

[DISCUSSION DRAFT]119TH CONGRESS
1ST SESSION**H. R.** _____

To ensure responsible age assurance practices within the mobile ecosystem,
particularly concerning the protection of minors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. AUCHINCLOSS introduced the following bill; which was referred to the
Committee on _____

A BILL

To ensure responsible age assurance practices within the
mobile ecosystem, particularly concerning the protection
of minors, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Parents Over Platforms Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

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

TITLE I—APPLICATION DISTRIBUTOR AND DEVELOPER
RESPONSIBILITIES

Sec. 101. Age assurance.

Sec. 102. Application distributor and developer obligations.

TITLE II—LIABILITY AND ENFORCEMENT

Sec. 201. Limitations on liability.

Sec. 202. Enforcement.

Sec. 203. Preemption.

Sec. 204. Severability.

Sec. 205. Effective date.

1 SEC. 2. DEFINITIONS.**2 In this Act:**

3 (1) ADULT.—The term “Adult” means an ac-
4 count holder who is or is estimated to be 18 years
5 of age or older.

6 (2) AGE CATEGORY.—The term “Age Cat-
7 egory” means categorization of an individual based
8 on age or estimated age, including a description of
9 the user as a Minor, Adult, or being within a given
10 age range.

11 (3) AGE SIGNAL.—The term “Age Signal”
12 means a signal that indicates an account holder’s
13 Age Category, which the account holder or the ac-
14 count holder’s parent has agreed to share.

15 (4) APPLICATION.—The term “Application”
16 means a software program that is—

17 (A) designed to be run on a Connected De-
18 vice, and to perform, or to help the user per-

1 form a specific task on the Connected Device;
2 and

3 (B) distributed through an Application
4 Distribution Provider.

5 The term does not include websites or Internet
6 Browser extensions, or software with a primary pur-
7 pose of extending the functionality of an Internet
8 Browser.

9 (5) APPLICATION DISTRIBUTOR.—The term
10 “Application Distributor” means a software applica-
11 tion that distributes Applications from Developers to
12 users of a Connected Device. The term does not in-
13 clude Internet Browsers.

14 (6) APPLICATION DISTRIBUTION PROVIDER.—
15 The term “Application Distribution Provider” means
16 an entity, company, or organization that owns, oper-
17 ates, or controls an Application Distributor.

18 (7) CONNECTED DEVICE.—The term “Con-
19 nected Device” means a smartphone, tablet, gaming
20 console, or virtual reality device that enables users
21 to connect to the Internet and download software
22 applications.

23 (8) COVERED APPLICATION.—The term “Cov-
24 ered Application” means an Application that is not
25 an Application Distributor and that a Developer pro-

1 vides, whether legally required or not, a different ex-
2 perience for Adults than for Minors or an experience
3 that is intended only for Adults. This includes, but
4 is not limited to, Developers that provide different
5 account types, content, or features or engage in dif-
6 ferent advertising or data practices depending on a
7 user's age. The term does not include Internet
8 Browsers or Online Search Engines.

9 (9) DEVELOPER.—The term “Developer”
10 means any person, entity, company, or organization
11 that creates, owns, or controls an Application.

12 (10) MINOR.—The term “Minor” means an ac-
13 count holder who is or is estimated to be under the
14 age of 18.

15 (11) COVERED WEBSITE.—“The term “Covered
16 Website” means a website that provides a URL-ac-
17 cessible or web version of a Covered Application.
18 The term does not include Internet Browsers or On-
19 line Search Engines.

20 (12) PERSONALIZED ADVERTISING.—“Personal-
21 ized Advertising” means displaying advertisements
22 to an account holder where the advertisement is se-
23 lected based on personal data obtained from that ac-
24 count holder's activities over time and across non-af-

1 filiated websites or online applications to predict
2 such account holder’s preferences or interests.

3 “Personalized Advertising” does not include:

4 (1) Advertising based on an account holder’s
5 activities within a Developer’s own Application or
6 Applications;

7 (2) Advertising based on the context of an ac-
8 count holder’s current interaction with an Applica-
9 tion;

10 (3) Advertising directed to an account holder in
11 response to the account holder’s direct request for
12 information or feedback; or

13 (4) The processing of personal data solely for
14 measuring or reporting advertising performance,
15 reach, or frequency.

16 **TITLE I—APPLICATION DIS-** 17 **TRIBUTOR AND DEVELOPER** 18 **RESPONSIBILITIES**

19 **SEC. 101. AGE ASSURANCE.**

20 (a) RESPONSIBILITIES OF APPLICATION DISTRIBU-
21 TION PROVIDERS.—An Application Distribution Pro-
22 vider—

23 (1) shall ask account holders to declare their
24 age when creating an account with the Application
25 Distribution Provider;

1 (2) may use commercially reasonable efforts to
2 obtain the Age Category of an account holder with
3 a reasonable level of certainty;

4 (3) may provide account holders with a mecha-
5 nism to obtain their Age Category and the ability to
6 request an update if they believe their Age Category
7 is incorrect; and

8 (4) shall provide Developers of Covered Applica-
9 tions the technical ability to call an Age Signal
10 where the account holder or the account holder's
11 parent has agreed to such sharing.

12 (b) RULE OF CONSTRUCTION.—

13 (1) Nothing in this section shall be construed to
14 preclude an Application Distribution Provider from
15 using multiple commercially reasonable methods to
16 obtain, estimate, or provide the Age Category of an
17 account holder.

18 (2) Nothing in this section shall be construed to
19 restrict an Application Distribution Provider's ability
20 to satisfy this section by obtaining a Minor account
21 holder's age from the Minor's parent.

22 **SEC. 102. APPLICATION DISTRIBUTOR AND DEVELOPER OB-**
23 **LIGATIONS.**

24 (a) APPLICATION DISTRIBUTION PROVIDERS.—An
25 Application Distribution Provider—

1 (1) shall provide the account holder's parent
2 with the ability to prevent account holders who are
3 not Adults from acquiring or using the Developer's
4 Covered Application from the Application Dis-
5 tributor;

6 (2) shall provide the Developer of a Covered
7 Application with the ability to prevent account hold-
8 ers who are not Adults from acquiring or using the
9 Developer's Covered Application from the Applica-
10 tion Distributor.

11 (A) Nothing in this section shall prevent
12 Application Distribution Providers from cre-
13 ating a user interface or centralized page for
14 account holder's parents to block categories by
15 age rating of Covered Applications based on the
16 content and features of the Covered Applica-
17 tion.

18 (2) shall provide the capability to Developers to
19 provide information regarding their relevant parental
20 controls for a Covered Application through a central-
21 ized product page or user interface, hosted by the
22 Application Distribution Provider, that provides rel-
23 evant information about a Covered Application;

24 (3) shall comply with the obligations set out in
25 subsection (b) for its own Covered Applications for

1 which the Application Distribution Provider is also
2 the Developer; and

3 (4) shall not use data collected from third-party
4 Covered Applications in the course of compliance
5 with this section to give the Application Distribution
6 Provider preference relative to those of third parties,
7 or to otherwise use such data in an anticompetitive
8 manner.

9 (b) DEVELOPERS OF COVERED APPLICATIONS.—A
10 Developer of a Covered Application—

11 (1) shall report to the Application Distribution
12 Provider whether their Applications provide a dif-
13 ferent experience for Adults than for users who are
14 not Adults or is intended only for Adults;

15 (2) shall provide information regarding privacy
16 and online safety settings to help parents support
17 Minors using their Covered Applications, unless
18 their Application is intended only for Adults and
19 blocks Minors;

20 (3) shall use commercially reasonable efforts to
21 determine whether a user is an Adult or a Minor
22 with a reasonable level of certainty;

23 (A) For the purposes of this section, an
24 Age Signal provided by an Application Distribu-
25 tion Provider shall be considered a commercially

1 reasonable effort, unless a Developer's Applica-
2 tion is intended only for Adults and blocks Mi-
3 nors and is required by law to restrict access to
4 Adults, in which case—

5 (i) an Age Signal provided by an Ap-
6 plication Distribution Provider indicating a
7 user is a Minor shall be sufficient basis to
8 block access; and

9 (ii) an Age Signal provided by an Ap-
10 plication Distribution Provider indicating a
11 user is an Adult shall not, by itself, satisfy
12 the requirement to determine whether a
13 user is an Adult with a reasonable level of
14 certainty, including for purposes of other
15 laws that require access restrictions based
16 on age.

17 (4) shall make a reasonable effort to ensure
18 that users who are Minors cannot engage in any ac-
19 tivity that has been restricted by the developer for
20 Adults only;

21 (5) shall obtain consent prior to permitting
22 Minor account holders from accessing a Covered Ap-
23 plication or portion thereof that the Developer has
24 designated as unsuitable for use by Minors without

1 parental guidance or supervision, or from accessing
2 content that is age-gated by law;

3 (6) shall not deliver personalized advertising to
4 Minors; and

5 (7) if the Developer determines that it is a Cov-
6 ered Application, and chooses to call an Age Signal
7 facilitated by an Application Distribution Provider to
8 satisfy the requirements of this section, the Devel-
9 oper—

10 (A) shall request the minimum amount of
11 information needed for purposes of compliance
12 with this Act;

13 (B) may not willfully disregard any infor-
14 mation regarding an individual's age or Age
15 Category that is otherwise available to the De-
16 veloper;

17 (C) may not share the information ob-
18 tained from the Age Signal with third parties,
19 except for a service provider, but only if nec-
20 essary for such service provider to implement
21 safety measures or privacy protections for mi-
22 nors or otherwise required to do so by law; and

23 (D) may not use the Age Signal for any
24 purpose beyond that intended by this Act, in-
25 cluding but not limited to using the Age Signal

1 to back into or attempt to back into a user's
2 date of birth.

3 (8) if the Developer uses a method other than
4 an Age Signal provided by an Application Distribu-
5 tion Provider to satisfy the requirements of this sec-
6 tion, the Developer—

7 (A) shall request the minimum amount of
8 information needed for purposes of compliance
9 with this Act;

10 (B) may not willfully disregard any infor-
11 mation regarding an individual's age or Age
12 Category that is available to the Developer;

13 (C) may not share the information ob-
14 tained in the course of complying with this sec-
15 tion with third parties, except for a service pro-
16 vider, but only if necessary for such service pro-
17 vider to implement safety measures or privacy
18 protections for minors or otherwise required to
19 do so by law; and

20 (D) may not use age data for any purpose
21 beyond that intended by this Act, including but
22 not limited to using age data to back into or at-
23 tempt to back into a user's date of birth.

24 (c) RULE OF CONSTRUCTION.—If the Developer and
25 an Application Distribution Provider are controlled by the

1 same entity, the Developer may rely on age determinations
2 made by that entity.

3 (d) RULE OF CONSTRUCTION.—Developers of Cov-
4 ered Websites shall have the same requirements as Devel-
5 opers of Covered Applications in this Act and may carry
6 over to Covered Websites an Age Signal received from an
7 Application Distribution Provider to fulfill such require-
8 ments.

9 **TITLE II—LIABILITY AND** 10 **ENFORCEMENT**

11 **SEC. 201. LIMITATIONS ON LIABILITY.**

12 (a) APPLICATION DISTRIBUTION PROVIDERS AND
13 OPERATING SYSTEM PROVIDERS.—An Application Dis-
14 tribution Provider or Operating System Provider that
15 makes a good faith effort to comply with the obligations
16 of this Act, taking into consideration available technology,
17 shall not be liable under any provision of this Act, or oth-
18 erwise liable for its actions taken in attempt to comply
19 with this Act, including but not limited to the following
20 with regard to facilitation of the provision of an Age Sig-
21 nal:

22 (1) Any erroneous Age Signal.

23 (2) Any conduct by a Developer of a Covered
24 Application that receives any Age Signal.

1 (3) Failing to provide an Age Signal due to any
2 reasonable technical limitations or outages that pre-
3 vent the provision of the Age Signal upon request.

4 (4) Not providing the Age Signal to Developers
5 that do not adhere to reasonable safety standards
6 and Application Distributor policies.

7 (b) DEVELOPERS.—A Developer of a Covered Appli-
8 cation—

9 (1) as between the Developer of a Covered Ap-
10 plication and the Application Distribution Provider,
11 is solely liable for correctly identifying whether their
12 Applications are Covered Applications under this
13 Act. No Application Distributor is required to
14 proactively identify Covered Applications, and an
15 Application Distributor will not be held liable in
16 cases where a Developer provides inaccurate infor-
17 mation about its Applications; and

18 (2) shall not be liable for an erroneous Age Sig-
19 nal provided by an Application Distribution Pro-
20 vider, if the Developer makes a reasonable effort,
21 taking into consideration available technology, to
22 properly use the Age Signal and carry out commer-
23 cially reasonable methods to obtain or estimate the
24 age of an account holder.

1 **SEC. 202. ENFORCEMENT.**

2 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

3 A violation of this Act or a regulation promulgated there-
4 under shall be treated as a violation of a rule defining
5 an unfair or deceptive act or practice under section
6 18(a)(1)(B) of the Federal Trade Commission Act (15
7 U.S.C. 57a(a)(1)(B)).

8 (b) POWERS OF THE COMMISSION.—

9 (1) IN GENERAL.—The Commission shall en-
10 force this Act in the same manner, by the same
11 means, and with the same jurisdiction, powers, and
12 duties as though all applicable terms and provisions
13 of the Federal Trade Commission Act (15 U.S.C. 41
14 et seq.) were incorporated into and made a part of
15 this Act.

16 (2) PRIVILEGES AND IMMUNITIES.—Any person
17 who violates this Act or a regulation promulgated
18 thereunder shall be subject to the penalties and enti-
19 tled to the privileges and immunities provided in the
20 Federal Trade Commission Act (15 U.S.C. 41 et
21 seq.).

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

1 **SEC. 203. PREEMPTION.**

2 No State or political subdivision of a State may main-
3 tain, enforce, prescribe, or continue in effect any law, rule,
4 regulation, requirement, standard, or other provision hav-
5 ing the force and effect of law of any State, or political
6 subdivision of a State, related to the provisions of this Act.

7 **SEC. 204. SEVERABILITY.**

8 If any provision of this Act or the application of any
9 provision to any person or circumstance is held invalid by
10 a final decision of a court of competent jurisdiction, the
11 remainder of this Act shall be given effect without the in-
12 valid provision or application.

13 **SEC. 205. EFFECTIVE DATE.**

14 This Act shall take effect not later than 24 months
15 after the date of its enactment.