

119TH CONGRESS
1ST SESSION

S. _____

To amend section 230 of the Communications Act of 1934 to limit liability protection under that section for certain social media platforms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CURTIS (for himself and Mr. KELLY) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend section 230 of the Communications Act of 1934 to limit liability protection under that section for certain social media platforms, 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 “Algorithm Account-
5 ability Act”.

6 **SEC. 2. LIMITATION OF LIABILITY PROTECTION FOR CER-**
7 **TAIN SOCIAL MEDIA PLATFORMS.**

8 (a) IN GENERAL.—Section 230 of the Communica-
9 tions Act of 1934 (47 U.S.C. 230) is amended—

1 (1) by redesignating subsection (f) as sub-
2 section (g); and

3 (2) by inserting after subsection (e) the fol-
4 lowing:

5 “(f) ALGORITHMIC PRODUCT DESIGN ACCOUNT-
6 ABILITY.—

7 “(1) DUTY OF CARE IN ALGORITHMIC DE-
8 SIGN.—

9 “(A) IN GENERAL.—A provider of a social
10 media platform shall exercise reasonable care in
11 the design, training, testing, deployment, oper-
12 ation, and maintenance of a recommendation-
13 based algorithm on the social media platform to
14 prevent bodily injury or death described in sub-
15 paragraph (B) that a reasonable and prudent
16 person would agree was—

17 “(i) reasonably foreseeable by the pro-
18 vider; and

19 “(ii) attributable, in whole or in part,
20 to the design characteristics or perform-
21 ance of the recommendation-based algo-
22 rithm.

23 “(B) COVERED BODILY INJURY OR
24 DEATH.—Bodily injury or death described in
25 this subparagraph, with respect to a social

1 media platform, is bodily injury to or the death
2 of a user of the social media platform, or bodily
3 injury or death inflicted by a user of the social
4 media platform upon another person, that
5 arises from the operation of the recommenda-
6 tion-based algorithm.

7 “(C) EXCEPTION.—

8 “(i) IN GENERAL.—Subparagraph (A)
9 shall not apply to the ranking, ordering,
10 promotion, recommendation, amplification,
11 or similar curation of content that is effec-
12 tuated—

13 “(I) by sorting information
14 chronologically or reverse chrono-
15 logically; or

16 “(II) to respond to an individual
17 search for content on the social media
18 platform initiated by a user.

19 “(ii) EXCEPTION LIMITED TO INITIAL
20 SEARCH.—Nothing in clause (i)(II) shall
21 be construed to limit the applicability of
22 subparagraph (A) to a provider of a social
23 media platform, with respect to the activi-
24 ties of a recommendation-based algorithm,
25 after a user of the social media platform

1 navigates beyond the initially populated
2 search results.

3 “(D) FIRST AMENDMENT PROTECTIONS.—
4 Nothing in subparagraph (A) shall be construed
5 to authorize the Commission to enforce that
6 subparagraph based on the viewpoint of a user
7 of a social media platform or of an information
8 content provider expressed by or through any
9 speech, expression, or information protected by
10 the First Amendment to the Constitution of the
11 United States.

12 “(2) ENFORCEMENT.—

13 “(A) LOSS OF LIABILITY PROTECTION.—
14 Subsection (c)(1) shall not apply to a provider
15 of a social media platform that violates para-
16 graph (1)(A) of this subsection.

17 “(B) PRIVATE RIGHT OF ACTION.—If a
18 person suffers bodily injury or death as the re-
19 sult of a violation of paragraph (1)(A) by the
20 provider of a social media platform, and the
21 bodily injury or death meets the requirements
22 under clauses (i) and (ii) of that paragraph and
23 paragraph (1)(B), the person or, in the case of
24 a minor or disabled person who suffers a bodily
25 injury or any person who dies, the legal rep-

1 representative of such a person, may bring a civil
2 action in a district court of the United States
3 of competent jurisdiction against the provider
4 for compensatory and punitive damages.

5 “(3) INVALIDITY OF PREDISPUTE AGREEMENTS
6 AND WAIVERS.—

7 “(A) IN GENERAL.—No predispute arbitra-
8 tion agreement or predispute joint-action waiver
9 (as those terms are defined in section 401 of
10 title 9, United States Code) shall be valid or en-
11 forceable with respect to a dispute arising
12 under this subsection.

13 “(B) APPLICABILITY.—Any determination
14 as to the scope or manner of applicability of
15 subparagraph (A) shall be made by a court,
16 rather than an arbitrator, without regard to
17 whether an agreement described in that sub-
18 paragraph purports to delegate such determina-
19 tion to an arbitrator.

20 “(4) RELATIONSHIP TO OTHER LAWS.—Noth-
21 ing in this subsection or any regulation promulgated
22 thereunder shall be construed to prohibit or other-
23 wise affect the enforcement of any Federal law or
24 regulation or State law or regulation that is at least
25 as protective of users of social media platforms as

1 this subsection and the regulations promulgated
2 thereunder.

3 “(5) SEVERABILITY.—If any provision of this
4 subsection or the application of such provision to
5 any person or circumstance is held to be unconstitu-
6 tional, the remainder of this subsection and the ap-
7 plication of the provision to any other person or cir-
8 cumstance shall not be affected.

9 “(6) DEFINITIONS .—In this subsection:

10 “(A) RECOMMENDATION-BASED ALGO-
11 RITHM.—The term ‘recommendation-based al-
12 gorithm’ means, with respect to a user of a so-
13 cial media platform, a fully or partially auto-
14 mated system used to rank, order, promote, rec-
15 ommend, amplify, or similarly curate content,
16 including other users, hashtags, or posts, based
17 on the personal data of the user, including the
18 preferences, interests, behavior, or characteris-
19 tics of the user.

20 “(B) SOCIAL MEDIA PLATFORM.—The
21 term ‘social media platform’—

22 “(i) means a for-profit interactive
23 computer service that—

24 “(I) permits a user to establish
25 an account or create a profile for the

1 purpose of allowing the user to create,
2 share, or view content through the ac-
3 count or profile; and

4 “(II) primarily serves as a service
5 through which a user described in
6 subclause (I) interacts with content;
7 and

8 “(ii) does not include an interactive
9 computer service—

10 “(I) that serves fewer than
11 1,000,000 registered users;

12 “(II) that is—

13 “(aa) an email program;

14 “(bb) an email distribution
15 list;

16 “(cc) a wireless messaging
17 service; or

18 “(dd) an online messaging
19 service, the predominant or ex-
20 clusive function of which is direct
21 messaging, meaning messages
22 are transmitted from the sender
23 to a recipient and not posted
24 within the interactive computer
25 service or publicly;

1 “(III) that is a private platform
2 or messaging service used by an entity
3 solely to communicate with others em-
4 ployed by or affiliated with the entity;

5 “(IV) that is a teleconferencing
6 or video conferencing service that al-
7 lows reception and transmission of
8 audio or video signals for real-time
9 communication, provided that the
10 real-time communication is initiated
11 by using a unique link or identifier to
12 facilitate access; or

13 “(V) that is an internet-based
14 platform whose primary purpose is—

15 “(aa) to allow users to post
16 product reviews, business reviews,
17 or travel information and re-
18 views;

19 “(bb) internet commerce,
20 which may include providing a
21 comment section;

22 “(cc) to allow users to
23 stream music, audiobooks, or
24 podcasts; or

1 “(dd) news or sports cov-
2 erage.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

4 (1) TRADEMARK ACT OF 1946.—Section 45 of
5 the Act entitled “An Act to provide for the registra-
6 tion and protection of trademarks used in commerce,
7 to carry out the provisions of certain international
8 conventions, and for other purposes”, approved July
9 5, 1946 (commonly known as the “Trademark Act
10 of 1946”) (15 U.S.C. 1127), is amended, in the defi-
11 nition relating to the term “Internet”, by striking
12 “section 230(f)(1) of the Communications Act of
13 1934 (47 U.S.C. 230(f)(1))” and inserting “section
14 230 of the Communications Act of 1934 (47 U.S.C.
15 230)”.

16 (2) TITLE 18, UNITED STATES CODE.—Section
17 2421A of title 18, United States Code, is amend-
18 ed—

19 (A) in subsection (a), by striking “(as such
20 term is defined in defined in section 230(f) the
21 Communications Act of 1934 (47 U.S.C.
22 230(f)))” and inserting “(as that term is de-
23 fined in section 230 of the Communications Act
24 of 1934 (47 U.S.C. 230))”; and

1 (B) in subsection (b), by striking “(as such
2 term is defined in defined in section 230(f) the
3 Communications Act of 1934 (47 U.S.C.
4 230(f)))” and inserting “(as that term is de-
5 fined in section 230 of the Communications Act
6 of 1934 (47 U.S.C. 230))”.

7 (3) WEBB-KENYON ACT.—Section 3(b)(1) of
8 the Act entitled “An Act divesting intoxicating liq-
9 uors of their interstate character in certain cases”,
10 approved March 1, 1913 (commonly known as the
11 “Webb-Kenyon Act”) (27 U.S.C. 122b(b)(1)), is
12 amended by striking “(as defined in section 230(f)
13 of the Communications Act of 1934 (47 U.S.C.
14 230(f)))” and inserting “(as defined in section 230 of
15 the Communications Act of 1934 (47 U.S.C. 230))”.

16 (4) TITLE 31, UNITED STATES CODE.—Section
17 5362(6) of title 31, United States Code, is amended
18 by striking “section 230(f) of the Communications
19 Act of 1934 (47 U.S.C. 230(f))” and inserting “sec-
20 tion 230 of the Communications Act of 1934 (47
21 U.S.C. 230)”.