[DISCUSSION DRAFT]

117TH CONGRESS 1ST SESSION

H. R. ______

To amend section 230 of the Communications Act of 1934 to provide that immunity under such section does not apply to certain companies and to require internet platform companies to implement and maintain reasonable and user-friendly appeals processes for decisions about content on the platforms of such companies and to submit quarterly filings to the Federal Trade Commission regarding content enforcement decisions and appeals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__ introduced the following bill; which was referred to the Committee on ______________________

A BILL

To amend section 230 of the Communications Act of 1934 to provide that immunity under such section does not apply to certain companies and to require internet platform companies to implement and maintain reasonable and user-friendly appeals processes for decisions about content on the platforms of such companies and to submit quarterly filings to the Federal Trade Commission regarding content enforcement decisions and appeals, and for other purposes.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the [“________________ Act of 2021”].

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Title I—Limitations on Section 230 Immunity

Sec. 101. Inapplicability of section 230 immunity to certain companies.

Sec. 102. Transitional rule.

Title II—Requirements for Internet Platform Companies

Sec. 201. Appeals processes.

Sec. 202. Filings regarding content enforcement decisions and appeals.

Sec. 203. Enforcement.

Sec. 204. Rule of construction.

Sec. 205. Relationship between Federal and State law.

Sec. 206. Definitions.

Title I—Limitations on Section 230 Immunity

Sec. 101. Inapplicability of Section 230 Immunity to Certain Companies.

Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended by adding at the end the fol-

lowing:

“(g) Inapplicability of Immunity to Covered Companies.—
“(1) IN GENERAL.—In the case of a provider of an interactive computer service that is a covered company—

“(A) paragraph (1) of subsection (c) shall not apply with respect to content provided by another information content provider after the date of the enactment of this subsection; and

“(B) paragraph (2) of subsection (c) shall not apply with respect to an action taken by such provider after the date of the enactment of this subsection.

“(2) COVERED COMPANY DEFINED.—In this subsection, the term ‘covered company’ means a company that provides any interactive computer service that—

[(“(A) generates $3,000,000,000 or more in annual revenue; and]

[(“(B) has 300,000,000 or more monthly active users.”).]

SEC. 102. TRANSITIONAL RULE.

(a) IN GENERAL.—Title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) is amended by inserting after section 230 the following:

“SEC. 230A. LIMITED IMMUNITY FOR COVERED COMPANIES.

“(a) IN GENERAL.—
“(1) Treatment of publisher or speaker.—No provider of an interactive computer service that is a covered company shall be treated as the publisher or speaker of any information provided by another information content provider.

“(2) Civil liability.—No provider of an interactive computer service that is a covered company shall be held liable on account of—

“(A) any action voluntarily taken in good faith to restrict access to or availability of material that is not constitutionally protected or that the provider has an objectively reasonable belief is obscene, lewd, lascivious, filthy, excessively violent, or harassing; or

“(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in subparagraph (A).

“(b) Effect on other laws.—

“(1) No effect on criminal law.—Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.
(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.—Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) NO EFFECT ON SEX TRAFFICKING LAW.—Nothing in this section (other than subsection (a)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, United States Code, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct under-
lying the charge would constitute a violation of section 1591 of title 18, United States Code; or

“(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant’s promotion or facilitation of prostitution was targeted.

“(c) DEFINITIONS.—As used in this section:

“(1) INTERNET.—The term ‘Internet’ means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

“(2) INTERACTIVE COMPUTER SERVICE.—The term ‘interactive computer service’ means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

“(3) INFORMATION CONTENT PROVIDER.—The term ‘information content provider’ means any per-
son or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service. To be responsible in whole or in part includes those instances in which an information content provider utilizes an algorithm to amplify, promote, or suggest content to a user unless a user knowingly and willfully selects an algorithm to display such content.

“(4) ACCESS SOFTWARE PROVIDER.—The term ‘access software provider’ means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

“(A) filter, screen, allow, or disallow content;

“(B) pick, choose, analyze, or digest content; or

“(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

“(5) COVERED COMPANY.—The term ‘covered company’ means a company that provides any interactive computer service that—

“(A) generates $3,000,000,000 or more in annual revenue; and]
“(B) has 300,000,000 or more monthly active users.”

(b) Sunset.—Effective on the date that is 5 years after the date of the enactment of this Act, section 230A of the Communications Act of 1934, as added by subsection (a), is repealed.

TITLE II—REQUIREMENTS FOR INTERNET PLATFORM COMPANIES

SEC. 201. APPEALS PROCESSES.

(a) In General.—Each covered company shall implement and maintain reasonable and user-friendly appeals processes for decisions about content on such covered company’s platforms.

(b) Decisions Regarding Content.—For any content a covered company edits, alters, blocks, or removes, the covered company shall—

(1) provide notice to the individual user immediately after their content was edited, altered, blocked, or removed;

(2) clearly state why such content was edited, altered, blocked, or removed, including by citing the specific provisions of such covered company’s content policies on which the decision was based;
(3) explain the process such user must undertake to appeal such decision; and

(4) in the case of any such appeal—

(A) respond to the appeal not later than [____ days] after the date on which the user files the appeal;

(B) provide an opportunity for such user to present reasons why the covered company’s action should not have been taken, including demonstrating inconsistent application of such company’s specific content policy at issue; and

(C) make a final determination about the covered company’s content decision not later than [____ days] after the date on which the user files the appeal.

(e) DECISIONS REGARDING USER ACCOUNTS.—For user accounts a covered company suspends or permanently bans related to a content decision, the covered company shall—

(1) provide notice to the individual user immediately after their account was suspended or permanently banned;

(2) clearly state to a user why their account was suspended or permanently banned, including by citing the specific provision of such covered com-
pany’s content policies on which the decision was
based;

(3) explain the process such user must under-
take to appeal such decision; and

(4) in the case of any such appeal—

(A) respond to the appeal not later than

[____ days] after the date on which the user
files the appeal;

(B) provide an opportunity for such user
to present reasons why the covered company’s
action should not have been taken, including
demonstrating inconsistent application of such
company’s specific content policy at issue; and

(C) make a final determination about the
covered company’s decision to suspend or per-
manently ban the user’s account not later than

[____ days] after the date on which the user
files the appeal.

SEC. 202. FILINGS REGARDING CONTENT ENFORCEMENT
DECISIONS AND APPEALS.

(a) QUARTERLY FILINGS.—Each covered company
shall submit to the Commission, on a quarterly basis, a
detailed description of such covered company’s content en-
forcement decisions and appeals decisions, including the
following:
(1) Content that such covered company altered, flagged, or removed from such covered company’s platforms.

(2) The number of user accounts suspended based on content enforcement decisions.

(3) The number of user accounts permanently banned based on content enforcement decisions.

(4) For all content enforcement decisions, the number of such decisions related to conservative content and conservative accounts.

(5) For all content enforcement decisions, the number of such decisions related to liberal content and liberal accounts.

(6) The number of appeals filed for content decisions and corresponding decisions on such appeals.

(7) The number of appeals filed for suspensions or permanent bans of accounts and corresponding decisions on such appeals.

(b) PUBLIC AVAILABILITY.—The Commission shall make publicly available on the website of the Commission the disclosures required under subsection (a). The covered company filing such disclosures may claim any information included in such filing to be privileged and confidential and, upon coordination with the Commission, such information shall be treated as such for purposes of section
552(b)(4) of title 5, United States Code. If the Commission withholds any information included in the filing, the Commission shall make publicly available on the website the category of information withheld and the purposes for doing so.

SEC. 203. ENFORCEMENT.

(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of this title shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) ACTIONS BY THE COMMISSION.—The Commission shall enforce this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title, and any covered company that violates this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.
(b) **Enforcement by State Attorneys General.**—

(1) **In General.**—If the attorney general of a State has reason to believe that any covered company has violated or is violating this title that affects one or more residents of that State, the attorney general of the State may bring a civil action exclusively in an appropriate district court of the United States to—

(A) enjoin further such violation by the defendant;

(B) enforce compliance with this title;

(C) obtain civil penalties in the amount provided for under subsection (a);

(D) obtain other remedies permitted under State law; or

(E) obtain damages, restitution, or other compensation on behalf of residents of the State.

(2) **Rule of Construction.**—For purposes of bringing a civil action under paragraph (1), nothing in this title shall be construed to prevent the attorney general of a State from exercising the powers conferred on such attorney general by the laws of the State to conduct investigations, administer oaths
or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(3) ACTIONS BY OTHER STATE OFFICIALS.—

(A) IN GENERAL.—In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so, except for any private person on behalf of the State, may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) SAVINGS PROVISION.—Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

SEC. 204. RULE OF CONSTRUCTION.

Except as otherwise expressly provided, nothing in this title may be construed to expand the authority of the Commission.
SEC. 205. RELATIONSHIP BETWEEN FEDERAL AND STATE LAW.

No State or political subdivision of a State may adopt, maintain, enforce, or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this title.

SEC. 206. DEFINITIONS.

In this title:

(1) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(2) COVERED COMPANY.—The term “covered company” means a company that provides any internet platform that—

(A) generates $3,000,000,000 or more in annual revenue; and

(B) has 300,000,000 or more monthly active users.