

117TH CONGRESS
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H. R. 3067

To clarify that a violation of certain terms of service and related materials is an unfair or deceptive act or practice and subject to enforcement by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

MAY 7, 2021

Ms. SCHAKOWSKY (for herself and Ms. CASTOR of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To clarify that a violation of certain terms of service and related materials is an unfair or deceptive act or practice and subject to enforcement by the Federal Trade Commission.

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 “Online Consumer Pro-
5 tection Act”.

1 **SEC. 2. TERMS OF SERVICE REQUIRED FOR SOCIAL MEDIA**
2 **PLATFORMS AND ONLINE MARKETPLACES.**

3 (a) IN GENERAL.—Each social media platform or on-
4 line marketplace shall establish, maintain, and make pub-
5 licly available at all times and in a machine-readable for-
6 mat, terms of service in a manner that is clear, easily un-
7 derstood, and written in plain and concise language. The
8 terms of service shall meet the following requirements:

9 (1) The terms of service shall include—

10 (A) any terms or conditions of use of any
11 service provided by such person to a consumer;

12 (B) any policies of such person with regard
13 to such service or use of such service by a con-
14 sumer; and

15 (C) the consumer protection policy con-
16 sistent with subsection (b).

17 (2) The terms of service shall cover issues re-
18 lated to the behavior of a service or a user of such
19 service, and shall at a minimum include terms of use
20 related to—

21 (A) payment methods;

22 (B) content ownership, including content
23 generated by a user;

24 (C) policies related to sharing user content
25 with third parties;

1 (D) any disclaimers, limitations, notices of
2 nonliability, or the consequences of not agreeing
3 to or complying with the terms of service; and

4 (E) any other topic the Commission deems
5 appropriate.

6 (b) REQUIRED CONSUMER PROTECTION POLICY.—

7 (1) FOR SOCIAL MEDIA PLATFORMS.—For so-
8 cial media platforms, the consumer protection policy
9 required by subsection (a) shall include—

10 (A) a description of the content and behav-
11 ior permitted or prohibited on its service both
12 by the platform and by users;

13 (B) whether content may be blocked, re-
14 moved, or modified, or if service to users may
15 be terminated and the grounds upon which such
16 actions will be taken;

17 (C) whether a person can request that con-
18 tent be blocked, removed, or modified, or that
19 a user's service be terminated, and how to make
20 such a request;

21 (D) a description of how a user will be no-
22 tified of and can respond to a request that his
23 or her content be blocked, removed, or modified,
24 or service be terminated, if such actions are
25 taken;

1 (E) how a person can appeal a decision to
2 block, remove, or modify content, allow content
3 to remain, or terminate or not terminate service
4 to a user, if such actions are taken; and

5 (F) any other topic the Commission deems
6 appropriate.

7 (2) FOR ONLINE MARKETPLACES.—For online
8 marketplaces, the consumer protection policy re-
9 quired by subsection (a) shall include—

10 (A) a description of the products, product
11 descriptions, and marketing material, allowed or
12 disallowed on the marketplace;

13 (B) whether a product, product descrip-
14 tions, and marketing material may be blocked,
15 removed, or modified, or if service to a user
16 may be terminated and the grounds upon which
17 such actions will be taken;

18 (C) whether users will be notified of prod-
19 ucts that have been recalled or are dangerous,
20 and how they will be notified;

21 (D) for users—

22 (i) whether a user can report sus-
23 pected fraud, deception, dangerous prod-
24 ucts, or violations of the online market-

1 place's terms of service, and how to make
2 such report;

3 (ii) whether a user who submitted a
4 report will be notified of whether action
5 was taken as a result of the report, the ac-
6 tion that was taken and the reason why ac-
7 tion was taken or not taken, and how the
8 user will be notified;

9 (iii) how to appeal the result of a re-
10 port; and

11 (iv) under what circumstances a user
12 is entitled to refund, repair, or other rem-
13 edy and the remedy to which the user may
14 be entitled, how the user will be notified of
15 such entitlement, and how the user may
16 claim such remedy; and

17 (E) for sellers—

18 (i) how sellers are notified of a report
19 by a user or a violation of the terms of
20 service or consumer protection policy;

21 (ii) how to contest a report by a user;

22 (iii) how a seller who is the subject of
23 a report will be notified of what action will
24 be or must be taken as a result of the re-
25 port and the justification for such action;

(iv) how to appeal a decision of the online marketplace to take an action in response to a user report or for a violation of the terms of service or consumer protection policy; and

(v) the policy regarding refunds, repairs, replacements, or other remedies as a result of a user report or a violation of the terms of service or consumer protection policy.

(c) STANDARD SHORT-FORM STATEMENTS AND GRAPHIC ICONS FOR CONSUMER PROTECTION PRACTICES.—

(1) STUDY AND REPORT.—Not later than 180 days after the date of the enactment of this Act, the Commission shall conduct a study to determine the most effective method of communicating common consumer protection practices in short-form consumer disclosure statements or graphic icons that disclose the consumer protection and content moderation practices of social media platforms and online marketplaces. The Commission shall submit a report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the

1 Senate with the results of the study. The report
2 shall also be made publicly available on the website
3 of the Commission.

4 (2) REGULATIONS.—Except as provided in
5 paragraph (3), after completion of the study and not
6 later than 1 year after the date of the enactment of
7 this Act, the Commission shall finalize regulations
8 based on the results of such study that require social
9 media platforms and online marketplaces to commu-
10 nicate their consumer protection and content mod-
11 eration practices, and any other information as the
12 Commission may determine, in a clear and con-
13 spicuous manner.

14 (3) EXCEPTION.—If the Commission deter-
15 mines, by a majority vote of the Commissioners, that
16 short-form consumer disclosure statements or graph-
17 ic icons will not advance consumer understanding of
18 consumer protection and content moderation prac-
19 tices of social media platforms and online market-
20 places, the Commission shall include its reasoning
21 for making that determination in the report to Con-
22 gress required by paragraph (1) and shall not final-
23 ize the rulemaking until it determines such rules
24 would advance consumer understanding of consumer

1 protection and content moderation practices of social
2 media platforms and online marketplaces.

3 **SEC. 3. CONSUMER PROTECTION PROGRAM.**

4 (a) IN GENERAL.—Each social media platform and
5 online marketplace shall establish and implement a con-
6 sumer protection program that includes policies, practices,
7 and procedures regarding consumer protection and con-
8 tent moderation—

9 (1) to—

10 (A) ensure compliance with applicable Fed-
11 eral, State, and local consumer protection laws;

12 (B) develop, implement, and ensure com-
13 pliance with the terms of service required by
14 section 2;

15 (C) develop and implement policies regard-
16 ing the content and behavior permitted on its
17 service both by the platform and users, and en-
18 sure compliance with such policies, practices
19 and procedures;

20 (D) mitigate risks that could be harmful to
21 consumer's safety, well-being, and reasonable
22 expectations of users of the social media plat-
23 form or online marketplace;

24 (E) implement reasonable safeguards with-
25 in, and training and education of employees and

1 contractors of, the social media platform or on-
2 line marketplace to promote compliance with all
3 consumer protection laws and the consumer
4 protection program; and

5 (F) disclose any other requirement the
6 Commission deems appropriate; and

7 (2) taking into consideration—

8 (A) the size of, and the nature, scope, and
9 complexity of the activities engaged in by the
10 social media platform and online marketplace;

11 (B) the activities engaged in by users on
12 the social media platform or online market-
13 place; and

14 (C) the cost of implementing the program.

15 (b) ADDITIONAL REQUIREMENTS.—As part of the
16 consumer protection program, a social media platform or
17 online marketplace shall—

18 (1) establish processes to monitor, manage, and
19 enforce the social media platform’s or online market-
20 place’s consumer protection program, and dem-
21 onstrate the covered entity’s compliance with Fed-
22 eral, State, and local consumer protection laws;

23 (2) establish processes to assess and mitigate
24 the risks to individuals resulting from the social
25 media platform’s or online marketplace’s amplifi-

1 cation of content or products not in compliance with
2 its terms of service;

3 (3) establish a process to periodically review
4 and update the consumer protection program;

5 (4) appoint a consumer protection officer, who
6 reports directly to the chief executive officer; and

7 (5) establish and implement controls to monitor
8 and mitigate known or reasonably foreseeable risks
9 to consumers resulting from hosting content or prod-
10 ucts.

11 (c) ANNUAL FILINGS TO THE FTC.—

12 (1) FILING REQUIREMENTS.—Each social
13 media platform or online marketplace that either has
14 annual revenue in excess of \$250,000 in the prior
15 year or that has more than 10,000 monthly active
16 users on average in the prior year, shall be required
17 to submit to the Commission, on an annual basis, a
18 filing that includes—

19 (A) a detailed and granular description of
20 each of the requirements in section 2 and this
21 section;

22 (B) the name and contact information of
23 the consumer protection officer required under
24 subsection (b)(4); and

1 (C) a description of any material changes
2 in the consumer protection program or the
3 terms of service since the most recent prior dis-
4 closure to the Commission.

5 (2) OFFICER CERTIFICATION.—For each entity
6 that submits an annual filing under paragraph (1),
7 the entity’s principal executive officer and the con-
8 sumer protection officer required under subsection
9 (b)(4), shall be required to certify in each such an-
10 nual filing that—

11 (A) the signing officer has reviewed the fil-
12 ing;

13 (B) based on such officer’s knowledge, the
14 filing does not contain any untrue statement of
15 a material fact or omit to state a material fact
16 necessary to make the statements, in light of
17 the circumstances under which such statements
18 were made, not misleading;

19 (C) based on such officer’s knowledge, the
20 filing fairly presents in all material respects the
21 consumer protection practices of the social
22 media platform or online marketplace; and

23 (D) the signing consumer protection offi-
24 cer—

1 (i) is responsible for establishing and
2 maintaining safeguards and controls to
3 protect consumers and administer the con-
4 sumer protection program; and

5 (ii) has provided all material conclu-
6 sions about the effectiveness of such safe-
7 guards and controls.

8 (3) PUBLIC AVAILABILITY.—The Commission
9 shall make publicly available on the website of the
10 Commission the filings submitted under paragraph
11 (1). The Commission may withhold information in-
12 cluded in such a filing if the Commission determines
13 such information should not be public. If the Com-
14 mission withholds any information, the Commission
15 shall make publicly available on the website the cat-
16 egory of information withheld and the reasons for
17 withholding it.

18 **SEC. 4. ENFORCEMENT.**

19 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
20 SION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—Any violation of this Act shall be treated as
23 a violation of a regulation under section 18(a)(1)(B)
24 of the Federal Trade Commission Act (15 U.S.C.

1 57a(a)(1)(B)) regarding unfair or deceptive acts or
2 practices.

3 (2) POWERS OF COMMISSION.—The Commis-
4 sion shall enforce this Act in the same manner, by
5 the same means, and with the same jurisdiction,
6 powers, and duties as though all applicable terms
7 and provisions of the Federal Trade Commission Act
8 (15 U.S.C. 41 et seq.) were incorporated into and
9 made a part of this Act. Any person who violates
10 this Act shall be subject to the penalties and entitled
11 to the privileges and immunities provided in the
12 Federal Trade Commission Act.

13 (b) REGULATIONS.—The Commission shall promul-
14 gate regulations under section 553 of title 5, United
15 States Code, to carry out the purposes of this Act.

16 (c) PRIVATE RIGHT OF ACTION.—

17 (1) ENFORCEMENT BY INDIVIDUALS.—

18 (A) IN GENERAL.—An individual alleging
19 damages as a result of a violation of this Act
20 may bring a civil action in any court of com-
21 petent jurisdiction, State or Federal.

22 (B) RELIEF.—In a civil action brought
23 under subparagraph (A) in which the plaintiff
24 prevails, the court may award—

1 (i) damages as provided in subpara-
2 graph (C);

3 (ii) reasonable attorney's fees and liti-
4 gation costs; and

5 (iii) any other relief, including equi-
6 table or declaratory relief, that the court
7 determines appropriate.

8 (C) DAMAGES.—A prevailing plaintiff is
9 entitled to actual damages as a result of the
10 violation of this Act.

11 (2) INVALIDITY OF PRE-DISPUTE ARBITRATION
12 AGREEMENTS AND PRE- DISPUTE JOINT ACTION
13 WAIVERS.—

14 (A) IN GENERAL.—Notwithstanding any
15 other provision of law, no pre-dispute arbitra-
16 tion agreement or pre-dispute joint action waiv-
17 er shall be valid or enforceable with respect to
18 a dispute arising under this Act.

19 (B) APPLICABILITY.—Any determination
20 as to whether or how this paragraph applies to
21 any dispute shall be made by a court, rather
22 than an arbitrator, without regard to whether
23 such agreement purports to delegate such deter-
24 mination to an arbitrator.

25 (C) DEFINITIONS.—In this paragraph:

1 (i) PRE-DISPUTE ARBITRATION
 2 AGREEMENT.—The term “pre-dispute arbi-
 3 tration agreement” means any agreement
 4 to arbitrate a dispute that has not arisen
 5 at the time of making the agreement.

6 (ii) PRE-DISPUTE JOINT-ACTION
 7 WAIVER.—The term “pre-dispute joint-ac-
 8 tion waiver” means an agreement, whether
 9 or not part of a pre-dispute arbitration
 10 agreement, that would prohibit, or waive
 11 the right of, one of the parties to the
 12 agreement to participate in a joint, class,
 13 or collective action in a judicial, arbitral,
 14 administration, or other forum, concerning
 15 a dispute that has not yet arisen at the
 16 time of making the agreement.

17 (iii) DISPUTE.—The term “dispute”
 18 means any claim related to an alleged vio-
 19 lation of this Act and between an indi-
 20 vidual and a covered organization.

21 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
 22 ERAL.—

23 (1) IN GENERAL.—If the chief law enforcement
 24 officer of a State, or an official or agency designated
 25 by a State, has reason to believe that any person has

1 violated or is violating this Act, the attorney general,
2 official, or agency of the State, in addition to any
3 authority it may have to bring an action in State
4 court under its consumer protection law, may bring
5 a civil action in any appropriate United States dis-
6 trict court or in any other court of competent juris-
7 diction, including a State court, to—

8 (A) enjoin further such violation by such
9 person;

10 (B) enforce compliance with this Act;

11 (C) obtain civil penalties; and

12 (D) obtain damages, restitution, or other
13 compensation on behalf of residents of the
14 State.

15 (2) NOTICE AND INTERVENTION BY THE
16 FTC.—The attorney general of a State shall provide
17 prior written notice of any action under paragraph
18 (1) to the Commission and provide the Commission
19 with a copy of the complaint in the action, except in
20 any case in which such prior notice is not feasible,
21 in which case the attorney general shall serve such
22 notice immediately upon instituting such action. The
23 Commission shall have the right—

24 (A) to intervene in the action;

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

3 (C) to file petitions for appeal.

4 (3) LIMITATION ON STATE ACTION WHILE FED-
5 ERAL ACTION IS PENDING.—If the Commission has
6 instituted a civil action for violation of this Act, no
7 State attorney general, or official or agency of a
8 State, may bring an action under this subsection
9 during the pendency of that action against any de-
10 fendant named in the complaint of the Commission
11 for any violation of this Act alleged in the complaint.

12 (4) RELATIONSHIP WITH STATE-LAW CLAIMS.—
13 If the attorney general of a State has authority to
14 bring an action under State law directed at acts or
15 practices that also violate this Act, the attorney gen-
16 eral may assert the State-law claim and a claim
17 under this Act in the same civil action.

18 **SEC. 5. RELATIONSHIP TO OTHER LAWS.**

19 (a) EFFECT OF OTHER LAWS.—Section 230 of the
20 Communications Act of 1934 (47 U.S.C. 230) shall not
21 apply to any violation of this Act.

22 (b) EFFECT ON STATE LAWS.—Nothing in this Act
23 or any regulation promulgated under this Act shall pre-
24 empt or otherwise affect any State or local law.

1 (c) SEVERABILITY.—If any provision of this Act, or
 2 the application thereof to any person or circumstance, is
 3 held invalid, the remainder of this Act and the application
 4 of such provision to other persons not similarly situated
 5 or to other circumstances shall not be affected by the in-
 6 validation.

7 **SEC. 6. FTC ENFORCEMENT AUTHORITY.**

8 (a) IN GENERAL.—Section 230(e) of the Commu-
 9 nications Act of 1934 (47 U.S.C. 230(e)) is amended by
 10 adding at the end the following:

11 “(6) NO EFFECT ON FTC ENFORCEMENT.—
 12 Nothing in this section shall be construed to impair
 13 the enforcement by the Federal Trade Commission
 14 of any provision of law enforced by the Federal
 15 Trade Commission.”.

16 (b) APPLICABILITY.—The amendment made by this
 17 section shall apply with respect to any action or pro-
 18 ceeding that is commenced on or after the date of the en-
 19 actment of this Act.

20 **SEC. 7. DEFINITIONS.**

21 As used in this Act, the following definitions apply:

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

24 (2) CONSUMER PRODUCT.—The term “con-
 25 sumer product” has the meaning given such term in

1 section 3(a) of the Consumer Product Safety Act
2 (15 U.S.C. 2052(a)).

3 (3) ONLINE MARKETPLACE.—The term “online
4 marketplace” means a website or web application,
5 that—

6 (A) includes features that allow for, facili-
7 tate, or enable third-party sellers to engage in
8 the sale, purchase, payment, storage, shipping,
9 or delivery of a consumer product in the United
10 States; and

11 (B) hosts one or more third-party sellers.

12 (4) SELLER.—The term “seller” means a per-
13 son or entity that sells, offers to sell, or contracts to
14 sell a consumer product through an online market-
15 place’s platform.

16 (5) SOCIAL MEDIA PLATFORM.—The term “so-
17 cial media platform” means a website or mobile web
18 application that—

19 (A) permits a person to become a reg-
20 istered user, establish an account, or create a
21 profile for the purpose of allowing the user to
22 create, share, and view user-generated content
23 through such an account or profile;

1 (B) enables one or more users to generate
2 content that can be viewed by other users of the
3 platform; and

4 (C) primarily serves as a medium for users
5 to interact with content generated by other
6 users of the medium and for the platform to de-
7 liver ads to users.

8 (6) USER.—The term “user” means a person
9 or entity that uses a social media platform or online
10 marketplace for any purpose, including advertisers
11 and sellers, regardless of whether that person has an
12 account or is otherwise registered with the platform.

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