

116TH CONGRESS
2D SESSION

H. R. 8975

To prohibit the usage of exploitative and deceptive practices by large online operators and to promote consumer welfare in the use of behavioral research by such providers.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 16, 2020

Ms. BLUNT ROCHESTER introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit the usage of exploitative and deceptive practices by large online operators and to promote consumer welfare in the use of behavioral research by such providers.

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 “Deceptive Experiences
5 To Online Users Reduction Act” or the “DETOUR Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act the following definition apply:

8 (1) BEHAVIORAL OR PSYCHOLOGICAL EXPERI-
9 MENT, RESEARCH, OR STUDY.—The term “behav-

1 ioral or psychological experiment, research, or
2 study” means the study, including through human
3 experimentation, of overt or observable actions and
4 mental phenomena inferred from behavior, including
5 interactions between and among individuals and the
6 activities of social groups.

7 (2) COMMISSION.—The term “Commission”
8 means the Federal Trade Commission.

9 (3) COMPULSIVE USAGE.—The term “compul-
10 sive usage” means any response stimulated by exter-
11 nal factors that causes an individual to engage in re-
12 petitive, purposeful, and intentional behavior causing
13 psychological distress, loss of control, anxiety, de-
14 pression, or harmful stress responses.

15 (4) INDEPENDENT REVIEW BOARD.—The term
16 “independent review board” means a board, com-
17 mittee, or other group that serves to protect the wel-
18 fare, rights, and privacy of users and is formally
19 designated by a large online operator to review, ap-
20 prove the initiation of, and conduct periodic review
21 of, any behavioral or psychological experiment, re-
22 search, or study, conducted by such an operator or
23 by any entity directed by such an operator to con-
24 duct such behavioral or psychological experiment, re-
25 search, or study, involving human subjects.

1 (5) INFORMED CONSENT.—The term “informed
2 consent”—

3 (A) means the express, affirmative consent
4 freely given by a user immediately prior to any
5 user data being collected from such user for any
6 behavioral or psychological experiment, re-
7 search, or study, where such user is provided
8 adequate and understandable information—

9 (i) to allow for an informed decision
10 about voluntary participation in such a be-
11 havioral or psychological experiment, re-
12 search, or study; and

13 (ii) to ensure the understanding of
14 such user of the information and any asso-
15 ciated benefits, risks, or consequences of
16 participation prior to obtaining the vol-
17 untary agreement to participate by the
18 user; and

19 (B) does not include—

20 (i) the consent of an individual under
21 the age of 18;

22 (ii) language that limits or purports
23 to limit the liability of a large online oper-
24 ator; or

1 (iii) the consent to a provision con-
2 tained in a general contract or service
3 agreement.

4 (6) LARGE ONLINE OPERATOR.—The term
5 “large online operator” means any person that—

6 (A) provides an online service;

7 (B) has more than 100,000,000 authenti-
8 cated users of an online service in any 30-day
9 period; and

10 (C) is subject to the jurisdiction of the
11 Commission under the Federal Trade Commis-
12 sion Act (15 U.S.C. 41 et seq.).

13 (7) ONLINE SERVICE.—The term “online serv-
14 ice” means a website or interactive computer service,
15 other than an internet access service, that is made
16 available to the public over the internet and enables
17 users to generate content that can be viewed by
18 other users of the service or that connects users for
19 the purpose of such users engaging in dialogue,
20 sharing information, or otherwise interacting.

21 (8) PARENTAL CONSENT.—The term “parental
22 consent” means the verifiable consent of a parent or
23 guardian for a child under the age of 18 who uses
24 an online service.

1 (9) USER.—The term “user” means any indi-
2 vidual who uses an online service.

3 (10) USER DATA.—The term “user data”
4 means any information relating to an identified or
5 identifiable individual user, whether directly sub-
6 mitted to the large online operator by the user or de-
7 rived from the observed activity of the user by the
8 large online operator. Such term includes any such
9 information purchased or otherwise obtained from
10 third parties.

11 (11) USER INTERFACE.—The term “user inter-
12 face” refers to any content accessible to a user of an
13 online service or means by which a user interacts
14 with such online service or engages with other users
15 of an online service.

16 (12) VERIFIABLE CONSENT.—The term
17 “verifiable consent” means the express, affirmative
18 consent freely given by a user to be subjected to the
19 intended effect or effects of a user interface for an
20 online service that is—

21 (A) specific, informed, and unambiguous;

22 and

23 (B) given without the exchange of any fi-
24 nancial or other incentives for such consent.

1 **SEC. 3. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
2 **LATING TO THE MANIPULATION OF USER**
3 **INTERFACES.**

4 (a) CONDUCT PROHIBITED.—

5 (1) IN GENERAL.—It shall be unlawful for any
6 large online operator—

7 (A) to design, modify, or manipulate a user
8 interface of an online service with the purpose
9 or substantial effect of obscuring, subverting, or
10 impairing user autonomy, decision making, or
11 choice to obtain consent or user data;

12 (B) to conduct a behavioral or psycho-
13 logical experiment, research, or study of users
14 of an online service, except with the informed
15 consent of each user involved;

16 (C) to design, modify, or manipulate a user
17 interface of an online service with the purpose
18 or substantial effect of cultivating compulsive
19 usage, including video auto-play functions initi-
20 ated without verifiable consent of a user; or

21 (D) to design, modify, or manipulate a
22 user interface on an online service, or portion
23 thereof, that is directed to an individual under
24 the age of 18, with the purpose or substantial
25 effect of increasing usage of an online service

1 through which a user interacts with other users
2 without parental consent.

3 (b) DUTIES OF LARGE ONLINE OPERATORS.—Any
4 large online operator that engages in any form of behav-
5 ioral or psychological experiment, research, or study based
6 on the activity or data of its users shall—

7 (1) disclose, on a routine basis, but not less
8 than once each 90 days, the general purpose of any
9 such behavioral or psychological experiment, re-
10 search, or study to each user whose user data is or
11 was during the previous 90-day period subject to or
12 included in any such behavioral or psychological ex-
13 periment, research, or study;

14 (2) state on its online platform and readily ac-
15 cessible to a user through its user interface, any be-
16 havioral or psychological experiment, research, or
17 study whose purpose is to increase user engagement
18 with the online service or to encourage users to take
19 any action to convert such users into purchasers of
20 any additional product or service offered by such on-
21 line service;

22 (3) present the disclosures described in para-
23 graphs (1) and (2) in a manner that—

24 (A) is clear, conspicuous, context-appro-
25 priate, and easily accessible; and

1 (B) is not deceptively obscured;

2 (4) discontinue any behavioral or psychological
3 experiment, research, or study, if informed consent
4 or parental consent was determined by such large
5 online operator to be inappropriately acquired, or
6 has reason to believe that such consent was inappro-
7 priately acquired, and cannot obtain such consent
8 within 48 hours of such determination, for the proc-
9 essing of user data for behavioral or psychological
10 experiment, research, or study;

11 (5) establish an independent review board for
12 any behavioral or psychological research, of any pur-
13 pose, conducted on users or on the basis of user ac-
14 tivity or data, which shall review and have authority
15 to approve, require modification in, or disapprove all
16 behavioral or psychological experiments, research, or
17 studies; and

18 (6) ensure that such independent review board
19 established under paragraph (5) shall register with
20 the Commission, including providing to the Commis-
21 sion—

22 (A) the names and resumes of every board
23 member;

1 (B) the composition and reporting struc-
 2 ture of the board to the management of the op-
 3 erator;

4 (C) the process by which the board is to be
 5 notified of proposed studies or modifications
 6 along with the processes by which the board is
 7 capable of vetoing or amending such proposals;

8 (D) any compensation provided to board
 9 members; and

10 (E) any conflict of interest that might
 11 exist concerning a board member's participation
 12 in the board.

13 (c) REGISTERED PROFESSIONAL STANDARDS
 14 BODY.—

15 (1) REGISTRATION.—An association of large
 16 online operators may register as a professional
 17 standards body by filing with the Commission an ap-
 18 plication for registration in such form as the Com-
 19 mission, by rule, may prescribe containing the rules
 20 of the association and such other information and
 21 documents as the Commission, by rule, may pre-
 22 scribe as necessary or appropriate in the public in-
 23 terest or for protecting the welfare of users of large
 24 online operators.

1 (2) DETERMINATION BY THE COMMISSION.—An
2 association of large online operators may not reg-
3 ister as a professional standards body unless the
4 Commission determines that—

5 (A) the association is so organized and has
6 the capacity to enforce compliance by its mem-
7 bers and persons associated with its members,
8 with the provisions of this Act;

9 (B) the rules of the association provide
10 that any large online operator may become a
11 member of such association;

12 (C) the rules of the association assure a
13 fair representation of its members in the selec-
14 tion of its directors and administration of its
15 affairs and provide that one or more directors
16 shall be representative of users and not be asso-
17 ciated with, or receive any direct or indirect
18 funding from, a member of the association or
19 any large online operator;

20 (D) the rules of the association are de-
21 signed to prevent exploitative and manipulative
22 acts or practices, to promote transparent and
23 fair principles of technology development and
24 design, to promote research in keeping with
25 best practices for behavioral or psychological ex-

1 periments, research, or studies or the designs of
2 a user interfaces and informed consent, and to
3 continually evaluate industry practices and
4 issue binding guidance consistent with the ob-
5 jectives of this Act;

6 (E) the rules of the association provide
7 that its members and persons associated with
8 its members shall be appropriately disciplined
9 for violation of any provision of this Act, the
10 rules or regulations thereunder, or the rules of
11 the association, by expulsion, suspension, limi-
12 tation of activities or functions, fine, censure,
13 being suspended or barred from being associ-
14 ated with a member, or any other appropriate
15 sanction; and

16 (F) the rules of the association are in ac-
17 cordance with the provisions of this Act, and, in
18 general, provide a fair procedure for the dis-
19 ciplining of members and persons associated
20 with members, the denial of membership to any
21 person seeking membership therein, the barring
22 of any person from becoming associated with a
23 member thereof, and the prohibition or limita-
24 tion by the association of any person with re-

1 spect to access to services offered by the asso-
2 ciation or a member thereof.

3 (3) RESPONSIBILITIES AND ACTIVITIES.—Any
4 association registered under paragraph (1) shall de-
5 velop, on a continuing basis, guidance and bright-
6 line rules for the development and design of tech-
7 nology products of large online operators consistent
8 with the duties of a large online operator described
9 under subsection (b).

10 (d) ENFORCEMENT BY THE COMMISSION.—

11 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
12 TICE.—A violation of subsection (a) or (b) shall be
13 treated as a violation of a rule defining an unfair or
14 deceptive act or practice under section 18(a)(1)(B)
15 of the Federal Trade Commission Act (15 U.S.C.
16 57a(a)(1)(B)).

17 (2) REGULATIONS.—Not later than one year
18 after the date of enactment of this Act, the Commis-
19 sion shall prescribe regulations under section 553 of
20 title 5, United States Code, that—

21 (A) establish rules and procedures for ob-
22 taining the informed consent, verifiable consent,
23 or parental consent of users;

24 (B) establish rules for the registration, for-
25 mation, oversight, and management of the inde-

pendent review boards, including standards that ensure effective independence of such entities from improper or undue influence by a large online operator;

(C) establish rules for the registration, formation, oversight, and management of professional standards bodies, including procedures for the regular oversight of such bodies and revocation of their designation; and

(D) in consultation with each professional standards body that registers under subsection (c), define conduct that does not have the purpose or substantial effect of subverting or impairing user autonomy, decision making, or choice, or of cultivating compulsive usage for users or increasing the usage of an online service by a child without parental consent, such as—

(i) de minimis user interface changes derived from testing consumer preferences, including different styles, layouts, or text, where such changes are not done with the purpose of obtaining user consent or user data;

1 (ii) algorithms or data outputs outside
2 the control of a large online operator or its
3 affiliates; and

4 (iii) establishing default settings that
5 provide enhanced privacy protection to
6 users or otherwise enhance their autonomy
7 and decision-making ability.

○