

118TH CONGRESS  
1ST SESSION

# S. 2264

To allow for civil and criminal actions against certain providers of interactive computer services, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JULY 12, 2023

Mr. OSSOFF introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To allow for civil and criminal actions against certain providers of interactive computer services, 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 “Fentanyl Trafficking  
5 Prevention Act”.

6 **SEC. 2. LIABILITY FOR CERTAIN CONTROLLED SUB-**  
7 **STANCES ACT VIOLATIONS.**

8 (a) IN GENERAL.—Part D of the Controlled Sub-  
9 stances Act (21 U.S.C. 841 et seq.) is amended by adding  
10 at the end the following:

1 **“SEC. 424. LIABILITY OF INTERACTIVE COMPUTER SERVICE**  
 2 **PROVIDERS.**

3 “(a) DEFINITION.—In this section, the term ‘covered  
 4 provider’ means a provider of an interactive computer  
 5 service, as that term is defined in section 230 of the Com-  
 6 munications Act of 1934 (47 U.S.C. 230), that at any  
 7 point during the 12 months preceding the filing of an in-  
 8 dictment or information alleging a violation of subsection  
 9 (b) or the filing of a complaint in a civil action under sub-  
 10 section (c)—

11 “(1) has not fewer than 50,000,000 United  
 12 States-based monthly active users; or

13 “(2) has not fewer than 100,000,000 worldwide  
 14 monthly active users.

15 “(b) CRIMINAL OFFENSE.—

16 “(1) OFFENSE.—It shall be unlawful for a cov-  
 17 ered provider that operates through the use of any  
 18 facility or means of interstate or foreign commerce  
 19 or in or affecting interstate or foreign commerce,  
 20 through such service to knowingly or intentionally  
 21 facilitate a violation of section 401(a)(1), 409, 418,  
 22 or 419 for distributing, dispensing, or possessing  
 23 with intent to distribute or dispense—

24 “(A) an opioid or a synthetic opioid;

25 “(B) cocaine; or

26 “(C) methamphetamine.

1           “(2) PENALTY.—A covered provider that vio-  
2           lates paragraph (1) shall be fined not more than  
3           \$10,000,000.

4           “(c) CIVIL ACTION.—

5           “(1) IN GENERAL.—The Attorney General may  
6           bring a civil action in an appropriate district court  
7           of the United States against any covered provider  
8           that operates through the use of any facility or  
9           means of interstate or foreign commerce or in or af-  
10          fecting interstate or foreign commerce, and through  
11          such service, intentionally, knowingly, or recklessly  
12          facilitates a violation of section 401(a)(1), 409, 418,  
13          or 419 for distributing, dispensing, or possessing  
14          with intent to distribute or dispense—

15                   “(A) an opioid or a synthetic opioid;

16                   “(B) cocaine; or

17                   “(C) methamphetamine.

18          “(2) PENALTY.—In a civil action brought under  
19          paragraph (1), the Attorney General may recover a  
20          civil penalty of not more than \$5,000,000.

21          “(d) RULES OF CONSTRUCTION.—

22                  “(1) APPLICABILITY TO LEGAL PROCESS.—  
23          Nothing in this section shall be construed to apply  
24          to any action by a covered provider that is necessary  
25          to comply with a valid court order, subpoena, search

1 warrant, statutory obligation, or preservation re-  
2 quest from a law enforcement agency.

3 “(2) MENTAL STATE WITH RESPECT TO EACH  
4 ITEM REQUIRED.—For purposes of subsections (b)  
5 and (c), the terms ‘intentionally’, ‘knowingly’, and  
6 ‘recklessly’ shall be construed to mean intentionality,  
7 knowledge, or recklessness, respectively, with respect  
8 to the facilitation of each violation described in those  
9 subsections.

10 “(e) ENCRYPTION TECHNOLOGIES.—

11 “(1) CYBERSECURITY PROTECTIONS DO NOT  
12 GIVE RISE TO LIABILITY.—A criminal prosecution  
13 under subsection (b) or a civil action under sub-  
14 section (c) may not be brought against a covered  
15 provider because the covered provider—

16 “(A) utilizes full end-to-end encrypted mes-  
17 saging services, device encryption, or other  
18 encryption services;

19 “(B) does not possess the information nec-  
20 essary to decrypt a communication; or

21 “(C) fails to take an action that would oth-  
22 erwise undermine the ability of the covered pro-  
23 vider to offer full end-to-end encrypted mes-  
24 saging services, device encryption, or other  
25 encryption services.

1           “(2) RULE OF CONSTRUCTION.—Nothing in  
2 this subsection is intended to undermine the use of  
3 encryption technology.

4           “(f) PROTECTION OF PRIVACY.—Nothing in this sec-  
5 tion shall be construed to require a covered provider to—

6           “(1) monitor any user, subscriber, or customer  
7 of that covered provider;

8           “(2) monitor the content of any communication  
9 of any person described in paragraph (1); or

10           “(3) affirmatively search, screen, or scan for  
11 violations described in subsection (b)(1) or (c)(1).”.

12           (b) CLERICAL AMENDMENT.—The table of contents  
13 for the Controlled Substances Act (21 U.S.C. 801 et seq.)  
14 is amended by inserting after the item relating to section  
15 423 the following:

“Sec. 424. Liability of interactive computer service providers.”.

16 **SEC. 3. FEDERAL CIVIL LIABILITY.**

17           Section 230(e) of the Communications Act of 1934  
18 (47 U.S.C. 230(e)) is amended by adding at the end the  
19 following:

20           “(6) NO EFFECT ON CERTAIN CLAIMS OR  
21 CHARGES PERTAINING TO CERTAIN DRUGS.—Noth-  
22 ing in this section, other than subsection (c)(2)(A),  
23 shall be construed to impair or limit any claim in a  
24 civil action brought against a provider of an inter-

1 active computer service under section 424(c) of the  
2 Controlled Substances Act.”.

3 **SEC. 4. SEVERABILITY.**

4 If any provision of this Act or amendment made by  
5 this Act, or the application of such a provision or amend-  
6 ment to any person or circumstance, is held to be uncon-  
7 stitutional, the remaining provisions of this Act and  
8 amendments made by this Act, and the application of such  
9 provision or amendment to any other person or cir-  
10 cumstance, shall not be affected thereby.

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