

117TH CONGRESS  
1ST SESSION

# S. 1896

To prohibit the discriminatory use of personal information by online platforms in any algorithmic process, to require transparency in the use of algorithmic processes and content moderation, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

MAY 27, 2021

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

## A BILL

To prohibit the discriminatory use of personal information by online platforms in any algorithmic process, to require transparency in the use of algorithmic processes and content moderation, 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 “Algorithmic Justice  
5       and Online Platform Transparency Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

1           (1) Online platforms have become integral to  
2 individuals' full participation in economic, demo-  
3 cratic, and societal processes.

4           (2) Online platforms employ manipulative dark  
5 patterns, collect large amounts of personal informa-  
6 tion from their users, and leverage that personal in-  
7 formation for opaque algorithmic processes in ways  
8 that create vastly different experiences for different  
9 types of users.

10          (3) Algorithmic processes are often used by on-  
11 line platforms without adequate testing and in the  
12 absence of critical transparency requirements and  
13 other legally enforceable safety and efficacy stand-  
14 ards, which has resulted in discrimination in hous-  
15 ing, lending, job advertising, and other areas of op-  
16 portunity.

17          (4) The use of discriminatory algorithmic proc-  
18 esses causes disproportionate harm to populations  
19 that already experience marginalization.

20          (5) Online platforms constantly engage in con-  
21 tent moderation decision making, resulting in highly  
22 influential outcomes regarding what content is visi-  
23 ble and accessible to users.

24          (6) Online platforms' content moderation prac-  
25 tices have disproportionately significant repercus-

1        sions for members of marginalized communities, who  
 2        have historically been the target of nefarious online  
 3        activity, including disinformation campaigns.

4            (7) Users of online platforms should have ac-  
 5        cess to understandable information about how online  
 6        platforms moderate content and use algorithmic  
 7        processes to amplify or recommend content.

8            (8) Users of online platforms should be able to  
 9        easily move their data to alternative online plat-  
 10       forms, and the importance of this right is particu-  
 11       larly significant given certain online platforms' use  
 12       of harmful algorithmic processes and engagement in  
 13       ineffective content moderation.

14           (9) In a variety of sectors, algorithmic proc-  
 15       esses also facilitate discriminatory outcomes on on-  
 16       line platforms that individuals may not personally  
 17       interact with, but which nonetheless process the per-  
 18       sonal information of such individuals and have sig-  
 19       nificant, negative consequences.

20           (10) The people of the United States would  
 21       benefit from the convening of experts from a diverse  
 22       set of governmental positions to collectively study  
 23       and report on discriminatory algorithmic processes  
 24       across the United States' economy and society, with  
 25       particular attention to intersections of harm.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) **ALGORITHMIC PROCESS.**—The term “algo-  
 4 rithmic *process*” means a computational process, in-  
 5 cluding one derived from machine learning or other  
 6 artificial intelligence techniques, that processes per-  
 7 sonal information or other data for the purpose of  
 8 determining the order or manner that a set of infor-  
 9 mation is provided, recommended to, or withheld  
 10 from a user of an online platform, including the pro-  
 11 vision of commercial content, the display of social  
 12 media posts, or any other method of automated deci-  
 13 sion making, content selection, or content amplifi-  
 14 cation.

15 (2) **BIOMETRIC INFORMATION.**—The term “bio-  
 16 metric information”—

17 (A) means information regarding the phys-  
 18 iological or biological characteristics of an indi-  
 19 vidual that may be used, singly or in combina-  
 20 tion with each other or with other identifying  
 21 data, to establish the identity of an individual;  
 22 and

23 (B) includes—

24 (i) genetic information;

25 (ii) imagery of the iris, retina, finger-  
 26 print, face, hand, palm, vein patterns, and

voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted;

(iii) keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information; and

(iv) any mathematical code, profile, or algorithmic model derived from information regarding the physiological or biological characteristics of an individual.

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

(4) CONTENT MODERATION.—The term “content moderation” means—

(A) the intentional deletion, labeling, or editing of user generated content or a process of purposefully decreasing access to such content through the human labor of any individual that is financially compensated by an online platform, an automated process, or some combination thereof, pursuant to the online platform’s terms of service or stated community standards; and

1 (B) such other practices as the Commis-  
2 sion may identify under regulations promul-  
3 gated under section 553 of title 5, United  
4 States Code.

5 (5) DE-IDENTIFIED.—The term “de-identified”,  
6 with respect to personal information, means infor-  
7 mation that has been altered, anonymized, or aggre-  
8 gated so that it cannot reasonably identify, relate to,  
9 describe, or be capable of being associated with or  
10 linked to, directly or indirectly, a particular indi-  
11 vidual or device.

12 (6) DEMOGRAPHIC INFORMATION.—The term  
13 “demographic information” means information re-  
14 garding an individual’s or class of individuals’ race,  
15 color, ethnicity, sex, religion, national origin, age,  
16 gender, gender identity, sexual orientation, disability  
17 status, familial status, immigration status, edu-  
18 cational attainment, income, source of income, occu-  
19 pation, employment status, biometric information,  
20 criminal record, credit rating, or any categorization  
21 used by the online platform derived from such infor-  
22 mation.

23 (7) GROUP.—The term “group” means a page  
24 or other subdivision of an online platform that func-  
25 tions as a forum for users to post or otherwise dis-

1       tribute content to, or communicate with, other users  
2       of such page or other subdivision.

3           (8) NON-PRECISE GEOLOCATION INFORMA-  
4       TION.—The term “non-precise geolocation informa-  
5       tion” means information regarding a country, state,  
6       county, city, or ZIP code.

7           (9) ONLINE PLATFORM.—The term “online  
8       platform” means any public-facing website, online  
9       service, online application, or mobile application  
10      which is operated for commercial purposes and pro-  
11      vides a community forum for user generated content,  
12      including a social network site, content aggregation  
13      service, or service for sharing videos, images, games,  
14      audio files, or other content.

15          (10) PERSONAL INFORMATION.—

16           (A) IN GENERAL.—The term “personal in-  
17       formation” means information that directly or  
18       indirectly identifies, or could be reasonably  
19       linked to, a particular individual or device.

20           (B) REASONABLY LINKED.—For purposes  
21       of subparagraph (A), information could be rea-  
22       sonably linked to an individual or device if such  
23       information can be used on its own or in com-  
24       bination with other information held by, or

1 readily accessible to, a person to identify an in-  
2 dividual or device.

3 (11) PLACE OF PUBLIC ACCOMMODATION.—The  
4 term “place of public accommodation” means—

5 (A) any entity considered a place of public  
6 accommodation under section 201(b) of the  
7 Civil Rights Act of 1964 (42 U.S.C. 2000a(b))  
8 or section 301 of the Americans with Disabil-  
9 ities Act of 1990 (42 U.S.C. 12181); or

10 (B) any commercial entity that offers  
11 goods or services through the internet to the  
12 general public.

13 (12) SMALL BUSINESS.—

14 (A) IN GENERAL.—The term “small busi-  
15 ness” means a commercial entity that estab-  
16 lishes, with respect to the 3 preceding calendar  
17 years (or since the inception of such entity if  
18 such period is less than 3 calendar years), that  
19 the entity—

20 (i) maintains an average annual gross  
21 revenue of less than \$25,000,000;

22 (ii) on average, annually processes the  
23 personal information of less than 100,000  
24 individuals, households, or devices used by  
25 individuals or households;



- 1 (iii) on average, derives 50 percent or  
 2 less of its annual revenue from transfer-  
 3 ring the personal information of individ-  
 4 uals; and
- 5 (iv) has less than 50 workers at any  
 6 time during such period.

7 (B) COMMON CONTROL OR BRANDING.—  
 8 For purposes of subparagraph (A), the amounts  
 9 at issue shall include the activity of any person  
 10 that controls, is controlled by, is under common  
 11 control with, or shares common branding with  
 12 such commercial entity.

13 (13) USER GENERATED CONTENT.—The term  
 14 “user generated content” means any content, includ-  
 15 ing text, images, videos, reviews, profiles, games, or  
 16 audio content, that is made or created (including  
 17 through a form, template, or other process provided  
 18 by the online platform) and posted on an online plat-  
 19 form by a user of the online platform.

20 **SEC. 4. TRANSPARENCY.**

21 (a) NOTICE AND REVIEW OF ALGORITHMIC PROC-  
 22 ESS.—Beginning 1 year after the date of enactment of this  
 23 Act, any online platform that employs, operates, or other-  
 24 wise utilizes an algorithmic process to withhold, amplify,  
 25 recommend, or promote content (including a group) to a

1 user of the online platform shall comply with the following  
2 requirements:

3 (1) REQUIRED NOTICE.—

4 (A) IN GENERAL.—With respect to each  
5 type of algorithmic process utilized by an online  
6 platform, such online platform shall disclose the  
7 following information to users of the online  
8 platform in conspicuous, accessible, and plain  
9 language that is not misleading:

10 (i) The categories of personal infor-  
11 mation the online platform collects or cre-  
12 ates for purposes of the type of algorithmic  
13 process.

14 (ii) The manner in which the online  
15 platform collects or creates such personal  
16 information.

17 (iii) How the online platform uses  
18 such personal information in the type of  
19 algorithmic process.

20 (iv) The method by which the type of  
21 algorithmic process prioritizes, assigns  
22 weight to, or ranks different categories of  
23 personal information to withhold, amplify,  
24 recommend, or promote content (including  
25 a group) to a user.

1 (B) LANGUAGE OF REQUIRED NOTICE.—

2 Such online platform shall make available the  
3 notice described in subparagraph (A) in each  
4 language in which the online platform provides  
5 services.

6 (C) RULEMAKING.—The Commission shall  
7 conduct a rulemaking to identify each type of  
8 algorithmic process for which an online plat-  
9 form is required to disclose the information de-  
10 scribed in subparagraph (A).

11 (2) REVIEW OF ALGORITHMIC PROCESS.—

12 (A) RECORD OF ALGORITHMIC PROCESS.—

13 Subject to subparagraph (B), such online plat-  
14 form shall, for 5 years, retain a record that de-  
15 scribes—

16 (i) the categories of personal informa-  
17 tion used by the type of algorithmic proc-  
18 ess;

19 (ii) the method by which the type of  
20 algorithmic process weighs or ranks certain  
21 categories of personal information;

22 (iii) the method by which the online  
23 platform develops its type of algorithmic  
24 process, including—

- 1 (I) a description of any personal  
2 information or other data used in  
3 such development;
- 4 (II) an explanation of any per-  
5 sonal information or other data used  
6 to train the type of algorithmic proc-  
7 ess on an ongoing basis; and
- 8 (III) a description of how the  
9 type of algorithmic process was tested  
10 for accuracy, fairness, bias, and dis-  
11 crimination; and
- 12 (iv) if the online platform (except for  
13 a small business) utilizes an algorithmic  
14 process that relates to opportunities for  
15 housing, education, employment, insurance,  
16 credit, or the access to or terms of use of  
17 any place of public accommodations, an as-  
18 sessment of whether the type of algo-  
19 rithmic process produces disparate out-  
20 comes on the basis of an individual's or  
21 class of individuals' actual or perceived  
22 race, color, ethnicity, sex, religion, national  
23 origin, gender, gender identity, sexual ori-  
24 entation, familial status, biometric infor-  
25 mation, or disability status.

1 (B) ADDITIONAL REQUIREMENTS.—

2 (i) REQUIREMENT TO DE-IDENTIFY  
3 PERSONAL INFORMATION.—The record de-  
4 scribed in subparagraph (A) shall not in-  
5 clude any personal information other than  
6 de-identified personal information.

7 (ii) EXTENSION OF RECORD RETEN-  
8 TION.—An online platform shall retain the  
9 record described in subparagraph (A) for  
10 up to an additional 3 years if the Commis-  
11 sion determines that the online platform  
12 poses a reasonable risk of engaging in re-  
13 peated violations of this Act or of unlawful  
14 discrimination as a result of its use of an  
15 algorithmic process.

16 (C) REVIEW OF RECORD.—Upon the re-  
17 quest of the Commission, an online platform  
18 shall make available to the Commission the  
19 complete record described in subparagraph (A).

20 (b) NOTICE OF CONTENT MODERATION PRAC-  
21 TICES.—

22 (1) NOTICE.—

23 (A) IN GENERAL.—Beginning 1 year after  
24 the date of enactment of this Act, any online  
25 platform shall disclose to users of the online

1 platform in conspicuous, accessible, and plain  
2 language that is not misleading a complete de-  
3 scription of the online platform's content mod-  
4 eration practices, including a description of any  
5 type of automated content moderation practices  
6 and content moderation practices that employ  
7 human labor.

8 (B) LANGUAGE OF REQUIRED NOTICE.—

9 Such online platform shall make available the  
10 notice described in subparagraph (A) in each  
11 language in which the online platform provides  
12 services.

13 (2) CONTENT MODERATION TRANSPARENCY RE-  
14 PORTS.—

15 (A) IN GENERAL.—Beginning 180 days  
16 after the date of enactment of this Act, any on-  
17 line platform (except for a small business) that  
18 engages in content moderation shall publish,  
19 not less than annually, a transparency report of  
20 their content moderation practices.

21 (B) REQUIREMENTS.—

22 (i) IN GENERAL.—The transparency  
23 report required under subparagraph (A)  
24 shall include, if applicable:

1 (I) The total number of content  
2 moderation decisions for the applica-  
3 ble period.

4 (II) The number of content mod-  
5 eration decisions for the applicable pe-  
6 riod broken down by:

7 (aa) Relevant policy, type, or  
8 category of content moderation  
9 undertaken by the online plat-  
10 form.

11 (bb) Whether the content  
12 moderation decision occurred in  
13 response to information regard-  
14 ing organized campaigns or other  
15 coordinated behavior.

16 (cc) Aggregate demographic  
17 information of users who created  
18 the user generated content sub-  
19 jected to content moderation.

20 (dd) Aggregate demographic  
21 information of users targeted by  
22 an algorithmic process involving  
23 content subjected to content  
24 moderation.

1 (ee) Whether the content  
2 moderation occurred through  
3 automated practices, human  
4 labor by the online platform,  
5 labor by any individual that does  
6 not work as a paid employee of  
7 the online platform, or any com-  
8 bination thereof.

9 (ff) In the case of content  
10 moderation that occurred  
11 through human labor by any in-  
12 dividual that does not work for  
13 the online platform, the nature of  
14 such individual's relationship to  
15 the online platform (such as a  
16 user, moderator, State actor, or  
17 representative of an external  
18 partner organization).

19 (gg) The number and per-  
20 centage of content moderation  
21 decisions subject to appeal or  
22 other form of secondary review.

23 (hh) The number and per-  
24 centage of content moderation



1 decisions reversed on appeal or  
2 other form of secondary review.

3 (ii) The number of content  
4 moderation decisions occurring in  
5 response to a government de-  
6 mand or request.

7 (jj) The number of govern-  
8 ment demands or requests for  
9 content moderation broken down  
10 by Federal agency, State, munici-  
11 pality, or foreign nation.

12 (kk) The types of content  
13 moderation decisions made.

14 (ll) Other information that  
15 the Commission, by regulation,  
16 deems appropriate.

17 (III) The ability to cross-ref-  
18 erence each of the different types of  
19 information disclosed pursuant to sub-  
20 clause (II).

21 (ii) ACCESSIBILITY OF REPORT.—The  
22 transparency report required under sub-  
23 paragraph (A) shall be—

1 (I) publicly available to any indi-  
 2 vidual without such individual being  
 3 required to create a user account;

4 (II) conspicuous;

5 (III) accessible;

6 (IV) not misleading; and

7 (V) available in each language in  
 8 which the online platform provides  
 9 services.

10 (iii) ACCESSIBILITY OF REPORT

11 DATA.—The online platform shall—

12 (I) provide any data in the trans-  
 13 parency report required under sub-  
 14 paragraph (A) in a machine-readable  
 15 format; and

16 (II) allow anyone to freely copy  
 17 and use such data.

18 (3) RULE OF CONSTRUCTION.—Nothing in this  
 19 subsection shall require an online platform to collect  
 20 personal information that the online platform would  
 21 not otherwise collect.

22 (c) ADVERTISEMENT LIBRARY.—Beginning 180 days  
 23 after the date of enactment of this Act, any online plat-  
 24 form (except for a small business) that uses personal in-  
 25 formation in combination with an algorithmic process to

1 sell or publish an advertisement shall take all reasonable  
2 steps to maintain a library of such advertisements. The  
3 library shall—

4 (1) be—

5 (A) publicly available to any individual  
6 without such individual being required to create  
7 a user account;

8 (B) conspicuous;

9 (C) accessible;

10 (D) not misleading; and

11 (E) available in each language in which the  
12 online platform provides services;

13 (2) present information in both human- and  
14 machine-readable formats;

15 (3) allow any individual to freely copy and use  
16 the information contained in the library;

17 (4) at a minimum, be searchable by date, loca-  
18 tion, topic, cost, advertiser, keyword, information  
19 disclosed pursuant to paragraph (6), or any other  
20 criteria that the Commission, by regulation, deems  
21 appropriate;

22 (5) contain copies of all advertisements sold or  
23 published by the online platform for 2 years fol-  
24 lowing the sale or publishing of each advertisement;  
25 and

1 (6) for each advertisement entry, include—

2 (A) the content of the advertisement;

3 (B) all targeting criteria selected by the  
4 advertiser, including demographic information  
5 and non-precise geolocation information (except  
6 in the event that including a specific criterion  
7 would disclose personal information);

8 (C) any data the online platform provided  
9 to the advertiser regarding to whom it sold or  
10 published the advertisement, including demo-  
11 graphic information and non-precise geolocation  
12 information (except in the event that including  
13 specific data would disclose personal informa-  
14 tion); and

15 (D) the name of the advertiser, the cost of  
16 the advertisement, the dates the advertisement  
17 was displayed on the online platform, and any  
18 other information that the Commission, by reg-  
19 ulation, deems appropriate.

20 (d) CERTIFICATION.—Not later than 30 days after  
21 making any disclosure required by subsection (a)(1), (b),  
22 or (c), and annually thereafter, an online platform shall  
23 certify the accuracy and completeness of such disclosure.  
24 Such certification shall—

1           (1) be signed, under oath, by the online plat-  
 2           form’s chief executive officer, chief privacy officer,  
 3           chief operating officer, chief information security of-  
 4           ficer, or another senior officer of equivalent stature;

5           (2) attest that the officer described in para-  
 6           graph (1) has personal knowledge sufficient to make  
 7           such certification; and

8           (3) in addition to any annual certification, be  
 9           issued with any material change (which shall not in-  
 10          clude routine additions to or maintenance of entries  
 11          in the advertising library pursuant to subsection  
 12          (c)).

#### 13 **SEC. 5. RIGHT TO DATA PORTABILITY.**

14          In promulgating regulations under this Act, the Com-  
 15          mission shall require an online platform, if the online plat-  
 16          form retains the personal information of a user, to provide  
 17          to the user access to the personal information retained in  
 18          the form of a portable electronic table that—

19               (1) is in a usable and searchable format; and

20               (2) allows the user to transfer such personal in-  
 21          formation from one online platform to another with-  
 22          out hindrance.

#### 23 **SEC. 6. PROHIBITED CONDUCT.**

24          (a) PUBLIC ACCOMMODATIONS.—It shall be unlawful  
 25          for an online platform to employ any proprietary online

1 platform design features, including an algorithmic process,  
2 or otherwise process the personal information of an indi-  
3 vidual in a manner that segregates, discriminates in, or  
4 otherwise makes unavailable the goods, services, facilities,  
5 privileges, advantages, or accommodations of any place of  
6 public accommodation on the basis of an individual's or  
7 class of individuals' actual or perceived race, color, eth-  
8 nicity, religion, national origin, sex, gender, gender iden-  
9 tity, sexual orientation, familial status, biometric informa-  
10 tion, or disability status.

11 (b) EQUAL OPPORTUNITY.—It shall be unlawful for  
12 an online platform to employ any proprietary online plat-  
13 form design features, including an algorithmic process, or  
14 otherwise process the personal information of an indi-  
15 vidual for the purpose of advertising, marketing, soliciting,  
16 offering, selling, leasing, licensing, renting, or otherwise  
17 commercially contracting for housing, employment, credit,  
18 insurance, healthcare, or education opportunities in a  
19 manner that discriminates against or otherwise makes the  
20 opportunity unavailable on the basis of an individual's or  
21 class of individuals' actual or perceived race, color, eth-  
22 nicity, religion, national origin, sex, gender, gender iden-  
23 tity, sexual orientation, familial status, biometric informa-  
24 tion, or disability status.

1       (c) VOTING RIGHTS.—It shall be unlawful for an on-  
2 line platform to process personal information in a manner  
3 that intentionally deprives, defrauds, or attempts to de-  
4 prive or defraud any individual of their free and fair exer-  
5 cise of the right to vote in a Federal, State, or local elec-  
6 tion. Such manner includes:

7           (1) Intentional deception regarding—

8               (A) the time, place, or method of voting or  
9               registering to vote;

10              (B) the eligibility requirements to vote or  
11              register to vote;

12              (C) the counting of ballots;

13              (D) the adjudication of elections;

14              (E) explicit endorsements by any person or  
15              candidate; or

16              (F) any other material information per-  
17              taining to the procedures or requirements for  
18              voting or registering to vote in a Federal, State,  
19              or local election; or

20           (2) Intentionally using deception, threats, in-  
21           timidation, fraud, or coercion to prevent, interfere  
22           with, retaliate against, deter, or attempt to prevent,  
23           interfere with, retaliate against, or deter an indi-  
24           vidual from—

1 (A) voting or registering to vote in a Fed-  
 2 eral, State, or local election; or

3 (B) supporting or advocating for a can-  
 4 didate in a Federal, State, or local election.

5 (d) DISCRIMINATORY ADVERTISING.—

6 (1) IN GENERAL.—Not later than 2 years after  
 7 the date of enactment of this Act, the Commission  
 8 shall promulgate regulations to define and prohibit  
 9 unfair or deceptive acts or practices with respect to  
 10 advertising practices.

11 (2) PERIODIC REVIEW OF REGULATIONS.—The  
 12 Commission shall review such regulations not less  
 13 than once every 5 years and update the regulations  
 14 as appropriate.

15 (3) CONSIDERATIONS.—In promulgating regu-  
 16 lations under this subsection, the Commission shall  
 17 consider:

18 (A) Established public policy, such as civil  
 19 rights laws, to prevent discrimination and pro-  
 20 mote equal opportunity.

21 (B) The state of the art of advertising.

22 (C) Research of and methodologies for  
 23 measuring discrimination in advertising.

24 (D) The role of each actor in the adver-  
 25 tising ecosystem.



1 (E) Any harm caused by predatory or ma-  
 2 nipulative advertising practices, including prac-  
 3 tices targeting vulnerable populations.

4 (F) Whether, and at what age, a minor is  
 5 able to distinguish between editorial content  
 6 and paid advertisements.

7 (G) Methods for fairly promoting equal op-  
 8 portunity in housing, employment, credit, insur-  
 9 ance, education, and healthcare through tar-  
 10 geted outreach to underrepresented populations  
 11 in a fair and non-deceptive manner.

12 (H) The needs of small businesses.

13 (I) Any other criteria the Commission  
 14 deems appropriate.

15 (e) SAFETY AND EFFECTIVENESS OF ALGORITHMIC  
 16 PROCESSES.—

17 (1) IN GENERAL.—It shall be unlawful for an  
 18 online platform to employ an algorithmic process in  
 19 a manner that is not safe and effective.

20 (2) SAFE.—For purposes of paragraph (1), an  
 21 algorithmic process is safe—

22 (A) if the algorithmic process does not  
 23 produce any disparate outcome as described in  
 24 the assessment conducted under section  
 25 4(a)(2)(A)(iv); or

1 (B) if the algorithmic process does produce  
 2 a disparate outcome as described in the assess-  
 3 ment conducted under section 4(a)(2)(A)(iv),  
 4 any such disparate outcome is justified by a  
 5 non-discriminatory, compelling interest, and  
 6 such interest cannot be satisfied by less dis-  
 7 criminatory means.

8 (3) EFFECTIVE.—For purposes of paragraph  
 9 (1), an algorithmic process is effective if the online  
 10 platform employing or otherwise utilizing the algo-  
 11 rithmic process has taken reasonable steps to ensure  
 12 that the algorithmic process has the ability to  
 13 produce its desired or intended result.

14 (f) DISCRIMINATION BY USERS OF ONLINE PLAT-  
 15 FORMS.—It shall be unlawful for a user of an online plat-  
 16 form to utilize an algorithmic process on an online plat-  
 17 form in a manner that—

18 (1) withholds, denies, deprives, or attempts to  
 19 withhold, deny, or deprive any individual of a right  
 20 or privilege under title II of the Civil Rights Act of  
 21 1964 (42 U.S.C. 2000a et. seq.);

22 (2) intimidates, threatens, coerces, or attempts  
 23 to intimidate, threaten, or coerce any individual with  
 24 the purpose of interfering with a right or privilege  
 25 under title II of such Act; or

1           (3) punishes or attempts to punish any indi-  
 2           vidual for exercising or attempting to exercise a  
 3           right or privilege under title II of such Act.

4           (g) EXCEPTIONS.—Nothing in this section shall limit  
 5           an online platform from processing personal information  
 6           for the purpose of —

7           (1) good faith internal testing to prevent unlaw-  
 8           ful discrimination, identify disparate outcomes or  
 9           treatment, or otherwise determine the extent or ef-  
 10          fectiveness of the online platform’s compliance with  
 11          this Act; or

12          (2) advertising, marketing, or soliciting eco-  
 13          nomic opportunities (which shall not be of lower  
 14          quality or contain less desirable terms than similar  
 15          opportunities the online platform advertises, mar-  
 16          kets, or solicits to the general population) to under-  
 17          represented populations in a fair and non-deceptive  
 18          manner.

19          (h) FTC ADVISORY OPINIONS.—An online platform  
 20          may request guidance from the Commission with respect  
 21          to the online platform’s potential compliance with this Act,  
 22          in accordance with the Commission’s rules of practice on  
 23          advisory opinions.

24          (i) PRESERVATION OF RIGHTS AND WHISTLE-  
 25          BLOWER PROTECTIONS; RULES OF CONSTRUCTION.—

1           (1) NO CONDITIONAL SERVICE.—An online  
2 platform may not condition or degrade the provision  
3 of a service or product to an individual based on the  
4 individual’s waiver of any right guaranteed in this  
5 section.

6           (2) NO ARBITRATION AGREEMENT OR WAIV-  
7 ER.—No pre-dispute arbitration agreement or pre-  
8 dispute joint action waiver of any right guaranteed  
9 in this section shall be valid or enforceable with re-  
10 spect to a dispute arising under this Act. Any deter-  
11 mination as to the scope or manner of applicability  
12 of this section shall be made by a court, rather than  
13 an arbitrator, without regard to whether such agree-  
14 ment purports to delegate such determination to an  
15 arbitrator.

16           (3) WHISTLEBLOWER PROTECTION.—An online  
17 platform may not, directly or indirectly, discharge,  
18 demote, suspend, threaten, harass, or in any other  
19 manner discriminate against an individual for re-  
20 porting or attempting to report a violation of this  
21 section.

22           (4) RULE OF CONSTRUCTION.—Nothing in this  
23 section shall be construed to affect the application of  
24 section 230 of the Communications Act of 1934  
25 (commonly known as “section 230 of the Commu-

1       nications Decency Act of 1996”) (47 U.S.C. 230) to  
 2       an online platform or otherwise impose on an online  
 3       platform legal liability for user generated content.

4   **SEC. 7. INTERAGENCY TASK FORCE ON ALGORITHMIC**  
 5       **PROCESSES ON ONLINE PLATFORMS.**

6       (a) ESTABLISHMENT.—The Commission shall estab-  
 7       lish an interagency task force on algorithmic processes on  
 8       online platforms (referred to in this section as the “Task  
 9       Force”) for the purpose of examining the discriminatory  
 10      use of personal information by online platforms in algo-  
 11      rithmic processes.

12      (b) MEMBERSHIP.—

13           (1) IN GENERAL.—The Task Force established  
 14      under this section shall include representatives  
 15      from—

16                   (A) the Commission;

17                   (B) the Department of Education;

18                   (C) the Department of Justice;

19                   (D) the Department of Labor;

20                   (E) the Department of Housing and Urban  
 21      Development;

22                   (F) the Department of Commerce;

23                   (G) the Department of Health and Human  
 24      Services;

25                   (H) the Department of Veterans Affairs;

1 (I) the Equal Employment Opportunity  
2 Commission;

3 (J) the Consumer Financial Protection Bu-  
4 reau;

5 (K) the Federal Communications Commis-  
6 sion;

7 (L) the Federal Elections Commission; and

8 (M) the White House Office of Science and  
9 Technology Policy.

10 (2) CHAIR.—The Task Force shall be co-  
11 chaired by 1 representative of the Commission and  
12 1 representative of the Department of Justice.

13 (3) STAFF.—The Task Force shall hire such  
14 other personnel, including individuals with expertise  
15 in the intersection of civil rights and technology, as  
16 may be appropriate to enable the Task Force to per-  
17 form its duties.

18 (c) STUDY AND REPORT.—

19 (1) STUDY.—The Task Force shall conduct a  
20 study on the discriminatory use of personal informa-  
21 tion by online platforms in algorithmic processes.  
22 Such study shall include the following:

23 (A) Discriminatory use of personal infor-  
24 mation in the advertisement of (including the

1 withholding of an advertisement) housing op-  
2 portunities.

3 (B) Discriminatory use of personal infor-  
4 mation in the advertisement of (including the  
5 withholding of an advertisement) credit, lend-  
6 ing, or other financial services opportunities.

7 (C) Discriminatory use of personal infor-  
8 mation in the advertisement of (including the  
9 withholding of an advertisement) employment  
10 opportunities.

11 (D) Discriminatory use of personal infor-  
12 mation in the advertisement of (including the  
13 withholding of an advertisement) education op-  
14 portunities.

15 (E) Discriminatory use of personal infor-  
16 mation in the advertisement of (including the  
17 withholding of an advertisement) insurance op-  
18 portunities.

19 (F) Discriminatory use of personal infor-  
20 mation or biometric information by employers  
21 in the surveillance or monitoring of workers.

22 (G) Discriminatory use of personal infor-  
23 mation on online platforms involved in hiring  
24 screening practices.

1 (H) Discriminatory use of personal infor-  
2 mation or biometric information in education,  
3 including the use of—

4 (i) student personal information for  
5 predictive forecasting on student ability or  
6 potential for purposes of admissions deci-  
7 sions; and

8 (ii) automated proctoring software  
9 that monitors, analyzes, or otherwise proc-  
10 esses student biometric information to  
11 identify suspicious behavior, including any  
12 discriminatory outcomes associated with  
13 the use of such software.

14 (I) Discriminatory use of user biometric  
15 information.

16 (J) Use of personal information by  
17 disinformation campaigns for the purpose of po-  
18 litical disenfranchisement.

19 (K) Any other discriminatory use of per-  
20 sonal information.

21 (2) REPORT.—Not later than 180 days after  
22 the date of enactment of this Act, and biennially  
23 thereafter, the Task Force shall submit to Congress  
24 a report containing the results of the study con-  
25 ducted under paragraph (1), together with rec-



1       ommendations for such legislation and administra-  
2       tive action as the Task Force determines appro-  
3       prium.

4       (d) FUNDING.—Out of any money in the Treasury  
5       not otherwise appropriated, there are appropriated to the  
6       Commission such sums as are necessary to carry out this  
7       section. Amounts appropriated under the preceding sen-  
8       tence shall remain available until expended.

9       **SEC. 8. ENFORCEMENT.**

10       (a) ENFORCEMENT BY THE COMMISSION.—

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

17               (2) POWERS OF THE COMMISSION.—

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

1 (B) PRIVILEGES AND IMMUNITIES.—Any  
 2 person who violates this Act or a regulation  
 3 promulgated under this Act shall be subject to  
 4 the penalties and entitled to the privileges and  
 5 immunities provided in the Federal Trade Com-  
 6 mission Act (15 U.S.C. 41 et seq.).

7 (C) AUTHORITY PRESERVED.—Nothing in  
 8 this Act shall be construed to limit the author-  
 9 ity of the Commission under any other provi-  
 10 sion of law.

11 (3) RULEMAKING.—The Commission shall pro-  
 12 mulgate in accordance with section 553 of title 5,  
 13 United States Code, such rules as may be necessary  
 14 to carry out this Act.

15 (b) ENFORCEMENT BY STATES.—

16 (1) AUTHORIZATION.—Subject to paragraph  
 17 (2), in any case in which the attorney general of a  
 18 State has reason to believe that an interest of the  
 19 residents of the State has been or is adversely af-  
 20 fected by the engagement of any person in an act or  
 21 practice that violates this Act or a regulation pro-  
 22 mulgated under this Act, the attorney general of the  
 23 State may, as *parens patriae*, bring a civil action on  
 24 behalf of the residents of the State in an appropriate  
 25 district court of the United States to—

1 (A) enjoin that act or practice;

2 (B) enforce compliance with this Act or the  
3 regulation;

4 (C) obtain damages, civil penalties, restitu-  
5 tion, or other compensation on behalf of the  
6 residents of the State; or

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

9 (2) RIGHTS OF THE COMMISSION.—

10 (A) NOTICE TO THE COMMISSION.—

11 (i) IN GENERAL.—Except as provided  
12 in clause (iii), the attorney general of a  
13 State shall notify the Commission in writ-  
14 ing that the attorney general intends to  
15 bring a civil action under paragraph (1)  
16 before initiating the civil action against a  
17 person subject to this Act.

18 (ii) CONTENTS.—The notification re-  
19 quired by clause (i) with respect to a civil  
20 action shall include a copy of the complaint  
21 to be filed to initiate the civil action.

22 (iii) EXCEPTION.—If it is not feasible  
23 for the attorney general of a State to pro-  
24 vide the notification required by clause (i)  
25 before initiating a civil action under para-

1 graph (1), the attorney general shall notify  
 2 the Commission immediately upon insti-  
 3 tuting the civil action.

4 (B) INTERVENTION BY THE COMMIS-  
 5 SION.—The Commission may—

6 (i) intervene in any civil action  
 7 brought by the attorney general of a State  
 8 under paragraph (1); and

9 (ii) upon intervening—

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

12 (II) file petitions for appeal of a  
 13 decision in the civil action.

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

22 (4) ACTION BY THE COMMISSION.—If the Com-  
 23 mission institutes a civil action with respect to a vio-  
 24 lation of this Act, the attorney general of a State  
 25 may not, during the pendency of the action, bring a

1 civil action under paragraph (1) against any defend-  
 2 ant named in the complaint of the Commission for  
 3 the violation with respect to which the Commission  
 4 instituted such action.

5 (5) VENUE; SERVICE OF PROCESS.—

6 (A) VENUE.—Any action brought under  
 7 paragraph (1) may be brought in the district  
 8 court of the United States that meets applicable  
 9 requirements relating to venue under section  
 10 1391 of title 28, United States Code.

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

14 (i) is an inhabitant; or

15 (ii) may be found.

16 (c) ENFORCEMENT BY THE DEPARTMENT OF JUS-  
 17 TICE.—

18 (1) IN GENERAL.—The Attorney General may  
 19 bring a civil action to enforce section 6(a), (b), (c),  
 20 (e), (f), or (i) in an appropriate district court of the  
 21 United States.

22 (2) COORDINATION WITH THE COMMISSION.—

23 The Attorney General shall, when reasonable and  
 24 appropriate, consult and coordinate with the Com-

1 mission on a civil action brought under paragraph  
2 (1).

3 (3) RELIEF.—In any civil action brought under  
4 paragraph (1), the court may impose injunctive re-  
5 lief, declaratory relief, damages, civil penalties, res-  
6 titution, and any other relief the court deems appro-  
7 priate.

8 (d) ENFORCEMENT BY INDIVIDUALS.—

9 (1) IN GENERAL.—Any individual alleging a  
10 violation of section 6(a), (b), or (c), or a regulation  
11 promulgated thereunder, may bring a civil action in  
12 any court of competent jurisdiction, State or Fed-  
13 eral.

14 (2) RELIEF.—In a civil action brought under  
15 paragraph (1) in which the plaintiff prevails, the  
16 court may award—

17 (A) an amount equal to \$2,500 or actual  
18 damages, whichever is greater;

19 (B) punitive damages;

20 (C) reasonable attorney's fees and litiga-  
21 tion costs; and

22 (D) any other relief, including injunctive or  
23 declaratory relief, that the court determines ap-  
24 propriate.

○