To amend the Communications Act of 1934 to provide that, under certain circumstances, an interactive computer service provider that allows for the proliferation of health misinformation through that service shall be treated as the publisher or speaker of that misinformation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Health Misinformation Act of 2021”.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3

4 This Act may be cited as the “Health Misinformation

5 Act of 2021”.
SEC. 2. FINDINGS.

Congress finds the following:

(1) Access to accurate and reliable information is crucial for public health and safety during a national emergency or crisis, such as the COVID–19 pandemic.

(2) On January 27, 2020, the Secretary of Health and Human Services determined that a public health emergency existed under section 319 of the Public Health Service Act (42 U.S.C. 247d) as a result of confirmed cases of COVID–19 in the United States.

(3) As of the date of enactment of this Act, in the United States, there have been more than 34,000,000 cases of COVID–19 and more than 600,000 deaths resulting from COVID–19.

(4) Since the declaration of the public health emergency described in paragraph (2), misinformation and disinformation relating to COVID–19 have spread at an alarming rate, which has—

(A) hindered the public response efforts of Federal, State, local, and indigenous leaders; and

(B) endangered lives.

(5) The COVID–19 pandemic is the first pandemic in human history during which—
(A) the internet is being used to keep individuals informed and connected; and

(B) misinformation and disinformation about the disease, and about treatments and preventative measures with respect to the disease, including vaccines, have proliferated on the internet and through the use of social media.

(6) Features that are built into technology platforms have contributed to the spread of misinformation and disinformation, with social media platforms incentivizing individuals to share content to get likes, comments, and other positive signals of engagement, which rewards engagement rather than accuracy.

(7) Social media companies use algorithms that determine what material users see online, and those algorithms often prioritize content based on the popularity of the content, or similarity to previously seen content, which means that a user exposed to information once could see more of that kind of information over time, furthering the effects of misinformation and disinformation.

(8) One study has found that as much as 65 percent of misinformation and disinformation on the
internet and social media relating to the COVID–19 vaccines can be traced back to 12 individuals and another study has found that even brief exposure to misinformation relating to the COVID–19 vaccines makes individuals less likely to want to receive one of those vaccines.

(9) The COVID–19 pandemic remains an ongoing threat and there is a need to ensure that social media platforms do their part in promoting accurate scientific information to users of those platforms.

SEC. 3. TREATMENT OF PUBLISHER OR SPEAKER.

(a) In General.—Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended—

(1) in subsection (c)(1)—

(A) by striking “No provider” and inserting the following:

“(A) In General.—Except as provided in subparagraph (B), no provider”; and

(B) by adding at the end the following:

“(B) Exception.—A provider of an interactive computer service shall be treated as the publisher or speaker of health misinformation that is created or developed through the interactive computer service during a covered period if the provider promotes that health misin-
formation through an algorithm used by the
provider (or similar software functionality), ex-
cept that this subparagraph shall not apply if
that promotion occurs through a neutral mecha-
nism, such as through the use of chronological
functionality.”; and
(2) in subsection (f), by adding at the end the
following:
“(5) COVERED PERIOD.—The term ‘covered pe-
riod’ means a period during which a public health
emergency declared by the Secretary of Health and
Human Services under section 319 of the Public
Health Service Act (42 U.S.C. 247d), including a re-
newal of any such declaration, is in effect.”.
(b) GUIDANCE.—Not later than 30 days after the
date of enactment of this Act, the Secretary of Health and
Human Services, in consultation with the heads of other
relevant Federal agencies and outside experts determined
appropriate by the Secretary, shall issue guidance regard-
ing what constitutes health misinformation for the pur-
poses of subparagraph (B) of section 230(c)(1) of the
Communications Act of 1934 (47 U.S.C. 230(c)(1)), as
added by subsection (a) of this section.