

[DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION

H. R. _____

To require internet platform companies to implement and maintain reasonable content moderation policies and practices to address the illegal sale of drugs on the platforms of such companies, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To require internet platform companies to implement and maintain reasonable content moderation policies and practices to address the illegal sale of drugs on the platforms of such companies, and for other purposes.

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 [“ _____ Act
5 of 2021”].

1 **SEC. 2. REASONABLE CONTENT MODERATION POLICIES**
2 **AND PRACTICES TO ADDRESS ILLEGAL SALE**
3 **OF DRUGS.**

4 (a) IN GENERAL.—Each covered company shall im-
5 plement and maintain reasonable content moderation poli-
6 cies and practices to address the illegal sale of drugs on
7 such covered company’s platform, taking into consider-
8 ation—

9 (1) the size of, and the nature, scope, and com-
10 plexity of the activities engaged in by, such covered
11 company; and

12 (2) the current state of the art in administra-
13 tive, technical, and technological means for moder-
14 ating such content.

15 (b) MATTERS REQUIRED TO BE INCLUDED.—Each
16 covered company shall maintain content moderation poli-
17 cies and practices that include the following:

18 (1) A written content moderation policy with re-
19 spect to identifying and removing content regarding
20 the illegal sale of drugs on such covered company’s
21 platform.

22 (2) The identification of an officer or other in-
23 dividual as the point of contact with responsibility
24 for the management of the covered company’s con-
25 tent moderation policies and practices regarding the
26 illegal sale of drugs.

1 (3) A process for identifying content regarding
2 the illegal sale of drugs on such covered company's
3 platform.

4 (4) A process for taking preventive measures to
5 mitigate against reasonably foreseeable content re-
6 garding the illegal sale of drugs on such covered
7 company's platform.

8 (5) A process for employee training and super-
9 vision for implementation of the policies, practices,
10 and procedures required by this Act.

11 (c) MONITORING, EVALUATION, AND ADJUST-
12 MENT.—Not less frequently than every 12 months, each
13 covered company shall monitor, evaluate, and adjust, as
14 appropriate, the content moderation policies and practices
15 of such covered company in light of any relevant changes
16 in—

17 (1) technology; and

18 (2) the changing business arrangements of the
19 covered company, such as—

20 (A) mergers and acquisitions;

21 (B) alliances and joint ventures;

22 (C) outsourcing arrangements;

23 (D) bankruptcy; and

24 (E) changes to personal information sys-
25 tems.

1 **SEC. 3. FTC-APPROVED COMPLIANCE GUIDELINES.**

2 (a) IN GENERAL.—A covered company or group of
3 covered companies may apply to the Commission for ap-
4 proval of one or more sets of self-regulatory guidelines re-
5 lated to content moderation policies and practices to ad-
6 dress the illegal sale of drugs on such covered company’s
7 platform or such group of covered companies’ platforms.

8 (b) COMMISSION REVIEW.—

9 (1) INITIAL APPROVAL.—

10 (A) OPPORTUNITY FOR PUBLIC COM-
11 MENT.—As soon as feasible after the receipt of
12 proposed guidelines submitted under subsection
13 (a), the Commission shall provide an oppor-
14 tunity for public comment on such proposed
15 guidelines.

16 (B) REQUIREMENTS FOR APPROVAL.—The
17 Commission shall approve an application re-
18 garding proposed guidelines under subsection
19 (a) if the applicant demonstrates that such
20 guidelines—

21 (i) meet or exceed the requirements of
22 this Act;

23 (ii) provide for the regular review and
24 validation by an independent organization
25 not associated with the covered company or
26 group of covered companies and approved

1 by the Commission to conduct such reviews
2 of the content moderation policies and
3 practices of such covered company or
4 group of covered companies to ensure that
5 such covered company or group of covered
6 companies continues to meet or exceed the
7 requirements of this Act; and

8 (iii) include a means of enforcement if
9 the covered company or group of covered
10 companies does not meet or exceed the re-
11 quirements of this Act, which may include
12 referral to the Commission for enforcement
13 consistent with section 4.

14 (C) DEADLINE.—Not later than **180**
15 **days** after receiving an application for ap-
16 proval of proposed guidelines submitted under
17 subsection (a), the Commission shall issue a de-
18 termination approving or denying such applica-
19 tion and providing its reasons for approving or
20 denying such application.

21 (2) APPROVAL OF MODIFICATIONS.—

22 (A) APPROVAL REQUIRED.—If a covered
23 company or group of covered companies makes
24 material changes to guidelines previously ap-
25 proved by the Commission, such covered com-

1 pany or group of covered companies shall sub-
2 mit the updated guidelines to the Commission
3 for approval.

4 (B) DEADLINE.—Not later than **90**
5 **days** after a covered company or group of cov-
6 ered companies submits to the Commission up-
7 dated guidelines under subparagraph (A), the
8 Commission shall approve or deny any material
9 change to the guidelines.

10 (3) WITHDRAWAL OF APPROVAL.—If at any
11 time the Commission determines that the guidelines
12 previously approved no longer meet the requirements
13 of this Act or that compliance with the approved
14 guidelines is insufficiently enforced by the covered
15 company or group of covered companies, the Com-
16 mission shall notify such covered company or group
17 of covered companies of its intention to withdraw
18 approval of such guidelines and the basis for doing
19 so. If, not later than 90 days after receipt of such
20 notice, such covered company or group of covered
21 companies cures any such alleged deficiency, the
22 Commission may not withdraw approval of such
23 guidelines.

24 (c) SAFE HARBOR.—A covered company shall be
25 deemed in compliance with this Act if such covered com-

1 pany is in compliance with guidelines approved by the
2 Commission under this section. If such covered company
3 is not in compliance with guidelines approved under this
4 section, such covered company is subject to enforcement
5 under section 4.

6 **SEC. 4. ENFORCEMENT.**

7 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
8 SION.—

9 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
10 TICES.—A violation of this Act shall be treated as
11 a violation of a rule defining an unfair or deceptive
12 act or practice prescribed under section 18(a)(1)(B)
13 of the Federal Trade Commission Act (15 U.S.C.
14 57a(a)(1)(B)).

15 (2) ACTIONS BY THE COMMISSION.—The Com-
16 mission shall enforce this Act in the same manner,
17 by the same means, and with the same jurisdiction,
18 powers, and duties as though all applicable terms
19 and provisions of the Federal Trade Commission Act
20 (15 U.S.C. 41 et seq.) were incorporated into and
21 made a part of this Act, and any covered company
22 that violates this Act shall be subject to the pen-
23 alties and entitled to the privileges and immunities
24 provided in the Federal Trade Commission Act.

1 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
2 ERAL.—

3 (1) IN GENERAL.—If the attorney general of a
4 State has reason to believe that any covered com-
5 pany has violated or is violating this Act that affects
6 one or more residents of that State, the attorney
7 general of the State may bring a civil action exclu-
8 sively in an appropriate district court of the United
9 States to—

10 (A) enjoin further such violation by the de-
11 fendant;

12 (B) enforce compliance with this Act;

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

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

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

20 (2) NOTICE.—The attorney general of a State
21 shall provide prior written notice of any action under
22 paragraph (1) to the Commission and provide the
23 Commission with a copy of the complaint in the ac-
24 tion, except in any case in which such prior notice
25 is not feasible, in which case the attorney general

1 shall serve such notice immediately upon instituting
2 such action.

3 (3) INTERVENTION BY THE FTC.—Upon receiv-
4 ing notice under paragraph (2), the Commission
5 shall have the right—

6 (A) to intervene in the action;

7 (B) upon so intervening, to be heard on all
8 matters arising therein; and

9 (C) to file petitions for appeal.

10 (4) LIMITATION ON STATE ACTION WHILE FED-
11 ERAL ACTION IS PENDING.—If the Commission has
12 instituted a civil action for violation of this Act, no
13 State attorney general may bring a separate action
14 under paragraph (1) during the pendency of the ac-
15 tion of the Commission against any defendant
16 named in the complaint of the Commission for any
17 violation of this Act that is alleged in the complaint.
18 A State attorney general may join a civil action for
19 a violation of this Act filed by the Commission.

20 (5) RULE OF CONSTRUCTION.—For purposes of
21 bringing a civil action under paragraph (1), nothing
22 in this Act shall be construed to prevent the attor-
23 ney general of a State from exercising the powers
24 conferred on such attorney general by the laws of
25 the State to conduct investigations, administer oaths

1 or affirmations, or compel the attendance of wit-
2 nesses or the production of documentary and other
3 evidence.

4 (6) ACTIONS BY OTHER STATE OFFICIALS.—

5 (A) IN GENERAL.—In addition to civil ac-
6 tions brought by attorneys general under para-
7 graph (1), any other officer of a State who is
8 authorized by the State to do so, except for any
9 private person on behalf of the State, may bring
10 a civil action under paragraph (1), subject to
11 the same requirements and limitations that
12 apply under this subsection to civil actions
13 brought by attorneys general.

14 (B) SAVINGS PROVISION.—Nothing in this
15 subsection may be construed to prohibit an au-
16 thorized official of a State from initiating or
17 continuing any proceeding in a court of the
18 State for a violation of any civil or criminal law
19 of the State.

20 **SEC. 5. RELATIONSHIP BETWEEN FEDERAL AND STATE**
21 **LAW.**

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

1 **SEC. 6. DEFINITIONS.**

2 In this Act:

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

5 [(2) COVERED COMPANY.—The term “covered
6 company” means a company that provides any inter-
7 net platform that—]

8 [(A) generates \$1,000,000,000 or more in
9 annual revenue; and]

10 [(B) has 100,000,000 or more global ac-
11 tive users.]

12 [(3) ILLEGAL SALE OF DRUGS.—The term “il-
13 legal sale of drugs” means to advertise or offer to
14 sell, deliver, distribute, dispense, or introduce into
15 interstate commerce a controlled substance (as de-
16 fined in section 102 of the Controlled Substances
17 Act (21 U.S.C. 802)) or drug (as defined in section
18 201 of the Federal Food, Drug, and Cosmetic Act
19 (21 U.S.C. 321)) in violation of section 401(h) or
20 403(c)(2) of the Controlled Substances Act (21
21 U.S.C. 841(h); 843(c)(2)) or section 301(a), 301(d),
22 or 505(a) of the Federal Food, Drug, and Cosmetic
23 Act (21 U.S.C. 331(a); 331(d); 355(a)).]