

116TH CONGRESS
2D SESSION

H. R. 8719

To amend section 230 of the Communications Act of 1934 to limit the immunity of providers and users of interactive computer services under such section, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 2020

Mr. STEUBE introduced the following bill; which was referred to the
Committee on Energy and Commerce

A BILL

To amend section 230 of the Communications Act of 1934 to limit the immunity of providers and users of interactive computer services under such section, 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 “Curbing Abuse and
5 Saving Expression In Technology Act” or the “CASE-IT
6 Act”.

1 **SEC. 2. LIMITATION OF SECTION 230 IMMUNITY.**

2 (a) IN GENERAL.—Section 230(c) of the Communica-
3 tions Act of 1934 (47 U.S.C. 230(c)) is amended by add-
4 ing at the end the following:

5 “(3) EXCEPTIONS RELATING TO ILLEGAL,
6 EXPLOITIVE, OR HARMFUL CONTENT.—

7 “(A) IN GENERAL.—During a period de-
8 scribed in subparagraph (D), paragraph (1)
9 shall not apply to a provider or user of an inter-
10 active computer service that creates, develops,
11 posts, materially contributes to, or induces an-
12 other person to create, develop, post, or materi-
13 ally contribute to illegal online content.

14 “(B) CERTAIN CONTACT BETWEEN ADULT
15 AND MINOR.—During a period described in sub-
16 paragraph (D), paragraph (1) shall not apply to
17 a provider of an interactive computer service
18 that knowingly permits or facilitates an adult
19 having contact through an interactive computer
20 service of such provider with an individual that
21 such adult knows or believes to be a minor, if
22 such contact involves any matter containing ex-
23 plicit verbal descriptions or narrative accounts
24 of sexually explicit nudity, sexual conduct, sex-
25 ual excitement, or sadomasochistic abuse that is

intended to arouse or satisfy the sexual desire of either such adult or such minor.

“(C) CONTENT THAT IS INDECENT, OBSCENE, OR OTHERWISE HARMFUL TO MINORS.—During a period described in subparagraph (D), paragraph (1) shall not apply to a provider or user of an interactive computer service that permits or facilitates the distribution of content that—

“(i) is indecent, obscene, or otherwise harmful to minors; and

“(ii) is made readily accessible to minors by the failure of such provider or user to implement a system designed to effectively screen users who are minors from accessing such content, to the extent feasible using technology available at the time of such distribution.

“(D) PERIOD OF LOSS OF IMMUNITY.—For purposes of subparagraph (A), (B), or (C), a period described in this subparagraph is—

“(i) any 1-year period beginning on the date on which the provider engages in conduct described in such subparagraph; or

1 “(ii) in the case of such conduct that
2 continues for more than 1 day, any 1-year
3 period beginning on the date on which the
4 provider ceases such conduct.

5 “(E) RULE OF CONSTRUCTION.—This
6 paragraph shall be broadly construed to ad-
7 vance the purposes of this section for the de-
8 ployment of new technologies and policies to
9 block or filter offensive content such as inde-
10 cency, obscenity, pornography, or sexually ex-
11 plicit content so as to prevent any such content
12 from being readily accessible to minors.

13 “(4) EXCEPTION FOR STIFLING FREE EXPRES-
14 SION.—

15 “(A) IN GENERAL.—Paragraphs (1) and
16 (2)(A) shall not apply to a provider of an inter-
17 active computer service that is in the business
18 or practice of communicating user-generated
19 content during any period during which such
20 provider—

21 “(i) is dominant in its market; and

22 “(ii) makes content moderation deci-
23 sions pursuant to policies or practices that
24 are not reasonably consistent with the
25 First Amendment to the Constitution.

1 “(B) RULE OF CONSTRUCTION.—This
2 paragraph shall be broadly construed to ad-
3 vance the purposes of this section in encour-
4 aging the growth of the internet as a forum for
5 a true diversity of discourse, unique opportuni-
6 ties for cultural development, and myriad ave-
7 nues for intellectual activity, where lawful polit-
8 ical, religious, cultural, social, scientific, and
9 other online content can flourish without dis-
10 crimination based on viewpoint.

11 “(5) PRIVATE RIGHT OF ACTION.—

12 “(A) IN GENERAL.—If a provider of an
13 interactive computer service that is dominant in
14 its market bans, blocks, down-ranks, demone-
15 tizes in its advertising, or otherwise subjects to
16 similar adverse treatment the content of any in-
17 formation content provider that uses an inter-
18 active computer service of such dominant pro-
19 vider by reason of the failure of such dominant
20 provider to make content moderation decisions
21 pursuant to policies or practices that are rea-
22 sonably consistent with the First Amendment to
23 the Constitution, such information content pro-
24 vider may bring a civil action in an appropriate
25 State court or an appropriate district court of

1 the United States against such dominant pro-
2 vider to obtain the relief described in subpara-
3 graph (B).

4 “(B) RELIEF.—

5 “(i) IN GENERAL.—An information
6 content provider that prevails in a civil ac-
7 tion under subparagraph (A) may obtain
8 the following relief:

9 “(I) The greater of—

10 “(aa) compensatory dam-
11 ages, including both personal and
12 business economic loss; or

13 “(bb) liquidated damages in
14 the amount of \$500,000 for each
15 incident of adverse treatment de-
16 scribed in subparagraph (A).

17 “(II) Punitive damages, in the
18 case of a reckless failure of the pro-
19 vider of the interactive computer serv-
20 ice to make content moderation deci-
21 sions pursuant to policies or practices
22 that are reasonably consistent with
23 the First Amendment to the Constitu-
24 tion.

1 “(ii) TREBLE DAMAGES.—In the case
2 of a willful or knowing failure of the pro-
3 vider of the interactive computer service to
4 make content moderation decisions pursu-
5 ant to policies or practices that are reason-
6 ably consistent with the First Amendment
7 to the Constitution, the information con-
8 tent provider may obtain, instead of the
9 amount determined under clause (i)(I),
10 three times such amount.

11 “(6) CERTIFICATION REGARDING MARKET
12 DOMINANCE AND CONTENT MODERATION POLICIES
13 AND PRACTICES.—

14 “(A) IN GENERAL.—Not later than 120
15 days after the date of the enactment of this
16 paragraph, the Federal Trade Commission and
17 the Attorney General shall promulgate regula-
18 tions to establish a process under which a pro-
19 vider of an interactive computer service with
20 net assets or annual net revenue exceeding
21 \$500,000,000 may apply for a review and cer-
22 tification by the Federal Trade Commission,
23 acting with the concurrence of the Attorney
24 General—

1 “(i) that such provider is not domi-
2 nant in its market; or

3 “(ii) if such provider is determined to
4 be dominant in its market under clause (i),
5 that the policies and practices of such
6 dominant provider relating to content mod-
7 eration, as applied to information content
8 providers using the interactive computer
9 service or interactive computer services of
10 such dominant provider, are reasonably
11 consistent with the First Amendment to
12 the Constitution.

13 “(B) EFFECT OF CERTIFICATION.—A cer-
14 tification under subparagraph (A) may, in the
15 discretion of the trial court, be admissible in
16 any civil action or criminal prosecution in which
17 it is asserted that paragraph (4) applies to the
18 provider to which such certification relates, or
19 in any civil action brought under paragraph (5)
20 against such provider, but such certification
21 shall not be determinative on the issues de-
22 scribed in clauses (i) and (ii) of such subpara-
23 graph.”.

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

4 “(5) DOMINANT IN ITS MARKET.—The term
5 ‘dominant in its market’ means, with respect to a
6 provider of an interactive computer service, that
7 such provider has gained substantial, sustained mar-
8 ket power over any competitors. Actual monopoly
9 control over a market is not required to satisfy the
10 preceding sentence.

11 “(6) REASONABLY CONSISTENT WITH THE
12 FIRST AMENDMENT TO THE CONSTITUTION.—The
13 term ‘reasonably consistent with the First Amend-
14 ment to the Constitution’ means, with respect to the
15 policies and practices of a provider of an interactive
16 computer service relating to content moderation,
17 that such provider conforms such policies and prac-
18 tices to established law under the First Amendment
19 to the Constitution applicable to state actors, re-
20 gardless of whether or not such provider is a state
21 actor, to the extent feasible taking into consideration
22 the developing capabilities and complexities of tech-
23 nology and the unique characteristics of online com-
24 munication platforms.

1 “(7) MINOR.—The term ‘minor’ means an indi-
2 vidual who is under 18 years of age.

3 “(8) HARMFUL TO MINORS.—The term ‘harm-
4 ful to minors’ means, with respect to content, that
5 such content contains a description or representation
6 of nudity, sexual conduct, sexual excitement, or
7 sadomasochistic abuse that—

8 “(A) predominantly appeals to the pru-
9 rient, shameful, or morbid interest of minors;

10 “(B) is patently offensive to prevailing
11 standards in the adult community with respect
12 to what is suitable material for minors; and

13 “(C) is utterly without redeeming social
14 importance for minors.

15 “(9) ADULT.—The term ‘adult’ means an indi-
16 vidual who is 18 years of age or older.”.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to conduct by a pro-
19 vider of an interactive computer service (as defined in sec-
20 tion 230(f) of the Communications Act of 1934 (47 U.S.C.
21 230(f))) that occurs after the date of the enactment of
22 this Act.

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