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H. R. 3816

[Report No. 117-655]

To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2021

Mr. CICILLINE (for himself, Mr. GOODEN of Texas, Mr. NADLER, and Mr. BUCK) introduced the following bill; which was referred to the Committee on the Judiciary

DECEMBER 21, 2022

Additional sponsors: Mr. JONES, Mr. JOHNSON of Georgia, Mr. RASKIN, Ms. JAYAPAL, Ms. SCANLON, Mr. NEGUSE, Mrs. MCBATH, Mrs. TRAHAN, Mr. CAWTHORN, Mr. DONALDS, Mr. GOSAR, Mr. GARCÍA of Illinois, Mr. LEVIN of Michigan, Ms. TLAIB, Mr. ESPAILLAT, Mr. BABIN, Mr. MAST, Mrs. MILLER-MEEKS, Ms. NEWMAN, Ms. PORTER, Ms. PINGREE, Mr. HICE of Georgia, Mr. JEFFRIES, Ms. OMAR, Ms. LEE of California, Mr. MFUME, Mrs. BUSTOS, Mrs. DEMINGS, Ms. DEAN, Ms. ESCOBAR, Ms. SCHAKOWSKY, Ms. HOULAHAN, Mrs. CHERFILUS-McCORMICK, Ms. CASTOR of Florida, Ms. CRAIG, Mrs. LAWRENCE, Ms. WILD, Mr. PERLMUTTER, Mr. MORELLE, Mr. PAYNE, Mrs. WATSON COLEMAN, Ms. CHU, Mr. DESAULNIER, and Mr. DEFazio

DECEMBER 21, 2022

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on June 11, 2021]

A BILL

To provide that certain discriminatory conduct by covered platforms shall be unlawful, 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 “American Innovation*
5 *and Choice Online Act”.*

6 **SEC. 2. UNLAWFUL DISCRIMINATORY CONDUCT.**

7 (a) *VIOLATION.—It shall be unlawful for a person op-*
8 *erating a covered platform, in or affecting commerce, to en-*
9 *gage in any conduct in connection with the operation of*
10 *the covered platform that—*

11 (1) *advantages the covered platform operator’s*
12 *own products, services, or lines of business over those*
13 *of another business user;*

14 (2) *excludes or disadvantages the products, serv-*
15 *ices, or lines of business of another business user rel-*
16 *ative to the covered platform operator’s own products,*
17 *services, or lines of business; or*

18 (3) *discriminates among similarly situated busi-*
19 *ness users, including, but not limited to, those busi-*
20 *ness users employed by businesses owned by women*
21 *and minorities.*

22 (b) *OTHER DISCRIMINATORY CONDUCT.—It shall be*
23 *unlawful for a person operating a covered platform, in or*
24 *affecting commerce, to—*

1 (1) *restrict or impede the capacity of a business*
2 *user to access or interoperate with the same platform,*
3 *operating system, hardware or software features that*
4 *are available to the covered platform operator’s own*
5 *products, services, or lines of business;*

6 (2) *condition access to the covered platform or*
7 *preferred status or placement on the covered platform*
8 *on the purchase or use of other products or services*
9 *offered by the covered platform operator;*

10 (3) *use non-public data to offer, or support the*
11 *offering of, the covered platform operator’s own prod-*
12 *ucts, services, or lines of business that are obtained*
13 *from or generated on the covered platform—*

14 (A) *by the activities of a business user; or*

15 (B) *through an interaction of a covered*
16 *platform user with the products or services of a*
17 *business user;*

18 (4) *restrict or impede a business user from ac-*
19 *cessing data generated on the covered platform by the*
20 *activities of the business user, or through an inter-*
21 *action of a covered platform user with the business*
22 *user’s products or services, such as by establishing*
23 *contractual or technical restrictions that prevent the*
24 *portability of such data by the business user to other*
25 *systems or applications;*

1 (5) *restrict or impede covered platform users*
2 *from un-installing software applications that have*
3 *been preinstalled on the covered platform or changing*
4 *default settings that direct or steer covered platform*
5 *users to products or services offered by the covered*
6 *platform operator;*

7 (6) *restrict or impede businesses users from com-*
8 *municating information or providing hyperlinks on*
9 *the covered platform to covered platform users to fa-*
10 *cilitate business transactions;*

11 (7) *in connection with any user interface, in-*
12 *cluding search or ranking functionality offered by the*
13 *covered platform, treat the covered platform operator's*
14 *own products, services, or lines of business more fa-*
15 *vorably than those of another business user;*

16 (8) *interfere with or restrict a business user's*
17 *pricing of its products or services;*

18 (9) *restrict or impede a business user, or a busi-*
19 *ness user's customers or users, from interoperating or*
20 *connecting to any product or service; or*

21 (10) *retaliate against any person that raises con-*
22 *cerns with any law enforcement authority about ac-*
23 *tual or potential violations of State or Federal law or*
24 *that initiates or participates in litigation to enforce*
25 *this Act.*

1 (c) *AFFIRMATIVE DEFENSE.*—Subsections (a) and (b)
2 *shall not apply if the defendant establishes by clear and*
3 *convincing evidence that the conduct described in sub-*
4 *sections (a) or (b)—*

5 (1) *would not result in harm to the competitive*
6 *process by restricting or impeding legitimate activity*
7 *by business users; or*

8 (2) *was narrowly tailored, could not be achieved*
9 *through less discriminatory means, was*
10 *nonpretextual, and was necessary to—*

11 (A) *prevent a violation of, or comply with,*
12 *Federal or State law; or*

13 (B) *protect user privacy or other non-public*
14 *data; or*

15 (3) *increases consumer welfare.*

16 (d) *COVERED PLATFORM DESIGNATION.*—The Federal
17 *Trade Commission or Department of Justice shall designate*
18 *a covered platform for the purpose of implementing and en-*
19 *forcing this Act. Such designation shall—*

20 (1) *be based on a finding that the criteria set*
21 *forth in subsection (g)(4)(i)–(iii) are met;*

22 (2) *be issued in writing and published in the*
23 *Federal Register; and*

24 (3) *apply for 10 years from its issuance regard-*
25 *less of whether there is a change in control or owner-*

1 *ship over the covered platform unless the Commission*
2 *or the Department of Justice removes the designation*
3 *under subsection (e).*

4 *(e) REMOVAL OF COVERED PLATFORM DESIGNA-*
5 *TION.—The Commission or the Department of Justice*
6 *shall—*

7 *(1) consider whether its designation of a covered*
8 *platform under subsection (d) should be removed prior*
9 *to the expiration of the ten-year period if the covered*
10 *platform operator files a request with the Commission*
11 *or the Department of Justice, which shows that the*
12 *online platform no longer meets the criteria set forth*
13 *in subsection (g)(4)(i)–(iii);*

14 *(2) determine whether to grant a request sub-*
15 *mitted under paragraph 1 not later than 120 days*
16 *after the date of the filing of such request; and*

17 *(3) obtain the concurrence of the Commission or*
18 *the Department of Justice, as appropriate, before*
19 *granting a request submitted under paragraph (1).*

20 *(f) REMEDIES.—*

21 *(1) CIVIL PENALTY.—Any covered platform oper-*
22 *ator who is found to have violated subsections (a) or*
23 *(b) shall be liable to the United States or the Commis-*
24 *sion for a civil penalty, which shall accrue to the*

1 *United States Treasury, in an amount not more than*
2 *the greater of—*

3 *(A) 15 percent of the total United States*
4 *revenue of the person for the previous calendar*
5 *year; or*

6 *(B) 30 percent of the United States revenue*
7 *of the person in any line of business affected or*
8 *targeted by the unlawful conduct during the pe-*
9 *riod of the unlawful conduct. This civil penalty*
10 *may be recovered in a civil action brought by the*
11 *United States or the Commission.*

12 *(2) REMEDIES IN ADDITION.—Remedies provided*
13 *in this subsection are in addition to, and not in lieu*
14 *of, any other remedy available under Federal or State*
15 *law.*

16 *(A) RESTITUTION; CONTRACT RESCISSION*
17 *AND REFORMATION; REFUNDS; RETURN OF PROP-*
18 *ERTY.—The Assistant Attorney General of the*
19 *Antitrust Division, the Commission, or the attor-*
20 *ney general of any State may seek, and the court*
21 *may order, with respect to a violation that gives*
22 *rise to the suit, restitution for losses, rescission*
23 *or reformation of contracts, refund of money, or*
24 *return of property.*

1 (B) *DISGORGEMENT.*—*The Assistant Attor-*
2 *ney General of the Antitrust Division, the Com-*
3 *mission, or the attorney general of any State*
4 *may seek, and the court may order, disgorgement*
5 *of any unjust enrichment that a covered platform*
6 *operator obtained as a result of the violation that*
7 *gives rise to the suit.*

8 (C) *INJUNCTIONS.*—*The Assistant Attorney*
9 *General of the Antitrust Division, the Commis-*
10 *sion, or the attorney general of any State may*
11 *seek, and the court may order, relief in equity as*
12 *necessary to prevent, restrain, or prohibit viola-*
13 *tions of this Act.*

14 (D) *CONFLICT OF INTEREST.*—

15 (i) *If the fact finder determines that a*
16 *violation of this Act arises from a conflict*
17 *of interest related to the covered platform*
18 *operator’s ownership or control of multiple*
19 *lines of business, the court shall consider re-*
20 *quiring, and may order, divestiture of the*
21 *line or lines of business that give rise to*
22 *such conflict.*

23 (ii) *For purposes of this section, the*
24 *term “conflict of interest” includes the con-*
25 *flict of interest that arises when—*

1 (I) a covered platform operator
2 owns or controls a line of business,
3 other than the covered platform; and

4 (II) the covered platform opera-
5 tor's ownership or control of that line
6 of business creates the incentive and
7 ability for the covered platform oper-
8 ator to—

9 (aa) advantage the covered
10 platform operator's own products,
11 services, or lines of business on the
12 covered platform over those of a
13 competing business or a business
14 that constitutes nascent or poten-
15 tial competition to the covered
16 platform operator; or

17 (bb) exclude from, or dis-
18 advantage, the products, services,
19 or lines of business on the covered
20 platform of a competing business
21 or a business that constitutes nas-
22 cent or potential competition to
23 the covered platform operator.

24 (3) *REPEAT OFFENDERS.*—If the fact finder de-
25 termines that a covered platform operator has en-

1 gaged in a pattern or practice of violating this Act,
2 the court shall consider requiring, and may order,
3 that the Chief Executive Officer, and any other cor-
4 porate officer as appropriate to deter violations of
5 this Act, forfeit to the United States Treasury any
6 compensation received by that person during the 12
7 months preceding or following the filing of a com-
8 plaint for an alleged violation of this Act.

9 (g) DEFINITIONS.—In this section:

10 (1) ANTITRUST LAWS.—The term “antitrust
11 laws” has the meaning given the term in subsection
12 (a) of section 1 of the Clayton Act (15 U.S.C. 12).

13 (2) BUSINESS USER.—The term “Business User”
14 means a person that utilizes or plans to utilize the
15 covered platform for the sale or provision of products
16 or services.

17 (3) COMMISSION.—The term “Commission”
18 means the Federal Trade Commission.

19 (4) COVERED PLATFORM.—The term “covered
20 platform” means an online platform—

21 (A) that has been designated as a “covered
22 platform” under section 2(d); or

23 (B) that—

24 (i) at any point during the 12 months
25 preceding a designation under section 2(d)

1 or at any point during the 12 months pre-
2 ceding the filing of a complaint for an al-
3 leged violation of this Act—

4 (I) has at least 50,000,000 United
5 States-based monthly active users on
6 the online platform; or

7 (II) has at least 100,000 United
8 States-based monthly active business
9 users on the online platform;

10 (ii) at any point during the 2 years
11 preceding a designation under section 2(d)
12 or at any point during the 2 years pre-
13 ceding the filing of a complaint for an al-
14 leged violation of this Act, is owned or con-
15 trolled by a person with United States net
16 annual sales or a market capitalization
17 greater than \$600,000,000,000, adjusted for
18 inflation on the basis of the Consumer Price
19 Index; and

20 (iii) is a critical trading partner for
21 the sale or provision of any product or serv-
22 ice offered on or directly related to the on-
23 line platform.

1 (5) *CRITICAL TRADING PARTNER.*—*The term*
2 *“critical trading partner” means an entity that has*
3 *the ability to restrict or impede the access of—*

4 (A) *a business user to its users or cus-*
5 *tomers; or*

6 (B) *a business user to a tool or service that*
7 *it needs to effectively serve its users or customers.*

8 (6) *PERSON.*—*The term “person” has the mean-*
9 *ing given the term in subsection (a) of section 1 of*
10 *the Clayton Act (15 U.S.C. 12).*

11 (7) *DATA.*—

12 (A) *IN GENERAL.*—*Not later than 6 months*
13 *after the date of enactment of this Act, the Com-*
14 *mission shall adopt rules in accordance with sec-*
15 *tion 553 of title 5, United States Code, to define*
16 *the term “data” for the purpose of implementing*
17 *and enforcing this Act.*

18 (B) *DATA.*—*The term “data” shall include*
19 *information that is collected by or provided to a*
20 *covered platform or business user that is linked,*
21 *or reasonably linkable, to a specific—*

22 (i) *user or customer of the covered plat-*
23 *form; or*

24 (ii) *user or customer of a business user.*

1 (8) *ONLINE PLATFORM.*—*The term “online plat-*
2 *form” means a website, online or mobile application,*
3 *operating system, digital assistant, or online service*
4 *that—*

5 (A) *enables a user to generate content that*
6 *can be viewed by other users on the platform or*
7 *to interact with other content on the platform;*

8 (B) *facilitates the offering, sale, purchase,*
9 *payment, or shipping of products or services, in-*
10 *cluding software applications, between and*
11 *among consumers or businesses not controlled by*
12 *the platform operator; or*

13 (C) *enables user searches or queries that ac-*
14 *cess or display a large volume of information.*

15 (9) *CONTROL.*—*The term “control” with respect*
16 *to a person means—*

17 (A) *holding 25 percent or more of the stock*
18 *of the person;*

19 (B) *having the right to 25 percent or more*
20 *of the profits of the person;*

21 (C) *having the right to 25 percent or more*
22 *of the assets of the person, in the event of the per-*
23 *son’s dissolution;*

1 (D) if the person is a corporation, having
2 the power to designate 25 percent or more of the
3 directors of the person;

4 (E) if the person is a trust, having the
5 power to designate 25 percent or more of the
6 trustees; or

7 (F) otherwise exercises substantial control
8 over the person.

9 (10) STATE.—The term “State” means a State,
10 the District of Columbia, the Commonwealth of Puer-
11 to Rico, and any other territory or possession of the
12 United States.

13 (h) ENFORCEMENT.—

14 (1) IN GENERAL.—Except as otherwise provided
15 in this Act—

16 (A) the Commission shall enforce this Act in
17 the same manner, by the same means, and with
18 the same jurisdiction, powers, and duties as
19 though all applicable terms of the Federal Trade
20 Commission Act (15 U.S.C. 41 et seq.) were in-
21 corporated into and made a part of this Act;

22 (B) the Attorney General shall enforce this
23 Act in the same manner, by the same means,
24 and with the same jurisdiction, powers and du-
25 ties as though all applicable terms of the Sher-

1 *man Act (15 U.S.C. 1 et seq.), Clayton Act (15*
2 *U.S.C. 12 et seq.), and Antitrust Civil Process*
3 *Act (15 U.S.C. 1311 et seq.) were incorporated*
4 *into and made a part of this Act; and*

5 *(C) any attorney general of a State shall*
6 *enforce this Act in the same manner, by the same*
7 *means, and with the same jurisdiction, powers*
8 *and duties as though all applicable terms of the*
9 *Sherman Act (15 U.S.C. 1 et seq.) and the Clay-*
10 *ton Act (15 U.S.C. 12 et seq.) were incorporated*
11 *into and made a part of this Act.*

12 *(2) UNFAIR METHODS OF COMPETITION.—A vio-*
13 *lation of this Act shall also constitute an unfair meth-*
14 *od of competition under section 5 of the Federal*
15 *Trade Commission Act (15 U.S.C. 45).*

16 *(3) COMMISSION INDEPENDENT LITIGATION AU-*
17 *THORITY.—If the Commission has reason to believe*
18 *that a person violated this Act, the Commission may*
19 *commence a civil action, in its own name by any of*
20 *its attorneys designated by it for such purpose, to re-*
21 *cover a civil penalty and seek other appropriate relief*
22 *in a district court of the United States.*

23 *(4) PARENS PATRIAE.—Any attorney general of*
24 *a State may bring a civil action in the name of such*
25 *State for a violation of this Act as parens patriae on*

1 *behalf of natural persons residing in such State, in*
2 *any district court of the United States having juris-*
3 *isdiction of the defendant, and may secure any form of*
4 *relief provided for in this section.*

5 *(i) EMERGENCY RELIEF.—*

6 *(1) The Commission, Assistant Attorney General*
7 *of the Antitrust Division, or any attorney general of*
8 *a State may seek a temporary injunction requiring*
9 *the covered platform operator to take or stop taking*
10 *any action for not more than 120 days and the court*
11 *shall grant such relief if the Commission, the United*
12 *States, or the attorney general of a State proves—*

13 *(A) there is a plausible claim that a covered*
14 *platform operator took an action that violates*
15 *this Act; and*

16 *(B) that action impairs the ability of at*
17 *least 1 business user to compete with the covered*
18 *platform operator.*

19 *(2) The emergency relief shall not last more than*
20 *120 days from the filing of the complaint.*

21 *(3) The court shall terminate the emergency re-*
22 *lief at any time that the covered platform operator*
23 *proves that the Commission, the United States, or the*
24 *attorney general of the State seeking relief under this*

1 *section has not taken reasonable steps to investigate*
2 *whether a violation has occurred.*

3 (4) *Nothing in this subsection prevents or limits*
4 *the Commission, the United States, or any attorney*
5 *general of any State from seeking other equitable re-*
6 *lief as provided in subsection (f) of this section.*

7 (j) *STATUTE OF LIMITATIONS.—A proceeding for a*
8 *violation of this section may be commenced not later than*
9 *6 years after such violation occurs.*

10 **SEC. 3. JUDICIAL REVIEW.**

11 (a) *IN GENERAL.—Any party that is subject to a cov-*
12 *ered platform designation under section 2(d) of this Act,*
13 *a decision in response to a request to remove a covered plat-*
14 *form designation under section 2(e) of this Act, a final*
15 *order issued in any district court of the United States under*
16 *this Act, or a final order of the Commission issued in an*
17 *administrative adjudicative proceeding under this Act may*
18 *within 30 days of the issuance of such designation, decision,*
19 *or order, petition for review of such designation, decision,*
20 *or order in the United States Court of Appeals for the Dis-*
21 *trict of Columbia Circuit.*

22 (b) *TREATMENT OF FINDINGS.—In a proceeding for*
23 *judicial review of a covered platform designation under sec-*
24 *tion 2(d) of this Act, a decision in response to a request*
25 *to remove a covered platform designation under section 2(e)*

1 *of this Act, or a final order of the Commission issued in*
2 *an administrative adjudicative proceeding under this Act,*
3 *the findings of the Commission or the Assistant Attorney*
4 *General as to the facts, if supported by evidence, shall be*
5 *conclusive.*

6 **SEC. 4. BUREAU OF DIGITAL MARKETS.**

7 (a) *ESTABLISHMENT OF BUREAU.*—As soon as prac-
8 *ticable, but not later than 180 days after the date of enact-*
9 *ment of this Act, the Commission shall establish within the*
10 *Commission a bureau of digital markets for purposes of en-*
11 *forcement of this Act.*

12 (b) *LEADERSHIP.*—The head of the Bureau of Digital
13 *Markets shall be the Director of the Bureau of Digital Mar-*
14 *kets, who shall—*

15 (1) *report directly to the Chair of the Commis-*
16 *sion; and*

17 (2) *be appointed by the Chair of the Commis-*
18 *sion.*

19 (c) *BUREAU STAFF.*—The Bureau of Digital Markets
20 *shall retain or employ legal, technology, economic, research,*
21 *and service staff sufficient to carry out the functions, pow-*
22 *ers, and duties of the Bureau.*

23 (d) *REPORTING REQUIREMENT.*—Not later than 1
24 *year after the date of enactment of this Act, the Bureau*
25 *of Digital Markets shall on an annual basis publish and*

1 *submit a report to the Committee on the Judiciary of the*
2 *House of Representatives and the Committee on the Judici-*
3 *ary of the Senate describing the Bureau's enforcement ac-*
4 *tivities during the previous 12-month period.*

5 **SEC. 5. ENFORCEMENT GUIDELINES.**

6 (a) *IN GENERAL.*—*Not later than 1 year after the date*
7 *of enactment of this Act, the Commission and the Assistant*
8 *Attorney General of the Antitrust Division shall jointly*
9 *issue guidelines outlining policies and practices, relating*
10 *to agency enforcement of this Act, with the goal of pro-*
11 *moting transparency and deterring violations.*

12 (b) *UPDATES.*—*The Commission and the Assistant At-*
13 *torney General of the Antitrust Division shall update the*
14 *joint guidelines issued under subsection (a), as needed to*
15 *reflect current agency policies and practices, but not less*
16 *frequently than once every 4 years beginning on the date*
17 *of enactment of this Act.*

18 (c) *OPERATION.*—*The Joint Guidelines issued under*
19 *this section do not confer any rights upon any person,*
20 *State, or locality, nor shall they operate to bind the Com-*
21 *mission, Department of Justice, or any person, State, or*
22 *locality to the approach recommended in such Guidelines.*

23 **SEC. 6. SUITS BY PERSONS INJURED.**

24 (a) *IN GENERAL.*—*Except as provided in subsection*
25 *(b), any person who shall be injured in his business or prop-*

1 *erty by reason of anything forbidden in this Act may sue*
2 *therefor in any district court of the United States in the*
3 *district in which the defendant resides or is found or has*
4 *an agent, without respect to the amount in controversy, and*
5 *shall recover threefold the damages by him sustained, and*
6 *the cost of suit, including a reasonable attorney's fee. The*
7 *court may award under this section, pursuant to a motion*
8 *by such person promptly made, simple interest on actual*
9 *damages for the period beginning on the date of service of*
10 *such person's pleading setting forth a claim under this Act*
11 *and ending on the date of judgment, or for any shorter pe-*
12 *riod therein, if the court finds that the award of such inter-*
13 *est for such period is just in the circumstances. In deter-*
14 *mining whether an award of interest under this section for*
15 *any period is just in the circumstances, the court shall con-*
16 *sider only—*

17 (1) *whether such person or the opposing party,*
18 *or either party's representative, made motions or as-*
19 *serted claims or defenses so lacking in merit as to*
20 *show that such party or representative acted inten-*
21 *tionally for delay, or otherwise acted in bad faith;*

22 (2) *whether, in the course of the action involved,*
23 *such person or the opposing party, or either party's*
24 *representative, violated any applicable rule, statute,*
25 *or court order providing for sanctions for dilatory be-*

1 *havior or otherwise providing for expeditious pro-*
2 *ceedings; and*

3 *(3) whether such person or the opposing party,*
4 *or either party's representative, engaged in conduct*
5 *primarily for the purpose of delaying the litigation or*
6 *increasing the cost thereof.*

7 *(b) AMOUNT OF DAMAGES PAYABLE TO FOREIGN*
8 *STATES AND INSTRUMENTALITIES OF FOREIGN STATES.—*

9 *(1) Except as provided in paragraph (2), any*
10 *person who is a foreign state may not recover under*
11 *subsection (a) an amount in excess of the actual dam-*
12 *ages sustained by it and the cost of suit, including a*
13 *reasonable attorney's fee.*

14 *(2) Paragraph (1) shall not apply to a foreign*
15 *state if—*

16 *(A) such foreign state would be denied,*
17 *under section 1605(a)(2) of title 28, immunity*
18 *in a case in which the action is based upon a*
19 *commercial activity, or an act, that is the subject*
20 *matter of its claim under this section;*

21 *(B) such foreign state waives all defenses*
22 *based upon or arising out of its status as a for-*
23 *ign state, to any claims brought against it in*
24 *the same action;*

1 (C) such foreign state engages primarily in
2 commercial activities; and

3 (D) such foreign state does not function,
4 with respect to the commercial activity, or the
5 act, that is the subject matter of its claim under
6 this section as a procurement entity for itself or
7 for another foreign state.

8 (c) *INJUNCTIVE RELIEF.*—Any person shall be entitled
9 to sue for and have injunctive relief, in any court of the
10 United States having jurisdiction over the parties, against
11 threatened loss or damage by a violation of this Act, when
12 and under the same conditions and principles as injunctive
13 relief against threatened conduct that will cause loss or
14 damage is granted by courts of equity, under the rules gov-
15 erning such proceedings, and upon the execution of proper
16 bond against damages for an injunction improvidently
17 granted and a showing that the danger of irreparable loss
18 or damage is immediate, a preliminary injunction may
19 issue: Provided, That nothing herein contained shall be con-
20 strued to entitle any person, except the United States, to
21 bring suit for injunctive relief against any common carrier
22 subject to the jurisdiction of the Surface Transportation
23 Board under subtitle IV of title 49. In any action under
24 this section in which the plaintiff substantially prevails, the

1 *court shall award the cost of suit, including a reasonable*
2 *attorney's fee, to such plaintiff.*

3 **SEC. 7. RULE OF CONSTRUCTION.**

4 *(a) Notwithstanding any other provision of law,*
5 *whether user conduct would constitute a violation of section*
6 *1030 of title 18 of the United States Code is not dispositive*
7 *of whether the defendant has established an affirmative de-*
8 *fense under this Act.*

9 *(b) An action taken by a covered platform operator*
10 *that is reasonably tailored to protect the rights of third par-*
11 *ties under sections 106, 1101, 1201, or 1401 of title 17 of*
12 *the United States Code or rights actionable under sections*
13 *32 or 43 of the Lanham Act (15 U.S.C. §§ 1114, 1125),*
14 *or corollary state law, shall not be considered unlawful con-*
15 *duct under subsection 2(a) or (b) of this Act.*

16 *(c) Nothing in this Act shall be construed to limit any*
17 *authority of the Attorney General or the Commission under*
18 *the antitrust laws, the Federal Trade Commission Act (15*
19 *U.S.C. 45), or any other provision of law or to limit the*
20 *application of any law.*

21 **SEC. 8. SEVERABILITY.**

22 *If any provision of this Act, an amendment made by*
23 *this Act, or the application of such provision or amendment*
24 *to any person or circumstance is held to be unconstitu-*
25 *tional, the remainder of this Act and of the amendments*

1 *made by this Act, and the application of the remaining pro-*
2 *visions of this Act and amendments to any person or cir-*
3 *cumstance shall not be affected.*

Amend the title so as to read: “A bill to provide that certain discriminatory conduct by a covered platform operator shall be unlawful, and for other purposes.”.

Union Calendar No. 475

117TH CONGRESS
2^D SESSION

H. R. 3816

[Report No. 117-655]

A BILL

To provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes.

DECEMBER 21, 2022

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed