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(Original Signature of Member)

119TH CONGRESS
1ST SESSION

H. R. _____

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 HOUSE OF REPRESENTATIVES

Mr. KENNEDY of Utah introduced the following bill; which was 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”.

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

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

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

7 (2) by inserting after subsection (e) the fol-
8 lowing:

9 “(f) ALGORITHMIC PRODUCT DESIGN ACCOUNT-
10 ABILITY.—

11 “(1) DUTY OF CARE IN ALGORITHMIC DE-
12 SIGN.—

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

21 “(i) reasonably foreseeable by the pro-
22 vider; and

23 “(ii) attributable, in whole or in part,
24 to the design characteristics or perform-
25 ance of the recommendation-based algo-
26 rithm.

1 “(B) COVERED BODILY INJURY OR
2 DEATH.—Bodily injury or death described in
3 this subparagraph, with respect to a social
4 media platform, is bodily injury to or the death
5 of a user of the social media platform, or bodily
6 injury or death inflicted by a user of the social
7 media platform upon another person, that
8 arises from the operation of the recommenda-
9 tion-based algorithm.

10 “(C) EXCEPTION.—

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

16 “(I) by sorting information
17 chronologically or reverse chrono-
18 logically; or

19 “(II) to respond to an individual
20 search for content on the social media
21 platform initiated by a user.

22 “(ii) EXCEPTION LIMITED TO INITIAL
23 SEARCH.—Nothing in clause (i)(II) shall
24 be construed to limit the applicability of
25 subparagraph (A) to a provider of a social

1 media platform, with respect to the activi-
2 ties of a recommendation-based algorithm,
3 after a user of the social media platform
4 navigates beyond the initially populated
5 search results.

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

15 “(2) ENFORCEMENT.—

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

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

1 paragraph (1)(B), the person or, in the case of
2 a minor or disabled person who suffers a bodily
3 injury or any person who dies, the legal rep-
4 resentative of such a person, may bring a civil
5 action in a district court of the United States
6 of competent jurisdiction against the provider
7 for compensatory and punitive damages.

8 “(3) INVALIDITY OF PREDISPUTE AGREEMENTS
9 AND WAIVERS.—

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

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

23 “(4) RELATIONSHIP TO OTHER LAWS.—Noth-
24 ing in this subsection or any regulation promulgated
25 thereunder shall be construed to prohibit or other-

1 wise affect the enforcement of any Federal law or
2 regulation or State law or regulation that is at least
3 as protective of users of social media platforms as
4 this subsection and the regulations promulgated
5 thereunder.

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

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

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

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

1 “(i) means a for-profit interactive
2 computer service that—

3 “(I) permits a user to establish
4 an account or create a profile for the
5 purpose of allowing the user to create,
6 share, or view content through the ac-
7 count or profile; and

8 “(II) primarily serves as a service
9 through which a user described in
10 subclause (I) interacts with content;
11 and

12 “(ii) does not include an interactive
13 computer service—

14 “(I) that serves fewer than
15 1,000,000 registered users;

16 “(II) that is—

17 “(aa) an email program;

18 “(bb) an email distribution
19 list;

20 “(cc) a wireless messaging
21 service; or

22 “(dd) an online messaging
23 service, the predominant or ex-
24 clusive function of which is direct
25 messaging, meaning messages

1 are transmitted from the sender
2 to a recipient and not posted
3 within the interactive computer
4 service or publicly;

5 “(III) that is a private platform
6 or messaging service used by an entity
7 solely to communicate with others em-
8 ployed by or affiliated with the entity;

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

17 “(V) that is an internet-based
18 platform whose primary purpose is—

19 “(aa) to allow users to post
20 product reviews, business reviews,
21 or travel information and re-
22 views;

23 “(bb) internet commerce,
24 which may include providing a
25 comment section;

1 “(cc) to allow users to
2 stream music, audiobooks, or
3 podcasts; or

4 “(dd) news or sports cov-
5 erage.”.

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) TRADEMARK ACT OF 1946.—Section 45 of
8 the Act entitled “An Act to provide for the registra-
9 tion and protection of trademarks used in commerce,
10 to carry out the provisions of certain international
11 conventions, and for other purposes”, approved July
12 5, 1946 (commonly known as the “Trademark Act
13 of 1946”) (15 U.S.C. 1127), is amended, in the defi-
14 nition relating to the term “Internet”, by striking
15 “section 230(f)(1) of the Communications Act of
16 1934 (47 U.S.C. 230(f)(1))” and inserting “section
17 230 of the Communications Act of 1934 (47 U.S.C.
18 230)”.

19 (2) TITLE 18, UNITED STATES CODE.—Section
20 2421A of title 18, United States Code, is amend-
21 ed—

22 (A) in subsection (a), by striking “(as such
23 term is defined in defined in section 230(f) the
24 Communications Act of 1934 (47 U.S.C.
25 230(f)))” and inserting “(as that term is de-

1 fined in section 230 of the Communications Act
2 of 1934 (47 U.S.C. 230))”; and

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

9 (3) WEBB-KENYON ACT.—Section 3(b)(1) of
10 the Act entitled “An Act divesting intoxicating liq-
11 uors of their interstate character in certain cases”,
12 approved March 1, 1913 (commonly known as the
13 “Webb-Kenyon Act”) (27 U.S.C. 122b(b)(1)), is
14 amended by striking “(as defined in section 230(f)
15 of the Communications Act of 1934 (47 U.S.C.
16 230(f)))” and inserting “(as defined in section 230 of
17 the Communications Act of 1934 (47 U.S.C. 230))”.

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