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1ST SESSION

S. 2918

To keep children safe and protect their interests on the internet, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30, 2021

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

A BILL

To keep children safe and protect their interests on the internet, 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 “Kids Internet Design
5 and Safety Act” or the “KIDS Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Children increasingly consume digital enter-
9 tainment on the internet and are uniquely suscep-
10 tible to manipulation online, given their lack of im-

portant neurological and psychological capabilities which are developed later in adulthood.

(2) Today’s digital media environment, which is constantly evolving and now includes high-tech experiences, such as augmented reality and virtual reality, is largely designed in non-transparent ways to ensure children interact with content that reflect the interests and goals of content producers, online platforms, and marketers.

(3) Artificial intelligence, machine learning, and other complex systems are used to make continuous decisions about how online content for children can be personalized to increase engagement.

(4) Online companies gather, analyze, and use data for behavioral marketing directed at children.

(5) Companies employ sophisticated strategies, including neuromarketing, to affect consumer behavior and manipulate online users’ decision making.

(6) Branded content in various forms of multimedia, including native advertising and influencer marketing, exposes children to marketing that is inherently manipulative or purposely disguised as entertainment or other information.

SEC. 3. DEFINITIONS.

(a) IN GENERAL.—In this Act:

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

12 (2) COMMISSION.—The term “Commission”
 13 means the Federal Trade Commission.

14 (3) CONSTRUCTIVE KNOWLEDGE.—

15 (A) IN GENERAL.—The term “constructive
 16 knowledge” means, for purposes of section 4,
 17 with respect to knowledge that a user of an on-
 18 line platform is a covered user, knowledge that
 19 is imputed to the operator of the online plat-
 20 form if—

21 (i) the operator directly or indirectly
 22 collects, uses, profiles, buys, sells, classi-
 23 fies, or analyzes (using an algorithmic
 24 process or other form of data analytics)
 25 data about the user to estimate, identify,

1 or classify the age, age range, or proxy
2 thereof;

3 (ii) the operator has or receives data
4 or reporting related to the age of the user
5 on the online platform under the self-regu-
6 latory guidelines described in section 1304
7 of the Children’s Online Privacy Protection
8 Act of 1998 (15 U.S.C. 6503) that docu-
9 ments risks and controls, including the ex-
10 istence of operator-controlled data ana-
11 lytics and content analytics capabilities and
12 functions or outputs;

13 (iii) the operator has or receives com-
14 plaints from parents or other third parties
15 about the age of the user, whether through
16 the operator’s complaint mechanism, by
17 email, or other means conveniently acces-
18 sible by such parents or third parties;

19 (iv) the operator has or receives data
20 or reporting or information from the oper-
21 ator’s internal communications, including
22 documentation about its advertising prac-
23 tices, such as an advertisement insertion
24 order, or other promotional material to
25 marketers, that indicates that data is being

1 collected from the user because the user is
2 within a particular age range; or

3 (v) the operator knows that—

4 (I) a provider of content on the
5 platform communicates to an adver-
6 tising network that the content is in-
7 tended for users of a particular age
8 range or likely to appeal to users of a
9 particular age range, whether directly
10 or indirectly; and

11 (II) the user is shown that con-
12 tent.

13 (B) ADDITIONAL FACTORS.—The Commis-
14 sion may issue guidance or promulgate rules in
15 accordance with section 553 of title 5, United
16 States Code, that indicate factors, in addition
17 to those described in subparagraph (A), that
18 should be considered to be constructive knowl-
19 edge for purposes of this Act.

20 (4) COVERED USER.—The term “covered user”
21 means an individual under the age of 16.

22 (5) DIRECTED TO CHILDREN.—The term “di-
23 rected to children” means the targeting of covered
24 users by an online platform or portion of an online

1 platform, as demonstrated by, with respect to such
 2 platform or portion of a platform—

3 (A) its subject matter;

4 (B) its visual content;

5 (C) the use of animated characters or
 6 child-oriented activities for children and related
 7 incentives;

8 (D) music or other audio content;

9 (E) the age of models used;

10 (F) the presence of—

11 (i) child celebrities; or

12 (ii) celebrities who appeal to covered
 13 users;

14 (G) the language used;

15 (H) advertising content used on, or used to
 16 advertise, such platform; or

17 (I) reliable empirical evidence relating to—

18 (i) the composition of the audience of
 19 such platform; and

20 (ii) the intended audience of such
 21 platform.

22 (6) HOST-SELLING.—The term “host-selling”
 23 refers to commercial video content that features the
 24 same characters or individuals as in the adjacent
 25 noncommercial content.

1 (7) INFLUENCER MARKETING.—The term
 2 “influencer marketing” means a tactic by which a
 3 company compensates individuals who are deemed to
 4 have the potential to review, promote, or sell a prod-
 5 uct or service online to an intended target audience.

6 (8) ONLINE PLATFORM.—The term “online
 7 platform” means any public-facing website, online
 8 service, online application, or mobile application
 9 which is operated for commercial purposes.

10 (9) OPERATOR.—The term “operator” means
 11 any person who, for commercial purposes, in inter-
 12 state or foreign commerce, operates or provides an
 13 online platform.

14 (10) PERSON.—The term “person” means any
 15 individual, partnership, corporation, trust, estate, co-
 16 operative, association, or other entity.

17 **SEC. 4. REGULATION OF ACTS AND PRACTICES ON CHILD-**
 18 **DIRECTED PLATFORMS.**

19 (a) PROHIBITION ON CERTAIN INTERFACE ELE-
 20 MENTS.—

21 (1) IN GENERAL.—

22 (A) PROHIBITION.—It is unlawful for an
 23 operator to operate or provide—

24 (i) an online platform or a portion of
 25 an online platform directed to children that

incorporates an interface element described
in subparagraph (B); and

(ii) any online platform that employs
an interface element described in subpara-
graph (B) with respect to a user if the op-
erator has actual or constructive knowledge
that the user is a covered user.

(B) INTERFACE ELEMENTS DESCRIBED.—

The interface elements described in this sub-
paragraph are the following:

(i) Any auto-play setting that, without
input from the covered user, commences
additional video content directly following
the video content initially selected by the
user.

(ii) Messages or alerts that encourage
a covered user who is not actively using
the platform to engage with the platform.

(iii) Displaying the quantity of posi-
tive engagement or feedback that a covered
user has received from other users.

(iv) Any interface element or setting
that unfairly encourages a covered user,
due to their age or inexperience, to share
personal information, submit content, or

1 spend more time engaging with the plat-
 2 form.

3 (v) Any interface element that pro-
 4 vides a covered user with badges or other
 5 visual award symbols based on elevated
 6 levels of engagement with the platform.

7 (vi) Any interface element that maxi-
 8 mizes a covered user's spending on the
 9 platform, unfairly encourages a covered
 10 user to spend money on the platform, fa-
 11 cilitates a financial transaction by a cov-
 12 ered user on the platform without notifica-
 13 tion to the covered user's parent, or facili-
 14 tates a financial transaction by a covered
 15 user on the platform that is not in the in-
 16 terest of the covered user.

17 (2) RULEMAKING.—Not later than 1 year after
 18 the date of enactment of this Act and not less fre-
 19 quently than every 5 years thereafter, the Commis-
 20 sion shall promulgate regulations under section 553
 21 of title 5, United States Code, that establish any ad-
 22 ditions or exceptions to the prohibitions under para-
 23 graph (1). The Commission may only establish such
 24 an exception on the basis that the exception is nec-
 25 essary to provide essential functionality for an online

1 platform and is consistent with the best interests of
 2 covered users.

3 (b) PROHIBITION ON AMPLIFICATION OF CERTAIN
 4 CONTENT; USER REPORTING MECHANISM.—

5 (1) IN GENERAL.—It shall be unlawful for an
 6 operator to operate or provide—

7 (A) an online platform or portion of an on-
 8 line platform directed to children that employs
 9 an algorithmic process described in paragraph
 10 (2) on the platform;

11 (B) any online platform that employs an
 12 algorithmic process described in paragraph (2)
 13 with respect to a user of the platform if the op-
 14 erator of the platform has actual or construc-
 15 tive knowledge that the user is a covered user;
 16 and

17 (C) an online platform that does not in-
 18 clude a mechanism for users or other third par-
 19 ties to report suspected violations of any re-
 20 quirement of this paragraph.

21 (2) ALGORITHMIC PROCESS DESCRIBED.—An
 22 algorithmic process described in this paragraph is an
 23 algorithmic process that amplifies, promotes, or en-
 24 courages covered users' consumption of videos and
 25 other forms of content that—

1 (A) are of a non-educational nature (as de-
 2 termined by the Commission); and

3 (B) involve—

4 (i) sexual material;

5 (ii) promotion of physical or emotional
 6 violence or activities that can reasonably be
 7 assumed to result in physical or emotional
 8 harm, including self-harm, use of weapons,
 9 and bullying;

10 (iii) activities that are unlawful for
 11 covered users to engage in or the pro-
 12 motion of such activities; or

13 (iv) wholly commercial content that is
 14 not reasonably recognizable as such to a
 15 covered user.

16 (c) PROHIBITION ON CERTAIN ADVERTISING METH-
 17 ODS.—

18 (1) IN GENERAL.—It shall be unlawful for an
 19 online operator to operate or provide—

20 (A) an online platform or portion of an on-
 21 line platform directed to children that employs
 22 an algorithmic process to present any of the
 23 content described in paragraph (2) to users of
 24 the platform; and

1 (B) any online platform that employs an
2 algorithmic process to present any of the con-
3 tent described in paragraph (2) to a covered
4 user if the operator of the platform has actual
5 or constructive knowledge that the user is a
6 covered user.

7 (2) CONTENT DESCRIBED.—The content de-
8 scribed in this paragraph is the following:

9 (A) Content that includes host-selling.

10 (B) Program-length advertisements.

11 (C) Influencer marketing.

12 (D) Online advertising or material with
13 considerable commercial content involving alco-
14 hol, nicotine, or tobacco.

15 (E) Online advertising or material with
16 considerable commercial content with any
17 imbedded interactive elements that take advan-
18 tage of covered users' inexperience or credulity
19 in noncommercial child-directed content.

20 (F) Content that includes product place-
21 ment.

22 (3) PROGRAM-LENGTH ADVERTISEMENT.—For
23 purposes of this subsection, the term “program-
24 length advertisement” shall be defined by the Com-
25 mission through regulation or other public guidance.

1 (d) PROHIBITION ON USE OF PERSONAL INFORMA-
 2 TION.—It shall be unlawful for an online platform to use
 3 age verification information collected from a covered user
 4 for any commercial purpose if—

5 (1) the online platform is directed to children;
 6 or

7 (2) the operator of the online platform has con-
 8 structive knowledge that the user is a covered user.

9 (e) REQUIREMENT TO DISTINGUISH COMMERCIAL
 10 CONTENT FROM NONCOMMERCIAL CONTENT.—The Com-
 11 mission shall promulgate regulations in accordance with
 12 section 553 of title 5, United States Code, to require any
 13 online platform or portion of an online platform that is
 14 directed to children, or with respect to which the operator
 15 of the platform or portion of the platform has constructive
 16 knowledge that covered users use the platform or portion
 17 of the platform, to incorporate online visual elements or
 18 other indicators that distinguish commercial content from
 19 noncommercial content.

20 (f) RULEMAKING.—The Commission shall promul-
 21 gate, in accordance with section 553 of title 5, United
 22 States Code, such rules as may be necessary to carry out
 23 this section.

24 (g) EFFECTIVE DATE.—The requirements of this
 25 section shall apply to online platforms beginning on the

1 date that is 1 year after the date of enactment of this
2 Act.

3 **SEC. 5. ONLINE CONTENT LABELING.**

4 (a) CONTENT LABELING SYSTEM REPORT.—Not
5 later than the date that is 1 year after the date of enact-
6 ment of this Act, the Commission shall submit to Congress
7 a report—

8 (1) containing recommendations for a labeling
9 system to allow covered users and parents to identify
10 noncommercial, educational, and enriching content
11 for covered users online; and

12 (2) addressing considerations regarding how
13 such labeling system should—

14 (A) analyze content based on evidence-
15 based criteria;

16 (B) employ an easy-to-understand visual
17 cue for parents to identify content described in
18 paragraph (1);

19 (C) receive regular review to determine its
20 effectiveness; and

21 (D) include a mechanism for users to re-
22 port to the Commission complaints of mis-
23 labeled content and for the Commission to rem-
24 edy such instances of mislabeled content.

1 (b) CONSULTATION.—The report described in sub-
2 section (a) shall be developed by the Commission in con-
3 sultation with an advisory board, to be created and con-
4 vened by the Commission, which is comprised of experts
5 in child development, child health, education, and media.

6 **SEC. 6. TRANSPARENCY AND AUDITING.**

7 (a) TRANSPARENCY.—The Commission shall promul-
8 gate regulations in accordance with section 553 of title
9 5, United States Code, requiring an operator of an online
10 platform which is directed to children to publish and main-
11 tain a publicly accessible digital record of the viewable or
12 playable content of each such platform. Such regulations
13 shall require the operator to ensure that such record does
14 not include personal information (as defined in section
15 1302 of the Children’s Online Privacy Protection Act of
16 1998 (15 U.S.C. 6501)) or, as appropriate, user-generated
17 content.

18 (b) ANNUAL PLATFORM AUDITS.—The regulations
19 promulgated pursuant to subsection (a) shall include the
20 establishment of an annual audit process, to be conducted
21 by the Commission during the 5-year period subsequent
22 to the date of enactment of this Act, for each of the 25
23 online platforms directed to children with the highest total
24 number of covered users, to evaluate the level of compli-

1 ance by each such platform with the requirements under
2 this Act.

3 (c) REPORT.—The Commission shall submit annual
4 reports to Congress based on the audits described in sub-
5 section (b) that—

6 (1) describe the level of compliance by the plat-
7 forms described in such subsection with the require-
8 ments under this Act; and

9 (2) provide recommendations for such legisla-
10 tion and administrative actions as the Commission
11 determines appropriate based on the audit findings.

12 **SEC. 7. GRANT PROGRAM.**

13 (a) ESTABLISHMENT.—

14 (1) IN GENERAL.—The Secretary of Commerce
15 (in this section referred to as the “Secretary”) shall
16 make grants to eligible persons to foster the creation
17 and promotion of advertisement-free and educational
18 online content (such as videos and applications) for
19 covered users.

20 (2) ELIGIBLE PERSON.—For purposes of this
21 section, the term “eligible person” means a person
22 that has submitted an application, as approved by
23 the Secretary pursuant to the eligibility require-
24 ments developed under subsection (b), for the cre-

1 ation and promotion of advertisement-free and edu-
 2 cational online content for covered users.

3 (b) ADVISORY COUNCIL.—The Secretary shall estab-
 4 lish and convene an Advisory Council on Children’s Online
 5 Content, which shall be—

6 (1) comprised of experts in education, child de-
 7 velopment, psychology, online media, and other re-
 8 lated disciplines; and

9 (2) tasked with developing evidence-based cri-
 10 teria for grant eligibility and grant distribution.

11 (c) AUTHORIZATION OF APPROPRIATIONS.—

12 (1) IN GENERAL.—To carry out this section,
 13 there is authorized to be appropriated—

14 (A) for fiscal year 2022, \$4,000,000;

15 (B) for fiscal year 2023, \$8,000,000;

16 (C) for fiscal year 2024, \$10,000,000; and

17 (D) for fiscal year 2025, \$12,000,000.

18 (2) AVAILABILITY OF FUNDS.—Any amount ap-
 19 propriated under this subsection for any fiscal year
 20 shall remain available for the purposes of carrying
 21 out any application approved during such fiscal year
 22 for an additional period of 1 year after the end of
 23 such fiscal year.

1 **SEC. 8. FEDERAL TRADE COMMISSION STUDY.**

2 Not later than 1 year after the date of enactment
3 of this Act, the Commission shall conduct and publish a
4 study, using any compulsory processes available to the
5 Commission as necessary, relying on public data and infor-
6 mation if available and sufficient, and incorporating public
7 comment, on harms resulting from interface elements and
8 advertising methods on online platforms that are directed
9 to children (and best practices for avoiding such harms),
10 including the following:

11 (1) The use of algorithmic processes and any
12 other automated systems used for non-commercial
13 content recommendation or amplification on plat-
14 forms that are directed to covered users.

15 (2) The effect of algorithmic processes and any
16 other automated systems used for non-commercial
17 content recommendation or amplification on plat-
18 forms that are directed to covered users.

19 **SEC. 9. ADMINISTRATION AND ENFORCEMENT.**

20 (a) IN GENERAL.—This Act shall be enforced by the
21 Commission under the Federal Trade Commission Act (15
22 U.S.C. 41 et seq.).

23 (b) ACTIONS BY COMMISSION.—

24 (1) IN GENERAL.—The Commission shall pre-
25 vent any person from violating this Act or any regu-
26 lation promulgated by the Commission under this

1 Act in the same manner, by the same means, and
2 with the same jurisdiction, powers, and duties, as
3 though all applicable terms and provisions of the
4 Federal Trade Commission Act (15 U.S.C. 41 et
5 seq.) were incorporated into and made a part of this
6 Act.

7 (2) PENALTIES AND PRIVILEGES.—Any person
8 that violates this Act or any regulation promulgated
9 under this Act shall be subject to the penalties and
10 entitled to the privileges and immunities provided in
11 the Federal Trade Commission Act in the same
12 manner, by the same means, and with the same ju-
13 risdiction, power, and duties, as though all applica-
14 ble terms and provisions of the Federal Trade Com-
15 mission Act were incorporated into and made a part
16 of this Act.

17 (c) CIVIL PENALTY.—A violation of this Act, or a
18 regulation promulgated under this Act, shall be treated
19 as a violation of a rule defining an unfair or deceptive
20 act or practice prescribed under section 18(a)(1)(B) of the
21 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

22 (d) ENFORCEMENT BY STATES.—

23 (1) IN GENERAL.—If the attorney general of a
24 State has reason to believe that an interest of the
25 residents of the State has been or is being threat-

1 ened or adversely affected by a violation of this Act
2 or a regulation promulgated under this Act, the at-
3 torney general of the State may, as *parens patriae*,
4 bring a civil action on behalf of the residents of the
5 State in an appropriate district court of the United
6 States to obtain appropriate relief.

7 (2) RIGHTS OF COMMISSION.—

8 (A) NOTICE TO COMMISSION.—

9 (i) IN GENERAL.—Except as provided
10 in clause (iii), the attorney general of a
11 State, before initiating a civil action under
12 paragraph (1), shall provide written notifi-
13 cation to the Commission that the attorney
14 general intends to bring such civil action.

15 (ii) CONTENTS.—The notification re-
16 quired under clause (i) shall include a copy
17 of the complaint to be filed to initiate the
18 civil action.

19 (iii) EXCEPTION.—If it is not feasible
20 for the attorney general of a State to pro-
21 vide the notification required under clause
22 (i) before initiating a civil action under
23 paragraph (1), the attorney general shall
24 notify the Commission immediately upon
25 instituting the civil action.

1 (B) INTERVENTION BY COMMISSION.—The
 2 Commission may—

3 (i) intervene in any civil action
 4 brought by the attorney general of a State
 5 under paragraph (1); and

6 (ii) upon intervening—

7 (I) be heard on all matters arising
 8 in the civil action; and

9 (II) file petitions for appeal of a
 10 decision in the civil action.

11 (3) INVESTIGATORY POWERS.—Nothing in this
 12 subsection may be construed to prevent the attorney
 13 general of a State from exercising the powers conferred
 14 on the attorney general by the laws of the
 15 State to conduct investigations, to administer oaths
 16 or affirmations, or to compel the attendance of witnesses
 17 or the production of documentary or other
 18 evidence.

19 (e) EFFECT ON OTHER LAWS.—

20 (1) AUTHORITY OF THE COMMISSION.—Nothing
 21 contained in this Act shall be construed to limit the
 22 authority of the Commission under any other provisions
 23 of law.

24 (2) RELATION TO STATE LAW.—Nothing in this
 25 Act may be construed to preempt any provision of

- 1 State law that provides greater protection to con-
- 2 sumers than is provided in this Act.

