

116TH CONGRESS
2D SESSION

S. 4066

To require transparency, accountability, and protections for consumers online.

IN THE SENATE OF THE UNITED STATES

JUNE 24, 2020

Mr. SCHATZ (for himself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require transparency, accountability, and protections for consumers online.

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 “Platform Account-
5 ability and Consumer Transparency Act” or the “PACT
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

1 (1) COMMISSION.—Except as otherwise pro-
2 vided, the term “Commission” means the Federal
3 Trade Commission.

4 (2) DEMONETIZE.—The term “demonetize”,
5 with respect to content on an interactive computer
6 service, means to take action to prohibit the infor-
7 mation content provider that generated or dissemi-
8 nated the content from receiving financial benefit
9 based on the content.

10 (3) DEPRIORITIZE.—The term “deprioritize”,
11 with respect to content on an interactive computer
12 service, means to take action or use certain tech-
13 niques to reduce the priority level of the content in
14 response to potentially policy-violating content.

15 (4) ILLEGAL ACTIVITY.—The term “illegal ac-
16 tivity” means activity conducted by an information
17 content provider that has been determined by a Fed-
18 eral or State court to violate Federal criminal or
19 civil law.

20 (5) ILLEGAL CONTENT.—The term “illegal con-
21 tent” means information provided by an information
22 content provider that has been determined by a Fed-
23 eral or State court to violate—

24 (A) Federal criminal or civil law; or

25 (B) State defamation law.

1 (6) INTERACTIVE COMPUTER SERVICE.—The
2 term “interactive computer service” has the meaning
3 given the term in section 230 of the Communica-
4 tions Act of 1934 (47 U.S.C. 230).

5 (7) INFORMATION CONTENT PROVIDER.—The
6 term “information content provider” has the mean-
7 ing given the term in section 230 of the Communica-
8 tions Act of 1934 (47 U.S.C. 230).

9 (8) POTENTIALLY POLICY-VIOLATING CON-
10 TENT.—The term “potentially policy-violating con-
11 tent” means content that may violate the acceptable
12 use policy of the provider of an interactive computer
13 service.

14 (9) SMALL BUSINESS PROVIDER.—The term
15 “small business provider” means a provider of an
16 interactive computer service that, during the most
17 recent 24-month period—

18 (A) received fewer than 1,000,000 monthly
19 active users or monthly visitors; and

20 (B) accrued revenue of less than
21 \$25,000,000.

22 **SEC. 3. FINDINGS.**

23 Congress finds the following:

24 (1) Technological advancements involving the
25 internet and interactive computer service providers

1 have led to innovations that offer substantial benefit
2 to the people and the economy of the United States.

3 (2) People in the United States increasingly
4 rely on the internet and other interactive computer
5 services to communicate, gather information, and
6 conduct transactions that are central to many as-
7 pects of economic, political, social, and cultural life.

8 (3) The decisions made by providers of inter-
9 active computer services shape the online informa-
10 tion ecosystem available to people in the United
11 States and impact the environment for free expres-
12 sion.

13 (4) The people of the United States benefit
14 from understanding the choices that interactive com-
15 puter service providers make in maintaining their
16 services, including by removing, blocking, amplifying,
17 or otherwise modifying information provided by
18 other users.

19 (5) Online consumers are not adequately pro-
20 tected in the United States because, with the excep-
21 tion of Federal criminal statutes, providers of inter-
22 active computer services are immune from the en-
23 forcement of most Federal statutes and regulations.

24 (6) Federal and State court decisions and Fed-
25 eral statutes and regulations that apply to offline

1 commerce do not always govern online commerce
2 and communications.

3 (7) The rights of consumers should extend to
4 online commerce and communications to provide a
5 level playing field for all consumers and companies,
6 and to prevent wrongdoing and victimization of peo-
7 ple in the United States.

8 **SEC. 4. POLICY.**

9 It is the policy of the United States—

10 (1) to preserve the internet and other inter-
11 active computer services as forums for diversity of
12 political discourse, unique opportunities for cultural
13 development, and myriad avenues for intellectual
14 and commercial activity;

15 (2) to ensure consumers have easily accessible
16 and clear information about the acceptable use poli-
17 cies of interactive computer services to inform con-
18 sumer decisions on participation in, or engagement
19 with, those services through accountability and
20 transparency measures;

21 (3) to encourage the development and use of
22 technologies that minimize illegal activities and con-
23 tent and potentially policy-violating content; and

24 (4) to ensure that the consumer rights of users
25 of interactive computer services are maintained and

1 extended to activities that the users may participate
2 in online.

3 **SEC. 5. TRANSPARENCY AND PROCESS REQUIREMENTS.**

4 (a) ACCEPTABLE USE POLICY.—

5 (1) PUBLICATION OF ACCEPTABLE USE POL-
6 ICY.—A provider of an interactive computer service
7 shall publish an acceptable use policy in accordance
8 with paragraph (2) in a location that is easily acces-
9 sible to the user.

10 (2) CONTENTS OF POLICY.—The acceptable use
11 policy of a provider of an interactive computer serv-
12 ice shall—

13 (A) reasonably inform users about the
14 types of content that are allowed on the inter-
15 active computer service;

16 (B) explain the steps the provider takes to
17 ensure content complies with the acceptable use
18 policy;

19 (C) explain the means by which users can
20 notify the provider of potentially policy-violating
21 content, illegal content, or illegal activity, which
22 shall include—

23 (i) subject to subsection (e), making
24 available a live company representative to
25 take user complaints through a toll-free

1 telephone number during regular business
2 hours for not fewer than 8 hours per day
3 and 5 days per week;

4 (ii) an email address or relevant in-
5 take mechanism to handle user complaints;
6 and

7 (iii) a complaint system described in
8 subsection (b); and

9 (D) include publication of a quarterly
10 transparency report outlining actions taken to
11 enforce the policy, as described in subsection
12 (d).

13 (b) COMPLAINT SYSTEM.—A provider of an inter-
14 active computer service shall provide a system that is eas-
15 ily accessible to a user through which the user may submit
16 a complaint in good faith and track the status of the com-
17 plaint, including a complaint regarding—

18 (1) potentially policy-violating content, illegal
19 content, or illegal activity; or

20 (2) a decision of the interactive computer serv-
21 ice provider to remove content posted by the infor-
22 mation content provider.

23 (c) PROCESSING OF COMPLAINTS.—

1 (1) COMPLAINTS REGARDING ILLEGAL CON-
2 TENT, ILLEGAL ACTIVITY, OR POTENTIALLY POLICY-
3 VIOLATING CONTENT.—

4 (A) ILLEGAL CONTENT OR ILLEGAL ACTIV-
5 ITY.—Subject to subsection (e), if a provider of
6 an interactive computer service receives notice
7 of illegal content or illegal activity on the inter-
8 active computer service that substantially com-
9 plies with the requirements under paragraph
10 (3)(B)(ii) of section 230(e) of the Communica-
11 tions Act of 1934 (47 U.S.C. 230(e)), as added
12 by section 6(a), the provider shall remove the
13 content or stop the activity within 24 hours of
14 receiving that notice, subject to reasonable ex-
15 ceptions based on concerns about the legitimacy
16 of the notice.

17 (B) POTENTIALLY POLICY-VIOLATING CON-
18 TENT.—Subject to subsection (e), if a provider
19 of an interactive computer service receives no-
20 tice of potentially policy-violating content on the
21 interactive computer service, the provider shall,
22 not later than 14 days after receiving that no-
23 tice—

24 (i) review the content;

1 (ii) determine whether the content ad-
2 heres to the acceptable use policy of the
3 provider; and

4 (iii) take appropriate steps based on
5 the determination made under clause (ii).

6 (2) PROCESS AFTER REMOVAL OF CONTENT.—

7 (A) REMOVAL BASED ON USER COM-
8 PLAINT.—

9 (i) IN GENERAL.—Subject to clause
10 (ii), if a provider of an interactive com-
11 puter service removes potentially policy-vio-
12 lating content based on a user complaint,
13 the provider of the interactive computer
14 service shall, concurrently with the re-
15 moval—

16 (I) notify the information content
17 provider and the complainant of the
18 removal and explain why the content
19 was removed;

20 (II) allow the information content
21 provider to appeal the decision; and

22 (III) notify the information con-
23 tent provider and the complainant
24 of—

1 (aa) the determination re-
2 garding the appeal under sub-
3 clause (II); and

4 (bb) in the case of a reversal
5 of the decision to remove the con-
6 tent in question, the reason for
7 the reversal.

8 (ii) EXCEPTIONS.—A provider of an
9 interactive computer service shall not be
10 required to provide an information content
11 provider with notice or an opportunity to
12 appeal under clause (i)—

13 (I) if the provider of the inter-
14 active computer service is unable to
15 contact the information content pro-
16 vider after taking reasonable steps to
17 do so; or

18 (II) if the provider of the inter-
19 active computer service knows that
20 the potentially policy-violating content
21 relates to an ongoing law enforcement
22 investigation.

23 (B) REMOVAL BASED ON MODERATION DE-
24 CISIONS OF INTERACTIVE COMPUTER SERVICE
25 PROVIDER.—If a provider of an interactive com-

1 computer service receives notice, through a com-
2 plaint from the information content provider,
3 that the provider of the interactive computer
4 service removed content of the information con-
5 tent provider that the information content pro-
6 vider believes was not potentially policy-vio-
7 lating content, the provider of the interactive
8 computer service shall, not later than 14 days
9 after receiving notice—

10 (i) review the content;

11 (ii) determine whether the content ad-
12 heres to the acceptable use policy of the
13 provider of the interactive computer serv-
14 ice;

15 (iii) take appropriate steps based on
16 the determination made under clause (ii);
17 and

18 (iv) notify the information content
19 provider regarding the determination made
20 under clause (ii) and steps taken under
21 clause (iii).

22 (d) QUARTERLY TRANSPARENCY REPORT.—

23 (1) IN GENERAL.—Subject to subsection (e), as
24 part of the acceptable use policy required under sub-
25 section (a), a provider of an interactive computer

1 service shall publish a quarterly transparency report
2 in accordance with paragraph (2) of this subsection.

3 (2) REQUIREMENTS.—A provider of an inter-
4 active computer service shall include in the report
5 required under paragraph (1), with respect to the
6 preceding 3-month period—

7 (A) the total number of instances in which
8 illegal content, illegal activity, or potentially
9 policy-violating content was flagged—

10 (i) due to a user complaint; or

11 (ii) internally, by—

12 (I) an employee or contractor of
13 the provider; or

14 (II) an internal automated detec-
15 tion tool;

16 (B) the number of instances in which the
17 interactive computer service provider took ac-
18 tion with respect to illegal content, illegal activ-
19 ity, or known potentially policy-violating content
20 due to its nature as illegal content, illegal activ-
21 ity, or known potentially policy-violating con-
22 tent, including content removal, content demon-
23 etization, content deprioritization, appending
24 content with an assessment, account suspen-
25 sion, account removal, or any other action

1 taken in accordance with the acceptable use pol-
2 icy of the provider, categorized by—

3 (i) the category of rule violated;

4 (ii) the source of the flag, including
5 government, user, internal automated de-
6 tection tool, coordination with other inter-
7 active computer service providers, or per-
8 sonnel employed or contracted for by the
9 provider;

10 (iii) the country of the information
11 content provider; and

12 (iv) coordinated campaign, if applica-
13 ble;

14 (C)(i) the number of instances in which an
15 information content provider appealed the deci-
16 sion to remove potentially policy-violating con-
17 tent; and

18 (ii) the percentage of appeals described in
19 clause (i) that resulted in the restoration of
20 content; and

21 (D) a description of each tool, practice, ac-
22 tion, or technique used in enforcing the accept-
23 able use policy.

24 (3) **FORMAT.**—A provider of an interactive
25 computer service shall publish the information de-

1 scribed in paragraph (2) with an open license, in a
2 machine-readable and open format, and in a location
3 that is easily accessible to consumers.

4 (e) SMALL BUSINESS PROVIDER EXEMPTIONS.—

5 (1) LIVE COMPANY REPRESENTATIVE; TRANSPARENCY REPORT.—Subsections (a)(2)(C)(i) and (d)
6 shall not apply to a small business provider.
7

8 (2) PROCESSING OF COMPLAINTS.—Notwith-
9 standing the deadlines under subsection (c)(1), a
10 small business provider shall take action with re-
11 spect to illegal content, illegal activity, or potentially
12 policy-violating content under subparagraph (A) or
13 (B) of that subsection, as applicable, within a rea-
14 sonable period of time based on the size and capac-
15 ity of the provider.

16 (f) INTERNET INFRASTRUCTURE SERVICE EXEMP-
17 TION.—Subsections (a) through (e) shall not apply to a
18 provider of an interactive computer service that is used
19 by another interactive computer service for the manage-
20 ment, control, or operation of that other interactive com-
21 puter service, including for services such as web hosting,
22 domain registration, content delivery networks, caching,
23 back-end data storage, and cloud management.

24 (g) ENFORCEMENT BY COMMISSION.—

1 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
2 TICES.—

3 (A) IN GENERAL.—A violation of sub-
4 section (c)(1)(B), (c)(2), or (d) shall be treated
5 as a violation of a rule defining an unfair or de-
6 ceptive act or practice under section
7 18(a)(1)(B) of the Federal Trade Commission
8 Act (15 U.S.C. 57a(a)(1)(B)).

9 (B) LIMITATION ON AUTHORITY.—Nothing
10 in subparagraph (A) shall be construed to su-
11 persede paragraph (1) or (2) of section 230(c)
12 of the Communications Act of 1934 (47 U.S.C.
13 230(c)) or to otherwise authorize the Commis-
14 sion to review any action or decision by a pro-
15 vider of an interactive computer service related
16 to the application of the acceptable use policy of
17 the provider.

18 (2) POWERS OF COMMISSION.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (C), the Commission shall enforce
21 this section in the same manner, by the same
22 means, and with the same jurisdiction, powers,
23 and duties as though all applicable terms and
24 provisions of the Federal Trade Commission

1 Act (15 U.S.C. 41 et seq.) were incorporated
2 into and made a part of this Act.

3 (B) PRIVILEGES AND IMMUNITIES.—Ex-
4 cept as provided in subparagraph (C), any per-
5 son who violates this section shall be subject to
6 the penalties and entitled to the privileges and
7 immunities provided in the Federal Trade Com-
8 mission Act (15 U.S.C. 41 et seq.).

9 (C) NONPROFIT ORGANIZATIONS.—Not-
10 withstanding section 4 of the Federal Trade
11 Commission Act (15 U.S.C. 44) or any jurisdic-
12 tional limitation of the Commission, the Com-
13 mission shall also enforce this section, in the
14 same manner provided in subparagraphs (A)
15 and (B) of this paragraph, with respect to orga-
16 nizations not organized to carry on business for
17 their own profit or that of their members.

18 (h) GAO REPORT ON WHISTLEBLOWER PROTECTION
19 AND AWARDS.—Not later than 1 year after the date of
20 enactment of this Act, the Comptroller General of the
21 United States shall submit a report to Congress assessing
22 the viability, including the anticipated cost and benefit to
23 consumers, of establishing a whistleblower protection and
24 award program for employees and contractors of inter-
25 active computer services, to be administered by the Com-

1 mission, that would enable reporting and enforcement of
2 violations of consumer protections that take place online.

3 (i) NIST VOLUNTARY FRAMEWORK.—

4 (1) IN GENERAL.—Not later than 18 months
5 after the date of enactment of this Act, the Director
6 of the National Institute of Standards and Tech-
7 nology shall develop a voluntary framework, with
8 input from relevant experts, that consists of non-
9 binding standards, guidelines, and best practices to
10 manage risk and shared challenges related to, for
11 the purposes of this Act, good faith moderation
12 practices by interactive computer service providers.

13 (2) CONTENTS.—The framework developed
14 under paragraph (1) shall include—

15 (A) technical standards and processes for
16 the sharing of information among providers of
17 an interactive computer service;

18 (B) recommendations on automated detec-
19 tion tools and the appropriate nature and level
20 of human review to correct for machine error in
21 assessing nuanced or context-specific issues;

22 (C) standards and processes for providing
23 researchers access to data to conduct scientific,
24 historical, statistical, and other relevant re-
25 search, including with respect to content that is

1 removed, demonetized, or deprioritized by the
2 provider of an interactive computer service; and

3 (D) methods to strengthen the capacity of
4 a provider of an interactive computer service to
5 authenticate documentation of a determination
6 by a court that content or an activity violates
7 Federal law or State defamation law.

8 **SEC. 6. INTERMEDIARY LIABILITY.**

9 (a) INTERMEDIARY LIABILITY STANDARD.—Section
10 230(c) of the Communications Act of 1934 (47 U.S.C.
11 230(c)) is amended by adding at the end the following:

12 “(3) INTERMEDIARY LIABILITY STANDARD.—

13 “(A) IN GENERAL.—The protection under
14 paragraph (1) shall not apply to a provider of
15 an interactive computer service, with respect to
16 illegal content shared or illegal activity occur-
17 ring on the interactive computer service, if the
18 provider—

19 “(i) has knowledge of the illegal con-
20 tent or illegal activity; and

21 “(ii) subject to subparagraph (C),
22 does not remove the illegal content or stop
23 the illegal activity within 24 hours of ac-
24 quiring that knowledge, subject to reason-

1 able exceptions based on concerns about
2 the legitimacy of the notice.

3 “(B) NOTIFICATION OF ILLEGAL CONTENT
4 OR ILLEGAL ACTIVITY.—

5 “(i) IN GENERAL.—A provider of an
6 interactive computer service shall be
7 deemed to have knowledge of illegal con-
8 tent or illegal activity for purposes of sub-
9 paragraph (A) only if the provider receives
10 a notification of such content or activity
11 that substantially complies with the re-
12 quirements under clause (ii) of this sub-
13 paragraph.

14 “(ii) ELEMENTS.—A notification of il-
15 legal content or illegal activity provided to
16 a provider of an interactive computer serv-
17 ice as described in clause (i) shall be in
18 writing and include the following:

19 “(I) A copy of the order of a
20 Federal or State court under which
21 the content or activity was determined
22 to violate Federal law or State defa-
23 mation law, and to the extent avail-
24 able, any references substantiating the
25 validity of the order, such as the web

1 addresses of public court docket infor-
2 mation.

3 “(II) Identification of the illegal
4 content or illegal activity, and infor-
5 mation reasonably sufficient to permit
6 the provider to locate the content or
7 each account involved.

8 “(III) Information reasonably
9 sufficient to permit the provider to
10 contact the complaining party, which
11 shall include—

12 “(aa) if the complaining
13 party is a user of the interactive
14 computer service, information
15 identifying the user account; and

16 “(bb) if the complaining
17 party is not a user of the inter-
18 active computer service, an email
19 address of the complaining party.

20 “(IV) A statement by the com-
21 plaining party, made under penalty of
22 perjury in accordance with section
23 1746 of title 28, United States Code,
24 that—

1 “(aa) the content in the no-
2 tification is accurate; and

3 “(bb) the content or activity
4 described in the notification has
5 been determined by a Federal or
6 State court to be illegal.

7 “(C) EXEMPTIONS.—

8 “(i) SMALL BUSINESS PROVIDERS.—
9 Notwithstanding the deadline under clause
10 (ii) of subparagraph (A), a small business
11 provider shall take action with respect to
12 illegal content or illegal activity under that
13 subparagraph within a reasonable period of
14 time based on the size and capacity of the
15 provider.

16 “(ii) INTERNET INFRASTRUCTURE
17 SERVICES.—Subparagraph (A) shall not
18 apply with respect to an interactive com-
19 puter service that is used by another inter-
20 active computer service for the manage-
21 ment, control, or operation of that other
22 interactive computer service, including for
23 services such as web hosting, domain reg-
24 istration, content delivery networks,

1 caching, back-end data storage, and cloud
2 management.

3 “(D) MONITORING OR AFFIRMATIVE FACT-
4 SEEKING NOT REQUIRED.—Nothing in this
5 paragraph shall be construed to condition the
6 applicability of paragraph (1) to a provider of
7 an interactive computer service on the provider
8 monitoring the interactive computer service or
9 affirmatively seeking facts indicating illegal con-
10 tent or illegal activity in order to identify in-
11 stances of noticed activity or content additional
12 to any instances about which the provider has
13 received a notification.

14 “(E) ENFORCEMENT EXEMPTION.—Noth-
15 ing in this paragraph shall be construed to im-
16 pair or limit the application of subsection (e)(1)
17 or (g).”.

18 (b) DEFINITIONS.—Section 230(f) of the Commu-
19 nications Act of 1934 (47 U.S.C. 230(f)) is amended by
20 adding at the end the following:

21 “(5) ILLEGAL ACTIVITY.—The term ‘illegal ac-
22 tivity’ means activity conducted by an information
23 content provider that has been determined by a Fed-
24 eral or State court to violate Federal criminal or
25 civil law.

1 “(6) **ILLEGAL CONTENT.**—The term ‘illegal
2 content’ means information provided by an informa-
3 tion content provider that has been determined by a
4 Federal or State court to violate Federal criminal or
5 civil law or State defamation law.

6 “(7) **SMALL BUSINESS PROVIDER.**—The term
7 ‘small business provider’ means a provider of an
8 interactive computer service that, during the most
9 recent 24-month period—

10 “(A) received fewer than 1,000,000 month-
11 ly active users or monthly visitors; and

12 “(B) accrued revenue of less than
13 \$25,000,000.”.

14 (c) **TECHNICAL CORRECTION.**—Section 230(c)(2)(B)
15 of the Communications Act of 1934 (47 U.S.C.
16 230(c)(2)(B)) is amended by striking “paragraph (1)”
17 and inserting “subparagraph (A)”.

18 **SEC. 7. FEDERAL AND STATE ENFORCEMENT.**

19 (a) **FEDERAL ENFORCEMENT.**—Section 230(e)(1) of
20 the Communications Act of 1934 (47 U.S.C. 230(e)) is
21 amended—

22 (1) in the heading, by striking “**CRIMINAL**
23 **LAW**” and inserting “**FEDERAL CRIMINAL OR CIVIL**
24 **LAW**”;

1 (2) by inserting “by the Federal Government”
2 after “enforcement”; and

3 (3) by striking “or any other Federal criminal
4 statute” and inserting “any other Federal criminal
5 or civil statute, or any regulations of an Executive
6 agency (as defined in section 105 of title 5, United
7 States Code) or an establishment in the legislative or
8 judicial branch of the Federal Government”.

9 (b) ENFORCEMENT OF FEDERAL CIVIL LAWS BY
10 STATE ATTORNEYS GENERAL.—Section 230 of the Com-
11 munications Act of 1934 (47 U.S.C. 230) is amended by
12 adding at the end the following:

13 “(g) ENFORCEMENT OF FEDERAL CIVIL LAWS BY
14 STATE ATTORNEYS GENERAL.—

15 “(1) IN GENERAL.—Notwithstanding any other
16 provision of this section, and in consultation with
17 the Attorney General, the attorney general of a
18 State alleging a violation by a provider of an inter-
19 active computer service of a Federal civil law that
20 affects or may affect the State or the residents of
21 the State may bring a civil action on behalf of the
22 residents of the State in any district court of the
23 United States for the district in which the provider
24 is found or transacts business if the underlying

1 claim would constitute a violation of the substantive,
2 nonjurisdictional elements of a civil law of the State.

3 “(2) RELATION TO OTHER LAWS.—Nothing in
4 paragraph (1) shall be construed to impair or limit
5 the authority of the attorney general of a State
6 under any other Federal law to bring a civil action
7 on behalf of the residents of the State against a pro-
8 vider of an interactive computer service for violation
9 of a Federal civil law.”.

10 **SEC. 8. SEVERABILITY.**

11 If any provision of this Act or an amendment made
12 by this Act, or the application of such a provision or
13 amendment to any person or circumstance, is held to be
14 unenforceable or invalid, the remaining provisions of this
15 Act and amendments made by this Act, and the applica-
16 tion of the provision or amendment so held to other per-
17 sons not similarly situated or to other circumstances, shall
18 not be affected thereby.

19 **SEC. 9. EFFECTIVE DATE.**

20 This Act and the amendments made by this Act shall
21 take effect on the date that is 1 year after the date of
22 enactment of this Act.

○