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Industry, Advocates Opposed

## Sens. Manchin, Cornyn File CDA S. 230 Bill to Combat Illegal Drugs

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A bipartisan pair of senators introduced legislation Tuesday to amend Communications Decency Act Section 230 and require platforms to report illegal drug sales and other illicit activity. Tech industry and privacy advocates oppose the bill. Experts raised issues with proposals aimed at amending industry's liability shield, in interviews.

Introduced by Sens. Joe Manchin, D-W.Va., and John Cornyn, R-Texas, the See Something, Say Something Online Act would require platforms to report drug activity similar to the way banks "report suspicious transactions over \$10,000" or other potential criminal acts. Companies could be held liable if they fail to report, and they "must take reasonable steps to prevent or address unlawful activity." Based on the Bank Secrecy Act, the bill would create a DOJ office to "act as the clearinghouse for these reports." Manchin has threatened the tech industry with Section 230 legislation for months (see [1908230043](#)).

The internet rapidly changed, and the U.S. failed to keep up, Manchin [tweeted](#): "Now we must amend Section 230 to reflect the way the Internet impacts our lives today."

Attempts to rewrite 230 with concrete terms for defining content moderation liability were made in an effort to shield President Donald Trump's disinformation, said Access Now Legislative Manager Jennifer Brody. Proposals from DOJ (see [2009230060](#)) and Sens. Roger Wicker, R-Miss., Lindsey Graham, R-S.C., and Marsha Blackburn, R-Tenn. (see [2009080082](#)) seek to define 230's language. Trump doesn't like that he's not allowed to tweet or say anything he wants, and he's fueling baseless claims of anti-conservative bias, Brody said. She argued the legislative discussion about the section is missing the bigger issue: tech platform business models. Platforms are incentivized to spread hateful and inflammatory content, she said, and until that systemic issue is resolved, any modifications to 230 are Band-Aids.

Recent statutory proposals focused on two major categories, said New America's Open Technology Institute Senior Policy Counsel Koustubh Bagchi. The first focuses on debunked claims of anti-GOP bias on social media platforms, he said, citing proposals from DOJ, Wicker-Graham and NTIA's petition for rulemaking with the FCC (see [2009240058](#)). These Republican proposals appear to be messaging bills intended to earn political points, he

said: They threaten platforms' ability to remove harmful content. The second category like the legislation from Manchin-Cornyn and the Earn It Act (see [2008050039](#)), pressure platforms to "affirmatively monitor" user communications through a "should have known" standard, said Bagchi: This threatens end-to-end encryption.

The Senate Judiciary Committee is to mark up the Online Content Policy Modernization Act (S-4632) Thursday (see [2009240049](#)). It appears Graham added Section 230 language to the Case Act so his committee has jurisdiction over CDA's 230, said Re:Create Coalition Executive Director Joshua Lamel. The added language will make the legislation more difficult to pass because it's a nonstarter with Democrats, he said. Re:Create opposes the legislation as an unconstitutional measure with Seventh Amendment issues (see [1910210039](#)).

The R Street Institute, Access Now, Center for Democracy and Technology, Computer and Communications Industry Association, Engine, Public Knowledge, New America's Open Technology Institute and others wrote a [letter](#) Tuesday opposing the Online Content Policy Modernization Act.

The Manchin-Cornyn bill is another "slippery-slope" attempt to reform 230, said Hinch Newman's Richard Newman. The chipping away at this portion has perhaps partly been driven by a focus on public safety and concerns about selective censorship of political opinion, he said.

The Internet Association and NetChoice opposed the Manchin-Cornyn legislation. The bill would put platforms in "the impossible position of determining what is or isn't evidence of a crime, with crippling liability for failing to make the correct determination," said IA Deputy General Counsel Elizabeth Banker. "This could result in an enormous amount of user information being shared with the government, with little constraint on its use."

The bill would force platforms to send communication from groups like Black Lives Matter and anti-abortion activists to law enforcement because platforms "would need to take a better-safe-than-sorry approach to maintain protection from liability," NetChoice Vice President Carl Szabo said: The bill would skirt Fourth Amendment protections and turn social media platforms into a law enforcement arm.