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H. R. 4887

To clarify that a violation of certain terms of service and related materials is an unfair or deceptive act or practice and subject to enforcement by the Federal Trade Commission.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2023

Ms. SCHAKOWSKY (for herself and Ms. CASTOR of Florida) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To clarify that a violation of certain terms of service and related materials is an unfair or deceptive act or practice and subject to enforcement by the Federal Trade Commission.

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 “Online Consumer Pro-
5 tection Act”.

1 **SEC. 2. TERMS OF SERVICE REQUIRED FOR SOCIAL MEDIA**
2 **PLATFORMS AND ONLINE MARKETPLACES.**

3 (a) IN GENERAL.—Each social media platform or on-
4 line marketplace shall establish, maintain, and make pub-
5 licly available at all times and in a machine-readable for-
6 mat, terms of service in a manner that is clear, easily un-
7 derstood, and written in plain and concise language. The
8 terms of service shall meet the following requirements:

9 (1) The terms of service shall include—

10 (A) any terms or conditions of use of any
11 service provided by such person to a consumer;

12 (B) any policies of such person with regard
13 to such service or use of such service by a con-
14 sumer; and

15 (C) the consumer protection policy con-
16 sistent with subsection (b).

17 (2) The terms of service shall cover issues re-
18 lated to the behavior of a service or a user of such
19 service, and shall at a minimum include terms of use
20 related to—

21 (A) payment methods;

22 (B) content ownership, including content
23 generated by a user;

24 (C) policies related to sharing user content
25 with third parties;

1 (D) any disclaimers, limitations, notices of
2 nonliability, or the consequences of not agreeing
3 to or complying with the terms of service; and

4 (E) any other topic the Commission deems
5 appropriate.

6 (b) REQUIRED CONSUMER PROTECTION POLICY.—

7 (1) FOR SOCIAL MEDIA PLATFORMS.—For so-
8 cial media platforms, the consumer protection policy
9 required by subsection (a) shall include—

10 (A) a description of the content and behav-
11 ior permitted or prohibited on its service both
12 by the platform and by users;

13 (B) whether content may be blocked, re-
14 moved, or modified, or if service to users may
15 be terminated and the grounds upon which such
16 actions will be taken;

17 (C) whether a person can request that con-
18 tent be blocked, removed, or modified, or that
19 a user's service be terminated, and how to make
20 such a request;

21 (D) a description of how a user will be no-
22 tified of and can respond to a request that his
23 or her content be blocked, removed, or modified,
24 or service be terminated, if such actions are
25 taken;

1 (E) whether a user who requested content
2 be blocked, removed, or modified will be notified
3 of whether action was taken as a result of the
4 request, the action that was taken, the reason
5 why action was taken or not taken, and how the
6 user will be notified;

7 (F) how a person can appeal a decision to
8 block, remove, or modify content, allow content
9 to remain, or terminate or not terminate service
10 to a user, if such actions are taken;

11 (G) a description of how a user will be no-
12 tified of the result of the appeal;

13 (H) a description of the tools and support
14 available to users who have experienced cyber
15 harassment; and

16 (I) any other topic the Commission deems
17 appropriate.

18 (2) FOR ONLINE MARKETPLACES.—For online
19 marketplaces, the consumer protection policy re-
20 quired by subsection (a) shall include—

21 (A) a description of the products, product
22 descriptions, and marketing material, allowed or
23 disallowed on the marketplace;

24 (B) whether a product, product descrip-
25 tions, and marketing material may be blocked,

1 removed, or modified, or if service to a user
2 may be terminated and the grounds upon which
3 such actions will be taken;

4 (C) whether users will be notified of prod-
5 ucts that have been recalled or are dangerous,
6 and how they will be notified;

7 (D) for users—

8 (i) whether a user can report sus-
9 pected fraud, deception, dangerous prod-
10 ucts, or violations of the online market-
11 place's terms of service, and how to make
12 such report;

13 (ii) whether a user who submitted a
14 report will be notified of whether action
15 was taken as a result of the report, the ac-
16 tion that was taken and the reason why ac-
17 tion was taken or not taken, and how the
18 user will be notified;

19 (iii) how to appeal the result of a re-
20 port;

21 (iv) whether a user who appealed the
22 result of a report will be notified of wheth-
23 er action was taken as a result of the ap-
24 peal, the action that was taken, the reason

1 why action was taken or not taken, and
2 how the user will be notified; and

3 (v) under what circumstances a user
4 is entitled to refund, repair, or other rem-
5 edy and the remedy to which the user may
6 be entitled, how the user will be notified of
7 such entitlement, and how the user may
8 claim such remedy; and

9 (E) for sellers—

10 (i) how sellers are notified of a report
11 by a user or a violation of the terms of
12 service or consumer protection policy;

13 (ii) how to contest a report by a user;

14 (iii) how a seller who is the subject of
15 a report will be notified of what action will
16 be or must be taken as a result of the re-
17 port and the justification for such action;

18 (iv) how to appeal a decision of the
19 online marketplace to take an action in re-
20 sponse to a user report or for a violation
21 of the terms of service or consumer protec-
22 tion policy; and

23 (v) the policy regarding refunds, re-
24 pairs, replacements, or other remedies as a
25 result of a user report or a violation of the

1 terms of service or consumer protection
2 policy.

3 (c) STANDARD SHORT-FORM STATEMENTS AND
4 GRAPHIC ICONS FOR CONSUMER PROTECTION PRAC-
5 TICES.—

6 (1) STUDY AND REPORT.—Not later than 180
7 days after the date of the enactment of this Act, the
8 Commission shall conduct a study to determine the
9 most effective method of communicating common
10 consumer protection practices in short-form con-
11 sumer disclosure statements or graphic icons that
12 disclose the consumer protection and content mod-
13 eration practices of social media platforms and on-
14 line marketplaces. The Commission shall submit a
15 report to the Committee on Energy and Commerce
16 of the House of Representatives and the Committee
17 on Commerce, Science, and Transportation of the
18 Senate with the results of the study. The report
19 shall also be made publicly available on the website
20 of the Commission.

21 (2) REGULATIONS.—Except as provided in
22 paragraph (3), after completion of the study and not
23 later than 1 year after the date of the enactment of
24 this Act, the Commission shall finalize regulations
25 based on the results of such study that require social

1 media platforms and online marketplaces to commu-
2 nicate their consumer protection and content mod-
3 eration practices, and any other information as the
4 Commission may determine, in a clear and con-
5 spicuous manner.

6 (3) EXCEPTION.—If the Commission deter-
7 mines, by a majority vote of the Commissioners, that
8 short-form consumer disclosure statements or graph-
9 ic icons will not advance consumer understanding of
10 consumer protection and content moderation prac-
11 tices of social media platforms and online market-
12 places, the Commission shall include its reasoning
13 for making that determination in the report to Con-
14 gress required by paragraph (1) and shall not final-
15 ize the rulemaking until it determines such rules
16 would advance consumer understanding of consumer
17 protection and content moderation practices of social
18 media platforms and online marketplaces.

19 **SEC. 3. CONSUMER PROTECTION PROGRAM.**

20 (a) IN GENERAL.—Each social media platform and
21 online marketplace shall establish and implement a con-
22 sumer protection program that includes policies, practices,
23 and procedures regarding consumer protection and con-
24 tent moderation—

25 (1) to—

1 (A) ensure compliance with applicable Fed-
2 eral, State, and local consumer protection laws;

3 (B) develop, implement, and ensure com-
4 pliance with the terms of service required by
5 section 2;

6 (C) develop and implement policies regard-
7 ing the content and behavior permitted on its
8 service both by the platform and users, and en-
9 sure compliance with such policies, practices
10 and procedures;

11 (D) mitigate risks that could be harmful to
12 consumers' safety, well-being, and reasonable
13 expectations of users of the social media plat-
14 form or online marketplace, including cyber
15 harassment;

16 (E) implement reasonable safeguards with-
17 in, and training and education of employees and
18 contractors of, the social media platform or on-
19 line marketplace to promote compliance with all
20 consumer protection laws and the consumer
21 protection program; and

22 (F) disclose any other requirement the
23 Commission deems appropriate; and

24 (2) taking into consideration—

1 (A) the size of, and the nature, scope, and
2 complexity of the activities engaged in by the
3 social media platform and online marketplace;

4 (B) the activities engaged in by users on
5 the social media platform or online market-
6 place; and

7 (C) the cost of implementing the program.

8 (b) ADDITIONAL REQUIREMENTS.—As part of the
9 consumer protection program, a social media platform or
10 online marketplace shall—

11 (1) establish processes to monitor, manage, and
12 enforce the social media platform’s or online market-
13 place’s consumer protection program, and dem-
14 onstrate the covered entity’s compliance with Fed-
15 eral, State, and local consumer protection laws;

16 (2) establish processes to assess and mitigate
17 the risks to individuals resulting from the social
18 media platform’s or online marketplace’s amplifi-
19 cation of content or products not in compliance with
20 its terms of service;

21 (3) establish a process to periodically review
22 and update the consumer protection program;

23 (4) appoint a consumer protection officer, who
24 reports directly to the chief executive officer; and

1 (5) establish and implement controls to monitor
2 and mitigate known or reasonably foreseeable risks
3 to consumers resulting from hosting content or prod-
4 ucts.

5 (c) ANNUAL FILINGS TO THE FTC.—

6 (1) FILING REQUIREMENTS.—Each social
7 media platform or online marketplace that either has
8 annual revenue in excess of \$250,000 in the prior
9 year or that has more than 10,000 monthly active
10 users on average in the prior year, shall be required
11 to submit to the Commission, on an annual basis, a
12 filing that includes—

13 (A) a detailed and granular description of
14 each of the requirements in section 2 and this
15 section;

16 (B) the name and contact information of
17 the consumer protection officer required under
18 subsection (b)(4); and

19 (C) a description of any material changes
20 in the consumer protection program or the
21 terms of service since the most recent prior dis-
22 closure to the Commission.

23 (2) OFFICER CERTIFICATION.—For each entity
24 that submits an annual filing under paragraph (1),
25 the entity's principal executive officer and the con-

1 consumer protection officer required under subsection
2 (b)(4), shall be required to certify in each such an-
3 nual filing that—

4 (A) the signing officer has reviewed the fil-
5 ing;

6 (B) based on such officer's knowledge, the
7 filing does not contain any untrue statement of
8 a material fact or omit to state a material fact
9 necessary to make the statements, in light of
10 the circumstances under which such statements
11 were made, not misleading;

12 (C) based on such officer's knowledge, the
13 filing fairly presents in all material respects the
14 consumer protection practices of the social
15 media platform or online marketplace; and

16 (D) the signing consumer protection offi-
17 cer—

18 (i) is responsible for establishing and
19 maintaining safeguards and controls to
20 protect consumers and administer the con-
21 sumer protection program; and

22 (ii) has provided all material conclu-
23 sions about the effectiveness of such safe-
24 guards and controls.

1 (3) PUBLIC AVAILABILITY.—The Commission
2 shall make publicly available on the website of the
3 Commission the filings submitted under paragraph
4 (1). The Commission may withhold information in-
5 cluded in such a filing if the Commission determines
6 such information should not be public. If the Com-
7 mission withholds any information, the Commission
8 shall make publicly available on the website the cat-
9 egory of information withheld and the reasons for
10 withholding it.

11 **SEC. 4. ENFORCEMENT.**

12 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
13 SION.—

14 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
15 TICES.—Any violation of this Act shall be treated as
16 a violation of a regulation under section 18(a)(1)(B)
17 of the Federal Trade Commission Act (15 U.S.C.
18 57a(a)(1)(B)) regarding unfair or deceptive acts or
19 practices.

20 (2) POWERS OF COMMISSION.—The Commis-
21 sion shall enforce this Act in the same manner, by
22 the same means, and with the same jurisdiction,
23 powers, and duties as though all applicable terms
24 and provisions of the Federal Trade Commission Act
25 (15 U.S.C. 41 et seq.) were incorporated into and

1 made a part of this Act. Any person who violates
2 this Act shall be subject to the penalties and entitled
3 to the privileges and immunities provided in the
4 Federal Trade Commission Act.

5 (b) REGULATIONS.—The Commission shall promul-
6 gate regulations under section 553 of title 5, United
7 States Code, to carry out the purposes of this Act.

8 (c) PRIVATE RIGHT OF ACTION.—

9 (1) ENFORCEMENT BY INDIVIDUALS.—

10 (A) IN GENERAL.—An individual alleging
11 damages as a result of a violation of this Act
12 may bring a civil action in any court of com-
13 petent jurisdiction, State or Federal.

14 (B) RELIEF.—In a civil action brought
15 under subparagraph (A) in which the plaintiff
16 prevails, the court may award—

17 (i) damages as provided in subpara-
18 graph (C);

19 (ii) reasonable attorney’s fees and liti-
20 gation costs; and

21 (iii) any other relief, including equi-
22 table or declaratory relief, that the court
23 determines appropriate.

1 (C) DAMAGES.—A prevailing plaintiff is
2 entitled to actual damages as a result of the
3 violation of this Act.

4 (2) INVALIDITY OF PRE-DISPUTE ARBITRATION
5 AGREEMENTS AND PRE-DISPUTE JOINT ACTION
6 WAIVERS.—

7 (A) IN GENERAL.—Notwithstanding any
8 other provision of law, no pre-dispute arbitra-
9 tion agreement or pre-dispute joint action waiv-
10 er shall be valid or enforceable with respect to
11 a dispute arising under this Act.

12 (B) APPLICABILITY.—Any determination
13 as to whether or how this paragraph applies to
14 any dispute shall be made by a court, rather
15 than an arbitrator, without regard to whether
16 such agreement purports to delegate such deter-
17 mination to an arbitrator.

18 (C) DEFINITIONS.—In this paragraph:

19 (i) PRE-DISPUTE ARBITRATION
20 AGREEMENT.—The term “pre-dispute arbi-
21 tration agreement” means any agreement
22 to arbitrate a dispute that has not arisen
23 at the time of making the agreement.

24 (ii) PRE-DISPUTE JOINT-ACTION
25 WAIVER.—The term “pre-dispute joint-ac-

1 tion waiver” means an agreement, whether
2 or not part of a pre-dispute arbitration
3 agreement, that would prohibit, or waive
4 the right of, one of the parties to the
5 agreement to participate in a joint, class,
6 or collective action in a judicial, arbitral,
7 administration, or other forum, concerning
8 a dispute that has not yet arisen at the
9 time of making the agreement.

10 (iii) DISPUTE.—The term “dispute”
11 means any claim related to an alleged vio-
12 lation of this Act and between an indi-
13 vidual and a covered organization.

14 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
15 ERAL.—

16 (1) IN GENERAL.—If the chief law enforcement
17 officer of a State, or an official or agency designated
18 by a State, has reason to believe that any person has
19 violated or is violating this Act, the attorney general,
20 official, or agency of the State, in addition to any
21 authority it may have to bring an action in State
22 court under its consumer protection law, may bring
23 a civil action in any appropriate United States dis-
24 trict court or in any other court of competent juris-
25 diction, including a State court, to—

1 (A) enjoin further such violation by such
2 person;

3 (B) enforce compliance with this Act;

4 (C) obtain civil penalties; and

5 (D) obtain damages, restitution, or other
6 compensation on behalf of residents of the
7 State.

8 (2) NOTICE AND INTERVENTION BY THE
9 FTC.—The attorney general of a State shall provide
10 prior written notice of any action under paragraph
11 (1) to the Commission and provide the Commission
12 with a copy of the complaint in the action, except in
13 any case in which such prior notice is not feasible,
14 in which case the attorney general shall serve such
15 notice immediately upon instituting such action. The
16 Commission shall have the right—

17 (A) to intervene in the action;

18 (B) upon so intervening, to be heard on all
19 matters arising therein; and

20 (C) to file petitions for appeal.

21 (3) LIMITATION ON STATE ACTION WHILE FED-
22 ERAL ACTION IS PENDING.—If the Commission has
23 instituted a civil action for violation of this Act, no
24 State attorney general, or official or agency of a
25 State, may bring an action under this subsection

1 during the pendency of that action against any de-
2 fendant named in the complaint of the Commission
3 for any violation of this Act alleged in the complaint.

4 (4) RELATIONSHIP WITH STATE-LAW CLAIMS.—

5 If the attorney general of a State has authority to
6 bring an action under State law directed at acts or
7 practices that also violate this Act, the attorney gen-
8 eral may assert the State-law claim and a claim
9 under this Act in the same civil action.

10 **SEC. 5. RELATIONSHIP TO OTHER LAWS.**

11 (a) EFFECT OF OTHER LAWS.—Section 230 of the
12 Communications Act of 1934 (47 U.S.C. 230) shall not
13 apply to any violation of this Act.

14 (b) EFFECT ON STATE LAWS.—Nothing in this Act
15 or any regulation promulgated under this Act shall pre-
16 empt or otherwise affect any State or local law.

17 (c) SEVERABILITY.—If any provision of this Act, or
18 the application thereof to any person or circumstance, is
19 held invalid, the remainder of this Act and the application
20 of such provision to other persons not similarly situated
21 or to other circumstances shall not be affected by the in-
22 validation.

1 **SEC. 6. FTC ENFORCEMENT AUTHORITY.**

2 (a) IN GENERAL.—Section 230(e) of the Commu-
3 nications Act of 1934 (47 U.S.C. 230(e)) is amended by
4 adding at the end the following:

5 “(6) NO EFFECT ON FTC ENFORCEMENT.—
6 Nothing in this section shall be construed to impair
7 the enforcement by the Federal Trade Commission
8 of any provision of law enforced by the Federal
9 Trade Commission.”.

10 (b) APPLICABILITY.—The amendment made by this
11 section shall apply with respect to any action or pro-
12 ceeding that is commenced on or after the date of the en-
13 actment of this Act.

14 **SEC. 7. DEFINITIONS.**

15 As used in this Act, the following definitions apply:

16 (1) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (2) CONSUMER PRODUCT.—The term “con-
19 sumer product” has the meaning given such term in
20 section 3(a) of the Consumer Product Safety Act
21 (15 U.S.C. 2052(a)).

22 (3) CYBER HARASSMENT.—The term “cyber
23 harassment” means electronic communication that
24 harasses, torments, threatens, or terrorizes a target.

1 (4) ONLINE MARKETPLACE.—The term “online
2 marketplace” means a website or web application,
3 that—

4 (A) includes features that allow for, facili-
5 tate, or enable third-party sellers to engage in
6 the sale, purchase, payment, storage, shipping,
7 or delivery of a consumer product in the United
8 States; and

9 (B) hosts one or more third-party sellers.

10 (5) SELLER.—The term “seller” means a per-
11 son or entity that sells, offers to sell, or contracts to
12 sell a consumer product through an online market-
13 place’s platform.

14 (6) SOCIAL MEDIA PLATFORM.—The term “so-
15 cial media platform” means a website or mobile web
16 application that—

17 (A) permits a person to become a reg-
18 istered user, establish an account, or create a
19 profile for the purpose of allowing the user to
20 create, share, and view user-generated content
21 through such an account or profile;

22 (B) enables one or more users to generate
23 content that can be viewed by other users of the
24 platform; and

1 (C) primarily serves as a medium for users
2 to interact with content generated by other
3 users of the medium and for the platform to de-
4 liver ads to users.

5 (7) USER.—The term “user” means a person
6 or entity that uses a social media platform or online
7 marketplace for any purpose, including advertisers
8 and sellers, regardless of whether that person has an
9 account or is otherwise registered with the platform.

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