To regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 23 (legislative day, May 22), 2019

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

A BILL

To regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products, 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. REGULATION OF PAY-TO-WIN MICROTRANSACTIONS AND SALES OF LOOT BOXES IN VIDEO GAMES.

(a) Prohibition of Pay-to-Win Microtransactions and Sales of Loot Boxes in Minor-Oriented Games.—
(1) GAME PUBLISHERS.—It is unlawful for a game publisher to publish—

(A) a minor-oriented game that includes pay-to-win microtransactions or loot boxes; or

(B) an update to an existing minor-oriented game that would enable pay-to-win microtransactions or loot boxes in such game.

(2) DIGITAL GAME DISTRIBUTORS.—It is unlawful for a digital game distributor to distribute—

(A) a minor-oriented game that includes pay-to-win microtransactions or loot boxes; or

(B) an update to an existing minor-oriented game that would enable pay-to-win microtransactions or loot boxes in such game.

(b) PROHIBITION ON PUBLICATION OR DISTRIBUTION OF VIDEO GAMES CONTAINING PAY-TO-WIN MICROTRANSACTIONS OR PURCHASING LOOT BOXES WHERE THE PUBLISHER OR DISTRIBUTOR HAS CONSTRUCTIVE KNOWLEDGE THAT ANY USERS ARE UNDER AGE 18.—

(1) GAME PUBLISHERS.—It is unlawful for a game publisher to publish an interactive digital entertainment product that is not a minor-oriented game (or an update to such a product) if—

(A) such product or update contains pay-to-win microtransactions or loot boxes; and
(B) the publisher has constructive knowledge that any of its users are under the age of 18.

(2) Digital game distributors.—It is unlawful for a digital game distributor to distribute an interactive digital entertainment product that is not a minor-oriented game (or an update to such a product) if—

(A) such product or update contains pay-to-win microtransactions or loot boxes; and

(B) the distributor has constructive knowledge that any of its users are under the age of 18.

SEC. 2. DEFINITIONS.

In this Act:


(2) Interactive digital entertainment product.—

(A) In general.—The term “interactive digital entertainment product” means a program such as a video game that is accessed by a connected device and provides an interactive entertainment experience for the user.
(B) EXCLUSION.—Such term shall not in-
clude a program if—

(i) a user's interaction with the pro-
gram is limited to selecting options from a
menu of choices; and

(ii) the program would not be consid-
ered a game by a reasonable user.

(3) DIGITAL GAME DISTRIBUTOR.—The term
“digital game distributor” means a person that, for
commercial purposes, in interstate or foreign com-
merce, distributes an interactive digital entertain-
ment product over an online platform to over 1,000
users annually.

(4) GAME PUBLISHER.—The term “game pub-
lisher” means a person that, for commercial pur-
poses, in interstate or foreign commerce, develops or
finances the development of an interactive digital ent-
tertainment product that is distributed to over 1,000
users annually.

(5) MINOR-ORIENTED GAME.—The term
“minor-oriented video game” means an interactive
digital entertainment product for which the target
audience is individuals under the age of 18, as may
be demonstrated by—

(A) the subject matter of the product;
(B) the visual content of the product;

(C) the music or audio content of the product;

(D) the use of animated characters or activities that appeal to individuals under the age of 18;

(E) the age of the characters or models in the product;

(F) the presence in the product of—

   (i) celebrities who are under the age of 18; or

   (ii) celebrities who appeal to individuals under the age of 18;

(G) the language used in the product;

(H) the content of materials used to advertise the product and the platforms on which such materials appear;

(I) the content of any advertising materials that appear in the product;

(J) other reliable empirical evidence relating to—

   (i) the composition of the audience of the product; or
(ii) the audience of the product, as intended by the publisher or distributor of the product; or

(K) other evidence demonstrating that the product is targeted at individuals under the age of 18.

(6) ADD-ON TRANSACTION.—

(A) IN GENERAL.—The term “add-on transaction” means, with respect to an interactive digital entertainment product, a payment to the game publisher of an interactive digital entertainment product, an affiliate of the publisher, or any other person who accepts such payment for the benefit of the publisher, of either money or an in-game proxy for money, such as a virtual currency, that can be purchased with money, that—

(i) unlocks a feature of the product;

or

(ii) adds to or enhances the entertainment value of the product.

(B) EXCLUSION.—Such a term shall not include a payment (including a payment of a regular subscription fee) which is made only to allow a user to access the content of an inter-
active digital entertainment product, provided
that users do not have the option to pay dif-
ferent amounts to access the same content in
order to unlock a feature of the product or to
enhance the entertainment value of the product.

(7) PAY-TO-WIN MICROTRANSACTION.—

(A) IN GENERAL.—The term “pay-to-win
microtransaction” means an add-on transaction
to a interactive digital entertainment product
that—

(i) with respect to an interactive dig-
ital entertainment product that, from the
perspective of a reasonable user of the
product, is a game offering a scoring sys-
tem, a set of goals to achieve, a set of re-
wards, or a sense of interactive progression
through the product’s content including
but not limited to narrative progression—

(I) eases a user’s progression
through content otherwise available
within the game without the purchase
of such transaction;

(II) assists a user in accom-
plishing an achievement within the
game that can otherwise be accom-
plished without the purchase of such transaction;

(III) assists a user in receiving an award associated with the game that is otherwise available in association with the game without the purchase of such transaction; or

(IV) permits a user to continue to access content of the game that had previously been accessible to the user but has been made inaccessible after the expiration of a timer or a number of gameplay attempts; or

(ii) with respect to an interactive digital entertainment product that, from the perspective of a reasonable user of the product, is a game featuring competition with other users, provides a user with a competitive advantage with respect to the game’s competitive aspects over users who do not make such a transaction.

(B) Exclusions.—

(i) Difficulty modes.—Such term shall not include an add-on transaction to an interactive digital entertainment prod-
uct that provides the user with access to a new mode of play that makes progression through the content of the product more difficult than it would be without the transaction (as perceived by a reasonable user).

(ii) COSMETIC ALTERATIONS.—Such term shall not include an add-on transaction to an interactive digital entertainment product whose only effect is to alter a user’s visual representation within the game provided that it does not, from the perspective of a reasonable user, provide the user with a competitive advantage over other users who do not make such transaction.

(iii) ADDITIONAL GAME CONTENT.—Such term shall not include an add-on transaction to an interactive digital entertainment product that adds new content to the product provided that the add-on transaction can be purchased only once by a user and the perceived value offered by such transaction, from the perspective of a reasonable user, is not that it—
(I) eases a user’s progression through content otherwise available within the product without the purchase of such transaction;

(II) assists a user in accomplishing an achievement within the product that can otherwise be accomplished without the purchase of such transaction;

(III) assists a user in receiving an award associated with the product that is otherwise available in association with the product without the purchase of such transaction;

(IV) permits a user to continue to access content of the product that had previously been accessible to the user but is made inaccessible after the expiration of a timer or a number of gameplay attempts; or

(V) provides a competitive advantage over other users with respect to a product’s competitive aspects.
(8) Loot box.—The term “loot box” means an add-on transaction to an interactive digital entertainment product that—

(A) in a randomized or partially randomized fashion—

(i) unlocks a feature of the product; or

(ii) adds to or enhances the entertainment value of the product; or

(B) allows the user to make 1 or more additional add-on transactions—

(i) that the user could not have made without making the first add-on transaction; and

(ii) the content of which is unknown to the user until after the user has made the first add-on transaction.

SEC. 3. ENFORCEMENT AND APPLICABILITY.

(a) Enforcement by the Commission.—

(1) In general.—Except as otherwise provided, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(2) Unfair or deceptive acts or practices.—A violation of this Act shall be treated as
a violation of a rule defining an unfair or deceptive
act or practice prescribed under section 18(a)(1)(B)
57a(a)(1)(B)).

(3) Actions by the Commission.—

(A) In general.—Except as provided in
subsection (c)(1), the Commission shall prevent
any person from violating this Act in the same
manner, by the same means, and with the same
jurisdiction, powers, and duties as though all
applicable terms and provisions of the Federal
were incorporated into and made a part of this
Act, and any person who violates this Act shall
be subject to the penalties and entitled to the
privileges and immunities provided in the Fed-
eral Trade Commission Act.

(B) Violations.—

(i) In general.—In an action
brought by the Commission to enforce this
Act, each pay-to-win microtransaction or
loot box sold to a user who is under the
age of 18 through an interactive digital en-
tertainment product that does not meet a
requirement of this Act shall be treated as a separate violation.

(ii) Civil Penalty.—Notwithstanding section 5(m) of the Federal Trade Commission Act (15 U.S.C. 45(m)), a civil penalty recovered for a violation of this Act may be in excess of the amounts provided for in that section as the court finds appropriate to deter violations of this Act.

(iii) First Violations.—In an action brought by the Commission to enforce this Act, the Commission may seek a civil penalty for any violation of this Act, including any violation that is the first violation of this Act that a person against whom the action is brought has committed.

(b) Enforcement by State Attorneys General.—

(1) In general.—

(A) Civil Actions.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates this Act, the State, as
parens patriae, may bring a civil action on behalf of the residents of the State in an appropriate State court to—

(i) enjoin that practice;

(ii) enforce compliance with this Act;

(iii) obtain damages, restitution, or other compensation on behalf of residents of the State; or

(iv) obtain such other relief as the court may consider to be appropriate.

(B) NOTICE.—

(i) IN GENERAL.—Before filing an action under subparagraph (A), the attorney general of the State involved shall provide to the Commission—

(I) written notice of that action; and

(II) a copy of the complaint for that action.

(ii) EXEMPTION.—

(I) IN GENERAL.—Clause (i) shall not apply with respect to the filing of an action by an attorney general of a State under this paragraph if the attorney general of the State
determines that it is not feasible to provide the notice described in that clause before the filing of the action.

(II) Notification.—In an action described in subclause (I), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(2) Intervention.—

(A) In general.—On receiving notice under paragraph (1)(B), the Commission shall have the right to intervene in the action that is the subject of the notice.

(B) Effect of intervention.—If the Commission intervenes in an action under paragraph (1), it shall have the right—

(i) to be heard with respect to any matter that arises in that action; and

(ii) to file a petition for appeal.

(3) Construction.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred
on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(4) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of this Act, no State may, during the pendency of that action, institute an action under paragraph (1) against any defendant named in the complaint in the action instituted by or on behalf of the Commission for that violation.

(5) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) may be brought in any State court of competent jurisdiction.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served wherever the defendant—

(i) is an inhabitant; or

(ii) may be found.
SEC. 4. STUDY OF COMPLIANCE.

Not later than 2 years after the date of enactment of this Act, the Commission shall submit to each committee of Congress with jurisdiction over the Commission a report on—

(1) the actions taken by game publishers and digital game distributors to comply with this Act; and

(2) other Federal or State laws relating to pay-to-win microtransactions and loot boxes.

SEC. 5. STUDY OF THE EFFECT OF PAY-TO-WIN MICROTRANSACTIONS AND LOOT BOXES.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to each committee of Congress with jurisdiction over the Commission a report on the use of add-on content, including pay-to-win microtransactions, loot boxes, and other kinds of add-on transactions in the design of interactive digital entertainment products for audiences of all ages.

(b) CONTENT OF REPORT.—The report required under subsection (a) shall—

(1) analyze the use of pay-to-win microtransaction and loot box design practices in specific interactive digital entertainment products;
(2) analyze the psychological effects of pay-to-win microtransactions and loot boxes on users;

(3) study game development practices relating to pay-to-win microtransactions and loot boxes, including A/B testing of various pay-to-win microtransaction or loot box designs;

(4) analyze the effects of pay-to-win microtransactions and loot boxes on investment and production in the digital entertainment industry;

(5) document different types of pay-to-win microtransactions and loot boxes found in interactive digital entertainment products; and

(6) analyze whether other forms of add-on transactions to interactive digital entertainment products, such as those altering a user’s visual representation within a product, can induce compulsive purchasing behavior by minors.

(c) USE OF PSYCHOLOGICAL RESEARCH.—The Commission may conduct or commission psychological research on users of interactive digital entertainment products to inform the report required under subsection (a).