

Calendar No. 490

115TH CONGRESS
2D SESSION

S. 2842

[Report No. 115–285]

To prohibit the marketing of bogus opioid treatment programs or products.

IN THE SENATE OF THE UNITED STATES

MAY 15, 2018

Mrs. CAPITO (for herself, Ms. CORTEZ MASTO, Mr. SULLIVAN, Mr. BROWN, and Mr. NELSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 27, 2018

Reported by Mr. THUNE, with an amendment

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

A BILL

To prohibit the marketing of bogus opioid treatment programs or products.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Opioid Addiction Re-
5 covery ~~Fraud Prevention Act of 2018~~”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) OPIOID TREATMENT PRODUCT.—The term
4 “opioid treatment product” means a product, includ-
5 ing any supplement or medication, for use or mar-
6 keted for use in the treatment, cure, or prevention
7 of an opioid use disorder.

8 (2) OPIOID TREATMENT PROGRAM.—The term
9 “opioid treatment program” means a program that
10 provides treatment for people diagnosed with, hav-
11 ing, or purporting to have an opioid use disorder.

12 (3) OPIOID TREATMENT DISORDER.—The term
13 “opioid use disorder” means a cluster of cognitive,
14 behavioral, or physiological symptoms in which the
15 individual continues use of opioids despite significant
16 opioid-induced problems, such as adverse health ef-
17 fects.

18 **SEC. 3. FALSE OR MISLEADING REPRESENTATIONS WITH**
19 **RESPECT TO OPIOID TREATMENT PROGRAMS**
20 **AND PRODUCTS.**

21 (a) UNLAWFUL ACTIVITY.—It is unlawful to make
22 any deceptive representation with respect to the cost,
23 price, efficacy, performance, benefit, risk, or safety of any
24 opioid treatment program or opioid treatment product.

25 (b) ENFORCEMENT BY THE FEDERAL TRADE COM-
26 MISSION.—

1 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
2 TICES.—A violation of subsection (a) shall be treated
3 as a violation of a rule under section 18 of the Fed-
4 eral Trade Commission Act (15 U.S.C. 57a) regard-
5 ing unfair or deceptive acts or practices.

6 (2) POWERS OF THE FEDERAL TRADE COMMIS-
7 SION.—

8 (A) IN GENERAL.—The Federal Trade
9 Commission shall enforce this section in the
10 same manner, by the same means, and with the
11 same jurisdiction, powers, and duties as though
12 all applicable terms and provisions of the Fed-
13 eral Trade Commission Act (15 U.S.C. 41 et
14 seq.) were incorporated into and made a part of
15 this section.

16 (B) PRIVILEGES AND IMMUNITIES.—Any
17 person who violates subsection (a) shall be sub-
18 ject to the penalties and entitled to the privi-
19 leges and immunities provided in the Federal
20 Trade Commission Act as though all applicable
21 terms and provisions of the Federal Trade
22 Commission Act (15 U.S.C. 41 et seq.) were in-
23 corporated and made part of this section.

24 (C) AUTHORITY PRESERVED.—Nothing in
25 this section shall be construed to limit the au-

1 thority of the Federal Trade Commission under
2 any other provision of law.

3 ~~(c) ENFORCEMENT BY STATES.—~~

4 ~~(1) IN GENERAL.—~~Except as provided in para-
5 graph ~~(4)~~, in any case in which the attorney general
6 of a State has reason to believe that an interest of
7 the residents of the State has been or is threatened
8 or adversely affected by any person who violates sub-
9 section ~~(a)~~, the attorney general of the State, as
10 parens patriae, may bring a civil action on behalf of
11 the residents of the State in an appropriate district
12 court of the United States to obtain appropriate re-
13 lief.

14 ~~(2) RIGHTS OF FEDERAL TRADE COMMISS-~~
15 ~~SION.—~~

16 ~~(A) NOTICE TO FEDERAL TRADE COMMISS-~~
17 ~~SION.—~~

18 ~~(i) IN GENERAL.—~~Except as provided
19 in clause ~~(iii)~~, the attorney general of a
20 State shall notify the Federal Trade Com-
21 mission in writing that the attorney gen-
22 eral intends to bring a civil action under
23 paragraph ~~(1)~~ before initiating the civil ac-
24 tion.

1 (ii) CONTENTS.—The notification re-
 2 quired by clause (i) with respect to a civil
 3 action shall include a copy of the complaint
 4 to be filed to initiate the civil action.

5 (iii) EXCEPTION.—If it is not feasible
 6 for the attorney general of a State to pro-
 7 vide the notification required by clause (i)
 8 before initiating a civil action under para-
 9 graph (1), the attorney general shall notify
 10 the Federal Trade Commission imme-
 11 diately upon instituting the civil action.

12 (B) INTERVENTION BY FEDERAL TRADE
 13 COMMISSION.—The Federal Trade Commission
 14 may—

15 (i) intervene in any civil action
 16 brought by the attorney general of a State
 17 under paragraph (1); and

18 (ii) upon intervening—

19 (I) be heard on all matters aris-
 20 ing in the civil action; and

21 (II) file petitions for appeal.

22 (3) INVESTIGATORY POWERS.—Nothing in this
 23 subsection shall be construed to prevent the attorney
 24 general of a State from exercising the powers con-
 25 ferred on the attorney general by the laws of the

1 State to conduct investigations, to administer oaths
2 or affirmations, or to compel the attendance of wit-
3 nesses or the production of documentary or other
4 evidence.

5 (4) ~~PREEMPTIVE ACTION BY FEDERAL TRADE~~
6 ~~COMMISSION.~~—If the Federal Trade Commission or
7 the Attorney General on behalf of the Commission
8 institutes a civil action, or the Federal Trade Com-
9 mission institutes an administrative action, with re-
10 spect to a violation of subsection (a), the attorney
11 general of a State may not, during the pendency of
12 that action, bring a civil action under paragraph (1)
13 against any defendant or respondent named in the
14 complaint of the Commission for the violation with
15 respect to which the Commission instituted such ac-
16 tion.

17 (5) ~~VENUE; SERVICE OF PROCESS.~~—

18 (A) ~~VENUE.~~—Any action brought under
19 paragraph (1) may be brought in any district
20 court of the United States that meets applicable
21 requirements relating to venue under section
22 1391 of title 28, United States Code.

23 (B) ~~SERVICE OF PROCESS.~~—In an action
24 brought under paragraph (1), process may be
25 served in any district in which the defendant—

1 (i) is an inhabitant; or

2 (ii) may be found.

3 (6) ACTIONS BY OTHER STATE OFFICIALS.—In
 4 addition to civil actions brought by attorneys general
 5 under paragraph (1), any other consumer protection
 6 officer of a State who is authorized by the State to
 7 do so may bring a civil action under paragraph (1),
 8 subject to the same requirements and limitations
 9 that apply under this subsection to civil actions
 10 brought by attorneys general.

11 **SECTION 1. SHORT TITLE.**

12 *This Act may be cited as the “Opioid Addiction Recov-*
 13 *ery Fraud Prevention Act of 2018”.*

14 **SEC. 2. DEFINITIONS.**

15 *In this Act:*

16 (1) OPIOID TREATMENT PRODUCT.—*The term*
 17 *“opioid treatment product” means a product, includ-*
 18 *ing any supplement or medication, for use or mar-*
 19 *keted for use in the treatment, cure, or prevention of*
 20 *an opioid use disorder.*

21 (2) OPIOID TREATMENT PROGRAM.—*The term*
 22 *“opioid treatment program” means a program that*
 23 *provides treatment for people diagnosed with, having,*
 24 *or purporting to have an opioid use disorder.*

1 (3) *OPIOID USE DISORDER.*—*The term “opioid*
 2 *use disorder” means a cluster of cognitive, behavioral,*
 3 *or physiological symptoms in which the individual*
 4 *continues use of opioids despite significant opioid-in-*
 5 *duced problems, such as adverse health effects.*

6 **SEC. 3. FALSE OR MISLEADING REPRESENTATIONS WITH**
 7 **RESPECT TO OPIOID TREATMENT PROGRAMS**
 8 **AND PRODUCTS.**

9 (a) *UNLAWFUL ACTIVITY.*—*It is unlawful to make any*
 10 *deceptive representation with respect to the cost, price, effi-*
 11 *cacy, performance, benefit, risk, or safety of any opioid*
 12 *treatment program or opioid treatment product.*

13 (b) *ENFORCEMENT BY THE FEDERAL TRADE COMMIS-*
 14 *SION.*—

15 (1) *UNFAIR OR DECEPTIVE ACTS OR PRAC-*
 16 *TICES.*—*A violation of subsection (a) shall be treated*
 17 *as a violation of a rule under section 18 of the Fed-*
 18 *eral Trade Commission Act (15 U.S.C. 57a) regard-*
 19 *ing unfair or deceptive acts or practices.*

20 (2) *POWERS OF THE FEDERAL TRADE COMMIS-*
 21 *SION.*—

22 (A) *IN GENERAL.*—*The Federal Trade Com-*
 23 *mission shall enforce this section in the same*
 24 *manner, by the same means, and with the same*
 25 *jurisdiction, powers, and duties as though all ap-*

1 *plicable terms and provisions of the Federal*
2 *Trade Commission Act (15 U.S.C. 41 et seq.)*
3 *were incorporated into and made a part of this*
4 *section.*

5 (B) *PRIVILEGES AND IMMUNITIES.*—*Any*
6 *person who violates subsection (a) shall be sub-*
7 *ject to the penalties and entitled to the privileges*
8 *and immunities provided in the Federal Trade*
9 *Commission Act as though all applicable terms*
10 *and provisions of the Federal Trade Commission*
11 *Act (15 U.S.C. 41 et seq.) were incorporated and*
12 *made part of this section.*

13 (C) *AUTHORITY PRESERVED.*—*Nothing in*
14 *this section shall be construed to limit the au-*
15 *thority of the Federal Trade Commission under*
16 *any other provision of law.*

17 (c) *ENFORCEMENT BY STATES.*—

18 (1) *IN GENERAL.*—*Except as provided in para-*
19 *graph (4), in any case in which the attorney general*
20 *of a State has reason to believe that an interest of the*
21 *residents of the State has been or is threatened or ad-*
22 *versely affected by any person who violates subsection*
23 *(a), the attorney general of the State, as parens*
24 *patriae, may bring a civil action on behalf of the resi-*

1 *dents of the State in an appropriate district court of*
2 *the United States to obtain appropriate relief.*

3 (2) *RIGHTS OF FEDERAL TRADE COMMISSION.—*

4 (A) *NOTICE TO FEDERAL TRADE COMMIS-*
5 *SION.—*

6 (i) *IN GENERAL.—Except as provided*
7 *in clause (iii), the attorney general of a*
8 *State shall notify the Federal Trade Com-*
9 *mission in writing that the attorney general*
10 *intends to bring a civil action under para-*
11 *graph (1) before initiating the civil action.*

12 (ii) *CONTENTS.—The notification re-*
13 *quired by clause (i) with respect to a civil*
14 *action shall include a copy of the complaint*
15 *to be filed to initiate the civil action.*

16 (iii) *EXCEPTION.—If it is not feasible*
17 *for the attorney general of a State to pro-*
18 *vide the notification required by clause (i)*
19 *before initiating a civil action under para-*
20 *graph (1), the attorney general shall notify*
21 *the Federal Trade Commission immediately*
22 *upon instituting the civil action.*

23 (B) *INTERVENTION BY FEDERAL TRADE*
24 *COMMISSION.—The Federal Trade Commission*
25 *may—*

1 (i) *intervene in any civil action*
2 *brought by the attorney general of a State*
3 *under paragraph (1); and*

4 (ii) *upon intervening—*

5 (I) *be heard on all matters arising*
6 *in the civil action; and*

7 (II) *file petitions for appeal.*

8 (3) *INVESTIGATORY POWERS.—Nothing in this*
9 *subsection shall be construed to prevent the attorney*
10 *general of a State from exercising the powers con-*
11 *ferred on the attorney general by the laws of the State*
12 *to conduct investigations, to administer oaths or affir-*
13 *mations, or to compel the attendance of witnesses or*
14 *the production of documentary or other evidence.*

15 (4) *PREEMPTIVE ACTION BY FEDERAL TRADE*
16 *COMMISSION.—If the Federal Trade Commission or*
17 *the Attorney General on behalf of the Commission in-*
18 *stitutes a civil action, or the Federal Trade Commis-*
19 *sion institutes an administrative action, with respect*
20 *to a violation of subsection (a), the attorney general*
21 *of a State may not, during the pendency of that ac-*
22 *tion, bring a civil action under paragraph (1)*
23 *against any defendant or respondent named in the*
24 *complaint of the Commission for the violation with*

1 *respect to which the Commission instituted such ac-*
2 *tion.*

3 (5) *VENUE; SERVICE OF PROCESS.—*

4 (A) *VENUE.—Any action brought under*
5 *paragraph (1) may be brought in any district*
6 *court of the United States that meets applicable*
7 *requirements relating to venue under section*
8 *1391 of title 28, United States Code.*

9 (B) *SERVICE OF PROCESS.—In an action*
10 *brought under paragraph (1), process may be*
11 *served in any district in which the defendant—*

12 (i) *is an inhabitant; or*

13 (ii) *may be found.*

14 (6) *ACTIONS BY OTHER STATE OFFICIALS.—In*
15 *addition to civil actions brought by attorneys general*
16 *under paragraph (1), any other consumer protection*
17 *officer of a State who is authorized by the State to*
18 *do so may bring a civil action under paragraph (1),*
19 *subject to the same requirements and limitations that*
20 *apply under this subsection to civil actions brought*
21 *by attorneys general.*

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