

117TH CONGRESS
1ST SESSION

S. 2448

To amend the Communications Act of 1934 to provide that, under certain circumstances, an interactive computer service provider that allows for the proliferation of health misinformation through that service shall be treated as the publisher or speaker of that misinformation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22, 2021

Ms. KLOBUCHAR (for herself and Mr. LUJÁN) 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 that, under certain circumstances, an interactive computer service provider that allows for the proliferation of health misinformation through that service shall be treated as the publisher or speaker of that misinformation, 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 “Health Misinformation
5 Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Access to accurate and reliable information
4 is crucial for public health and safety during a na-
5 tional emergency or crisis, such as the COVID-19
6 pandemic.

7 (2) On January 27, 2020, the Secretary of
8 Health and Human Services determined that a pub-
9 lic health emergency existed under section 319 of
10 the Public Health Service Act (42 U.S.C. 247d), as
11 a result of confirmed cases of COVID-19 in the
12 United States.

13 (3) As of the date of enactment of this Act, in
14 the United States, there have been more than
15 34,000,000 cases of COVID-19 and more than
16 600,000 deaths resulting from COVID-19.

17 (4) Since the declaration of the public health
18 emergency described in paragraph (2), misinforma-
19 tion and disinformation relating to COVID-19 have
20 spread at an alarming rate, which has—

21 (A) hindered the public response efforts of
22 Federal, State, local, and indigenous leaders;
23 and

24 (B) endangered lives.

25 (5) The COVID-19 pandemic is the first pan-
26 demic in human history during which—

1 (A) the internet is being used to keep indi-
2 viduals informed and connected; and

3 (B) misinformation and disinformation
4 about the disease, and about treatments and
5 preventative measures with respect to the dis-
6 ease, including vaccines, have proliferated on
7 the internet and through the use of social
8 media.

9 (6) Features that are built into technology plat-
10 forms have contributed to the spread of misinforma-
11 tion and disinformation, with social media platforms
12 incentivizing individuals to share content to get
13 likes, comments, and other positive signals of en-
14 gagement, which rewards engagement rather than
15 accuracy.

16 (7) Social media companies use algorithms that
17 determine what material users see online, and those
18 algorithms often prioritize content based on the pop-
19 ularity of the content, or similarity to previously
20 seen content, which means that a user exposed to in-
21 formation once could see more of that kind of infor-
22 mation over time, furthering the effects of misin-
23 formation and disinformation.

24 (8) One study has found that as much as 65
25 percent of misinformation and disinformation on the

1 internet and social media relating to the COVID–19
 2 vaccines can be traced back to 12 individuals and
 3 another study has found that even brief exposure to
 4 misinformation relating to the COVID–19 vaccines
 5 makes individuals less likely to want to receive one
 6 of those vaccines.

7 (9) The COVID–19 pandemic remains an ongoing
 8 threat and there is a need to ensure that social
 9 media platforms do their part in promoting accurate
 10 scientific information to users of those platforms.

11 **SEC. 3. TREATMENT OF PUBLISHER OR SPEAKER.**

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

14 (1) in subsection (c)(1)—

15 (A) by striking “No provider” and insert-
 16 ing the following:

17 “(A) IN GENERAL.—Except as provided in
 18 subparagraph (B), no provider”; and

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

20 “(B) EXCEPTION.—A provider of an inter-
 21 active computer service shall be treated as the
 22 publisher or speaker of health misinformation
 23 that is created or developed through the inter-
 24 active computer service during a covered period
 25 if the provider promotes that health misin-

1 formation through an algorithm used by the
 2 provider (or similar software functionality), ex-
 3 cept that this subparagraph shall not apply if
 4 that promotion occurs through a neutral mecha-
 5 nism, such as through the use of chronological
 6 functionality.”; and

7 (2) in subsection (f), by adding at the end the
 8 following:

9 “(5) COVERED PERIOD.—The term ‘covered pe-
 10 riod’ means a period during which a public health
 11 emergency declared by the Secretary of Health and
 12 Human Services under section 319 of the Public
 13 Health Service Act (42 U.S.C. 247d), including a re-
 14 newal of any such declaration, is in effect.”.

15 (b) GUIDANCE.—Not later than 30 days after the
 16 date of enactment of this Act, the Secretary of Health and
 17 Human Services, in consultation with the heads of other
 18 relevant Federal agencies and outside experts determined
 19 appropriate by the Secretary, shall issue guidance regard-
 20 ing what constitutes health misinformation for the pur-
 21 poses of subparagraph (B) of section 230(c)(1) of the
 22 Communications Act of 1934 (47 U.S.C. 230(c)(1)), as
 23 added by subsection (a) of this section.

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