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To protect the right of the American public under the First Amendment to the Constitution of the United States to receive news and information from disparate sources by regulating the use of automated software programs intended to impersonate or replicate human activity on social media.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2018

Mrs. FEINSTEIN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the right of the American public under the First Amendment to the Constitution of the United States to receive news and information from disparate sources by regulating the use of automated software programs intended to impersonate or replicate human activity on social media.

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 “Bot Disclosure and
5 Accountability Act of 2018”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) According to the Pew Research Center, in
4 2005, only 5 percent of adults in the United States
5 used online social media, but by 2018, 69 percent of
6 adults in the United States reported using some type
7 of social media, including 88 percent of adults under
8 the age of 29, and 67 percent of adults in the
9 United States reportedly obtained some of their
10 news from social media, including 78 percent of
11 adults under the age of 50.

12 (2) In 2016, a study titled “Social bots distort
13 the 2016 U.S. Presidential election online discus-
14 sion” found that, during the 2016 United States
15 presidential election, approximately 400,000, or 15
16 percent, of the users of the social media website
17 Twitter who discussed the election were social media
18 bots. Those bots produced 3,800,000 tweets, which
19 accounted for 19 percent of all tweets regarding the
20 election.

21 (3) In 2017, a report published by researchers
22 from the University of Oxford and the University of
23 Pennsylvania titled “Computational Propaganda in
24 the United States: Manufacturing Consensus On-
25 line” noted that, “According to many of the people
26 interviewed for the report, including political bot

1 makers and campaign personnel, the goals of bot-
2 driven tactics are manifold: to create a bandwagon
3 effect, to build fake social media trends by automati-
4 cally spreading hashtags, and even to suppress the
5 opinions of the opposition.”.

6 (4) In testimony before the Committee on the
7 Judiciary of the Senate, representatives from Twit-
8 ter reported that, of the 2,752 Twitter accounts as-
9 sociated with the Russian intelligence unit known as
10 the “Internet Research Agency”, more than 47 per-
11 cent were social media bots.

12 (5) In 2017, the Oxford Internet Institute
13 found that Russian government social media bots
14 were used to manipulate highly targeted and con-
15 sequential segments of the electorate of the United
16 States. Researchers found that, of all tweets related
17 to the 2016 United States presidential election, Rus-
18 sian propaganda constituted—

19 (A) 40 percent of such tweets directed to
20 Pennsylvania residents;

21 (B) 34 percent of such tweets directed to
22 Michigan residents;

23 (C) 30 percent of such tweets directed to
24 Wisconsin residents;

1 (D) 41 percent of such tweets directed to
2 Florida residents;

3 (E) 40 percent of such tweets directed to
4 North Carolina residents; and

5 (F) 35 percent of such tweets directed to
6 Ohio residents.

7 (6) In *Associated Press v. United States*, 326
8 U.S. 1 (1945), the Supreme Court found, “It would
9 be strange indeed, however, if the grave concern for
10 freedom of the press which prompted adoption of the
11 First Amendment should be read as a command that
12 the government was without power to protect that
13 freedom.”.

14 **SEC. 3. SENSE OF CONGRESS.**

15 It is the sense of Congress that the United States
16 Government has a compelling interest in—

17 (1) mitigating the deceptiveness of social media
18 bots, which impersonate human activity online,
19 through public disclosure requirements that impose
20 a minimal burden on rights protected under the
21 First Amendment to the Constitution of the United
22 States;

23 (2) regulating the use of social media bots in
24 political advertising, which is intended to deceive

1 voters and suppress human speech, in a manner that
2 does not—

3 (A) distinguish between political messages
4 based on—

5 (i) content; or

6 (ii) the nature of the person pro-
7 ducing a message; or

8 (B) impose any aggregate limit on political
9 speech; and

10 (3) mitigating the effectiveness of efforts by
11 foreign entities to influence United States elections
12 through the use of social media bots to spread mis-
13 information and propaganda.

14 **SEC. 4. PUBLIC DISCLOSURE OF SOFTWARE PROGRAMS IN-**
15 **TENDED TO IMPERSONATE OR REPLICATE**
16 **HUMAN ACTIVITY.**

17 (a) DEFINITIONS.—

18 (1) IN GENERAL.—In this section—

19 (A) the term “automated software pro-
20 gram or process intended to impersonate or
21 replicate human activity online” has the mean-
22 ing given the term by the Commission by regu-
23 lation under paragraph (2);

24 (B) the term “Commission” means the
25 Federal Trade Commission;

1 (C) the term “social media provider”
2 means any person that owns or operates a so-
3 cial media website; and

4 (D) the term “social media website” means
5 any tool, website, application, or other media
6 that connects users on the internet for the pur-
7 pose of engaging in dialogue, sharing informa-
8 tion, collaborating, and interacting.

9 (2) DEFINITION BY REGULATION.—Not later
10 than 1 year after the date of enactment of this Act,
11 the Commission shall promulgate regulations under
12 section 553 of title 5, United States Code, to define
13 the term “automated software program or process
14 intended to impersonate or replicate human activity
15 online” broadly enough so that the definition is not
16 limited to current technology.

17 (b) REGULATIONS.—Not later than 1 year after the
18 date of enactment of this Act, the Commission shall pro-
19 mulgate regulations under section 553 of title 5, United
20 States Code, to require a social media provider to establish
21 and implement policies and procedures to require a user
22 of a social media website owned or operated by the social
23 media provider to publically disclose the use of any auto-
24 mated software program or process intended to imper-

1 sonate or replicate human activity online on the social
2 media website.

3 (c) REQUIREMENTS.—In promulgating regulations
4 under subsection (b), the Commission shall require a so-
5 cial media provider to establish and implement, for each
6 social media website owned or operated by the social media
7 provider—

8 (1) a policy that requires any user of the social
9 media website that employs an automated software
10 program or process intended to impersonate or rep-
11 licate human activity online on the social media
12 website to provide clear and conspicuous notice of
13 the automated program in clear and plain language
14 to any other person or user of the social media
15 website who may be exposed to activities conducted
16 by the automated program;

17 (2) a process that allows a user of the social
18 media website to provide clear and conspicuous no-
19 tice to any other person or user as required under
20 paragraph (1);

21 (3) a process to identify, assess, and verify
22 whether the activity of any user of the social media
23 website is conducted by an automated software pro-
24 gram or process intended to impersonate or replicate
25 human activity online;

1 (4) a process by which the social media provider
2 will take reasonable preventative and corrective ac-
3 tion to mitigate efforts by a user to use an auto-
4 mated software program or process intended to im-
5 personate or replicate human activity online without
6 disclosure as required under paragraph (1), which
7 may include suspension or any other action author-
8 ized by the Commission;

9 (5) a process by which the social media provider
10 will remove posts, images, or any other online activ-
11 ity of a user or profile making use of an automated
12 software program or process intended to imper-
13 sonate or replicate human activity online that is not
14 in compliance with the policy under paragraph (1);
15 and

16 (6) a process that allows a human user of the
17 social media website the opportunity to demonstrate
18 that the online activity of the user is in compliance
19 with the policy required under paragraph (1) prior
20 to, or immediately following, any mitigation activity
21 described in paragraph (4) or (5).

22 (d) **RULE OF CONSTRUCTION.**—Nothing in this sec-
23 tion shall be construed to require any social media pro-
24 vider to permit an automated software program or process
25 intended to impersonate or replicate human activity online

1 on a social media website owned or operated by the social
2 media provider.

3 (e) ENFORCEMENT.—

4 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
5 TICES.—A violation of a regulation promulgated
6 under subsection (b) shall be treated as a violation
7 of a rule defining an unfair or deceptive act or prac-
8 tice prescribed under section 18(a)(1)(B) of the Fed-
9 eral Trade Commission Act (15 U.S.C.
10 57a(a)(1)(B)).

11 (2) POWERS OF COMMISSION.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (C), the Commission shall enforce
14 this section in the same manner, by the same
15 means, and with the same jurisdiction, powers,
16 and duties as though all applicable terms and
17 provisions of the Federal Trade Commission
18 Act (15 U.S.C. 41 et seq.) were incorporated
19 into and made a part of this section.

20 (B) PRIVILEGES AND IMMUNITIES.—Ex-
21 cept as provided in subparagraph (C), any per-
22 son who violates subsection (b) shall be subject
23 to the penalties and entitled to the privileges
24 and immunities provided in the Federal Trade
25 Commission Act (15 U.S.C. 41 et seq.).

1 (C) COMMON CARRIERS AND NONPROFIT
2 ORGANIZATIONS.—Notwithstanding section 4,
3 5(a)(2), or 6 of the Federal Trade Commission
4 Act (15 U.S.C. 44, 45(a)(2), 46) or any juris-
5 dictional limitation of the Commission, the
6 Commission shall also enforce this section, in
7 the same manner provided in subparagraphs
8 (A) and (B) of this paragraph, with respect
9 to—

10 (i) common carriers subject to the
11 Communications Act of 1934 (47 U.S.C.
12 151 et seq.) and Acts amendatory thereof
13 and supplementary thereto; and

14 (ii) organizations not organized to
15 carry on business for their own profit or
16 that of their members.

17 (D) AUTHORITY PRESERVED.—Nothing in
18 this section shall be construed to limit the au-
19 thority of the Commission under any other pro-
20 vision of law.

1 **SEC. 5. PROHIBITION ON AUTOMATED SOFTWARE PRO-**
2 **GRAMS INTENDED TO IMPERSONATE OR REP-**
3 **LICATE HUMAN ACTIVITY FOR ONLINE PO-**
4 **LITICAL ADVERTISING.**

5 Title III of the Federal Election Campaign Act of
6 1971 (52 U.S.C. 30101 et seq.) is amended by adding at
7 the end the following new section:

8 **“SEC. 325. PROHIBITION ON THE USE OF CERTAIN AUTO-**
9 **MATED SOFTWARE PROGRAMS FOR POLIT-**
10 **ICAL ADVERTISING.**

11 “(a) PROHIBITION.—

12 “(1) CANDIDATES AND POLITICAL PARTIES.—
13 No candidate (including any authorized committee of
14 a candidate) or political party may—

15 “(A) use or cause to be used any auto-
16 mated software programs or processes intended
17 to impersonate or replicate human activity on-
18 line to make, amplify, share, or otherwise dis-
19 seminate any public communication; or

20 “(B) solicit, accept, purchase or sell any
21 automated software programs or processes in-
22 tended to impersonate or replicate human activ-
23 ity online for any purpose.

24 “(2) POLITICAL COMMITTEES, CORPORATIONS,
25 AND LABOR ORGANIZATIONS.—No political com-

1 mittee, corporation, or labor organization (as defined
2 in section 316(b)) may—

3 “(A) use or cause to be used any auto-
4 mated software programs or processes intended
5 to impersonate or replicate human activity on-
6 line to make, amplify, share, or otherwise dis-
7 seminate—

8 “(i) any message that expressly advo-
9 cates for the election or defeat of a can-
10 didate; or

11 “(ii) or any communication which
12 would be an electioneering communication
13 as defined in section 304(f)(1) if such sec-
14 tion were applied—

15 “(I) by taking into account com-
16 munications made over the Internet;

17 “(II) without regard to subpara-
18 graph (A)(i)(III) thereof with respect
19 to communications described in sub-
20 clause (I); and

21 “(III) by treating the facilities of
22 any online or digital newspaper, mag-
23 azine, blog, publication, or periodical
24 in the same manner the facilities of a

1 broadcasting station for purposes of
2 subparagraph (B)(i); or

3 “(B) solicit, accept, purchase or sell any
4 automated software programs or processes in-
5 tended to impersonate or replicate human activ-
6 ity online for any purpose described in subpara-
7 graph (A).

8 “(b) EXCEPTION.—The prohibition in subsection (a)
9 shall not apply to any internal or administrative systems
10 that are not oriented or accessible to the public.

11 “(c) DEFINITION.—For purposes of this section, the
12 term ‘automated software program or process intended to
13 impersonate or replicate human activity online’ has the
14 meaning given such term under section 4 of the Bot Dis-
15 closure and Accountability Act of 2018.”.

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