

Calendar No. 252

118TH CONGRESS }
1st Session }

SENATE

{ REPORT
118-114

INFORMING CONSUMERS ABOUT SMART
DEVICES ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 90



NOVEMBER 28, 2023.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

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Ms. CANTWELL, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 90]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 90) to require the disclosure of a camera or recording capability in certain internet-connected devices, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

The purpose of S. 90 is to require the disclosure of a camera or recording capability in certain internet-connected devices.

BACKGROUND AND NEEDS

Internet-connected smart devices are becoming increasingly common in U.S. households. Sixty-nine percent of U.S. households have at least one smart home product; 83 million households have more than one such product.¹ The U.S. smart home market is expected to reach \$78.7 billion by 2027, up from \$32.7 billion in 2021.² While internet-connected devices can provide enhanced capabilities for household products and increase consumer convenience, consumers

¹“United States Smart Home Market Analysis & Forecasts 2020–2026 by Application, Products, Active Household Numbers, Penetration Rate, Company Analysis,” *PR Newswire*, May 10, 2021 (<https://www.prnewswire.com/news-releases/united-states-smart-home-market-analysis--forecasts-2020-2026-by-application-products-active-household-numbers-penetration-rate-company-analysis-301287760.html>).

²“United States Smart Home Market, Size, Forecast 2022–2027, Industry Trends, Growth, Share, Impact of COVID-19, Company Analysis,” *Research and Markets*, January 2022 (https://www.researchandmarkets.com/reports/5521676/united-states-smart-home-market-size-forecast?utm_source=CI&utm_medium=PressRelease&utm_code=zscjib&utm_campaign=1533232++United+States+Smart+Home+Market+Analysis+%26+Forecasts+2020-2026+by+Application%2c+Products%2c+Active+Household+Numbers%2c+Penetration+Rate%2c+Company+Analysis&utm_exec=chdo54prd#product--adaptive)).

may not expect their refrigerators, thermostats, and other products to contain a camera or microphone that could surveil, record, and transmit to others their private home activity. Consumers have a strong privacy interest in knowing whether a household product has audio or video recording and transmission capabilities before they purchase the product.

LEGISLATIVE HISTORY

S. 90 was introduced on January 25, 2023, by Senator Cruz (for himself and Senator Cantwell) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senator Warnock is an additional cosponsor. On March 22, 2023, the Committee met in open Executive Session and, by voice vote, ordered S. 90 reported favorably with amendments.

S. 90 is substantially similar to H.R. 538, which was introduced on January 26, 2023, by Representative John Curtis (for himself and Representative Seth Moulton), and was referred to the Committee on Energy and Commerce of the House of Representatives. That bill passed the House on February 28, 2023, by a vote of 406–12.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 90, Informing Consumers About Smart Devices Act			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 22, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	*	4	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between -\$500,000 and \$500,000.			

S. 90 would require manufacturers of Internet-connected devices to disclose to consumers whether such devices have microphones or cameras. The bill would direct the Federal Trade Commission (FTC) to establish guidance for manufacturers to follow when notifying consumers and to enforce any violations of the bill's requirements.

Using information from the FTC and the cost of similar requirements, CBO expects that the FTC would need three employees to

issue guidance in 2024 and four employees in each year from 2025 through 2028 to enforce the bill's requirements. CBO estimates that the average cost for salaries and benefits for an FTC employee would be \$240,000 in 2024. After accounting for anticipated inflation, CBO estimates that implementing S. 90 would cost \$4 million over the 2023–2028 period; any spending would be subject to the availability of appropriated funds.

The bill would authorize the FTC to collect civil monetary penalties from businesses found in violation of the act, along with pursuing other remedies. Civil monetary penalties are generally remitted to the Treasury and recorded as revenues. However, CBO estimates that the additional revenues collected over the next decade would be insignificant. The extent to which businesses would violate the new rules after they go into effect is uncertain.

Furthermore, if a business does violate the new rules and the FTC chooses to proceed with an enforcement action, the extent to which the agency pursues civil penalties versus other remedies is also uncertain, as is the amount of time it would take to resolve a case.

S. 90 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) by requiring manufacturers of Internet-connected devices to disclose to the consumer if a component of the device includes a microphone or camera. According to industry sources, most manufacturers already disclose such information on the device's exterior packaging or other forms of advertising. Therefore, CBO estimates that the cost for manufacturers to comply with the bill would not exceed the annual threshold established in UMRA (\$198 million in 2023, adjusted annually for inflation).

S. 90 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are David Hughes (for federal costs) and Rachel Austin (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Number of Persons Covered

S. 90 would require manufacturers of certain consumer products that are capable of connecting to the internet to disclose to consumers whether such products contain a camera or microphone. As such, the number of persons covered would be approximately equivalent to the number of manufacturers of such products.

Economic Impact

S. 90 would not have a significant economic impact. It may require some increased expenditures by manufacturers of covered products in order to add clear and conspicuous labeling to such products as required under the Act.

Privacy

S. 90 would have a positive impact on individual privacy because it would provide transparency to consumers about whether devices capable of connecting to the internet have cameras or microphones.

Paperwork

S. 90 would not create additional paperwork.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the Act may be cited as the “Informing Consumers about Smart Devices Act”.

Section 2. Required disclosure of a camera or recording capability in certain internet-connected devices

This section requires manufacturers of covered devices to clearly and conspicuously disclose prior to purchase whether a covered device contains a camera or microphone.

Section 3. Enforcement by the Federal Trade Commission

This section provides that a violation of the Act shall be treated as a violation of a rule defining an unfair or deceptive practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act,³ and authorizes the Federal Trade Commission (FTC) to enforce the Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as applicable under the Federal Trade Commission Act.⁴

This section also directs the FTC, within 180 days of the Act’s enactment, to issue guidance to help manufacturers comply with the Act’s requirements, including guidance about best practices for making required disclosures as clear and conspicuous and age appropriate as practicable, and best practices for using a pictorial visual representation of the information to be disclosed. Manufacturers may petition the FTC for tailored guidance on how to meet the disclosure requirements consistent with existing rules of practice or any successor rules. The FTC’s guidance shall not confer rights on any person or entity, and shall not operate to bind the FTC or any person to the approach recommended in the guidance. The FTC shall not base an enforcement decision on practices that are alleged to be inconsistent with such guidance unless the practices allegedly violate section 2.

Section 4. Definition of covered device

This section defines the term “covered device” to: (1) mean a consumer product, as defined by section 3(a) of the Consumer Product

³ 15 U.S.C. 57a(a)(1)(B).

⁴ 15 U.S.C. 41 et seq.

Safety Act⁵ that is capable of connecting to the internet, a component of which is a camera or microphone; and (2) not include: (A) a telephone (including a mobile phone), a laptop, tablet, or any device that a consumer would reasonably expect to have a microphone or camera; (B) any device that is specifically marketed as a camera, telecommunications device, or microphone; or (C) any device or apparatus described in sections 255, 716, and 718, and subsections (aa) and (bb) of section 303 of the Communications Act of 1934,⁶ and any regulations promulgated thereunder.

Section 5. Effective date

This section provides that the Act would apply to all covered devices manufactured after the date that is 180 days after the date the FTC issues the guidance required by section 3. The Act would not apply to covered devices manufactured, sold, or otherwise introduced into interstate commerce before that date.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.



⁵ 15 U.S.C. 2052(a).

⁶ 47 U.S.C. 255; 617; 619; and 303(aa) and (bb).