



July 8, 2016

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: Full Committee Markup of H.R. 5510, H.R. 5111, H.R. 5092, H.R. 5104, H.R. 1301, H.R. 3299, H.R. 921, and H.R. 670

I. INTRODUCTION

The Committee on Energy and Commerce will meet in open markup on July 12 and July 13, 2016, in 2123 Rayburn House Office Building.

On Tuesday, July 12, 2016, at 4:00 p.m., the Committee will convene for opening statements only. The Committee will reconvene on Wednesday, July 13, 2016, at 2:00 p.m. to consider the following:

- H.R. 5510, FTC Process and Transparency Reform Act of 2016;
- H.R. 5111, Consumer Review Fairness Act;
- H.R. 5092, Reinforcing American Made Products Act;
- H.R. 5104, Better Online Ticket Sales (BOTS) Act;
- H.R. 1301, Amateur Radio Parity Act of 2016;
- HR 3299, Strengthening Public Health Emergency Response Act of 2015;
- H.R. 921, Sports Medicine Licensure Clarity Act of 2015; and
- H.R. 670, Special Needs Trust Fairness Act of 2015.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to Peter.Kielty@mail.house.gov. Any information with respect to the amendment's parliamentary standard (e.g., its germaneness) should be submitted at this time as well.

II. LEGISLATION

A. H.R. 5510, FTC Process and Transparency Reform Act of 2016

Section 1. Short Title.

Section 1 provides that the Act may be cited as the “FTC Process and Transparency Reform Act of 2016.”

Section 2. Unlawful Act or Practice.

This section states that an act or practice does not cause substantial injury to consumers if the injury or harm resulting from such act or practice is trivial or merely speculative. An injury may be sufficiently substantial if the injury does a small harm to a large number of people, and may be likely to cause substantial injury if it raises a significant risk of concrete harm.

This section requires that an act or practice is not unfair unless it is injurious in its net effects. To make this determination, the Federal Trade Commission (FTC or Commission) shall consider the various costs for a remedy, the burdens on society in general in the form of increased paperwork, increased regulatory burdens on the flow of information, reduced incentives to innovation and capital formation, and other similar matters. The Commission may not second-guess the wisdom of particular consumer decisions, but may consider whether there is an obstacle to the free exercise of consumer decision making.

Section 3. Time Limitation for Consent Orders.

This section requires any consent order entered into by the Commission related to unfair or deceptive acts or practices to include a termination clause that such consent order expire not later than eight years after it is entered into, unless the consent order relates to alleged fraud *or* the Commission determines that the order should last longer based on consideration of the impact on technological progress and risk of future violations of the order.

This section requires a review of any consent order five years after the date on which the order is entered into unless the consent order is related to alleged fraud outlined in this section, and allows entities to request such a review. If the consent order has not achieved its stated purposes, the Commission shall terminate the consent order.

Section 4. Annual Reporting on the Status of Investigations.

This section requires the Commission to submit an annual report to Congress on investigations relating to unfair or deceptive acts or practices, or unfair methods of competition, in or affecting commerce, including information on the number of investigations commenced, the number of investigations closed with no official agency action, the disposition of such closed investigations, and a description of such closed investigations sufficient to indicate the legal analysis supporting the Commission’s decision to close the investigation with privacy limitations for the entities investigated. If the subjects of the investigations required to be described under

this section do not consent to their publication, the Commission may not publish the descriptions that are otherwise required in the section.

Section 5. Requirement of Analysis and Rationale for Legislative and Regulatory Recommendations.

This section prohibits the FTC from submitting recommendations for legislative or regulatory action without an economic analysis or advice prepared by the Bureau of Economics. If no such economic analysis or advice is prepared, the FTC must indicate that no advice or economic analysis was prepared by the Bureau of Economics for the recommendations. This requirement does not apply to recommendations submitted to State or local entities, if the recommendation is made as part of an appearance of a Commissioner before Congress, or if the recommendation is requested by and submitted to any member or committee of Congress.

Section 6. Effects of Guidelines, General Statements of Policy, and Similar Guidance.

This section clarifies that in any enforcement action, the Commission shall prove a violation of a provision of law enforced by the Commission. The Commission may not base an enforcement action on, or execute a consent order based on acts or practices that are alleged to be inconsistent with any guidelines, general statements of policy, or similar guidance issued by the Commission unless the acts or practices violate a provision of law enforced by the Commission. Such guidelines, general statements of policy, or similar guidance may be used as evidence of compliance with the provision under which they were issued. Nothing in this section confers authority upon or negates existing authority of the Commission to issue such materials.

Section 7. Termination of Inactive Investigations.

This section requires the Commission to terminate a covered investigation at the end of a six-month period beginning on the date that a covered verifiable written communication is sent by the Commission, unless the Commission sends additional covered verifiable written communications or the Commission votes to extend the covered investigation. The requirement does not apply if the Commission, within thirty days of the expiration of the six-month period, determines that it did not send a verifiable written communication because of either excusable neglect or a circumstance beyond the control of the Commission making sending the communication impossible.

Section 8. Nonpublic Collaborative Discussions.

This section authorizes a bipartisan majority of FTC Commissioners to hold a non-public meeting as long as no votes or agency actions are taken at the meeting, each person present at the meeting is a Commissioner or employee of the Commission, and an attorney from the Office of General Counsel of the Commission is present at the meeting. This section also requires that the Commission publish a disclosure of the meeting on its Internet website within two business days of the meeting that includes a list of meeting attendees and a summary of the matters discussed at the meeting, except for matters that the Commission has determined are not in the public interest

to disclose. This section includes a provision preserving open meeting requirements for agency action. This section also includes definitions for terms used in the section.

Section 8. Annual Plan Required.

This section requires the FTC to publish and submit to Congress on December 1 of each year, an annual plan for the next calendar year describing the projected activities of the Commission. The annual plan must include a description of the Commission's policy priorities, projected rulemakings, plans to develop guidelines, plans to restructure the Commission or establish or alter working groups, planned projects or initiatives, and any projected dates and timelines associated with those initiatives.

This section also requires the FTC to publish and submit to Congress an annual report on the Commission's enforcement actions involving alleged unfair or deceptive acts or practices targeting or significantly affecting persons who are 65 years of age or older. The report is required to include a description of the Commission's enforcement actions, the disposition of those enforcement actions, and the proportion of enforcement actions involving elder fraud as a percentage of all enforcement action relating to unfair or deceptive acts or practices. The report must also include workshops, guidance documents, working groups, and conferences related to unfair or deceptive acts or practices that target or significantly affect individuals who are 65 years of age or older.

B. H.R. 5092, Reinforcing American-Made Products Act

Section 1. Short Title.

Section 1 provides that the Act may be cited as the "Reinforcing American-Made Products Act."

Section 2. Exclusivity of Federal Authority to Regulate Labeling of Products Made in the United States and Introduced in Interstate or Foreign Commerce.

This section establishes that the provisions of the Federal Trade Commission Act that authorize the Commission to regulate the extent to which a product may be labeled "Made in the U.S.A" or "Made in America" supersede any corresponding provision of State law.

C. H.R. 5111, Consumer Review Fairness Act

Section 1. Short Title.

Section 1 provides that the Act may be cited as the "Consumer Review Fairness Act of 2016."

Section 2. Consumer Review Protection.

This section voids form contract provisions if the provision prohibits or restricts an individual who is a party to the form contract from engaging in a covered communication, imposes a penalty or fee against such an individual for engaging in covered communications, or requires the transfer of intellectual property rights in review or feedback content, but allows non-exclusive licenses in such content.

This section does not affect any duty of confidentiality imposed by law; any civil cause of action for defamation, libel, or slander, or similar cause of action; any party's right to remove or refuse to display on an Internet website or webpage controlled by such party that contains personal information or likeness of a person or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic; is unrelated to the goods or services available on such Internet website or webpage; or is clearly false or misleading. This section does not impact a party's right to establish terms and conditions for content creation by an employee or independent contractor of a commercial entity in certain circumstances.

This section shall not apply to a provision of a form contract that prohibits disclosure or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments, to remove trade secrets or commercial or financial information considered privileged or confidential; personnel and medical files; records compiled for law enforcement purposes; unlawful content; and potentially damaging code, processes, programs, applications, or files.

This section outlines the enforcement responsibilities of the Federal Trade Commission, State attorneys general, and consumer protection officials. This section outlines venue and service of process requirements.

D. H.R. 5104, Better On-line Ticket Sales (BOTS) Act of 2016

Section 1. Short Title.

Section 1 provides that the Act may be cited as the "Better On-line Ticket Sales Act of 2016" or the "BOTS Act."

Section 2. Unfair and Deceptive Acts and Practices Relating to Use of Ticket Access Circumvention Software.

This section makes it unlawful for any person to sell or offer to sell software that (1) is primarily designed or produced to circumvent technological measures limiting purchases made via computerized event ticketing system; (2) has only limited commercially significant purpose or use other than for such circumvention; or (3) is marketed by a person as software intended for such circumvention. The section further makes it unlawful to use such software in violation of a ticket seller's posted ticket purchasing rules. It also makes it unlawful for any person to sell any ticket that has been obtained by that person, or another, using circumvention software, if the secondary seller either participated directly or had the ability to control the unlawful conduct or knew or should have known that the tickets were obtained in violation of the section. This section further provides a rule of construction clarifying that it is not unlawful to use

circumvention software to investigate or further the enforcement or defense of any alleged violation of this section; or engage in research necessary to identify and analyze flaws and vulnerabilities. This section sets forth that a violation of this Act will be treated as an unfair and deceptive act of practice under the Federal Trade Commission Act and authorizes State attorneys general to enforce its terms.

E. H.R. 1301, Amateur Radio Parity Act of 2016

H.R. 1301 directs the Federal Communications Commission (FCC or Commission) to adopt rules to protect the rights of amateur radio operators to use amateur radio equipment in deed restricted communities. In general, communications equipment is recognized under current law as having a societal benefit in providing access to information. Land use restrictions imposed by governments or homeowners associations on other pieces of communications equipment are currently limited by FCC regulation. H.R. 1301 directs the Commission to adopt similar regulations for the use of amateur radio equipment, ensuring that restrictions are minimally restrictive and tailored to achieve a legitimate end. In addition, community associations would continue to be allowed to establish reasonable rules regarding aesthetics of equipment and prohibit amateur radio equipment installation on common property. An amendment in the nature of a substitute expected to be offered during the markup includes the following provisions:

Section 1. Short Title.

This section provides the short title of “Amateur Radio Parity Act of 2016.”

Section 2. Findings.

This section identifies benefits that over 730,000 licensed amateur radio stations in the United States provide to societies. The findings acknowledge the unique challenges for amateur radio licensees complying with private land use regulations and community associations, but recognize that there are antenna designs and installations consistent with community association land and structure requirements.

Section 3. Application of Private Land Use Restrictions to Amateur Stations.

Section 3 establishes that private land use restrictions may not prevent amateur radio communications, but require licensees to obtain approval from a community association prior to installing outdoor equipment. The section allows a community association to prohibit amateur radio installation equipment on common property not under exclusive ownership of the licensee. Community associations may establish reasonable rules concerning aesthetics and installation requirements for outdoor equipment.

Section 4. Affirmation of Limited Preemption of State and Local Land Use Regulation.

Section 4 affirms current preemption of State and local land use regulations in regards to precluding amateur service communications.

Section 5. Definitions.

Section 5 contains definitions for a community association, and other terms defined in current regulations.

F. H.R. 3299, Strengthening Public Health Emergency Response Act of 2015

H.R. 3299, Strengthening Public Health Emergency Response Act. authored by Rep. Brooks (R-IN) and Rep. Eshoo (D-CA) would improve American preparedness and response programs. This legislation directs GAO to examine state and local preparedness programs, would increase American emergency preparedness by increasing administrative efficiency within the Office of Assistant Secretary for Preparedness and Response (ASPR) in the U.S. Department of Health and Human Services, and provide incentives for companies to spur development of medical countermeasures for public health emergencies and biochemical attacks.

G. H.R. 921, Sports Medicine Licensure Clarity Act of 2015

H.R. 921, Sports Medicine Licensure Act, authored by Vice Chairman Guthrie (R-KY), this legislation would ensure that sports medicine professionals are properly covered by their malpractice insurance while traveling with athletic teams in another State.

H. H.R. 670, Special Needs Trust Fairness Act of 2015.

H.R. 670, The Special Needs Trust Fairness Act of 2015, introduced by Rep. Thompson (R-PA) and Ranking Member Pallone (D-NJ), would extend the special needs trust exception to allow non-elderly individuals with disabilities to establish a special needs trust on their own behalf. If enacted, special needs trusts established by a non-elderly, disabled individual would no longer be considered an asset in determining that individual's eligibility for Medicaid.

III. STAFF CONTACTS

If you have questions regarding H.R. 5510, H.R. 5111, H.R. 5092, or H.R. 5104, please contact Paul Nagle or Graham Dufault. If you have questions regarding H.R. 1301, please contact David Redl or Charlotte Savercool. If you have any questions about H.R. 3299, H.R. 921, or H.R. 670, please contact Paul Edattel, Carly McWilliams, John Stone, or Josh Trent. Committee staff can be reached at (202) 225-2927.