

116TH CONGRESS
2D SESSION

S. 3983

To amend the Communications Act of 1934 to provide accountability for bad actors who abuse the Good Samaritan protections provided under that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 17, 2020

Mr. HAWLEY (for himself, Mr. RUBIO, Mr. COTTON, Mr. BRAUN, and Mrs. LOEFFLER) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to provide accountability for bad actors who abuse the Good Samaritan protections provided under that Act, 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 “Limiting Section 230
5 Immunity to Good Samaritans Act”.

6 **SEC. 2. SCOPE OF PROTECTION.**

7 Section 230 of the Communications Act of 1934 (47
8 U.S.C. 230) is amended—

1 (1) in subsection (c)—

2 (A) in paragraph (1)—

3 (i) by striking “No provider” and in-
4 sserting the following:

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), no provider”; and

7 (ii) by adding at the end the fol-
8 lowing:

9 “(B) CONDITION.—With respect to an
10 edge provider, subparagraph (A) shall only
11 apply if the provider adopts and maintains writ-
12 ten terms of service that—

13 “(i) take precedence over other such
14 terms in case of any conflict between the
15 sets of terms;

16 “(ii) describe any policies of the edge
17 provider relating to restricting access to or
18 availability of material; and

19 “(iii) promise that the edge provider
20 shall—

21 “(I) design and operate the pro-
22 vided service in good faith; and

23 “(II) if the provider is found, in
24 a civil action brought in Federal or
25 State court, or by an arbitrator, to

1 breach the promise made under sub-
2 clause (I) with respect to a claimant
3 user, pay that user—

4 “(aa) the greater of—

5 “(AA) damages of not
6 less than \$5,000; or

7 “(BB) actual damages;

8 and

9 “(bb) with respect to litiga-
10 tion or arbitration by the user to
11 enforce the promise—

12 “(AA) a reasonable at-
13 torney’s fee; and

14 “(BB) costs and other
15 expenses described in sec-
16 tions 1821 and 1920 of title
17 28, United States Code (or,
18 in the case of an action
19 brought in State court or
20 through arbitration, any
21 similar costs and other ex-
22 penses).”; and

23 (B) by adding at the end the following:

1 “(3) GOOD FAITH.—For the purposes of this
2 subsection, a provider of an interactive computer
3 service—

4 “(A) acts in good faith if the provider acts
5 with an honest belief and purpose, observes fair
6 dealing standards, and acts without fraudulent
7 intent; and

8 “(B) does not act in good faith if the pro-
9 vider takes an action that includes—

10 “(i) the intentionally selective enforce-
11 ment of the terms of service of the inter-
12 active computer service, including the in-
13 tentionally selective enforcement of policies
14 of the provider relating to restricting ac-
15 cess to or availability of material;

16 “(ii) enforcing the terms of service of
17 the interactive computer service, including
18 enforcing policies of the provider to restrict
19 access to or availability of material,
20 against a user by employing an algorithm
21 that selectively enforces those terms, if the
22 provider knows, or acts in reckless dis-
23 regard of the fact, that the algorithm se-
24 lectively enforces those terms;

1 “(iii) the intentional failure to honor a
2 public or private promise made by, or on
3 behalf of, the provider; or

4 “(iv) any other intentional action
5 taken by the provider without an honest
6 belief and purpose, without observing fair
7 dealing standards, or with fraudulent in-
8 tent.”;

9 (2) in subsection (e), by adding at the end the
10 following:

11 “(6) NO EFFECT ON LEGAL PROMISES.—Noth-
12 ing in this section shall be construed to impair or
13 limit any claim for breach of contract, promissory
14 estoppel, or breach of a duty of good faith.”; and

15 (3) in subsection (f), by adding at the end the
16 following:

17 “(5) EDGE PROVIDER.—The term ‘edge pro-
18 vider’—

19 “(A) means an entity that—

20 “(i) provides an interactive computer
21 service—

22 “(I) through a website, online ap-
23 plication, or mobile application (in-
24 cluding a single interactive computer

1 service that is provided through more
2 than 1 such website or application);

3 “(II) through which information
4 provided by another information con-
5 tent provider is distributed; and

6 “(III) that, in any month during
7 the most recently completed 12-month
8 period—

9 “(aa) more than 30,000,000
10 users in the United States
11 accessed, without regard to the
12 means by which the users
13 accessed the service; or

14 “(bb) more than
15 300,000,000 users worldwide
16 accessed, without regard to the
17 means by which the users
18 accessed the service; and

19 “(ii) during the most recently com-
20 pleted taxable year, had more than
21 \$1,500,000,000 in global revenue; and

22 “(B) does not include an organization de-
23 scribed in section 501(c) of the Internal Rev-

1 enue Code of 1986 that is exempt from taxation
2 under section 501(a) of such Code.”.

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