust Enforce-
11 ment Assistance Act of 1994 (15 U.S.C. 6211)) to any
12 officer or employee of a foreign law enforcement agency.”.

13 (b) PUBLICATION OF INFORMATION; REPORTS.—Sec-
14 tion 6(f) of the Federal Trade Commission Act (15 U.S.C.
15 46(f)) is amended—

16 (1) by striking “agencies or to any officer or
17 employee of any State law enforcement agency” and
18 inserting “agencies, to any officer or employee of
19 any State law enforcement agency, or to any officer
20 or employee of any foreign law enforcement agency”;

21 (2) by striking “Federal or State law enforce-
22 ment agency” and inserting “Federal, State, or for-
23 eign law enforcement agency”; and

24 (3) by adding at the end “Such information
25 shall be disclosed to an officer or employee of a for-

1 foreign law enforcement agency only if the foreign law
 2 enforcement agency has set forth a legal basis for its
 3 authority to maintain the information in confidence.
 4 Nothing in the preceding sentence authorizes the
 5 disclosure of material obtained in connection with
 6 the administration of Federal antitrust laws or for-
 7 eign antitrust laws (within the meaning of section
 8 12 of the International Antitrust Enforcement As-
 9 sistance Act of 1994 (15 U.S.C. 6211)) to any offi-
 10 cer or employee of a foreign law enforcement agen-
 11 cy.”.

12 **SEC. 204. OBTAINING INFORMATION FOR FOREIGN LAW EN-**
 13 **FORCEMENT AGENCIES.**

14 Section 6 of the Federal Trade Commission Act (15
 15 U.S.C. 46) is amended by adding at the end the following:

16 “(j)(1) Upon request from a foreign law enforcement
 17 agency, to provide assistance in accordance with this sub-
 18 section if the requesting agency states that it is inves-
 19 tigating, or engaging in enforcement proceedings against,
 20 possible violations of laws prohibiting fraudulent, decep-
 21 tive, misleading, or unfair commercial conduct, or other
 22 conduct that may be similar to conduct prohibited by any
 23 provision of the laws administered by the Commission,
 24 other than Federal antitrust laws (within the meaning of
 25 section 12 of the International Antitrust Enforcement As-

1 assistance Act of 1994 (15 U.S.C. 6211)), the Commission
2 may, in its discretion—

3 “(A) conduct such investigation as the Commis-
4 sion deems necessary to collect information and evi-
5 dence pertinent to the request for assistance; using
6 all investigative powers authorized by this Act; and

7 “(B) seek and accept appointment by a United
8 States district court of Commission attorneys to pro-
9 vide assistance to foreign and international tribunals
10 and to litigants before such tribunals on behalf of a
11 foreign law enforcement agency pursuant to section
12 1782 of title 28, United States Code.

13 “(2) The Commission may provide assistance under
14 paragraph (1) without regard to whether the conduct iden-
15 tified in the request would also constitute a violation of
16 the laws of the United States.

17 “(3) In deciding whether to provide such assistance,
18 the Commission shall consider—

19 “(A) whether the requesting agency has agreed
20 to provide or will provide reciprocal assistance to the
21 Commission; and

22 “(B) whether compliance with the request
23 would prejudice the public interest of the United
24 States.

1 “(4) If a foreign law enforcement agency has set
2 forth a legal basis for requiring execution of an inter-
3 national agreement as a condition for reciprocal assist-
4 ance, or as a condition for disclosure of materials or infor-
5 mation to the Commission, the Commission, after con-
6 sultation with the Secretary of State, may negotiate and
7 conclude an international agreement, in the name of either
8 the United States or the Commission and with the final
9 approval of the agreement by the Secretary of State, for
10 the purpose of obtaining such assistance or disclosure. The
11 Commission may undertake in such an international
12 agreement—

13 “(A) to provide assistance using the powers set
14 forth in this subsection;

15 “(B) to disclose materials and information in
16 accordance with subsection (f) of this section and
17 section 21(b)(6) of this Act; and

18 “(C) to engage in further cooperation, and pro-
19 tect materials and information received from disclo-
20 sure, as authorized by this Act.

21 “(5) The authority in this subsection is in addition
22 to, and not in lieu of, any other authority vested in the
23 Commission or any other officer of the United States.”.

1 **SEC. 205. INFORMATION SUPPLIED BY AND ABOUT FOR-**
2 **EIGN SOURCES.**

3 Section 21(f) of the Federal Trade Commission Act
4 (15 U.S.C. 57b-2(f)) is amended—

5 (1) by inserting “(1)” before “Any”; and add-
6 ing at the end the following:

7 “(2)(A) Except as provided in subparagraph (C) of
8 this paragraph, the Commission shall not be compelled to
9 disclose—

10 “(i) material obtained from a foreign law en-
11 forcement agency or other foreign government agen-
12 cy, if the foreign law enforcement agency or other
13 foreign government agency has requested confiden-
14 tial treatment as a condition of disclosing the mate-
15 rial;

16 “(ii) material reflecting consumer complaints
17 obtained from any other foreign source, if that for-
18 eign source supplying the material has requested
19 confidential treatment as a condition of disclosing
20 the material; or

21 “(iii) material reflecting a consumer complaint
22 submitted to a Commission reporting mechanism
23 sponsored in part by foreign law enforcement agen-
24 cies or other foreign government agencies.

1 “(B) For purposes of section 552 of title 5, this para-
 2 graph shall be considered a statute described in subsection
 3 (b)(3)(B) of such section 552.

4 “(C) Nothing in this paragraph shall authorize the
 5 Commission to withhold information from the Congress or
 6 prevent the Commission from complying with an order of
 7 a court of the United States in an action commenced by
 8 the United States or the Commission.”.

9 **SEC. 206. CONFIDENTIALITY AND DELAYED NOTICE OF**
 10 **PROCESS.**

11 (a) The Federal Trade Commission Act (15 U.S.C.
 12 41 et seq.) is amended by inserting after section 21 (15
 13 U.S.C. 57b-2) the following:

14 **“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**
 15 **COMPULSORY PROCESS FOR CERTAIN THIRD**
 16 **PARTIES.**

17 “(a) CONFIDENTIALITY OF COMPULSORY PROCESS
 18 ISSUED BY THE COMMISSION.—

19 “(1) This subsection shall apply only in connec-
 20 tion with compulsory process issued by the Commis-
 21 sion where the recipient of such process is not a sub-
 22 ject of the investigation or proceeding at the time
 23 such process is issued.

24 “(2) Notwithstanding any law or regulation of
 25 the United States, any constitution, law or regula-

1 tion of any State or political subdivision of any State
2 or any Territory or the District of Columbia, or any
3 contract or other legally enforceable agreement, the
4 Commission may seek an order requiring the recipi-
5 ent of compulsory process described in paragraph
6 (1) to keep such process confidential, upon an ex
7 parte showing to an appropriate United States dis-
8 trict court that there is a reason to believe that dis-
9 closure may—

10 “(A) result in the transfer of assets or
11 records outside the territorial limits of the
12 United States;

13 “(B) impede the ability of the Commission
14 to identify or trace funds;

15 “(C) endanger the life or physical safety of
16 an individual;

17 “(D) result in flight from prosecution;

18 “(E) result in destruction of or tampering
19 with evidence;

20 “(F) result in intimidation of potential wit-
21 nesses;

22 “(G) result in the dissipation or conceal-
23 ment of assets; or

24 “(H) otherwise seriously jeopardize an in-
25 vestigation or unduly delay a trial.

1 ~~“(3) Upon a showing described in paragraph~~
2 ~~(2), the presiding judge or magistrate judge shall~~
3 ~~enter an ex parte order prohibiting the recipient of~~
4 ~~process from disclosing that information has been~~
5 ~~submitted or that a request for information has been~~
6 ~~made, for such period as the court deems appro-~~
7 ~~priate.~~

8 ~~“(b) MATERIALS SUBJECT TO GOVERNMENT NOTIFI-~~
9 ~~CATION UNDER THE RIGHT TO FINANCIAL PRIVACY~~
10 ~~ACT.—~~

11 ~~“(1) When section 1105 or 1107 of the Right~~
12 ~~to Financial Privacy Act of 1978 (12 U.S.C. 3405~~
13 ~~or 3407) would otherwise require notice, notwith-~~
14 ~~standing such requirements, the Commission may~~
15 ~~obtain from a financial institution access to or copies~~
16 ~~of financial records of a customer, as these terms~~
17 ~~are defined in section 1101 of the Right to Financial~~
18 ~~Privacy Act of 1978 (12 U.S.C. 3401), through com-~~
19 ~~pulsory process described in subsection (a)(1) or~~
20 ~~through a judicial subpoena, without prior notice to~~
21 ~~the customer, upon an ex parte showing to an appro-~~
22 ~~priate United States district court that there is rea-~~
23 ~~son to believe that the required notice may cause an~~
24 ~~adverse result described in subsection (a)(2).~~

1 ~~“(2) Upon such showing, the presiding judge or~~
2 ~~magistrate judge shall enter an ex parte order grant-~~
3 ~~ing a delay of notice for a period not to exceed 90~~
4 ~~days and an order prohibiting the financial institu-~~
5 ~~tion from disclosing that records have been sub-~~
6 ~~mitted or that a request for records has been made.~~

7 ~~“(3) The court may grant extensions of the pe-~~
8 ~~riod of delay of notice provided in paragraph (2) of~~
9 ~~up to 90 days, upon a showing that the require-~~
10 ~~ments for delayed notice under subsection (a)(2)~~
11 ~~continue to apply.~~

12 ~~“(4) Upon expiration of the periods of delay of~~
13 ~~notice ordered under paragraphs (2) and (3), the~~
14 ~~Commission shall serve upon, or deliver by registered~~
15 ~~or first-class mail, or as otherwise authorized by the~~
16 ~~court to, the customer a copy of the process together~~
17 ~~with notice that states with reasonable specificity the~~
18 ~~nature of the law enforcement inquiry, informs the~~
19 ~~customer or subscriber when the process was served,~~
20 ~~and states that notification of the process was de-~~
21 ~~layed under this subsection.~~

22 ~~“(c) MATERIALS SUBJECT TO GOVERNMENT NOTIFI-~~
23 ~~CATION UNDER THE ELECTRONIC COMMUNICATIONS PRI-~~
24 ~~VACY ACT.—~~

1 ~~“(1) When section 2703(b)(1)(B) of title 18~~
2 ~~would otherwise require notice, notwithstanding such~~
3 ~~requirements, the Commission may obtain, through~~
4 ~~compulsory process described in subsection (a)(1) or~~
5 ~~through judicial subpoena,~~

6 ~~“(A) from a provider of remote computing~~
7 ~~services, access to or copies of the contents of~~
8 ~~a wire or electronic communication described in~~
9 ~~section 2703(b)(1) of title 18, and as those~~
10 ~~terms are defined in section 2510 of title 18, or~~

11 ~~“(B) from a provider of electronic commu-~~
12 ~~nications services, access to or copies of the~~
13 ~~contents of a wire or electronic communication~~
14 ~~that has been in electronic storage in an elec-~~
15 ~~tronic communications system for more than~~
16 ~~180 days, as those terms are defined in section~~
17 ~~2510 of title 18,~~

18 ~~without prior notice to the customer or subscriber,~~
19 ~~upon an ex parte showing to an appropriate United~~
20 ~~States district court by a Commission official that~~
21 ~~there is reason to believe that notification of the ex-~~
22 ~~istence of the process may cause an adverse result~~
23 ~~described in subsection (a)(2). Upon such a showing,~~
24 ~~the presiding judge or magistrate judge shall issue~~
25 ~~an exparte order granting a delay of notice for a pe-~~

1 riod not to exceed 90 days. A court may grant ex-
2 tensions of the period of delay of notice of up to 90
3 days, upon application by the Commission and a
4 showing that the requirements for delayed notice
5 under subsection (b)(2) continue to apply.

6 “(2) The Commission may apply to a court for
7 an order prohibiting a provider of electronic commu-
8 nications service or remote computing service to
9 whom process has been issued under this subsection,
10 for such period as the court deems appropriate, from
11 disclosing that information has been submitted or
12 that a request for information has been made. The
13 court shall enter such an order if it has reason to
14 believe that such disclosure may cause an adverse
15 result described in subsection (b)(2).

16 “(3) Upon expiration of the periods of delay of
17 notice ordered under subparagraph (1), the Commis-
18 sion shall serve upon, or deliver by registered or
19 first-class mail, or as otherwise authorized by the
20 court to, the customer or subscriber a copy of the
21 process together with notice that states with reason-
22 able specificity the nature of the law enforcement in-
23 quiry, informs the customer or subscriber when the
24 process was served, and states that notification of
25 the process was delayed under this subsection.

1 “(4) Nothing in the Electronic Communications
2 Privacy Act shall prohibit a provider of electronic
3 communications services or remote computing serv-
4 ices from disclosing complaints received by it from
5 a customer or subscriber or information reflecting
6 such complaints to the Commission.

7 “(d) LIABILITY LIMITATION.—The recipient of com-
8 pulsory process under subsections (a), (b), or (c) shall not
9 be liable to any person under any law or regulation of the
10 United States, any constitution, law, or regulation of any
11 State or political subdivision of any State or any Territory
12 or the District of Columbia, or under any contract or other
13 legally enforceable agreement, for failure to provide notice
14 that such process has been issued or that the recipient
15 has provided information in response to such process. The
16 preceding sentence does not provide any exemption from
17 liability for the underlying conduct reported.

18 “(e) IN-CAMERA PROCEEDINGS.—Upon application
19 by the Commission, all judicial proceedings pursuant to
20 this section shall be held in camera and the records thereof
21 sealed until expiration of the period of delay or such other
22 date as the presiding judge or magistrate judge may per-
23 mit.

24 “(f) PROCEDURE INAPPLICABLE TO CERTAIN PRO-
25 CEEDINGS.—This section shall not apply to compulsory

1 process issued in an investigation or proceeding related to
 2 the administration of Federal antitrust laws or foreign
 3 antitrust laws (within the meaning of section 12 of the
 4 International Antitrust Enforcement Assistance Act of
 5 1994 (15 U.S.C. 6211)).”.

6 (b) Section 16(a)(2) of the Federal Trade Commis-
 7 sion Act (15 U.S.C. 56(a)(2)) is amended—

8 (1) by striking “or” after the semicolon in sub-
 9 paragraph (C);

10 (2) by striking “Act;” in subparagraph (D) and
 11 inserting “Act; or”; and

12 (3) by inserting after subparagraph (D) the fol-
 13 lowing:

14 “(E) under section 21a of this Act;”.

15 **SEC. 207. PROTECTION FOR VOLUNTARY PROVISION OF IN-**
 16 **FORMATION.**

17 The Federal Trade Commission Act (15 U.S.C. 41
 18 et seq.) is amended by inserting after section 21a, as
 19 added by section 206 of this title, the following:

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

22 “(a) IN GENERAL.—An entity described in subsection
 23 (d)(1) that voluntarily provides material to the Commis-
 24 sion that it reasonably believes is relevant to—

1 “(1) a possible unfair or deceptive act or prac-
2 tice, as defined in section 5(a) of this Act, or

3 “(2) assets subject to recovery by the Commis-
4 sion, including assets located in foreign jurisdictions;
5 shall not be liable to any person under any law or regula-
6 tion of the United States, or any constitution, law, or reg-
7 ulation of any State or political subdivision of any State
8 or any Territory or the District of Columbia, for such dis-
9 closure or for any failure to provide notice of such disclo-
10 sure. The preceding sentence does not provide any exemp-
11 tion from liability for the underlying conduct reported.

12 “(b) LIABILITY LIMITATION.—An entity described in
13 subsection (d)(2) that makes a voluntary disclosure to the
14 Commission regarding the subjects described in subsection
15 (a)(1) and (2) shall be exempt from liability in accordance
16 with the provisions of section 5318(g)(3) of title 31,
17 United States Code.

18 “(c) FOIA EXEMPTION.—Material submitted pursu-
19 ant to this section with a request for confidential treat-
20 ment shall be exempt from disclosure under section 552
21 of title 5, United States Code.

22 “(d) ENTITIES TO WHICH SECTION APPLIES.—This
23 section applies to the following entities, whether foreign
24 or domestic:

1 “(1) A courier service, a commercial mail re-
2 ceiving agency, an industry membership organiza-
3 tion, a payment system provider, a consumer report-
4 ing agency, a domain name registrar and registry, a
5 provider of remote computing services or electronic
6 communication services, to the limited extent such a
7 provider is disclosing consumer complaints received
8 by it from a customer or subscriber, or information
9 reflecting such complaints; and

10 “(2) a bank or thrift institution, a commercial
11 bank or trust company, an investment company, a
12 credit card issuer, an operator of a credit card sys-
13 tem, and an issuer, redeemer, or cashier of travelers’
14 checks, checks, money orders, or similar instru-
15 ments.”.

16 **SEC. 208. INFORMATION SHARING WITH FINANCIAL REGU-**
17 **LATORS.**

18 Section 1112(e) of the Right to Financial Privacy Act
19 (12 U.S.C. 3412(e)) is amended by inserting “the Federal
20 Trade Commission,” after “the Securities and Exchange
21 Commission,”.

22 **SEC. 209. REPRESENTATION IN FOREIGN LITIGATION.**

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

1 “(c)(1) The Commission may designate Commission
 2 attorneys to assist the Department of Justice in connec-
 3 tion with litigation in foreign courts in which the Commis-
 4 sion has an interest, pursuant to the terms of a memo-
 5 randum of understanding to be negotiated by the Commis-
 6 sion and the Department of Justice.

7 “(2) The Commission is authorized to expend appro-
 8 priated funds for the retention of foreign counsel for con-
 9 sultation and for litigation in foreign courts, and for ex-
 10 penses related to consultation and to litigation in foreign
 11 courts in which the Commission has an interest.”.

12 **SEC. 210. AVAILABILITY OF REMEDIES.**

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

15 “(o) UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN-
 16 VOLVING FOREIGN COMMERCE.—

17 “(1) IN GENERAL.—For purposes of subsection
 18 (a), the term ‘unfair or deceptive acts or practices’
 19 includes such acts or practices involving foreign
 20 commerce that—

21 “(A) cause or are likely to cause reason-
 22 ably foreseeable injury within the United
 23 States; or

24 “(B) involve material conduct occurring
 25 within the United States.

1 ~~“(2) APPLICATION OF REMEDIES TO SUCH ACTS~~
 2 ~~OR PRACTICES.—All remedies available to the Com-~~
 3 ~~mission with respect to unfair and deceptive acts or~~
 4 ~~practices shall be available for acts and practices de-~~
 5 ~~scribed in paragraph (1), including restitution to do-~~
 6 ~~mestic or foreign victims.”.~~

7 **SEC. 211. CRIMINAL REFERRALS.**

8 Section 6 of the Federal Trade Commission Act (15
 9 U.S.C. 46), as amended by section 204 of this title, is
 10 amended by adding at the end the following:

11 ~~“(k) REFERRAL OF EVIDENCE FOR CRIMINAL PRO-~~
 12 ~~CEEDINGS.—Whenever the Commission obtains evidence~~
 13 ~~that any person, partnership or corporation, either domes-~~
 14 ~~tie or foreign, may have engaged in conduct that could~~
 15 ~~give rise to criminal proceedings, to transmit such evi-~~
 16 ~~dence to the Attorney General who may, in his discretion,~~
 17 ~~institute criminal proceedings under appropriate statutes.~~
 18 ~~Provided that nothing in this subsection affects any other~~
 19 ~~authority of the Commission to disclose information.”.~~

20 **SEC. 212. STAFF EXCHANGES.**

21 The Federal Trade Commission Act (15 U.S.C. 41
 22 et seq.) is amended by inserting after section 25 (15
 23 U.S.C. 57e) the following:

24 ~~“SEC. 25A. STAFF EXCHANGES.~~

25 ~~“(a) IN GENERAL.—The Congress consents to—~~

1 “(1) the retention or employment of officers or
2 employees of foreign government agencies on a tem-
3 porary basis by the Commission under section 3109
4 of title 5, United States Code, section 202 of title
5 18, United States Code, or section 2 of this Act (15
6 U.S.C. 42); and

7 “(2) the retention or employment of officers or
8 employees of the Commission on a temporary basis
9 by such foreign government agencies.

10 “(b) FORM OF ARRANGEMENTS.—Staff arrange-
11 ments under subsection (a) need not be reciprocal. The
12 Commission may accept payment or reimbursement, in
13 cash or in kind, from a foreign government agency to
14 which this section is applicable, or payment or reimburse-
15 ment made on behalf of such agency, for expenses incurred
16 by the Commission, its members, and employees in car-
17 rying out such arrangements.”.

18 **SEC. 213. EXPENDITURES FOR COOPERATIVE ARRANGE-**
19 **MENTS.**

20 “(a) IN GENERAL.—Section 6 of the Federal Trade
21 Commission Act (15 U.S.C. 46) as amended by section
22 211 of this title, is further amended by adding at the end
23 the following:

24 “(p) To expend appropriated funds for—

1 “(1) operating expenses and other costs of bi-
2 lateral and multilateral cooperative law enforcement
3 groups conducting activities of interest to the Com-
4 mission and in which the Commission participates;
5 and

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

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

21 “(B) any travel and transportation to or
22 from such meetings; and

23 “(3) any other related lodging or subsistence.”.

24 (b) **AUTHORIZATION OF APPROPRIATIONS.**—The
25 Federal Trade Commission is authorized to expend appro-

1 priated funds not to exceed \$100,000 per fiscal year for
 2 purposes of section 6(p) of the Federal Trade Commission
 3 Act (~~15 U.S.C. 46(p)~~), including operating expenses and
 4 other costs of the following bilateral and multilateral coop-
 5 erative law enforcement groups:

6 (1) The International Consumer Protection and
 7 Enforcement Network.

8 (2) The International Competition Network.

9 (3) The ~~Mexico-U.S.-Canada Health Fraud~~
 10 Task Force.

11 (4) Project Emptor.

12 (5) The Toronto Strategic Partnership and
 13 other regional partnerships with a nexus in a Cana-
 14 dian province.

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Federal Trade Commis-
 17 sion Reauthorization Act of 2003”.*

18 **TITLE I—REAUTHORIZATION**

19 **SEC. 101. REAUTHORIZATION.**

20 *The text of section 25 of the Federal Trade Commission
 21 Act (15 U.S.C. 57c) is amended to read as follows:*

22 *“There are authorized to be appropriated to carry out
 23 the functions, powers, and duties of the Commission not to
 24 exceed \$194,742,000 for fiscal year 2004, \$224,695,000 for*

1 *fiscal year 2005, \$235,457,000 for fiscal year 2006, and*
2 *\$245,000,000 for fiscal year 2007.”.*

3 **SEC. 102. AUTHORITY TO ACCEPT REIMBURSEMENTS,**
4 **GIFTS, AND VOLUNTARY AND UNCOMPEN-**
5 **SATED SERVICES.**

6 *The Federal Trade Commission Act (15 U.S.C. 41 et*
7 *seq.) is amended—*

8 *(1) by redesignating section 26 as section 28;*
9 *and*

10 *(2) by inserting after section 25 the following:*

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

12 *“The Commission may accept payment or reimburse-*
13 *ment, in cash or in kind, from a domestic or foreign law*
14 *enforcement authority, or payment or reimbursement made*
15 *on behalf of such authority, for expenses incurred by the*
16 *Commission, its members, or employees in carrying out any*
17 *activity pursuant to a statute administered by the Commis-*
18 *sion without regard to any other provision of law. Any such*
19 *payments or reimbursements shall be considered a reim-*
20 *bursement to the appropriated funds of the Commission.*

21 **“SEC. 27. GIFTS AND VOLUNTARY AND UNCOMPENSATED**
22 **SERVICES.**

23 *“(a) IN GENERAL.—In furtherance of its functions the*
24 *Commission may accept, hold, administer, and use uncon-*
25 *ditional gifts, donations, and bequests of real, personal, and*

1 *other property and, notwithstanding section 1342 of title*
2 *31, United States Code, accept voluntary and uncompen-*
3 *sated services.*

4 “(b) *LIMITATIONS.—*

5 “(1) *CONFLICTS OF INTEREST.—Notwithstanding*
6 *subsection (a), the Commission may not accept, hold,*
7 *administer, or use a gift, donation, or bequest if the*
8 *acceptance, holding, administration, or use would cre-*
9 *ate a conflict of interest or the appearance of a con-*
10 *flict of interest.*

11 “(2) *VOLUNTARY SERVICES.—A person who pro-*
12 *vides voluntary and uncompensated service under*
13 *subsection (a) shall be considered a Federal employee*
14 *for purposes of—*

15 “(A) *chapter 81 of title 5, United States*
16 *Code, (relating to compensation for injury);*

17 “(B) *sections 2671 through 2680 of title 28,*
18 *United States Code, (relating to tort claims);*
19 *and*

20 “(C) *for purposes of the provisions of law*
21 *relating to ethics, conflicts of interest, corrup-*
22 *tion, and any other criminal or civil statute or*
23 *regulation governing the standards of conduct for*
24 *Federal employees.”.*

1 **SEC. 103. PEER-TO-PEER FILE SHARING RISK EDUCATION.**

2 *The Federal Trade Commission shall, as part of its*
 3 *existing consumer education programs, educate consumers*
 4 *concerning the potential risks to their privacy and personal*
 5 *security, as well as educate consumers about potentially in-*
 6 *appropriate behavior resulting from purposeful or acci-*
 7 *dental misuse of peer-to-peer file sharing technology.*

8 **TITLE II—INTERNATIONAL**
 9 **CONSUMER PROTECTION**

10 **SEC. 201. FINDINGS.**

11 *The Congress finds the following:*

12 (1) *The Federal Trade Commission protects con-*
 13 *sumers from fraud and deception. Cross-border fraud*
 14 *and deception are growing international problems*
 15 *that affect American consumers and businesses.*

16 (2) *The development of the Internet and im-*
 17 *provements in telecommunications technologies have*
 18 *brought significant benefits to consumers. At the same*
 19 *time, they have also provided unprecedented opportu-*
 20 *nities for those engaged in fraud and deception to es-*
 21 *tablish operations in one country and victimize a*
 22 *large number of consumers in other countries.*

23 (3) *An increasing number of consumer com-*
 24 *plaints collected in the Consumer Sentinel database*
 25 *maintained by the Commission, and an increasing*
 26 *number of cases brought by the Commission, involve*

1 *foreign consumers, foreign businesses or individuals,*
2 *or assets or evidence located outside the United States.*

3 *(4) The Commission has legal authority to rem-*
4 *edy law violations involving domestic and foreign*
5 *wrongdoers, pursuant to the Federal Trade Commis-*
6 *sion Act. The Commission's ability to obtain effective*
7 *relief using this authority, however, may face prac-*
8 *tical impediments when wrongdoers, victims, other*
9 *witnesses, documents, money and third parties in-*
10 *volved in the transaction are widely dispersed in*
11 *many different jurisdictions. Such circumstances*
12 *make it difficult for the Commission to gather all the*
13 *information necessary to detect injurious practices, to*
14 *recover offshore assets for consumer redress, and to*
15 *reach conduct occurring outside the United States*
16 *that affects United States consumers.*

17 *(5) Improving the ability of the Commission and*
18 *its foreign counterparts to share information about*
19 *cross-border fraud and deception, to conduct joint and*
20 *parallel investigations, and to assist each other is*
21 *critical to achieve more timely and effective enforce-*
22 *ment in cross-border cases.*

23 *(6) Consequently, Congress should enact legisla-*
24 *tion to provide the Commission with more tools to*
25 *protect consumers across borders.*

1 **SEC. 202. FOREIGN LAW ENFORCEMENT AGENCY DEFINED.**

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

4 “ *‘Foreign law enforcement agency’ means—*

5 *“(1) any agency or judicial authority of a for-*
6 *foreign government, including a foreign state, a political*
7 *subdivision of a foreign state, or a multinational or-*
8 *ganization constituted by and comprised of foreign*
9 *states, that is vested with law enforcement or inves-*
10 *tigative authority in civil, criminal, or administra-*
11 *tive matters; or*

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

15 **SEC. 203. SHARING INFORMATION WITH FOREIGN LAW EN-**
16 **FORCEMENT AGENCIES.**

17 *(a) IN GENERAL.—Section 21(b)(6) of the Federal*
18 *Trade Commission Act (15 U.S.C. 57b-2(b)(6)) is amended*
19 *by adding at the end “The custodian may make such mate-*
20 *rial available to any foreign law enforcement agency upon*
21 *the prior certification of any officer of any such foreign law*
22 *enforcement agency that such material will be maintained*
23 *in confidence and will be used only for official law enforce-*
24 *ment purposes, if—*

1 “(A) the foreign law enforcement agency has set
2 forth a bona fide legal basis for its authority to main-
3 tain the material in confidence; and

4 “(B) the materials are to be used for purposes of
5 investigating, or engaging in enforcement proceedings
6 related to, possible violations of—

7 “(i) foreign laws prohibiting fraudulent or
8 deceptive commercial practices or other practices
9 similar to practices prohibited by any law ad-
10 ministered by the Commission;

11 “(ii) law administered by the Commission,
12 if disclosure of the material would further a
13 Commission investigation or enforcement pro-
14 ceeding; or

15 “(iii) with the approval of the Attorney
16 General, foreign criminal laws.

17 Nothing in the preceding sentence authorizes the disclosure
18 of material obtained in connection with the administration
19 of the Federal antitrust laws or foreign antitrust laws (as
20 defined in paragraphs (5) and (7), respectively, of section
21 12 of the International Antitrust Enforcement Assistance
22 Act of 1994 (16 U.S.C. 6211) to any officer or employee
23 of a foreign law enforcement agency.”.

1 (b) *PUBLICATION OF INFORMATION; REPORTS.*—*Sec-*
2 *tion 6(f) of the Federal Trade Commission Act (15 U.S.C.*
3 *46(f)) is amended—*

4 (1) *by inserting “(1)” after “such information”*
5 *the first place it appears; and*

6 (2) *by striking “purposes.” and inserting “pur-*
7 *poses, and (2) to any officer or employee of any for-*
8 *foreign law enforcement agency under the same cir-*
9 *cumstances that sharing material with foreign law*
10 *enforcement agencies is permitted under section*
11 *21(b)(6) of this Act.”.*

12 **SEC. 204. OBTAINING INFORMATION FOR FOREIGN LAW EN-**
13 **FORCEMENT AGENCIES.**

14 *Section 6 of the Federal Trade Commission Act (15*
15 *U.S.C. 46) is amended by adding at the end the following:*

16 “(j)(1) *Upon request from a foreign law enforcement*
17 *agency, to provide assistance in accordance with this sub-*
18 *section if the requesting agency states that it is inves-*
19 *tigating, or engaging in enforcement proceedings against,*
20 *possible violations of laws prohibiting fraudulent or decep-*
21 *tive commercial practices, or other practices that may be*
22 *similar to practices prohibited by any provision of the laws*
23 *administered by the Commission, other than Federal anti-*
24 *trust laws (as defined in section 12(5) of the International*

1 *Antitrust Enforcement Assistance Act of 1994 (15 U.S.C.*
2 *6211(5))), the Commission may, in its discretion—*

3 “(A) *conduct such investigation as the Commis-*
4 *sion deems necessary to collect information and evi-*
5 *dence pertinent to the request for assistance, using all*
6 *investigative powers authorized by this Act; and*

7 “(B) *seek and accept appointment by a United*
8 *States district court of Commission attorneys to pro-*
9 *vide assistance to foreign and international tribunals*
10 *and to litigants before such tribunals on behalf of a*
11 *foreign law enforcement agency pursuant to section*
12 *1782 of title 28, United States Code, when the request*
13 *is from an agency acting to investigate or pursue the*
14 *enforcement of civil laws or when the Attorney Gen-*
15 *eral refers such a request to the Commission.*

16 “(2) *The Commission may provide assistance under*
17 *paragraph (1) without requiring that the conduct identified*
18 *in the request also constitutes a violation of the laws of the*
19 *United States.*

20 “(3) *In deciding whether to provide such assistance,*
21 *the Commission shall consider all relevant factors, includ-*
22 *ing—*

23 “(A) *whether the requesting agency has agreed to*
24 *provide or will provide reciprocal assistance to the*
25 *Commission;*

1 “(B) whether compliance with the request would
2 prejudice the public interest of the United States; and

3 “(C) whether the requesting agency’s investiga-
4 tion or enforcement proceeding concerns acts or prac-
5 tices that cause or are likely to cause injury to a sig-
6 nificant number of persons.

7 “(4) If a foreign law enforcement agency has set forth
8 a legal basis for requiring execution of an international
9 agreement as a condition for reciprocal assistance, or as
10 a condition for disclosure of materials or information to
11 the Commission, the Commission, after consultation with
12 the Secretary of State, may negotiate and conclude an
13 international agreement, in the name of either the United
14 States or the Commission and with the final approval of
15 the agreement by the Secretary of State, for the purpose of
16 obtaining such assistance or disclosure. The Commission
17 may undertake in such an international agreement—

18 “(A) to provide assistance using the powers set
19 forth in this subsection;

20 “(B) to disclose materials and information in
21 accordance with subsection (f) of this section and sec-
22 tion 21(b)(6) of this Act; and

23 “(C) to engage in further cooperation, and pro-
24 tect materials and information received from disclo-
25 sure, as authorized by this Act.

1 “(5) *The authority in this subsection is in addition*
2 *to, and not in lieu of, any other authority vested in the*
3 *Commission or any other officer of the United States.*”.

4 **SEC. 205. INFORMATION SUPPLIED BY AND ABOUT FOR-**
5 **EIGN SOURCES.**

6 *Section 21(f) of the Federal Trade Commission Act (15*
7 *U.S.C. 57b-2(f)) is amended—*

8 (1) *by inserting “(1) before “Any”; and adding*
9 *at the end the following:*

10 “(2)(A) *Except as provided in subparagraph (C) of*
11 *this paragraph, the Commission shall not be compelled to*
12 *disclose—*

13 “(i) *material obtained from a foreign law en-*
14 *forcement agency or other foreign government agency,*
15 *if the foreign law enforcement agency or other foreign*
16 *government agency has requested confidential treat-*
17 *ment, or has precluded such disclosure under other*
18 *use limitations, as a condition of disclosing the mate-*
19 *rial;*

20 “(ii) *material reflecting consumer complaints ob-*
21 *tained from any other foreign source, if that foreign*
22 *source supplying the material has requested confiden-*
23 *tial treatment as a condition of disclosing the mate-*
24 *rial; or*

1 “(iii) material reflecting a consumer complaint
 2 submitted to a Commission reporting mechanism
 3 sponsored in part by foreign law enforcement agencies
 4 or other foreign government agencies.

5 “(B) For purposes of section 552 of title 5, this para-
 6 graph shall be considered a statute described in subsection
 7 (b)(3)(B) of such section 552.

8 “(C) Nothing in this paragraph shall authorize the
 9 Commission to withhold information from the Congress or
 10 prevent the Commission from complying with an order of
 11 a court of the United States in an action commenced by
 12 the United States or the Commission.”.

13 **SEC. 206. CONFIDENTIALITY AND DELAYED NOTICE OF**
 14 **PROCESS.**

15 (a) *IN GENERAL.*—The Federal Trade Commission Act
 16 (15 U.S.C. 41 et seq.) is amended by inserting after section
 17 21 the following:

18 **“SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF**
 19 **COMPULSORY PROCESS FOR CERTAIN THIRD**
 20 **PARTIES.**

21 (a) *IN GENERAL.*—The provisions for delay or prohibi-
 22 tion of notice under the Right to Financial Privacy Act
 23 (12 U.S.C. 3401 et seq.) and the Electronic Communication
 24 Privacy Act (18 U.S.C. 2701 et seq.) shall be available to
 25 the Commission—

1 (1) upon a finding by the presiding judge or
2 magistrate judge pursuant to an *ex parte* application
3 by the Commission that there is reason to believe that
4 notification may cause an adverse result; or

5 (2) where notification is delayed pursuant to sec-
6 tion 2705(a)(1)(B) of title 18, a finding by the Com-
7 mission that there is reason to believe that notifica-
8 tion may cause an adverse result.

9 (b) *EX PARTE APPLICATION BY COMMISSION.*—If the
10 provisions for delayed notice described in subsection (a) do
11 not apply, the Commission may apply *ex parte* to a pre-
12 siding judge or magistrate judge for an order commanding
13 the recipient of compulsory process issued by the Commis-
14 sion not to notify any other person of the existence of the
15 process, notwithstanding any law or regulation of the
16 United States, or under the constitution, or any law or reg-
17 ulation, of any State, political subdivision of a State, terri-
18 tory of the United States, or the District of Columbia. The
19 presiding judge or magistrate judge shall enter such an
20 order granting the requested delay for a period not to exceed
21 90 days, or for such period as the presiding judge or mag-
22 istrate judge deems appropriate, if there is reason to believe
23 that notification may cause an adverse results. The pre-
24 siding judge or magistrate judge may grant extensions of

1 *this delay of notice of up to 90 each in accordance with*
2 *this subsection.*

3 (c) *NO LIABILITY FOR COMPLIANCE.*—*The recipient of*
4 *compulsory process issued by the Commission under this*
5 *section shall not be liable under any law or regulation of*
6 *the United States, or under the constitution, or any law*
7 *or regulation, of any State, political subdivision of a State,*
8 *territory of the United States, or the District of Columbia,*
9 *or under any contract or other legally enforceable agree-*
10 *ment, for failure to provide notice that such process has been*
11 *issued or that the recipient has provided information in re-*
12 *sponse to such process. The preceding sentence does not pro-*
13 *vide any exemption from liability for the underlying con-*
14 *duct.*

15 (d) *VENUE AND PROCEDURE.*—

16 (1) *IN GENERAL.*—*All judicial proceedings under*
17 *this section may be brought in the United States Dis-*
18 *trict Court for the District of Columbia or any other*
19 *appropriate United States District Court. All ex*
20 *parte applications by the Commission under this sec-*
21 *tion related to a single investigation may be brought*
22 *in a single proceeding.*

23 (2) *IN CAMERA PROCEEDINGS.*—*Upon applica-*
24 *tion by the Commission, all judicial proceedings pur-*
25 *suant to this section shall be held in camera and the*

1 *records thereof sealed until expiration of the period of*
2 *delay or such other date as the presiding judge or*
3 *magistrate judge may permit.*

4 *(e) SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply*
5 *to an investigation or proceeding related to the administra-*
6 *tion of federal antitrust laws or foreign antitrust laws*
7 *(within the meaning of section 6211 of this title).*

9 *(f) ADVERSE RESULT DEFINED.—In this section the*
10 *term ‘adverse result’ means—*

11 *“(1) the transfer of assets or records outside the*
12 *territorial limits of the United States;*

13 *“(2) impeding the ability of the Commission to*
14 *identify or trace funds;*

15 *“(3) endangering the life or physical safety of an*
16 *individual;*

17 *“(4) flight from prosecution;*

18 *“(5) the destruction of, or tampering with, evi-*
19 *dence;*

20 *“(6) the intimidation of potential witnesses;*

21 *“(7) the dissipation or concealment of assets; or*

22 *“(8) otherwise seriously jeopardizing an inves-*
23 *tigation or unduly delaying a trial.”.*

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

4 (1) by striking “or” after the semicolon in sub-
 5 paragraph (C);

6 (2) by inserting “and” after the semicolon in
 7 subparagraph (D); and

8 (3) by inserting after subparagraph (D) the fol-
 9 lowing:

10 “(E) under section 21a of this Act;”.

11 **SEC. 207. PROTECTION FOR VOLUNTARY PROVISION OF IN-**
 12 **FORMATION.**

13 The *Federal Trade Commission Act* (15 U.S.C. 41 et
 14 seq.) is amended by inserting after section 21a, as added
 15 by section 206 of this title, the following:

16 **“SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF**
 17 **INFORMATION.**

18 “(a) *IN GENERAL.*—An entity described in subsection
 19 (e)(1) that voluntarily provides material to the Commission
 20 that it reasonably believes is relevant to—

21 “(1) a possible unfair or deceptive act or prac-
 22 tice, as defined in section 5(a) of this Act, or

23 “(2) assets subject to recovery by the Commis-
 24 sion, including assets located in foreign jurisdictions,

1 *shall not be liable to any person under any law or regula-*
2 *tion of the United States, or under the constitution, or any*
3 *law or regulation, of any State, political subdivision of a*
4 *State, territory of the United States, or the District of Co-*
5 *lumbia, for such disclosure or for any failure to provide*
6 *notice of such disclosure. The preceding sentence does not*
7 *provide any exemption from liability for the underlying*
8 *conduct.*

9 “(b) *LIABILITY LIMITATION.*—*An entity described in*
10 *subsection (e)(2) that makes a voluntary disclosure to the*
11 *Commission regarding the subjects described in subsection*
12 *(a)(1) and (2) shall be exempt from liability in accordance*
13 *with the provisions of section 5318(g)(3) of title 31, United*
14 *States Code.*

15 “(c) *CONSUMER COMPLAINTS.*—*Any entity described*
16 *in subsection (e) that makes a voluntary disclosure of con-*
17 *sumer complaints sent to it, or information contained there-*
18 *in, to the Commission shall not be liable to any person*
19 *under any law or regulation of the United States, or under*
20 *the constitution, or any law or regulation, of any State,*
21 *political subdivision of a State, territory of the United*
22 *States, or the District of Columbia, for such disclosure or*
23 *for any failure to provide notice of such disclosure. The pre-*
24 *ceding sentence does not provide any exemption from liabil-*
25 *ity for the underlying conduct.*

1 “(d) *FOIA EXEMPTION.*—Material submitted pursu-
2 ant to this section with a request for confidential treatment
3 shall be exempt from disclosure under section 552 of title
4 5, United States Code, to the extent it could reasonably be
5 expected to disclose either the identity of persons, partner-
6 ships, or corporations that are the subject of such disclo-
7 sures, or the identification of particular financial accounts,
8 their ownership, or confidential records of account activity.
9 This exemption is in addition to, and not in lieu of, any
10 other applicable exemptions from disclosure in such section
11 552.

12 “(e) *ENTITIES TO WHICH SECTION APPLIES.*—This
13 section applies to the following entities, whether foreign or
14 domestic:

15 “(1) A courier service, a commercial mail receiv-
16 ing agency, an industry membership organization, a
17 payment system provider, a consumer reporting agen-
18 cy, a domain name registrar and registry, and a pro-
19 vider of alternative dispute resolution services;

20 “(2) a bank or thrift institution, a commercial
21 bank or trust company, an investment company, a
22 credit card issuer, an operator of a credit card sys-
23 tem, and an issuer, redeemer, or cashier of travelers’
24 checks, money orders, or similar instruments; and

1 “(3) an Internet service provider or provider of
2 telephone services.”.

3 **SEC. 208. INFORMATION SHARING WITH FINANCIAL REGU-**
4 **LATORS.**

5 Section 1112(e) of the Right to Financial Privacy Act
6 (12 U.S.C. 3412(e)) is amended by inserting “the Federal
7 Trade Commission,” after “the Securities and Exchange
8 Commission,”.

9 **SEC. 209. REPRESENTATION IN FOREIGN LITIGATION.**

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

12 “(c)(1) The Commission may designate Commission
13 attorneys to assist the Department of Justice in connection
14 with litigation in foreign courts in which the Commission
15 has an interest, pursuant to the terms of a memorandum
16 of understanding to be negotiated by the Commission and
17 the Department of Justice. The preceding sentence is in ad-
18 dition to, and not in lieu of, any other authority vested
19 in the Commission or any other officer of the United States.

20 “(2) The Commission is authorized to expend appro-
21 priated funds for the retention of foreign counsel for con-
22 sultation and for litigation in foreign courts, and for ex-
23 penses related to consultation and to litigation in foreign
24 courts in which the Commission has an interest.

1 “(3) *Nothing in this section authorizes the payment*
2 *of claims or judgments from any source other than the per-*
3 *manent and indefinite appropriation authorized by section*
4 *1304 of title 31, United States Code.*”.

5 **SEC. 210. AVAILABILITY OF REMEDIES.**

6 *Section 5 of the Federal Trade Commission Act (15*
7 *U.S.C. 45) is amended by adding at the end the following:*

8 “(o) *UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN-*
9 *VOLVING FOREIGN COMMERCE.—*

10 “(1) *IN GENERAL.—For purposes of subsection*
11 *(a), the term ‘unfair or deceptive acts or practices’ in-*
12 *cludes such acts or practices involving foreign com-*
13 *merce that—*

14 “(A) *cause or are likely to cause reasonably*
15 *foreseeable injury within the United States; or*

16 “(B) *involve material conduct occurring*
17 *within the United States.*

18 “(2) *APPLICATION OF REMEDIES TO SUCH ACTS*
19 *OR PRACTICES.—All remedies available to the Com-*
20 *mission with respect to unfair and deceptive acts or*
21 *practices shall be available for acts and practices de-*
22 *scribed in paragraph (1), including restitution to do-*
23 *mestic or foreign victims.*”.

1 **SEC. 211. CRIMINAL REFERRALS.**

2 *Section 6 of the Federal Trade Commission Act (15*
3 *U.S.C. 46), as amended by section 204 of this title, is*
4 *amended by adding at the end the following:*

5 “(k) *REFERRAL FOR CRIMINAL PROCEEDINGS.—*

6 *“(1) IN GENERAL.—Whenever the Commission*
7 *obtains evidence that any person, partnership or cor-*
8 *poration, either domestic or foreign, has engaged in*
9 *conduct that may constitute a violation of Federal*
10 *criminal law, to transmit such evidence to the Attor-*
11 *ney General who may, in his discretion, institute*
12 *criminal proceedings under appropriate statutes.*
13 *Nothing in this paragraph affects any other authority*
14 *of the Commission to disclose information.*

15 *“(2) INTERNATIONAL INFORMATION.—The Com-*
16 *mission shall endeavor to ensure, with respect to*
17 *memoranda of understanding and international*
18 *agreements it may conclude, that material it has ob-*
19 *tained from foreign law enforcement agencies acting*
20 *to investigate or pursue the enforcement of foreign*
21 *criminal laws may be used for the purpose of inves-*
22 *tigation, prosecution, or prevention of violations of*
23 *United States criminal laws.”.*

1 **SEC. 212. STAFF EXCHANGES.**

2 *The Federal Trade Commission Act (15 U.S.C. 41 et*
3 *seq.) is amended by inserting after section 25 (15 U.S.C.*
4 *57c) the following:*

5 **“SEC. 25A. STAFF EXCHANGES.**

6 “(a) *IN GENERAL.*—*The Congress consents to—*

7 “(1) *the retention or employment of officers or*
8 *employees of foreign government agencies on a tem-*
9 *porary basis by the Commission under section 3109*
10 *of title 5, United States Code, section 202 of title 18,*
11 *United States Code, or section 2 of this Act (15*
12 *U.S.C. 42); and*

13 “(2) *the retention or employment of officers or*
14 *employees of the Commission on a temporary basis by*
15 *such foreign government agencies.*

16 “(b) *FORM OF ARRANGEMENTS.*—*Staff arrangements*
17 *under subsection (a) need not be reciprocal. The Commis-*
18 *sion may accept payment or reimbursement, in cash or in*
19 *kind, from a foreign government agency to which this sec-*
20 *tion is applicable, or payment or reimbursement made on*
21 *behalf of such agency, for expenses incurred by the Commis-*
22 *sion, its members, and employees in carrying out such ar-*
23 *rangements.”.*

1 **SEC. 213. EXPENDITURES FOR COOPERATIVE ARRANGE-**
2 **MENTS.**

3 (a) *IN GENERAL.*—Section 6 of the Federal Trade
4 Commission Act (15 U.S.C. 46) as amended by section 211
5 of this title, is further amended by adding at the end the
6 following:

7 “(p) *To expend appropriated funds for—*

8 “(1) *operating expenses and other costs of bilat-*
9 *eral and multilateral cooperative law enforcement*
10 *groups conducting activities of interest to the Com-*
11 *mission and in which the Commission participates;*
12 *and*

13 “(2) *expenses for consultations and meetings*
14 *hosted by the Commission with foreign government*
15 *agency officials, members of their delegations, appro-*
16 *priate representatives and staff to exchange views con-*
17 *cerning developments relating to the Commission’s*
18 *mission, development and implementation of coopera-*
19 *tion agreements, and provision of technical assistance*
20 *for the development of foreign consumer protection or*
21 *competition regimes, such expenses to include nec-*
22 *essary administrative and logistic expenses and the*
23 *expenses of Commission staff and foreign invitees in*
24 *attendance at such consultations and meetings includ-*
25 *ing—*

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

3 “(B) any travel and transportation to or
4 from such meetings; and

5 “(3) any other related lodging or subsist-
6 ence.”.

7 (b) *AUTHORIZATION OF APPROPRIATIONS.*—*The Fed-*
8 *eral Trade Commission is authorized to expend appro-*
9 *priated funds not to exceed \$100,000 per fiscal year for pur-*
10 *poses of section 6(p) of the Federal Trade Commission Act*
11 *(15 U.S.C. 46(p)), including operating expenses and other*
12 *costs of the following bilateral and multilateral cooperative*
13 *law enforcement groups:*

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

16 (2) *The International Competition Network.*

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

19 (4) *Project Emptor.*

20 (5) *The Toronto Strategic Partnership and other*
21 *regional partnerships with a nexus in a Canadian*
22 *province.*

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108TH CONGRESS
1ST SESSION

S. 1234

[Report No. 108-127]

A BILL

To reauthorize the Federal Trade Commission, and
for other purposes.

AUGUST 26, 2003

Reported with an amendment