117TH CONGRESS
1ST SESSION

H. R. 5439

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 30, 2021

Ms. Castor of Florida (for herself, Ms. Clarke of New York, Ms. Wexton, and Mrs. Trahan) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To keep children safe and protect their interests on the internet, 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. SHORT TITLE.

This Act may be cited as the “Kids Internet Design and Safety Act” or the “KIDS Act”.

SECTION 2. FINDINGS.

Congress finds the following:

(1) Children increasingly consume digital entertainment on the internet and are uniquely susceptible to manipulation online, given their lack of im-
portant neurological and psychological capabilities which are developed later in adulthood.

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

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

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

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

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

SEC. 3. DEFINITIONS.

(a) In General.—In this Act:
(1) Algorithmic process.—The term “algorithmic process” means a computational process, including one derived from machine learning or other artificial intelligence techniques, that processes personal information or other data for the purpose of determining the order or manner that a set of information is provided to a user of an online platform, including the provision of commercial content, the display of social media posts, or any other method of automated decision making, content selection, content recommendation, or content amplification.

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

(3) Constructive knowledge.—

(A) In general.—The term “constructive knowledge” means, for purposes of section 4, with respect to knowledge that a user of an online platform is a covered user, knowledge that is imputed to the operator of the online platform if—

(i) the operator directly or indirectly collects, uses, profiles, buys, sells, classifies, or analyzes (using an algorithmic process or other form of data analytics) data about the user to estimate, identify,
or classify the age, age range, or proxy thereof;

(ii) the operator has or receives data or reporting related to the age of the user on the online platform under the self-regulatory guidelines described in section 1304 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6503) that documents risks and controls, including the existence of operator-controlled data analytics and content analytics capabilities and functions or outputs;

(iii) the operator has or receives complaints from parents or other third parties about the age of the user, whether through the operator’s complaint mechanism, by email, or other means conveniently accessible by such parents or third parties;

(iv) the operator has or receives data or reporting or information from the operator’s internal communications, including documentation about its advertising practices, such as an advertisement insertion order, or other promotional material to marketers, that indicates that data is being
collected from the user because the user is within a particular age range; or

(v) the operator knows that—

(I) a provider of content on the platform communicates to an advertising network that the content is intended for users of a particular age range or likely to appeal to users of a particular age range, whether directly or indirectly; and

(II) the user is shown that content.

(B) ADDITIONAL FACTORS.—The Commission may issue guidance or promulgate rules in accordance with section 553 of title 5, United States Code, that indicate factors, in addition to those described in subparagraph (A), that should be considered to be constructive knowledge for purposes of this Act.

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

(5) DIRECTED TO CHILDREN.—The term “directed to children” means the targeting of covered users by an online platform or portion of an online
platform, as demonstrated by, with respect to such
platform or portion of a platform—

(A) its subject matter;
(B) its visual content;
(C) the use of animated characters or child-oriented activities for children and related incentives;
(D) music or other audio content;
(E) the age of models used;
(F) the presence of—

(i) child celebrities; or
(ii) celebrities who appeal to covered users;
(G) the language used;
(H) advertising content used on, or used to advertise, such platform; or
(I) reliable empirical evidence relating to—

(i) the composition of the audience of such platform; and
(ii) the intended audience of such platform.

(6) HOST-SELLING.—The term “host-selling” refers to commercial video content that features the same characters or individuals as in the adjacent noncommercial content.
(7) **Influencer Marketing.**—The term “influencer marketing” means a tactic by which a company compensates individuals who are deemed to have the potential to review, promote, or sell a product or service online to an intended target audience.

(8) **Online Platform.**—The term “online platform” means any public-facing website, online service, online application, or mobile application which is operated for commercial purposes.

(9) **Operator.**—The term “operator” means any person who, for commercial purposes, in interstate or foreign commerce, operates or provides an online platform.

(10) **Person.**—The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

**SEC. 4. Regulation of Acts and Practices on Child-Directed Platforms.**

(a) **Prohibition on Certain Interface Elements.**—

(1) **In General.**—

(A) **Prohibition.**—It is unlawful for an operator to operate or provide—

(i) an online platform or a portion of an online platform directed to children that
incorporates an interface element described in subparagraph (B); and

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

(B) INTERFACE ELEMENTS DESCRIBED.—

The interface elements described in this subparagraph are the following:

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

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

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

(iv) Any interface element or setting that unfairly encourages a covered user, due to their age or inexperience, to share personal information, submit content, or
spend more time engaging with the platform.

(v) Any interface element that provides a covered user with badges or other visual award symbols based on elevated levels of engagement with the platform.

(vi) Any interface element that maximizes a covered user’s spending on the platform, unfairly encourages a covered user to spend money on the platform, facilitates a financial transaction by a covered user on the platform without notification to the covered user’s parent, or facilitates a financial transaction by a covered user on the platform that is not in the interest of the covered user.

(2) RULEMAKING.—Not later than 1 year after the date of enactment of this Act and not less frequently than every 5 years thereafter, the Commission shall promulgate regulations under section 553 of title 5, United States Code, that establish any additions or exceptions to the prohibitions under paragraph (1). The Commission may only establish such an exception on the basis that the exception is necessary to provide essential functionality for an online
platform and is consistent with the best interests of covered users.

(b) Prohibition on Amplification of Certain Content; User Reporting Mechanism.—

(1) In general.—It shall be unlawful for an operator to operate or provide—

(A) an online platform or portion of an online platform directed to children that employs an algorithmic process described in paragraph (2) on the platform;

(B) any online platform that employs an algorithmic process described in paragraph (2) with respect to a user of the platform if the operator of the platform has actual or constructive knowledge that the user is a covered user; and

(C) an online platform that does not include a mechanism for users or other third parties to report suspected violations of any requirement of this paragraph.

(2) Algorithmic process described.—An algorithmic process described in this paragraph is an algorithmic process that amplifies, promotes, or encourages covered users' consumption of videos and other forms of content that—
(A) are of a non-educational nature (as determined by the Commission); and

(B) involve—

(i) sexual material;

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

(iii) activities that are unlawful for covered users to engage in or the promotion of such activities; or

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

(e) Prohibition on Certain Advertising Methods.—

(1) In general.—It shall be unlawful for an online operator to operate or provide—

(A) an online platform or portion of an online platform directed to children that employs an algorithmic process to present any of the content described in paragraph (2) to users of the platform; and
(B) any online platform that employs an algorithmic process to present any of the content described in paragraph (2) to a covered user if the operator of the platform has actual or constructive knowledge that the user is a covered user.

(2) Content Described.—The content described in this paragraph is the following:

(A) Content that includes host-selling.

(B) Program-length advertisements.

(C) Influencer marketing.

(D) Online advertising or material with considerable commercial content involving alcohol, nicotine, or tobacco.

(E) Online advertising or material with considerable commercial content with any imbedded interactive elements that take advantage of covered users’ inexperience or credulity in noncommercial child-directed content.

(F) Content that includes product placement.

(3) Program-Length Advertisement.—For purposes of this subsection, the term “program-length advertisement” shall be defined by the Commission through regulation or other public guidance.
(d) Prohibition on Use of Personal Information.—It shall be unlawful for an online platform to use age verification information collected from a covered user for any commercial purpose if—

(1) the online platform is directed to children;

or

(2) the operator of the online platform has constructive knowledge that the user is a covered user.

(e) Requirement to Distinguish Commercial Content from Noncommercial Content.—The Commission shall promulgate regulations in accordance with section 553 of title 5, United States Code, to require any online platform or portion of an online platform that is directed to children, or with respect to which the operator of the platform or portion of the platform has constructive knowledge that covered users use the platform or portion of the platform, to incorporate online visual elements or other indicators that distinguish commercial content from noncommercial content.

(f) Rulemaking.—The Commission shall promulgate, in accordance with section 553 of title 5, United States Code, such rules as may be necessary to carry out this section.

(g) Effective Date.—The requirements of this section shall apply to online platforms beginning on the
date that is 1 year after the date of enactment of this Act.

SEC. 5. ONLINE CONTENT LABELING.

(a) Content Labeling System Report.—Not later than the date that is 1 year after the date of enactment of this Act, the Commission shall submit to Congress a report—

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

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

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

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

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

(D) include a mechanism for users to report to the Commission complaints of mislabeled content and for the Commission to remedy such instances of mislabeled content.
(b) **Consultation.**—The report described in subsection (a) shall be developed by the Commission in consultation with an advisory board, to be created and convened by the Commission, which is comprised of experts in child development, child health, education, and media.

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

(a) **Transparency.**—The Commission shall promulgate regulations in accordance with section 553 of title 5, United States Code, requiring an operator of an online platform which is directed to children to publish and maintain a publicly accessible digital record of the viewable or playable content of each such platform. Such regulations shall require the operator to ensure that such record does not include personal information (as defined in section 1302 of the Children’s Online Privacy Protection Act of 1998 (15 U.S.C. 6501)) or, as appropriate, user-generated content.

(b) **Annual Platform Audits.**—The regulations promulgated pursuant to subsection (a) shall include the establishment of an annual audit process, to be conducted by the Commission during the 5-year period subsequent to the date of enactment of this Act, for each of the 25 online platforms directed to children with the highest total number of covered users, to evaluate the level of compli-
ance by each such platform with the requirements under this Act.

(c) Report.—The Commission shall submit annual reports to Congress based on the audits described in subsection (b) that—

(1) describe the level of compliance by the platforms described in such subsection with the requirements under this Act; and

(2) provide recommendations for such legislation and administrative actions as the Commission determines appropriate based on the audit findings.

SEC. 7. GRANT PROGRAM.

(a) Establishment.—

(1) In general.—The Secretary of Commerce (in this section referred to as the “Secretary”) shall make grants to eligible persons to foster the creation and promotion of advertisement-free and educational online content (such as videos and applications) for covered users.

(2) Eligible person.—For purposes of this section, the term “eligible person” means a person that has submitted an application, as approved by the Secretary pursuant to the eligibility requirements developed under subsection (b), for the cre-
ation and promotion of advertisement-free and edu-
cational online content for covered users.

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

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

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

(c) AUTHORIZATION OF APPROPRIATIONS.—

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

(A) for fiscal year 2021, $4,000,000;

(B) for fiscal year 2022, $8,000,000;

(C) for fiscal year 2023, $10,000,000; and

(D) for fiscal year 2024, $12,000,000.

(2) AVAILABILITY OF FUNDS.—Any amount ap-
propriated under this subsection for any fiscal year
shall remain available for the purposes of carrying
out any application approved during such fiscal year
for an additional period of 1 year after the end of
such fiscal year.
SEC. 8. FEDERAL TRADE COMMISSION STUDY.
Not later than 1 year after the date of enactment of this Act, the Commission shall conduct and publish a study, using any compulsory processes available to the Commission as necessary, relying on public data and information if available and sufficient, and incorporating public comment, on harms resulting from interface elements and advertising methods on online platforms that are directed to children (and best practices for avoiding such harms), including the following:

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

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

SEC. 9. ADMINISTRATION AND ENFORCEMENT.

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

(b) ACTIONS BY COMMISSION.—

(1) IN GENERAL.—The Commission shall prevent any person from violating this Act or any regulation promulgated by the Commission 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
seq.) were incorporated into and made a part of this
Act.

(2) Penalties and Privileges.—Any person
that violates this Act or any 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 in the same
manner, by the same means, and with the same ju-
risdiction, power, and duties, as though all applica-
table terms and provisions of the Federal Trade Com-
mission Act were incorporated into and made a part
of this Act.

(c) Civil Penalty.—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

(d) Enforcement by States.—

(1) In General.—If the attorney general of a
State has reason to believe that an interest of the
residents of the State has been or is being threat-
ened or adversely affected by a violation of this Act or a regulation promulgated under this Act, the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2) Rights of Commission.—

(A) Notice to Commission.—

(i) In general.—Except as provided in clause (iii), the attorney general of a State, before initiating a civil action under paragraph (1), shall provide written notification to the Commission that the attorney general intends to bring such civil action.

(ii) Contents.—The notification required under clause (i) shall include a copy of the complaint to be filed to initiate the civil action.

(iii) Exception.—If it is not feasible for the attorney general of a State to provide the notification required under clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.
(B) INTERVENTION BY COMMISSION.—The Commission may—

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

(ii) upon intervening—

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

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

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

(e) EFFECT ON OTHER LAWS.—

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

(2) RELATION TO STATE LAW.—Nothing in this Act may be construed to preempt any provision of
1 State law that provides greater protection to con-
sumers than is provided in this Act.