To prohibit social media companies from using practices that exploit human psychology or brain physiology to substantially impede freedom of choice, to require social media companies to take measures to mitigate the risks of internet addiction and psychological exploitation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2019

Mr. HAWLEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit social media companies from using practices that exploit human psychology or brain physiology to substantially impede freedom of choice, to require social media companies to take measures to mitigate the risks of internet addiction and psychological exploitation, and for other purposes.

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

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the “Social Media Addiction Reduction Technology Act” or the “SMART Act”.

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(b) FINDINGS.—Congress finds the following:

(1) The business model for many internet companies, especially social media companies, is to capture as much of their users’ attention as possible.

(2) To achieve this end, some of these internet companies design their platforms and services to exploit brain physiology and human psychology.

(3) By exploiting psychological and physiological vulnerabilities, these design choices interfere with the free choice of users.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(2) CONTENT FEED.—The term “content feed” means a service of a social media platform that aggregates and displays information such as text, photos, videos, links, and application activity provided by two or more users.

(3) SOCIAL MEDIA COMPANY.—The term “social media company” means any person that operates a social media platform in interstate or foreign commerce.

(4) SOCIAL MEDIA PLATFORM.—The term “social media platform” means any online electronic
medium, such as Facebook, Instagram, YouTube, or Twitter (as such services existed in 2019), a live-chat system, or an electronic dating service—

(A) that primarily serves as a medium for users to interact with content generated by other third-party users of the medium;

(B) that enables users to create accounts or profiles specific to the medium or to import profiles from another medium; and

(C) that enables one or more users to generate content that can be viewed by other third-party users of the medium.

(5) OPERATOR.—The term ‘‘operator’’ means any person who, in interstate or foreign commerce, operates a website on the internet, an online service, an online application, or a mobile application.

SEC. 3. PROHIBITED PRACTICES FOR SOCIAL MEDIA COMPANIES.

Beginning 3 months after the date of enactment of this Act, it shall be unlawful for a social media company to operate a social media platform that uses any of the following practices:

(1) INFINITE SCROLL OR AUTO REFILL.—The use of a process that automatically loads and displays additional content, other than music or video
content that the user has prompted to play, when a
user approaches or reaches the end of loaded content
without requiring the user to specifically request
(such as by pushing a button or clicking an icon, but
not by simply continuing to scroll) that additional
content be loaded and displayed.

(2) Elimination of natural stopping
points.—The use of a process that, without the
user expressly requesting additional content, loads
and displays more content into a content feed than
the typical user scrolls through in 3 minutes.

(3) Autoplay.—The use of a process that
automatically plays music or videos (other than ad-
vertisements) without an express, separate prompt
by the user (such as pushing a button or clicking an
icon), unless—

(A) before any content is loaded to the
user’s display, that user or a different user
compiled a playlist of multiple music videos or
audio files that the user designated should be
played without interruption, and the immediate
user selected one of the videos or files in that
precompiled playlist; or

(B) the predominant purpose of the social
media platform is to allow users to stream
music, but only if the only files the platform automatically plays are audio files or advertisements.

(4) BADGES AND OTHER AWARDS LINKED TO ENGAGEMENT WITH THE PLATFORM.—Providing a user with an award for engaging with the social media platform (such as a badge or other recognition of a user’s level of engagement with the platform) if such award does not substantially increase access to new or additional services, content, or functionality.

SEC. 4. REQUIREMENTS FOR SOCIAL MEDIA COMPANIES.

(a) IN GENERAL.—Beginning 6 months after the date of enactment of this Act, it shall be unlawful for a social media company to operate a social media platform if the platform does not include a user-friendly interface that, with respect to such platform and any other social media platform that is owned by the same social media company or a subsidiary of that company—

(1) allows a user to set a time limit that blocks the user’s own access to those platforms across all devices if the amount of time the user spends on those platforms within a certain period exceeds a time limit set by the user using 1-minute increments.
and, at minimum, allows the user to set such time limits for daily and weekly use;

(2) automatically limits the amount of time that a user may spend on those platforms across all devices to 30 minutes a day unless the user elects to adjust or remove the time limit and, if the user elects to increase or remove the time limit, resets the time limit to 30 minutes a day on the first day of every month;

(3) provides users with regular disclosures, including immediate disclosures when prompted by the user, of the amount of time the user has spent on those platforms across all devices, broken down by day, week, month, year, and platform; and

(4) displays a conspicuous pop-up to a user not less than once every 30 minutes that the user spends on those platforms, regardless of whether the user spent the 30 minutes on multiple devices, that shows how much time the user has spent on those platforms that day.

(b) LIMITATION.—Subsection (a) shall not apply to any portion of a social media platform that consists only of a predominantly text-based, direct message service such as email or a service that is substantially similar to email.
SEC. 5. REQUIREMENTS FOR OPERATORS.

Beginning 6 months after the date of enactment of this Act, it shall be unlawful for an operator to operate an internet website, online service, online application, or mobile application if the operator does not obtain the consent of users or allow users to select from among options in the following manner:

(1) Neutral Presentation.—If the operator requests that a user accept or consent to terms, or anything similar—

(A) by clicking an icon, the operator shall present the user with an option to decline by clicking an icon that is identical to the other icon in terms of size, shape, font, and other visual or auditory design, except that the options need not be identical in color as long as the option to decline is conspicuously shaded differently than the immediate background color, and such option to decline shall be placed before the option to consent as measured by the direction the language in which the option is written is conventionally read; and

(B) by taking some other action to consent or accept, the operator shall present the user with the option to decline by taking a similar, equivalent action.
(2) No preselected options.—When an operator requests a user to make a selection from among options, no option may be preselected.

SEC. 6. COMMISSION REPORT ON INTERNET ADDICTION.
Not less frequently than once every 3 years, the Commission shall submit to Congress a report on the issue of internet addiction and the processes through which social media companies and other internet companies, by exploiting human psychology and brain physiology, interfere with free choices of individuals on the internet (including with respect to the amount of time individuals spend online).

SEC. 7. POWERS OF THE COMMISSION.

(a) Temporary joint rulemaking authority.—

(1) In general.—The Commission and the Secretary of Health and Human Services (referred to in this subsection as the “Secretary”) may jointly promulgate rules under this subsection to prohibit practices by social media companies and operators that exploit human psychology or brain physiology to substantially interfere with consumers’ freedom of choice.

(2) Procedure.—The Commission and the Secretary may jointly promulgate rules under this subsection in accordance with section 553 of title 5, United States Code.
(3) **Sunset.**—No rule promulgated by the Commission and the Secretary under this subsection shall be effective for a period that is longer than 3 years, but no period of time during which the Commission is enjoined from enforcing such a rule pursuant to a court order issuing an injunction against such rule or declaring such rule unlawful shall be counted against such 3-year period.

(4) **Report to Congress.**—With respect to any rule promulgated under this subsection, 1 year before such rule is scheduled to expire the Commission and the Secretary shall issue a report to Congress explaining the basis for the rule and its importance and notifying Congress of the date on which the rule will expire if Congress does not enact the requirements of the rule into statutory law.

(b) **Enforcement by the Commission.**—

(1) **In General.**—Except as otherwise provided, this Act and the regulations prescribed under 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 or a regulation prescribed under 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) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(3) ACTIONS BY THE COMMISSION.—Except as provided in subsection (c)(1), the Commission shall prevent any person from violating this Act or a regulation prescribed under 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 Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act, and any person who violates this Act or a regulation prescribed under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

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

(c) 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 or a regulation prescribed under this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States or a State court of appropriate jurisdiction to—

(i) enjoin that practice;

(ii) enforce compliance with this Act or such regulation;

(iii) on behalf of residents of the State, obtain damages, statutory damages, restitution, or other compensation, each of which shall be distributed in accordance with State law; 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—
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(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 fil-

ing of an action by an attorney gen-

eral 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 ac-

tion described in subclause (I), the at-
torney 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 or a regulation prescribed under 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—

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

(ii) a State court of competent jurisdiction.

(B) Service of process.—In an action brought under paragraph (1) in a district court of the United States, process may be served wherever defendant—

(i) is an inhabitant; or

(ii) may be found.