



CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

April 21, 1999

H.R. 850

Security and Freedom Through Encryption (SAFE) Act

As ordered reported by the House Committee on the Judiciary on March 24, 1999

SUMMARY

H.R. 850 would allow individuals in the United States to use and sell any form of encryption and would prohibit states or the federal government from requiring individuals to relinquish the key to encryption technologies to any third party. The bill also would prevent the Bureau of Export Administration (BXA) in the Department of Commerce from restricting the export of most nonmilitary encryption products. H.R. 850 would establish criminal penalties and fines for the use of encryption technologies to conceal incriminating information relating to a felony from law enforcement officials. Finally, the bill would require the Attorney General to maintain data on the instances in which encryption impedes or obstructs the ability of the Department of Justice (DOJ) to enforce the criminal laws.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 850 would result in additional discretionary spending, by DOJ, of \$3 million to \$5 million over the 2000-2004 period. (The department's spending for activities related to encryption exports is negligible under current law.) Enacting H.R. 850 also would affect direct spending and receipts, beginning in fiscal year 2000, through the imposition of criminal fines and the resulting spending from the Crime Victims Fund. Therefore, pay-as-you-go procedures would apply. CBO estimates, however, that the amounts of additional direct spending and receipts would not be significant.

H.R. 850 contains no new private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would preempt state laws that require the use of encryption products or services in a number of circumstances. These preemptions would be intergovernmental mandates as defined in UMRA, but the cost to states would be small and would not exceed the threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The expense of compiling and maintaining data on the instances in which encryption impedes or obstructs the ability of the department to enforce the criminal laws is difficult to ascertain because the number of such instances is unknown—but DOJ believes that if H.R. 850 were enacted they would be numerous. CBO estimates that such efforts would cost DOJ between \$500,000 and \$1 million a year, assuming appropriation of the necessary amounts. These costs would fall within budget function 750 (administration of justice).

Under current policy, BXA would likely spend about \$500,000 a year reviewing exports of encryption products, pursuant to a November 1996 executive order and memorandum that authorized BXA to control the export of all nonmilitary encryption products. If H.R. 850 were enacted, BXA would still be required to review requests to export most computer hardware and software with encryption capabilities. Thus, enacting H.R. 850 would not significantly affect BXA's spending.

CBO estimates that the collections from criminal fines established by the bill—for the use of encryption technologies to conceal incriminating information relating to a felony—would not be significant.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 850 would affect direct spending and receipts by imposing criminal fines for encrypting incriminating information related to a felony. Collections from such fines are likely to be negligible, however, because the federal government would probably not pursue many additional cases under the bill. Any such collections would be recorded in the budget as governmental receipts, or revenues. They would be deposited in the Crime Victims Fund and spent the following year. Because the increase in direct spending would be the same as the amount of fines collected with a one-year lag, the additional direct spending would also be negligible.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 850 would preempt state laws that require encryption keys to be built into computer systems or to be registered with an outside entity or retained by the owner. The bill would also preempt state laws that require the use of encryption for authenticating documents or for ensuring their confidentiality. Both preemptions would be mandates as defined in UMRA.

The preemptions of state law would apply to all entities in the state, but they would also prevent the states themselves from using certain types of encryption technology. The direct impact on state budgets would depend upon the degree to which they are using and will use such technology. Most states have not implemented electronic systems that use encryption, so the impact of the bill on current operations would be small.

CBO has no basis for predicting the degree to which states would use encryption technology in the future in the absence of this legislation. Encryption that is prohibited by the bill includes the scrambling of electronically stored or transmitted information in order to preserve confidentiality, integrity, or authenticity. Thus, the bill may preclude states from using digital signatures to send or receive legal documents electronically. Digital signatures consist of a stream of electronically coded text that uses the body of the document itself, along with unique identifying information about the sender, to authenticate the document and its sender. They are generated through the use of mathematical algorithms, and they can be validated by using electronic keys.

The use of digital signatures would provide options to states and other entities that wish to send legal documents electronically, rather than as hard copies. Resulting reductions in paperwork and distribution costs could lead to cost savings. However, CBO estimates that any lost savings or other costs of the mandates to states would not exceed the threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose no new private-sector mandates as defined in UMRA.

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