

118TH CONGRESS
2D SESSION

S. _____

To require online service providers to disclose their acceptable use policies, provide users with written notice before the termination of a user’s account, and publish an annual report detailing actions taken to enforce their acceptable use policies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CRUZ (for himself, Mr. WICKER, and Mr. SCHMITT) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To require online service providers to disclose their acceptable use policies, provide users with written notice before the termination of a user’s account, and publish an annual report detailing actions taken to enforce their acceptable use policies, 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 “Transparency in En-
5 forcement, Restricting, and Monitoring of Services Act”
6 or the “TERMS Act”.

1 **SEC. 2. PURPOSE.**

2 The purpose of this Act is to ensure that consumers,
3 businesses, and organizations seeking to use the products
4 or services of an online service provider have sufficient in-
5 formation regarding the online service provider’s commer-
6 cial business standards, processes, and policies with re-
7 spect to the unilateral termination, suspension, or can-
8 cellation of user accounts or ability to use the online serv-
9 ice provider’s products or services. Such information al-
10 lows consumers to make informed choices regarding their
11 decision to use or purchase the services or products of an
12 online service provider and promotes a competitive mar-
13 ketplace for such products or services.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

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

18 (2) **NONPROFIT ORGANIZATION.**—The term
19 “nonprofit organization” has the meaning given
20 such term in section 201(i) of title 35, United States
21 Code.

22 (3) **ONLINE SERVICE PROVIDER.**—The term
23 “online service provider”—

24 (A) means the provider of a public-facing
25 website, online service, or online application di-
26 rected to a consumer or organization that—

1 (i) requires any person who wishes to
2 use the website, online service, or online
3 application to create a unique account or
4 profile for such website, service, or applica-
5 tion;

6 (ii) provides an internet-based product
7 or service to the general public that is ac-
8 cessible through the website, online service,
9 or online application; and

10 (iii) is engaged in interstate or foreign
11 commerce; and

12 (B) includes any entity described in sub-
13 paragraph (A), regardless of whether—

14 (i) offering a product or service to the
15 general public is the sole source of income
16 or principal business of such entity; or

17 (ii) the entity earns a profit on a
18 product or service.

19 (4) RESTRICT.—The term “restrict”, with re-
20 spect to a user, means an online service provider’s
21 termination or suspension of a user’s account or pro-
22 file on the online service provider’s website, online
23 service, or online application, or limitation of the
24 user’s access thereto based on a determination that

1 the user violated the online service provider’s accept-
2 able use policy.

3 (5) USER.—The term “user” means, with re-
4 spect to an online service provider, a person who
5 registers an account or creates a profile on the
6 website, online service, or online application of the
7 online service provider.

8 **SEC. 4. DISCLOSURE OF ACCEPTABLE USE POLICIES.**

9 (a) IN GENERAL.—Not later than 180 days after the
10 date of enactment of this Act and subject to subsection
11 (b), an online service provider shall publicly disclose in an
12 easily accessible manner, such as within terms of service
13 available on the online service provider’s website, an ac-
14 ceptable use policy that concisely and accurately describes,
15 in easy to understand language, information regarding the
16 standards, processes, and policies of the online service pro-
17 vider with respect to any decision by the online service
18 provider to restrict a user.

19 (b) REQUIRED INFORMATION.—For purposes of sub-
20 section (a), an online service provider shall include the fol-
21 lowing information in an acceptable use policy:

22 (1) An explanation of what specific acts or
23 practices are prohibited by the online service pro-
24 vider that could lead to a decision by the online serv-
25 ice provider to restrict a user.

1 (2) An explanation of how the online service
2 provider enforces the acceptable use policy, including
3 any third party the online service provider relies
4 upon, in whole or in part, to assist in the enforce-
5 ment of the acceptable use policy by the online serv-
6 ice provider.

7 (3) Either—

8 (A) an explanation of how a user can ap-
9 peal, if applicable, a decision by an online serv-
10 ice provider to restrict a user; or

11 (B) if the online service provider does not
12 permit an appeal or reconsideration of a deci-
13 sion to restrict a user, a statement that such
14 decision is not appealable or subject to recon-
15 sideration.

16 (4) An explanation of whether acts or practices
17 a user commits entirely outside of the website, online
18 service, or online application of the online service
19 provider, such as social media posts, public state-
20 ments, media publications, and third-party re-
21 sources, may be a sufficient basis alone or in com-
22 bination with other information to restrict a user.

23 (5) An explanation of the online service pro-
24 vider's standards, processes, and policies with re-

1 spect to the notice requirement described in section
2 5.

3 **SEC. 5. ADVANCE WRITTEN NOTICE PRIOR TO TERMI-**
4 **NATION OR SUSPENSION.**

5 (a) NOTICE REQUIREMENT.—

6 (1) IN GENERAL.—Except as described in sub-
7 section (b), an online service provider shall provide
8 advance written notice to a user in violation of the
9 online service provider’s acceptable use policy prior
10 to restricting the user.

11 (2) REQUIRED INFORMATION.—The advance
12 written notice required under paragraph (1) shall in-
13 clude the following information:

14 (A) The specific act or practice of the user
15 that led to the decision to restrict the user.

16 (B) A description of how the act or prac-
17 tice identified in subparagraph (A) violated the
18 acceptable use policy.

19 (C) Whether the user has an option to ap-
20 peal the decision, and, if so, a description of the
21 process for how the user can appeal the online
22 service provider’s decision, consistent with the
23 acceptable use policy.

24 (D) A description of the option for the
25 user to elect that the online service provider

1 publicly disclose such written notice as de-
2 scribed in paragraph (4).

3 (3) ADVANCE WRITTEN NOTICE.—

4 (A) IN GENERAL.—For the purposes of
5 this section, an online service provider will be
6 deemed to have provided an advance written no-
7 tice to a user if such provider makes a good
8 faith effort to notify the user not later than 7
9 days prior to restricting the user.

10 (B) GOOD FAITH EFFORT.—For the pur-
11 poses of subparagraph (A), a good faith effort
12 may include—

13 (i) a notification to the most recent
14 email address or other contact information
15 the user provided to the online service pro-
16 vider; or

17 (ii) if the online service provider does
18 not have any contact information of the
19 user, a highly visible notice that is dis-
20 played to the user on the online service
21 provider's website, service, or application
22 when the user next accesses such website,
23 service, or application.

24 (4) PUBLIC DISCLOSURE.—An online service
25 provider shall—

1 (A) provide to any user issued a written
2 notice under paragraph (1) an option for the
3 online service provider to publicly disclose such
4 notice; and

5 (B) if such user chooses to have such no-
6 tice publicly disclosed, publish such notice on
7 the website of the online service provider.

8 (b) EXCEPTIONS FOR COURT ACTION OR IMMINENT
9 RISK OF HARM.—An online service provider may restrict
10 a user without advance written notice if—

11 (1) such restriction was done to—

12 (A) comply with a lawful order of a court
13 of competent jurisdiction; or

14 (B) protect against an imminent risk of—

15 (i) death;

16 (ii) a serious physical injury; or

17 (iii) a serious health risk; and

18 (2) the online service provider provides the user
19 the information required by subsection (a)(2) and
20 publicly discloses the written notice at the same time
21 that the provider restricts the user or as soon as
22 practicable thereafter.

23 (c) EFFECTIVE DATE.—The requirements of this sec-
24 tion shall take effect on the date that is 180 days after
25 the date of enactment of this Act.

1 **SEC. 6. REPORTING REQUIREMENTS.**

2 (a) ANNUAL REPORT.—Not later than 1 year after
3 the date of enactment of this Act and annually thereafter
4 on a date to be determined by each online service provider,
5 an online service provider shall publish, with an open li-
6 cense, in both a format easily read by humans and a ma-
7 chine-readable format, in a location on their public website
8 that is easily accessible to users, and consistent with the
9 requirements described in subsections (b) and (c), a report
10 detailing actions taken to enforce the online service pro-
11 vider’s acceptable use policy.

12 (b) REPORT REQUIREMENTS.—The report required
13 under subsection (a) shall include the following informa-
14 tion with respect to the applicable reporting period:

15 (1) The total number of instances in which the
16 online service provider was alerted of a potential vio-
17 lation of the acceptable use policy by—

18 (A) a user complaint;

19 (B) an employee of, or a person con-
20 tracting with, the online service provider;

21 (C) an internal automated detection tool of
22 the online service provider;

23 (D) a government entity, including the spe-
24 cific office or entity that alerted the online serv-
25 ice provider;

26 (E) a nonprofit organization; or

1 (F) any other person.

2 (2) Subject to subsection (c), the number of in-
3 stances in which the online service provider took
4 steps to restrict a user, including the number of in-
5 stances in which the online service provider—

6 (A) terminated a user’s account or profile
7 on the online service provider’s website, online
8 service, or online application or otherwise per-
9 manently limited access to or use of the product
10 or service of the online service provider;

11 (B) suspended a user’s account or profile
12 on the online service provider’s website, online
13 service, or online application;

14 (C) limited a user’s access to the online
15 service provider’s website, online service, or on-
16 line application; or

17 (D) took any other action, such as issuing
18 a warning, in response to a violation of the ac-
19 ceptable use policy.

20 (3) The number of instances in which a user
21 appealed the online service provider’s decision.

22 (4) The number of appeals that resulted in a
23 reversal of the online service provider’s decision.

1 (c) CATEGORIZATION OF ACTIONS TAKEN.—The in-
2 formation described in subsection (b)(2) shall be cat-
3 egorized by—

4 (1) the exact provision of the acceptable use
5 policy that was violated by a user; and

6 (2) the source of the alert of the potential viola-
7 tion of the acceptable use policy as described in sub-
8 section (b)(1).

9 **SEC. 7. ENFORCEMENT.**

10 (a) ENFORCEMENT BY THE COMMISSION.—

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

17 (2) POWERS OF THE COMMISSION.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (C), the Commission shall enforce
20 this Act in the same manner, by the same
21 means, and with the same jurisdiction, powers,
22 and duties as though all applicable terms and
23 provisions of the Federal Trade Commission
24 Act (15 U.S.C. 41 et seq.) were incorporated
25 into and made a part of this Act.

1 (B) PRIVILEGES AND IMMUNITIES.—Ex-
2 cept as provided in subparagraph (C), any on-
3 line service provider who violates this Act or a
4 regulation promulgated under this Act shall be
5 subject to the penalties and entitled to the
6 privileges and immunities provided in the Fed-
7 eral Trade Commission Act (15 U.S.C. 41 et
8 seq.).

9 (C) NONPROFIT ORGANIZATIONS.—Not-
10 withstanding section 4, 5(a)(2), or 6 of the
11 Federal Trade Commission Act (15 U.S.C. 44,
12 45(a)(2), 46) or any jurisdictional limitation of
13 the Commission, the Commission shall also en-
14 force this Act, in the same manner provided in
15 subparagraphs (A) and (B), with respect to or-
16 ganizations not organized to carry on business
17 for their own profit or that of their members.

18 (D) AUTHORITY PRESERVED.—Nothing in
19 this subsection shall be construed to limit the
20 authority of the Commission under any other
21 provision of law.

22 (b) ENFORCEMENT BY STATES.—

23 (1) IN GENERAL.—In any case in which the at-
24 torney general of a State has reason to believe that
25 an interest of the residents of the State has been or

1 is threatened or adversely affected by the engage-
2 ment of any online service provider in a practice that
3 violates this Act, the attorney general of the State
4 may, as *parens patriae*, bring a civil action on behalf
5 of the residents of the State in an appropriate dis-
6 trict court of the United States—

7 (A) to enjoin further violation of this Act
8 by such online service provider;

9 (B) to enforce compliance with this Act;

10 (C) to obtain damages, restitution, or other
11 compensation on behalf of such residents; and

12 (D) to obtain such other relief as the court
13 may consider to be appropriate.

14 (2) RIGHTS OF THE COMMISSION.—

15 (A) NOTICE TO THE COMMISSION.—

16 (i) IN GENERAL.—Except as provided
17 in clause (iii), the attorney general of a
18 State shall notify the Commission in writ-
19 ing that the attorney general intends to
20 bring a civil action under paragraph (1)
21 before initiating the civil action.

22 (ii) CONTENTS.—The notification re-
23 quired by clause (i) with respect to a civil
24 action shall include a copy of the complaint
25 to be filed to initiate the civil action.

1 (iii) EXCEPTION.—If it is not feasible
2 for the attorney general of a State to pro-
3 vide the notification required by clause (i)
4 before initiating a civil action under para-
5 graph (1), the attorney general shall notify
6 the Commission immediately upon insti-
7 tuting the civil action.

8 (B) INTERVENTION BY THE COMMIS-
9 SION.—The Commission may—

10 (i) intervene in any civil action
11 brought by the attorney general of a State
12 under paragraph (1); and

13 (ii) upon intervening—

14 (I) be heard on all matters aris-
15 ing in the civil action; and

16 (II) file petitions for appeal of a
17 decision in the civil action.

18 (3) INVESTIGATORY POWERS.—Nothing in this
19 subsection may be construed to prevent the attorney
20 general of a State from exercising the powers con-
21 ferred on the attorney general by the laws of the
22 State to conduct investigations, to administer oaths
23 or affirmations, or to compel the attendance of wit-
24 nesses or the production of documentary or other
25 evidence.

1 (4) PREEMPTIVE ACTION BY THE COMMIS-
2 SION.—If the Commission institutes a civil action or
3 an administrative action with respect to a violation
4 of this Act, the attorney general of a State may not,
5 during the pendency of such action, bring a civil ac-
6 tion under paragraph (1) against any defendant
7 named in the complaint of the Commission for the
8 violation with respect to which the Commission insti-
9 tuted such action.

10 (5) VENUE; SERVICE OR PROCESS.—

11 (A) VENUE.—Any action brought under
12 paragraph (1) may be brought in—

13 (i) the district court of the United
14 States that meets applicable requirements
15 relating to venue under section 1391 of
16 title 28, United States Code; or

17 (ii) another court of competent juris-
18 diction.

19 (B) SERVICE OF PROCESS.—In an action
20 brought under paragraph (1), process may be
21 served in any district in which the defendant—

22 (i) is an inhabitant; or

23 (ii) may be found.

24 (6) ACTIONS BY OTHER STATE OFFICIALS.—

1 (A) IN GENERAL.—In addition to civil ac-
2 tions brought by attorneys general under para-
3 graph (1), any other officer of a State who is
4 authorized by the State to do so may bring a
5 civil action under paragraph (1), subject to the
6 same requirements and limitations that apply
7 under this subsection to civil actions brought by
8 attorneys general.

9 (B) SAVINGS PROVISION.—Nothing in this
10 subsection may be construed to prohibit an au-
11 thorized official of a State from initiating or
12 continuing any proceeding in a court of the
13 State for a violation of any civil or criminal law
14 of the State.

15 (c) COMMISSION GUIDANCE.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of enactment of this Act, the Commis-
18 sion shall issue guidance to assist online service pro-
19 viders in complying with the requirements of this
20 Act, which shall include the provision of best prac-
21 tices and examples.

22 (2) LIMITATION ON GUIDANCE.—No guidance
23 issued by the Commission with respect to this Act
24 shall—

1 (A) confer any rights on any person, State,
2 or locality; or

3 (B) operate to bind the Commission or any
4 person to the approach recommended in such
5 guidance.

6 (3) USE IN ENFORCEMENT ACTIONS.—In any
7 enforcement action brought pursuant to this Act—

8 (A) the Commission or State attorney gen-
9 eral, as applicable—

10 (i) shall allege a specific violation of a
11 provision of this Act; and

12 (ii) may not base such enforcement
13 on, or execute a consent order based on,
14 practices that are alleged to be inconsistent
15 with any guidance issued by the Commis-
16 sion with respect to this Act, unless the
17 practices are alleged to violate a provision
18 of this Act; and

19 (B) a person may use compliance with any
20 such guidance as evidence of compliance with
21 this Act.