

117TH CONGRESS
1ST SESSION

S. 2725

To amend the Communications Decency Act to remove immunity for online firearms marketplaces, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 13, 2021

Mr. BLUMENTHAL (for himself, Mrs. FEINSTEIN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Decency Act to remove immunity for online firearms marketplaces, 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 “Accountability for On-
5 line Firearms Marketplaces Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The core purpose of section 230 of the
9 Communications Act of 1934 (47 U.S.C. 230) (com-

1 monly known as the “Communications Decency
2 Act”) (referred to in this section as “Section 230”)
3 is to provide a specific protection for online plat-
4 forms acting as Good Samaritans to stop online
5 abuse. Specifically, Section 230 states that providers
6 of interactive computer services will not be treated
7 as publishers or speakers of user-generated content.
8 In turn, the provision entrusted providers to act as
9 Good Samaritans to police their platforms by block-
10 ing and screening offensive content.

11 (2) Section 230 bars actions that hold providers
12 liable as publishers of third-party content, but the
13 statute is irrelevant to claims unrelated to such pub-
14 lications. If a claim does not treat the defendant as
15 a publisher, Section 230 should not apply.

16 (3) However, courts have interpreted Section
17 230 as providing sweeping immunity for a broad
18 array of providers, including providers alleged to
19 have facilitated violations of criminal laws online.
20 This interpretation is overly broad and discourages
21 the self-policing that Section 230 intended to
22 incentivize.

23 (4) In *Daniel v. Armslist*, the Wisconsin Su-
24 preme Court read Section 230 to bar claims against
25 an online firearms marketplace. The court’s decision

1 swept so broadly as to cover websites designed to en-
2 courage and facilitate firearms trafficking in viola-
3 tion of chapter 44 of title 18, United States Code.

4 (5) Online firearms marketplaces have made it
5 increasingly easy for people who are prohibited from
6 gun ownership to purchase guns online. Online fire-
7 arms marketplaces facilitate such sales because
8 while Federal law requires licensed gun dealers to
9 perform background checks on prospective buyers, it
10 does not require unlicensed sellers to do so. For
11 more than a decade, online firearms marketplaces
12 have exploited this legal loophole by allowing unli-
13 censed sellers to sell guns directly to people prohib-
14 ited from gun ownership.

15 (6) Every year, unlicensed sellers post more
16 than 1,000,000 advertisements on online firearms
17 marketplaces in States that do not legally require a
18 background check. Individuals with criminal his-
19 tories and other prohibited purchasers rely on these
20 postings to evade basic background check laws and
21 procure firearms. One study found that nearly 1 in
22 9 prospective gun buyers who respond to advertise-
23 ments from unlicensed sellers on a major online fire-
24 arms marketplace would not pass a background
25 check, which is a rate that is 7 times higher than

1 the denial rate in contexts where background checks
 2 are required.

3 (7) Congress did not intend for Section 230 to
 4 bar otherwise valid claims against online firearms
 5 marketplaces for their own design of a website that
 6 encourages and contributes to its users circum-
 7 venting Federal laws, including Federal gun laws.

8 **SEC. 3. PROTECTION OF VICTIMS OF GUN VIOLENCE.**

9 Section 230 of the Communications Act of 1934 (47
 10 U.S.C. 230) is amended—

11 (1) in subsection (c)—

12 (A) in paragraph (1), by striking “No pro-
 13 vider” and inserting “Except as provided in
 14 paragraph (3), no provider”; and

15 (B) by adding at the end the following:

16 “(3) TREATMENT OF PUBLISHER OR SPEAKER
 17 DOES NOT APPLY TO ONLINE FIREARMS MARKET-
 18 PLACE.—Paragraph (1) shall not apply to an online
 19 firearms marketplace, for purposes of any claim in
 20 an action brought against the online firearms mar-
 21 ketplace in its capacity as an online firearms mar-
 22 ketplace.”; and

23 (2) in subsection (f), by adding at the end the
 24 following:

1 “(5) ONLINE FIREARMS MARKETPLACE.—The
2 term ‘online firearms marketplace’ means an inter-
3 active computer service that—

4 “(A) facilitates transactions related to fire-
5 arms, firearms accessories, firearms equipment,
6 and other firearms-related materials;

7 “(B) advertises or makes available any
8 posting or listing of any statement by a trans-
9 feror or by a transferee that could be reason-
10 able inferred to propose the transfer of a fire-
11 arm; or

12 “(C) makes digital instructions in the form
13 of Computer Aided Design files or other code
14 that can automatically program a 3-dimensional
15 printer or similar device to produce a firearm or
16 complete a firearm from an unfinished frame or
17 receiver,

18 regardless of whether such transactions or other ac-
19 tivities violate the terms of service of the interactive
20 computer services.

21 “(6) FIREARM.— The term ‘firearm’ has the
22 meaning given the term in section 921(a) of title 18,
23 United States Code.”.

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