S. 1409

To protect the safety of children on the internet.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2023

Mr. Blumenthal (for himself, Mrs. Blackburn, Mr. Luján, Mrs. Capito, Ms. Baldwin, Mr. Cassidy, Ms. Klobuchar, Ms. Ernst, Mr. Peters, Mr. Daines, Mr. Hickenlooper, Mr. Rubio, Mr. Warner, Mr. Sullivan, Mr. Coons, Mr. Young, Mr. Schatz, Mr. Grassley, Mr. Murphy, Mr. Graham, Mr. Welch, Mr. Marshall, Ms. Hassan, Mrs. Hyde-Smith, Mr. Durbin, Mr. Mullin, Mr. Casey, Mr. Risch, Mr. Whitehouse, Mrs. Britt, Mr. Scott of Florida, Ms. Lummis, and Mr. Cornyn) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation.

A BILL

To protect the safety of children on the internet.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Kids Online Safety Act”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
SEC. 2. DEFINITIONS.

In this Act:

(1) **CHILD.**—The term “child” means an individual who is under the age of 13.

(2) **COMPULSIVE USAGE.**—The term “compulsive usage” means any response stimulated by external factors that causes an individual to engage in repetitive behavior reasonably likely to cause psychological distress, loss of control, anxiety, depression, or harmful stress responses.

(3) **COVERED PLATFORM.**—

(A) **IN GENERAL.**—The term “covered platform” means a social media service, social network, online video game (including educational games), messaging application, video streaming service, or an online platform that connects to the internet and that is used, or is reasonably likely to be used, by a minor.
(B) EXCEPTIONS.—The term “covered platform” does not include—

(i) an entity acting in its capacity as a provider of—

   (I) a common carrier service subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and all Acts amendatory thereof and supplementary thereto;

   (II) a broadband internet access service (as such term is defined for purposes of section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation);

   (III) an email service; or

   (IV) a wireless messaging service provided through the short messaging service or multimedia messaging service protocols;

(ii) an organization not organized to carry on business for its own profit or that of its members;

(iii) any public or private preschool, elementary, or secondary school, or any
stitution of vocational, professional, or higher education; or

(iv) a product or service that primarily functions as business-to-business software.

(4) Mental health disorder.—The term “mental health disorder” has the meaning given the term “mental disorder” in the Diagnostic and Statistical Manual of Mental Health Disorders, 5th Edition (or the most current successor edition).

(5) Minor.—The term “minor” means an individual who is under the age of 17.

(6) Online platform.—The term “online platform” means any public-facing website, online service, online application, or mobile application that predominantly provides a community forum for user generated content, including sharing videos, images, games, audio files, or other content.

(7) Parent.—The term “parent” includes a legal guardian or an individual with legal custody over a minor.

(8) Personal data.—The term “personal data” means information that identifies or is linked or reasonably linkable to a particular minor, includ-
ing a consumer device identifier associated with a
minor.

(9) PERSONALIZED RECOMMENDATION SYST-

EM.—The term “personalized recommendation sys-

tem” means a fully or partially automated system
used to suggest, promote, or rank information based
on the personal data of users.

(10) SEXUAL EXPLOITATION AND ABUSE.—The
term “sexual exploitation and abuse” means any of
the following:

(A) Coercion and enticement, as described
in section 2422 of title 18, United States Code.

(B) Child sexual abuse material, as de-
scribed in sections 2251, 2252, 2252A, and
2260 of title 18, United States Code.

(C) Trafficking for the production of im-
ages, as described in section 2251A of title 18,
United States Code.

(D) Sex trafficking of children, as de-
scribed in section 1591 of title 18, United
States Code.

(11) TARGETED ADVERTISING.—

(A) IN GENERAL.—The term “targeted ad-
vertising” means displaying an advertisement to
an individual where the advertisement is se-
lected based on personal data about the individual to predict the individual's preferences and interests.

(B) EXCLUSIONS.—Such term does not include—

(i) advertising or marketing directed to an individual in response to the individual’s request for information or express selection of a product or service;

(ii) contextual advertising where an advertisement is displayed to an individual based on the content in which the advertisement appears and does not vary based on who the individual is; or

(iii) processing personal data solely to measure or report advertising performance, reach, or frequency.

SEC. 3. DUTY OF CARE.

(a) PREVENTION OF HARM TO MINORS.—A covered platform shall act in the best interests of a user that the platform knows or reasonably should know is a minor by taking reasonable measures in its design and operation of products and services to prevent and mitigate the following:
(1) Consistent with evidence-informed medical information, the following mental health disorders: anxiety, depression, eating disorders, substance use disorders, and suicidal behaviors.

(2) Patterns of use that indicate or encourage addiction-like behaviors.

(3) Physical violence, online bullying, and harassment of the minor.

(4) Sexual exploitation and abuse.

(5) Promotion and marketing of narcotic drugs (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, gambling, or alcohol.

(6) Predatory, unfair, or deceptive marketing practices, or other financial harms.

(b) LIMITATION.—Nothing in subsection (a) shall be construed to require a covered platform to prevent or preclude—

(1) any minor from deliberately and independently searching for, or specifically requesting, content; or

(2) the covered platform or individuals on the platform from providing resources for the prevention or mitigation of suicidal behaviors, substance use,
and other harms, including evidence-informed information and clinical resources.

SEC. 4. SAFEGUARDS FOR MINORS.

(a) SAFEGUARDS FOR MINORS.—

(1) SAFEGUARDS.—A covered platform shall provide an individual that the covered platform knows or reasonably should know is a minor with readily accessible and easy-to-use safeguards to, as applicable—

(A) limit the ability of other individuals to communicate with the minor;

(B) prevent other users, whether registered or not, from viewing the minor’s personal data collected by or shared on the covered platform, in particular restricting public access to personal data;

(C) limit features that increase, sustain, or extend use of the covered platform by the minor, such as automatic playing of media, rewards for time spent on the platform, notifications, and other features that result in compulsive usage of the covered platform by the minor;

(D) control personalized recommendation systems, including the right to—
(i) opt out of such personalized recommendation systems, while still allowing the display of content based on a chronological format; or

(ii) limit types or categories of recommendations from such systems; and

(E) restrict the sharing of the geolocation of the minor and provide notice regarding the tracking of the minor’s geolocation.

(2) OPTIONS.—A covered platform shall provide an individual that the covered platform knows or reasonably should know is a minor with readily accessible and easy-to-use options to—

(A) delete the minor’s account and delete any personal data collected from, or shared by, the minor on the covered platform; or

(B) limit the amount of time spent by the minor on the covered platform.

(3) DEFAULT SAFEGUARD SETTINGS FOR MINORS.—A covered platform shall provide that, in the case of a user that the platform knows or reasonably should know is a minor, the default setting for any safeguard described under paragraph (1) shall be the option available on the platform that provides
the most protective level of control that is offered by
the platform over privacy and safety for that user.

(b) Parental Tools.—

(1) Tools.—A covered platform shall provide
readily accessible and easy-to-use settings for par-
ents to support an individual that the platform
knows or reasonably should know is a minor with re-
spect to the individual’s use of the platform.

(2) Requirements.—The parental tools pro-
vided by a covered platform shall include—

(A) the ability to manage a minor’s privacy
and account settings, including the safeguards
and options established under subsection (a), in
a manner that allows parents to—

(i) view the privacy and account set-
tings; and

(ii) in the case of a user that the plat-
form knows or reasonably should know is
a child, change and control the privacy and
account settings;

(B) the ability to restrict purchases and fi-
nancial transactions by the minor, where appli-
cable; and

(C) the ability to view metrics of total time
spent on the platform.
(3) **NOTICE TO MINORS.**—A covered platform shall provide clear and conspicuous notice to an individual that the platform knows or reasonably should know is a minor when tools described in this subsection are in effect and what settings or controls have been applied.

(4) **DEFAULT TOOLS.**—A covered platform shall provide that, in the case of a user that the platform knows or reasonably should know is a child, the tools described in this subsection shall be enabled by default.

(c) **REPORTING MECHANISM.**—

(1) **REPORTS SUBMITTED BY PARENTS, MINORS, AND SCHOOLS.**—A covered platform shall provide—

(A) a readily accessible and easy-to-use means to submit reports to the covered platform of harms to minors;

(B) an electronic point of contact specific to matters involving harms to a minor; and

(C) confirmation of the receipt of such a report and a means to track a submitted report.

(2) **TIMING.**—A covered platform shall establish an internal process to receive and substantively re-
respond to reports in a reasonable and timely manner, but in no case later than—

(A) 7 days after the receipt of a report, if, for the most recent calendar year, the platform averaged more than 10,000,000 active users on a monthly basis in the United States;

(B) 21 days after the receipt of a report, if, for the most recent calendar year, the platform averaged less than 10,000,000 active users on a monthly basis in the United States;

and

(C) notwithstanding subparagraphs (A) and (B), if the report involves an imminent threat to the safety of a minor, as promptly as needed to address the reported threat to safety.

(d) ADVERTISING OF ILLEGAL PRODUCTS.—A covered platform shall not facilitate the advertising of narcotic drugs (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, gambling, or alcohol to an individual that the covered platform knows or reasonably should know is a minor.

(e) APPLICATION.—

(1) ACCESSIBILITY.—With respect to safeguards and parental controls described under sub-
sections (a) and (b), a covered platform shall pro-
vide—

(A) information and control options in a
clear and conspicuous manner that takes into
consideration the differing ages, capacities, and
developmental needs of the minors most likely
to access the covered platform and does not en-
courage minors or parents to weaken or disable
safeguards or parental controls;

(B) readily accessible and easy-to-use con-
trols to enable or disable safeguards or parental
controls, as appropriate; and

(C) information and control options in the
same language, form, and manner as the cov-
ered platform provides the product or service
used by minors and their parents.

(2) DARK PATTERNS PROHIBITION.—It shall be
unlawful for any covered platform to design, modify,
or manipulate a user interface of a covered platform
with the purpose or substantial effect of subverting
or impairing user autonomy, decision-making, or
choice in order to weaken or disable safeguards or
parental controls required under this section.

(3) RULES OF CONSTRUCTION.—Nothing in
this section shall be construed to—
(A) prevent a covered platform from taking reasonable measures to—

(i) block, detect, or prevent the distribution of unlawful, obscene, or other harmful material to minors as described in section 3(a); or

(ii) block or filter spam, prevent criminal activity, or protect the security of a platform or service; or

(B) require the disclosure of a minor’s browsing behavior, search history, messages, contact list, or other content or metadata of their communications.

SEC. 5. DISCLOSURE.

(a) NOTICE.—

(1) REGISTRATION.—Prior to registration or purchase of a covered platform by an individual that the platform knows or reasonably should know is a minor, the platform shall provide clear, conspicuous, and easy-to-understand—

(A) notice of the policies and practices of the covered platform with respect to personal data and safeguards for minors;
(B) information about how to access the safeguards and parental tools required under section 4; and

(C) notice about whether the covered platform, including any personalized recommendation systems used by the platform, pose any heightened risks of harms to minors.

(2) PARENTAL NOTIFICATION.—

(A) NOTICE AND ACKNOWLEDGMENT.—In the case of an individual that a covered platform knows or reasonably should know is a child, the platform shall additionally provide information about the parental tools and safeguards required under section 4 to a parent of the child and obtain express affirmative acknowledgment from the parent prior to the initial use of the covered platform by the child.

(B) REASONABLE EFFORT.—A covered platform shall be deemed to have satisfied the requirement described in subparagraph (A) if the covered platform has undertaken a reasonable effort (taking into consideration available technology) to ensure a parent receives the information described in such subparagraph and
to obtain a parent’s express affirmative acknowledgment.

(3) CONSOLIDATED NOTICES.—A covered platform may consolidate the process for providing information and (if applicable) obtaining parental acknowledgment as required under this subsection with its obligations to obtain consent for data privacy practices, provided the content of the notice meets the requirements of this subsection.

(4) RULEMAKING.—The Federal Trade Commission may issue rules pursuant to section 553 of title 5, United States Code, to establish templates or models of short-form notices that include the minimum level of information and labels necessary for the disclosures required under paragraph (1).

(b) PERSONALIZED RECOMMENDATION SYSTEM.—A covered platform that operates personalized recommendation systems shall set out in its terms and conditions, in a clear, conspicuous, and easy-to-understand manner—

(1) an overview of how those personalized recommendation systems are used by the covered platform to provide information to users of the platform who are minors, including how such systems use the personal data of minors; and
(2) information about options for minors or their parents to control personalized recommendation systems (including by opting out of such systems).

(c) ADVERTISING AND MARKETING INFORMATION AND LABELS.—

(1) INFORMATION AND LABELS.—A covered platform that facilitates advertising aimed at users that the platform knows or reasonably should know are minors shall provide clear, conspicuous, and easy-to-understand information and labels to minors on advertisements regarding—

(A) the name of the product, service, or brand and the subject matter of an advertisement;

(B) why the minor is being targeted for a particular advertisement if the covered platform engages in targeted advertising, including material information about how the minor’s personal data was used to target the advertisement; and

(C) whether particular media displayed to the minor is an advertisement or marketing material, including disclosure of endorsements of products, services, or brands made for commer-
cial consideration by other users of the plat-
form.

(2) RULEMAKING.—The Federal Trade Com-
mission may issue rules pursuant to section 553 of
title 5, United States Code, to establish templates or
models of short-form notices that include the min-
imum level of information and labels necessary for
the disclosures required under paragraph (1).

(d) RESOURCES FOR PARENTS AND MINORS.—A cov-
ered platform shall provide to minors and parents clear,
conspicuous, easy-to-understand, and comprehensive infor-
mation in a prominent location regarding—

(1) its policies and practices with respect to
personal data and safeguards for minors; and

(2) how to access the safeguards and tools re-
quired under section 4.

(e) RESOURCES IN ADDITIONAL LANGUAGES.—A
covered platform shall ensure, to the extent practicable,
that the disclosures required by this section are made
available in the same language, form, and manner as the
covered platform provides any product or service used by
minors and their parents.

SEC. 6. TRANSPARENCY.

(a) IN GENERAL.—Subject to subsection (b), not less
frequently than once a year, a covered platform shall issue
a public report identifying the reasonably foreseeable risk of material harms to minors and describing the prevention and mitigation measures taken to address such risk based on an independent, third-party audit conducted through reasonable inspection of the covered platform.

(b) **Scope of Application.**—The requirements of this section shall apply to a covered platform if—

(1) for the most recent calendar year, the platform averaged more than 10,000,000 active users on a monthly basis in the United States; and

(2) the platform predominantly provides a community forum for user-generated content and discussion, including sharing videos, images, games, audio files, discussion in a virtual setting, or other content, such as acting as a social media platform, virtual reality environment, or a social network service.

(c) **Content.**—

(1) **Transparency.**—The public reports required of a covered platform under this section shall include—

(A) an assessment of the extent to which the platform is likely to be accessed by minors;

(B) a description of the commercial interests of the covered platform in use by minors;
(C) an accounting, based on the data held by the covered platform, of—

(i) the number of individuals using the covered platform reasonably believed to be minors in the United States, disaggregated by the age ranges of 0–5, 6–9, 10–12, and 13–16; and

(ii) the median and mean amounts of time spent on the platform by minors in the United States who have accessed the platform during the reporting year on a daily, weekly, and monthly basis, disaggregated by the age ranges of 0–5, 6–9, 10–12, and 13–16;

(D) an accounting of total reports received regarding, and the prevalence (which can be based on scientifically valid sampling methods using the content available to the covered platform in the normal course of business) of content related to, the harms described in section 3(a), disaggregated by category of harm; and

(E) a description of any material breaches of parental tools or assurances regarding minors, representations regarding the use of the
personal data of minors, and other matters regarding non-compliance.

(2) Systemic risks assessment.—The public reports required of a covered platform under this section shall include—

(A) an assessment of the reasonably foreseeable risk of harms to minors posed by the covered platform, including identifying any other physical, mental, developmental, or financial harms in addition to those described in section 3(a);

(B) an assessment of how recommendation systems and targeted advertising systems can contribute to harms to minors;

(C) a description of whether and how the covered platform uses system design features that increase, sustain, or extend use of a product or service by a minor, such as automatic playing of media, rewards for time spent, and notifications;

(D) a description of whether, how, and for what purpose the platform collects or processes categories of personal data that may cause reasonably foreseeable risk of harms to minors;
(E) an evaluation of the efficacy of safeguards for minors under section 4, and any issues in delivering such safeguards and the associated parental tools; and

(F) an evaluation of any other relevant matters of public concern over risk of harms to minors.

(3) MITIGATION.—The public reports required of a covered platform under this section shall in-
clude—

(A) a description of the safeguards and parental tools available to minors and parents on the covered platform;

(B) a description of interventions by the covered platform when it had or has reason to believe that harms to minors could occur;

(C) a description of the prevention and mitigation measures intended to be taken in re-
response to the known and emerging risks identified in its assessment of system risks, including steps taken to—

(i) prevent harms to minors, including adapting or removing system design fea-
tures or addressing through parental con-
trols;
(ii) provide the most protective level of control over privacy and safety by default; and

(iii) adapt recommendation systems to prioritize the best interests of users who are minors, as described in section 3(a);

(D) a description of internal processes for handling reports and automated detection mechanisms for harms to minors, including the rate, timeliness, and effectiveness of responses under the requirement of section 4(c);

(E) the status of implementing prevention and mitigation measures identified in prior assessments; and

(F) a description of the additional measures to be taken by the covered platform to address the circumvention of safeguards for minors and parental tools.

(d) REASONABLE INSPECTION.—In conducting an inspection of the systemic risks of harm to minors under this section, an independent, third-party auditor shall—

(1) take into consideration the function of recommendation systems;

(2) consult parents and youth experts, including youth and families with relevant past or current ex-
perience, public health and mental health nonprofit organizations, health and development organizations, and civil society with respect to the prevention of harms to minors;

(3) conduct research based on experiences of minors that use the covered platform, including reports under section 4(c) and information provided by law enforcement;

(4) take account of research, including research regarding system design features, marketing, or product integrity, industry best practices, or outside research; and

(5) consider indicia or inferences of age of users, in addition to any self-declared information about the age of individuals.

(e) Cooperation With Independent, Third-Party Audit.—To facilitate the report required by subsection (c), a covered platform shall—

(1) provide or otherwise make available to the independent third-party conducting the audit all information and material in its possession, custody, or control that is relevant to the audit;

(2) provide or otherwise make available to the independent third-party conducting the audit access
to all network, systems, and assets relevant to the audit; and

(3) disclose all relevant facts to the independent third-party conducting the audit, and not misrepresent in any manner, expressly or by implication, any relevant fact.

(f) PRIVACY SAFEGUARDS.—

(1) In issuing the public reports required under this section, a covered platform shall take steps to safeguard the privacy of its users, including ensuring that data is presented in a de-identified, aggregated format such that it is reasonably impossible for the data to be linked back to any individual user.

(2) This section shall not be construed to require the disclosure of information that will lead to material vulnerabilities for the privacy of users or the security of a covered platform’s service or create a significant risk of the violation of Federal or State law.

(g) LOCATION.—The public reports required under this section should be posted by a covered platform on an easy to find location on a publicly available website.

SEC. 7. INDEPENDENT RESEARCH.

(a) DEFINITIONS.—In this section:
(1) ASSISTANT SECRETARY.—The term “Assistant Secretary” means the Assistant Secretary of Commerce for Communications and Information.

(2) DE-IDENTIFIED DATA.—The term “de-identified data” means information—

(A) that does not identify and is not linked or reasonably linkable to an individual or an individual’s device; and

(B) with respect to which a covered platform or researcher takes reasonable technical and contractual measures to ensure that the information is not used to re-identify any individual or individual’s device.

(3) ELIGIBLE RESEARCHER.—

(A) IN GENERAL.—The term “eligible researcher” means an individual or group of individuals affiliated with or employed by—

(i) an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

(ii) a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986.
(B) LIMITATION.—Such term shall not include an individual or group of individuals that is—

(i) not located in the United States;

or

(ii) affiliated with the government of a foreign adversary (as defined in section 8(c)(2) of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. 1607(c)(2))).

(4) INDEPENDENT RESEARCH.—The term “independent research” means the scientific or historical analysis of information that is performed for the primary purpose of advancing understanding, knowledge, and remedies regarding the harms to minors described in section 3(a).

(5) NONCOMMERCIAL PURPOSE.—The term “noncommercial purpose” means a purpose that does not involve any direct or indirect use of data sets for the sale, resale, solicitation, rental, or lease of a service, or any use by which the user expects a profit, including the sale to the general public of a publication containing independent research.

(6) PROGRAM.—The term “Program” means the program established under subsection (b)(1).
(7) Qualified Researcher.—The term “qualified researcher” means an eligible researcher who is approved by the Assistant Secretary to conduct independent research regarding harms to minors under the Program.

(b) Independent Research Program Relating to Identified Harms to Minors.—

(1) Establishment.—Subject to paragraph (2), the Assistant Secretary shall establish a program, with public notice and an opportunity to comment, under which an eligible researcher may apply for, and a covered platform shall provide, access to data sets from the covered platform for the sole purpose of conducting independent research regarding the harms described in section 3(a).

(2) Scope of Application.—The requirements of this subsection shall apply to a covered platform if—

(A) for the most recent calendar year, the platform averaged more than 10,000,000 active users on a monthly basis in the United States; and

(B) the platform predominantly provides a community forum for user generated content and discussion, including sharing videos, im-
ages, games, audio files, discussion in a virtual setting, or other content, such as acting as a social media platform, virtual reality environment, or social network service.

(3) PROCESSES, PROCEDURES, AND STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary shall establish for the program established under this subsection—

(A) definitions for data sets (related to harms described in section 3(a)) that qualify for disclosure to researchers under the program and standards of access for data sets to be provided under the program;

(B) a process by which an eligible researcher may submit an application described in paragraph (1);

(C) an appeals process for eligible researchers to appeal adverse decisions on applications described in paragraph (1) (including a decision to grant an appeal under paragraph (4)(C));

(D) procedures for implementation of the program, including methods for—

(i) participation by covered platforms;
(ii) evaluation of researcher proposals for alignment with program objectives and scoping; and

(iii) verification by the Assistant Secretary of the credentials of eligible researchers and processes for the application or disqualification to participate in the program;

(E) standards for privacy, security, and confidentiality required to participate in the program, including rules to ensure that the privacy and safety of users is not infringed by the program;

(F) a mechanism to allow individuals to control the use of their personal data under the program, including the ability to opt out of the program;

(G) standards for transparency regarding the operation and administration of the program; and

(H) rules to prevent requests for data sets that present financial conflicts of interest, including efforts by covered platforms to gain a competitive advantage by directly funding data access requests, the use of qualified researcher
status for commercial gain, or efforts by covered platforms to obtain access to intellectual property that is otherwise protected by law.

(4) DUTIES AND RIGHTS OF COVERED PLATFORMS.—

(A) ACCESS TO DATA SETS.—

(i) IN GENERAL.—If the Assistant Secretary approves an application under paragraph (1) with respect to a covered platform, the covered platform shall, in a timely manner, provide the qualified researcher with access to data sets necessary to conduct independent research described in that paragraph.

(ii) LIMITATIONS.—Nothing in this section shall be construed to require a covered platform to provide access to data sets that are intellectual property protected by Federal law, trade secrets, or commercial or financial information.

(iii) FORM OF ACCESS.—A covered platform shall provide to a qualified researcher access to data sets under clause (i) through online databases, application
programming interfaces, and data files as appropriate.

(B) Nondisclosure Agreement.—A covered platform may require, as a condition of access to the data sets of the covered platform, that a qualified researcher enter into a nondisclosure agreement restricting the release of data sets, provided that—

(i) the agreement does not restrict the publication or discussion regarding the qualified researcher’s findings; and

(ii) the terms of the agreement allow the qualified researcher to provide the original agreement or a copy of the agreement to the Assistant Secretary.

(C) Appeal.—

(i) Agency Appeal.—A covered platform may appeal the granting of an application under paragraph (1) on the grounds that, and the Assistant Secretary shall grant such appeal if—

(I) the covered platform does not have access to the requested data sets or the requested data sets are not reasonably tailored to application; or
(II) providing access to the data sets will lead to material vulnerabilities for the privacy of users or the security of the covered platform’s service or create a significant risk of the violation of Federal or state law.

(ii) JUDICIAL REVIEW.—A decision of the Assistant Secretary with respect to an appeal under clause (i) shall be considered to be a final agency action for purposes of judicial review under chapter 7 of title 5, United States Code.

(iii) ALTERNATIVE MEANS OF FULFILLMENT.—As part of an appeal under clause (i) that is made on the basis of subclause (II) of such clause, a covered platform shall propose one or more alternative data sets or means of accessing the requested data sets that are appropriate and sufficient to fulfill the purpose of the application, or shall explain why there are no alternative data sets or means of access which acceptably mitigate the applicable privacy, security, or legal concerns.
(D) **TIMING.**—A covered platform for which this provision applies shall participate in the program established under this subsection no later than two years after enactment of this Act.

(5) **APPLICATION REQUIREMENTS.**—In order to be approved to access data sets from a covered platform, an eligible researcher shall, in the application submitted under paragraph (1)—

(A) explain the purpose for which the independent research is undertaken;

(B) commit to conduct the research for noncommercial purposes;

(C) demonstrate a proven record of expertise on the proposed research topic and related research methodologies;

(D) if the eligible researcher is seeking access to data sets that include personal data, explain why the data sets are requested, and the means through which such data sets shall be accessed are the least sensitive and the most privacy-protective means that will permit completion of the research and not compromise the privacy or safety of users; and
(E) commit to fulfill, and demonstrate a capacity to fulfill, the specific data security and confidentiality requirements corresponding to the application.

(6) PRIVACY AND DUTY OF CONFIDENTIALITY.—

(A) RESEARCHER CONFIDENTIALITY.—To protect user privacy, a qualified researcher shall keep data sets provided by a covered platform under the program confidential and secure to the specifications set forth under the program rules and the approved application.

(B) PLATFORM CONFIDENTIALITY.—A covered platform shall use reasonable measures to enable researcher access to data sets under the program in a secure and privacy-protective manner, including through the de-identification of personal data or use of other privacy-enhancing technologies.

(C) FEDERAL AGENCIES.—Nothing in this subsection shall be construed to authorize—

(i) a Federal agency to seek access to the data of a covered platform through the program; or
(ii) a qualified researcher to transfer
or share any data sets provided by a cov-
ered platform under the program with a
Federal agency.

(D) SECURITY.—Nothing in this sub-
section shall be construed in a manner that
would result in data sets from a covered plat-
form being transferred to the Government of
the People’s Republic of China or the govern-
ment of another foreign adversary (as defined
in section 8(c)(2) of the Secure and Trusted
Communications Networks Act of 2019 (47
U.S.C. 1607(e)(2))).

(e) SAFE HARBOR FOR COLLECTION OF DATA FOR
INDEPENDENT RESEARCH REGARDING IDENTIFIED
HARMS TO MINORS.—If, in the course of conducting inde-
pendent research for noncommercial purposes regarding
harms described in section 3(a) (without regard to wheth-
er such research is conducted under the program), an eli-
gible researcher collects or uses data from a covered plat-
form in a manner that violates the terms of service of the
platform, no cause of action based on such violation shall
lie or be maintained in any court against such researcher
unless the violation relates to the failure of the researcher
to take reasonable measures to protect user privacy and security.

(d) RULEMAKING.—The Assistant Secretary, in consultation with the Secretary of Commerce, the Director of the National Institute of Standards and Technology, the Director of the National Science Foundation, and the Director of the National Institutes of Health shall promulgate rules in accordance with section 553 of title 5, United States Code, as necessary to implement this section.

SEC. 8. MARKET RESEARCH.

(a) MARKET RESEARCH BY COVERED PLATFORMS.—The Federal Trade Commission, in consultation with the Secretary of Commerce, shall issue guidance for covered platforms seeking to conduct market- and product-focused research on minors. Such guidance shall include—

(1) a standard consent form that provides minors and their parents a clear, conspicuous, and easy-to-understand explanation of the scope and purpose of the research to be conducted, and provides an opportunity for informed consent; and

(2) recommendations for research practices for studies that may include minors, disaggregated by the age ranges of 0–5, 6–9, 10–12, and 13–16.

(b) TIMING.—The Federal Trade Commission shall issue such guidance not later than 18 months after the
date of enactment of this Act. In doing so, they shall seek input from members of the public and the representatives of the Kids Online Safety Council established under section 12.

SEC. 9. AGE VERIFICATION STUDY AND REPORT.

(a) Study.—The Director of the National Institute of Standards and Technology, in coordination with the Federal Communications Commission, Federal Trade Commission, and the Secretary of Commerce, shall conduct a study evaluating the most technologically feasible methods and options for developing systems to verify age at the device or operating system level.

(b) Contents.—Such study shall consider—

(1) the benefits of creating a device or operating system level age verification system;

(2) what information may need to be collected to create this type of age verification system;

(3) the accuracy of such systems and their impact or steps to improve accessibility, including for individuals with disabilities;

(4) how such a system or systems could verify age while mitigating risks to user privacy and data security and safeguarding minors’ personal data, emphasizing minimizing the amount of data col-
lected and processed by covered platforms and age
verification providers for such a system; and

(5) the technical feasibility, including the need
for potential hardware and software changes, includ-
ing for devices currently in commerce and owned by
consumers.

(e) REPORT.—Not later than 1 year after the date
of enactment of this Act, the agencies described in sub-
section (a) shall submit a report containing the results of
the study conducted under such subsection to the Com-
mittee on Commerce, Science, and Transportation of the
Senate and the Committee on Energy and Commerce of
the House of Representatives.

SEC. 10. GUIDANCE.

(a) IN GENERAL.—Not later than 18 months after
the date of enactment of this Act, the Federal Trade Com-
mission, in consultation with the Kids Online Safety Coun-
cil established under section 12, shall issue guidance to—

(1) provide information and examples for cov-
ered platforms and auditors regarding—

(A) identifying features that are used to
increase, sustain, or extend use of the covered
platform by a minor;

(B) safeguarding minors against the pos-
sible misuse of parental tools;
(C) best practices in providing minors and
parents the most protective level of control over
privacy and safety;

(D) using indicia or inferences of age of
users for assessing use of the covered platform
by minors;

(E) methods for evaluating the efficacy of
safeguards; and

(F) providing additional control options
that allow parents to address the harms de-
scribed in section 3(a); and

(2) outline conduct that does not have the pur-
pose or substantial effect of subverting or impairing
user autonomy, decision-making, or choice, or of
causing, increasing, or encouraging compulsive usage
for a minor, such as—

(A) de minimis user interface changes de-
derived from testing consumer preferences, includ-
ing different styles, layouts, or text, where such
changes are not done with the purpose of weak-
ening or disabling safeguards or parental con-
trols;

(B) algorithms or data outputs outside the
control of a covered platform; and
(C) establishing default settings that provide enhanced privacy protection to users or otherwise enhance their autonomy and decision-making ability.

(b) GUIDANCE TO SCHOOLS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Education, in consultation with the Federal Trade Commission and the Kids Online Safety Council established under section 12, shall issue guidance to assist to assist elementary and secondary schools in using the notice, safeguards and tools provided under this Act and providing information on online safety for students and teachers.

(e) LIMITATION ON FEDERAL TRADE COMMISSION GUIDANCE.—

(1) EFFECT OF GUIDANCE.—No guidance issued by the Federal Trade Commission with respect to this Act shall—

(A) confer any rights on any person, State, or locality; or

(B) operate to bind the Federal Trade Commission or any person to the approach recommended in such guidance.
(2) Use in enforcement actions.—In any enforcement action brought pursuant to this Act, the Federal Trade Commission—

(A) shall allege a violation of a provision of this Act; and

(B) may not base such enforcement action on, or execute a consent order based on, practices that are alleged to be inconsistent with guidance issued by the Federal Trade Commission with respect to this Act, unless the practices are alleged to violate a provision of this Act.

SEC. 11. ENFORCEMENT.

(a) Enforcement by Federal Trade Commission.—

(1) Unfair and deceptive acts or practices.—A violation of this Act or a regulation promulgated 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)).

(2) Powers of the Commission.—

(A) In general.—The Federal Trade Commission (referred to in this section as the
“Commission”) shall enforce this Act and any regulation promulgated 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.

(B) PRIVILEGES AND IMMUNITIES.—Any person that violates this Act or a regulation promulgated under this Act shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

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

(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 or a regulation promulgated 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, 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—

(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 or a regulation promulgated under this Act, no State may, during the pendency of that action, institute a separate 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.

SEC. 12. KIDS ONLINE SAFETY COUNCIL.

(a) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Commerce shall establish and convene the Kids Online Safety Council for the purpose of providing advice on matters related to this Act.

(b) PARTICIPATION.—The Kids Online Safety Council shall include diverse participation from—

(1) academic experts, health professionals, and members of civil society with expertise in mental health, substance use disorders, and the prevention of harms to minors;

(2) representatives in academia and civil society with specific expertise in privacy and civil liberties;

(3) parents and youth representation;
(4) representatives of covered platforms;

(5) representatives of the National Telecommunications and Information Administration, the National Institute of Standards and Technology, the Federal Trade Commission, the Department of Justice, and the Department of Health and Human Services;

(6) State attorneys general or their designees acting in State or local government; and

(7) representatives of communities of socially disadvantaged individuals (as defined in section 8 of the Small Business Act (15 U.S.C. 637)).

(c) ACTIVITIES.—The matters to be addressed by the Kids Online Safety Council shall include—

(1) identifying emerging or current risks of harms to minors associated with online platforms;

(2) recommending measures and methods for assessing, preventing, and mitigating harms to minors online;

(3) recommending methods and themes for conducting research regarding online harms to minors; and

(4) recommending best practices and clear, consensus-based technical standards for transparency reports and audits, as required under this Act, in-
excluding methods, criteria, and scope to promote overall accountability.

SEC. 13. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect on the date that is 18 months after the date of enactment of this Act.

SEC. 14. RULES OF CONSTRUCTION AND OTHER MATTERS.

(a) RELATIONSHIP TO OTHER LAWS.—Nothing in this Act shall be construed to—

(1) preempt section 444 of the General Education Provisions Act (20 U.S.C. 1232g, commonly known as the "Family Educational Rights and Privacy Act of 1974") or other Federal or State laws governing student privacy;

(2) preempt the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501 et seq.) or any rule or regulation promulgated under such Act; or

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

(b) PROTECTIONS FOR PRIVACY.—Nothing in this Act shall be construed to require—

(1) the affirmative collection of any personal data with respect to the age of users that a covered
platform is not already collecting in the normal course of business; or

(2) a covered platform to implement an age-gating or age verification functionality.

(c) COMPLIANCE.—Nothing in this Act shall be construed to restrict a covered platform’s ability to—

(1) cooperate with law enforcement agencies regarding activity that the covered platform reasonably and in good faith believes may violate Federal, State, or local laws, rules, or regulations;

(2) comply with a civil, criminal, or regulatory inquiry or any investigation, subpoena, or summons by Federal, State, local, or other government authorities; or

(3) investigate, establish, exercise, respond to, or defend against legal claims.

SEC. 15. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, is determined to be unenforceable or invalid, the remaining provisions of this Act and the amendments made by this Act shall not be affected.