



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 4, 2016

H.R. 5111 **Consumer Review Fairness Act of 2016**

As ordered reported by the House Committee on Energy and Commerce on July 13, 2016

H.R. 5111 would void certain provisions in standard form contracts (those used in the course of selling or leasing goods and services) that impose restrictions or penalties for one party's review of the performance of another party under the contract. It also would void and prohibit certain contract provisions that would assign the intellectual property rights for one party's review of the performance of the contract to any other party. The bill would grant the Federal Trade Commission (FTC) the authority to enforce the new prohibitions and authorize the agency to levy civil penalties for violations. H.R. 5111 also would direct the FTC to develop an education and outreach program to provide businesses with best practices for complying with new restrictions.

CBO estimates that the cost of implementing H.R. 5111 would be insignificant because the FTC enforces similar prohibitions and provides compliance assistance under its existing general authorities.

CBO estimates that enacting H.R. 5111 would increase federal revenues from the new authority to collect civil penalties; therefore, pay-as-you-go procedures apply. However, CBO estimates those collections would be insignificant because of the small number of cases that the agency would probably pursue. CBO estimates that enacting the bill would not affect direct spending.

CBO estimates that enacting H.R. 5111 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5111 contains no intergovernmental mandates as defined in Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Although the FTC has begun to enforce prohibitions on contract provisions similar to those outlined in the bill under its existing authorities, to the extent that such provisions are not currently considered void in all jurisdictions, the bill would impose a private-sector mandate as defined in UMRA on entities that use such provisions in their contracts. The cost of the mandate would be the value of forgone income from out-of-court settlements

and compensation for damages the entities could be awarded under a breach of contract claim. However, reliable and comprehensive information concerning the number of businesses that continue to use contracts containing such provisions, the number of those contracts that impose a monetary payment as a penalty, and the level of any such payments is not available. In addition, although the court cases in which consumers have challenged these provisions have resulted in judgments in favor of the consumer, the limited sample of such cases cannot be used to generalize about the results of such cases in other jurisdictions. Therefore, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

On December 9, 2015, CBO transmitted a cost estimate for S. 2044, the Consumer Review Freedom Act of 2015, as reported by the Senate Committee on Commerce, Science, and Transportation on November 18, 2015. The two pieces of legislation are similar and CBO's estimates of their budgetary effects are the same.

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs) and Logan Smith (for the impact on the private sector). The estimate was approved by Theresa Gullo, Assistant Director for Budget Analysis.