

118TH CONGRESS
2D SESSION

S. _____

To prohibit users who are under age 13 from creating or maintaining social media accounts and to prohibit the use of algorithmic recommendation systems on individuals under age 17.

IN THE SENATE OF THE UNITED STATES

Mr. SCHATZ introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit users who are under age 13 from creating or maintaining social media accounts and to prohibit the use of algorithmic recommendation systems on individuals under age 17.

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 “Healthy Kids Act”.

5 **SEC. 2. DEFINITIONS.**

6 In this Act:

7 (1) **PERSONALIZED RECOMMENDATION SYS-**
8 **TEM.**—The term “personalized recommendation sys-

1 tem” means a fully or partially automated system
2 used to suggest, promote, or rank content, including
3 other users, hashtags, or posts, based on the per-
4 sonal data of users. A fully or partially automated
5 system that suggests, promotes, or ranks content
6 based solely on a user’s language, city or town, or
7 age shall not be considered a personalized rec-
8 ommendation system.

9 (2) CHILD.—The term “child” means an indi-
10 vidual under the age of 13.

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

13 (4) PERSONAL DATA.—The term “personal
14 data” has the same meaning as the term “personal
15 information” as defined in section 1302 of the Chil-
16 dren’s Online Privacy Protection Act (15 U.S.C.
17 6501).

18 (5) SOCIAL MEDIA PLATFORM.—

19 (A) IN GENERAL.—The term “social media
20 platform” means a public-facing, online plat-
21 form that—

22 (i) is directed to consumers;

23 (ii) collects personal data;

1 (iii) primarily derives revenue from
2 advertising or the sale of personal data;
3 and

4 (iv) as its core function, facilitates so-
5 cial interaction between users through the
6 creation and sharing of text, images, vid-
7 eos, or other forms of content among users
8 where such content is primarily intended
9 for viewing, resharing, or platform-enabled
10 distributed social endorsement or com-
11 ment.

12 (B) LIMITATION.—The term “social media
13 platform” does not include a platform that, as
14 its core function for consumers, provides or fa-
15 cilitates any of the following:

16 (i) The purchase and sale of commer-
17 cial goods.

18 (ii) Teleconferencing and
19 videoconferencing services that require the
20 use of a unique link or identifier to facili-
21 tate access to the teleconference or video-
22 conference.

23 (iii) Crowd-sourced reference guides
24 such as encyclopedias and dictionaries.

1 (iv) Electronic storage, including
2 cloud-based storage that allows collabo-
3 rative editing by invited users.

4 (v) The playing or creation of video
5 games.

6 (vi) Content that consists primarily of
7 news, sports, entertainment, or other infor-
8 mation or content that is preselected by
9 the platform.

10 (vii) Business, product, or travel in-
11 formation including user reviews or
12 rankings of such businesses, products, or
13 other travel information.

14 (viii) Educational information, experi-
15 ences, training, or instruction provided to
16 build knowledge, skills, or a craft, or on
17 behalf of or in support of an elementary
18 school or secondary school, as such terms
19 are defined in section 8101 of the Elemen-
20 tary and Secondary Education Act of 1965
21 (20 U.S.C. 7801).

22 (ix) Electronic mail or direct mes-
23 saging between users consisting of text,
24 photos, or videos that are not posted pub-

1 licly and are visible only to the senders and
2 recipients.

3 (6) TEEN.—The term “teen” means an indi-
4 vidual over the age of 12 and under the age of 17.

5 **SEC. 3. NO CHILDREN UNDER 13.**

6 A social media platform shall not permit an individual
7 to create or maintain an account if it has actual knowledge
8 or knowledge fairly implied on the basis of objective cir-
9 cumstances that the individual is a child.

10 **SEC. 4. PROHIBITION ON THE USE OF PERSONALIZED REC-**
11 **COMMENDATION SYSTEMS ON CHILDREN OR**
12 **TEENS.**

13 (a) IN GENERAL.—

14 (1) PROHIBITION ON USE OF PERSONALIZED
15 RECOMMENDATION SYSTEMS ON CHILDREN OR
16 TEENS.—Except as provided in paragraph (2), a so-
17 cial media platform shall not use the personal data
18 of an individual in a personalized recommendation
19 system if the platform has actual knowledge or
20 knowledge fairly implied on the basis of objective cir-
21 cumstances that the individual is a child or teen.

22 (2) EXCEPTION.—A social media platform may
23 use a personalized recommendation system to dis-
24 play content to a child or teen if the system only
25 uses the type of device used by the child or teen.

1 (b) RULE OF CONSTRUCTION.—The prohibition in
2 subsection (a) shall not be construed to—

3 (1) prevent a social media platform from pro-
4 viding search results to a child or teen deliberately
5 or independently searching for (such as by typing a
6 phrase into a search bar), or specifically requesting,
7 content, so long as such results are not based on the
8 personal data of the child or teen (except to the ex-
9 tent permitted under subsection (a)(2));

10 (2) prevent a social media platform from taking
11 reasonable measures to—

12 (A) block, detect, or prevent the distribu-
13 tion of unlawful or obscene material;

14 (B) block or filter spam, or protect the se-
15 curity of a platform or service; or

16 (C) prevent criminal activity; or

17 (3) prohibit a social media platform from dis-
18 playing user-generated content that has been se-
19 lected or followed by a teen account holder as long
20 as the display of content is based on a chronological
21 format.

1 **SEC. 5. DETERMINATION OF WHETHER AN OPERATOR HAS**
2 **KNOWLEDGE FAIRLY IMPLIED ON THE BASIS**
3 **OF OBJECTIVE CIRCUMSTANCES THAT AN IN-**
4 **DIVIDUAL IS A CHILD OR TEEN.**

5 (a) RULES OF CONSTRUCTION.—For purposes of en-
6 forcing this Act, in making a determination as to whether
7 an operator of a social media platform has knowledge fair-
8 ly implied on the basis of objective circumstances that a
9 specific user is a child or teen, the Commission or a State
10 attorney general shall rely on competent and reliable evi-
11 dence, taking into account the totality of the cir-
12 cumstances, including whether a reasonable and prudent
13 person under the circumstances would have known that
14 the user is a child or teen. Nothing in this Act, including
15 a determination described in the preceding sentence, shall
16 be construed to require a social media platform to—

17 (1) affirmatively collect any personal data with
18 respect to the age of a child or teen that the plat-
19 form is not already collecting in the normal course
20 of business; or

21 (2) implement an age gating or age verification
22 functionality.

23 (b) COMMISSION GUIDANCE.—

24 (1) IN GENERAL.—Not later than 180 days
25 after the date of enactment of this Act, the Commis-
26 sion shall issue guidance to provide information, in-

1 including best practices and examples for operators of
2 social media platforms to understand the Commis-
3 sion's determination of whether an operator of a so-
4 cial media platform has knowledge fairly implied on
5 the basis of objective circumstances that a user is a
6 child or teen.

7 (2) LIMITATION.—No guidance issued by the
8 Commission with respect to this Act shall confer any
9 rights on any person, State, or locality, nor shall op-
10 erate to bind the Commission or any person to the
11 approach recommended in such guidance. In any en-
12 forcement action brought pursuant to this Act, the
13 Commission or State attorney general, as applicable,
14 shall allege a specific violation of this Act. The Com-
15 mission or State attorney general, as applicable, may
16 not base an enforcement action on, or execute a con-
17 sent order based on, practices that are alleged to be
18 inconsistent with any such guidance, unless the
19 practices allegedly violate this Act.

20 (c) RESTRICTION ON USE AND RETENTION OF PER-
21 SONAL DATA.—If a social media platform or a third-party
22 on its behalf collects personal data to estimate whether
23 an individual is a child or a teen, the social media platform
24 or a third-party shall not—

1 (1) use any personal data collected specifically
2 for the purposes of the platform's age estimation
3 process for any purpose other than to comply with
4 the provisions of this Act; or

5 (2) retain any personal data collected from a
6 user specifically for the purposes of the age esti-
7 mation process.

8 **SEC. 6. ENFORCEMENT.**

9 (a) ENFORCEMENT BY COMMISSION.—

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

16 (2) POWERS OF COMMISSION.—

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

1 (B) PRIVILEGES AND IMMUNITIES.—Ex-
2 cept as provided in subparagraph (C), any per-
3 son who violates this Act shall be subject to the
4 penalties and entitled to the privileges and im-
5 munities provided in the Federal Trade Com-
6 mission Act (15 U.S.C. 41 et seq.).

7 (C) NONPROFIT ORGANIZATIONS AND COM-
8 MON CARRIERS.—Notwithstanding section 4 or
9 5(a)(2) of the Federal Trade Commission Act
10 (15 U.S.C. 44, 45(a)(2)) or any jurisdictional
11 limitation of the Commission, the Commission
12 shall also enforce this Act, in the same manner
13 provided in subparagraphs (A) and (B) of this
14 paragraph, with respect to—

15 (i) organizations not organized to
16 carry on business for their own profit or
17 that of their members; and

18 (ii) common carriers subject to the
19 Communications Act of 1934 (47 U.S.C.
20 151 et seq.) and all Acts amendatory
21 thereof and supplementary thereto.

22 (3) AUTHORITY PRESERVED.—Nothing in this
23 Act shall be construed to limit the authority of the
24 Commission under any other provision of law.

25 (b) ENFORCEMENT BY STATES.—

1 (1) AUTHORIZATION.—Subject to paragraph
2 (3), in any case in which the attorney general of a
3 State has reason to believe that an interest of the
4 residents of the State has been or is threatened or
5 adversely affected by the engagement of a social
6 media platform in a practice that violates this Act,
7 the attorney general of the State may, as *parens*
8 *patriae*, bring a civil action against the social media
9 platform on behalf of the residents of the State in
10 an appropriate district court of the United States to
11 obtain appropriate relief, including civil penalties in
12 the amount determined under paragraph (2).

13 (2) CIVIL PENALTIES.—A social media platform
14 that is found, in an action brought under paragraph
15 (1), to have knowingly or repeatedly violated a provi-
16 sion of this Act shall, in addition to any other pen-
17 alty otherwise applicable to a violation of this Act,
18 be liable for a civil penalty equal to the amount cal-
19 culated by multiplying—

20 (A) the greater of—

21 (i) the number of days during which
22 the social media platform was not in com-
23 pliance with that provision; or

24 (ii) the number of end users who were
25 impacted by the violation; by

1 (B) an amount not to exceed the maximum
2 civil penalty for which a person, partnership, or
3 corporation may be liable under section
4 5(m)(1)(A) of the Federal Trade Commission
5 Act (15 U.S.C. 45(m)(1)(A)) (including any ad-
6 justments for inflation).

7 (3) RIGHTS OF FEDERAL TRADE COMMIS-
8 SION.—

9 (A) NOTICE TO FEDERAL TRADE COMMIS-
10 SION.—

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.

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

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

1 notify the Commission immediately upon
2 instituting the civil action.

3 (B) INTERVENTION BY FEDERAL TRADE
4 COMMISSION.—The Commission may—

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

8 (ii) upon intervening—

9 (I) be heard on all matters arising in the civil action; and
10

11 (II) file petitions for appeal.

12 (4) INVESTIGATORY POWERS.—Nothing in this
13 subsection may be construed to prevent the attorney
14 general of a State from exercising the powers conferred on the attorney general by the laws of the
15 State to—
16

17 (A) conduct investigations;

18 (B) administer oaths or affirmations; or

19 (C) compel the attendance of witnesses or
20 the production of documentary or other evidence.
21

22 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
23 COMMISSION.—If the Commission institutes a civil
24 action or an administrative action with respect to a
25 violation of this Act, the attorney general of a State

1 may not, during the pendency of the action, bring a
2 civil action under paragraph (1) against any defend-
3 ant named in the complaint of the Commission
4 based on the same set of facts giving rise to the al-
5 leged violation with respect to which the Commission
6 instituted the action.

7 (6) VENUE; SERVICE OF PROCESS.—

8 (A) VENUE.—Any action brought under
9 paragraph (1) may be brought in—

10 (i) the district court of the United
11 States that meets applicable requirements
12 relating to venue under section 1391 of
13 title 28, United States Code; or

14 (ii) another court of competent juris-
15 diction.

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

19 (i) is an inhabitant; or

20 (ii) may be found.

21 (7) ACTIONS BY OTHER STATE OFFICIALS.—

22 (A) IN GENERAL.—In addition to civil ac-
23 tions brought by attorneys general under para-
24 graph (1), any other consumer protection offi-
25 cer of a State who is authorized by the State

1 to do so may bring a civil action under para-
2 graph (1), subject to the same requirements
3 and limitations that apply under this subsection
4 to civil actions brought by attorneys general.

5 (B) SAVINGS PROVISION.—Nothing in this
6 subsection may be construed to prohibit an au-
7 thorized official of a State from initiating or
8 continuing any proceeding in a court of the
9 State for a violation of any civil or criminal law
10 of the State.

11 **SEC. 7. RELATIONSHIP TO OTHER LAWS.**

12 (a) SAVINGS CLAUSE.—Nothing in this Act shall be
13 construed to—

14 (1) affect the application of—

15 (A) section 444 of the General Education
16 Provisions Act (20 U.S.C. 1232g, commonly
17 known as the “Family Educational Rights and
18 Privacy Act of 1974”) or other Federal or State
19 laws governing student privacy; or

20 (B) the Children’s Online Privacy Protec-
21 tion Act of 1998 (15 U.S.C. 6501 et seq.) or
22 any rule or regulation promulgated under such
23 Act; or

1 (2) authorize any action that would conflict
2 with section 18(h) of the Federal Trade Commission
3 Act (15 U.S.C. 57a(h)).

4 (b) RELATIONSHIP TO STATE LAWS.—The provisions
5 of this Act shall preempt any State law, rule, or regulation
6 only to the extent that such State law, rule, or regulation
7 conflicts with a provision of this Act. Nothing in this Act
8 shall be construed to prohibit a State from enacting a law,
9 rule, or regulation that provides greater protection to chil-
10 dren and teens than the protection provided by the provi-
11 sions of this Act.

12 **SEC. 8. SEVERABILITY.**

13 If any provision of this Act is determined to be unen-
14 forceable or invalid, the remaining provisions of this Act
15 shall not be affected.

16 **SEC. 9. EFFECTIVE DATE.**

17 This Act shall take effect 1 year after the date of
18 enactment of this Act.