

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3149
OFFERED BY MR. JAMES OF MICHIGAN

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “App Store Accountability Act”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. App store obligations.
Sec. 4. App developer obligations.
Sec. 5. Compliance.
Sec. 6. Enforcement by the Federal Trade Commission.
Sec. 7. Enforcement by States.
Sec. 8. Safe harbor.
Sec. 9. Preemption.
Sec. 10. Severability.
Sec. 11. Effective date.

6 SEC. 2. DEFINITIONS.

7 In this Act:

8 (1) ADULT.—The term “adult” means an indi-
9 vidual who is 18 years of age or older.

10 (2) AGE CATEGORY.—The term “age category”
11 means the category of an individual based on their

1 age and includes the categories of an adult, teen-
2 ager, child, and young child.

3 (3) AGE CATEGORY DATA.—The term “age cat-
4 egory data” means nonpersonally identifiable infor-
5 mation that—

6 (A) identifies the age category of a user;
7 and

8 (B) is collected by a covered app store pro-
9 vider and shared with an app developer.

10 (4) AGE RATING.—The term “age rating”
11 means a publicly displayed assessment of the appro-
12 priateness of an app for different age categories.

13 (5) APP.—The term “app” means a software
14 application or electronic service that may be run or
15 directed by a user on a computer, mobile device, or
16 any other general purpose computing device.

17 (6) APP DEVELOPER.—The term “app devel-
18 oper” means any person that owns or controls an
19 app on the app store of a covered app store provider
20 that is available in the United States.

21 (7) APP STORE.—The term “app store” means
22 a publicly available website, software application, or
23 other electronic service that—

24 (A) distributes and facilitates the download
25 onto a mobile device of an app from a third-

1 party developer by a user of a computer, mobile
2 device, or any other general purpose computing
3 device; and

4 (B) exercises control over the distribution
5 of any such app through a review process for
6 acceptance and categorization.

7 (8) CHILD.—The term “child” means an indi-
8 vidual who is at least 13 years of age and less than
9 16 years of age.

10 (9) COMMISSION.—The term “Commission”
11 means the Federal Trade Commission.

12 (10) COVERED APP STORE PROVIDER.—The
13 term “covered app store provider” means any person
14 that owns or controls an app store that is available
15 in the United States.

16 (11) KNOW.—The term “know” means to have
17 actual knowledge or willful disregard.

18 (12) MINOR.—The term “minor” means an in-
19 dividual who is less than 18 years of age.

20 (13) MOBILE DEVICE.—The term “mobile de-
21 vice” means a phone or general purpose tablet that
22 provides cellular or wireless connectivity, is capable
23 of connecting to the Internet, runs a mobile oper-
24 ating system, and is capable of running apps
25 through the mobile operating system.

1 (14) MOBILE OPERATING SYSTEM.—The term
2 “mobile operating system” means a set of software
3 that manages mobile device hardware resources, pro-
4 vides common services for mobile device programs,
5 and provides interfaces for applications to access de-
6 vice functionality.

7 (15) PARENT.—The term “parent”, with re-
8 spect to a minor, means an adult with the legal right
9 to make decisions on behalf of the minor, includ-
10 ing—

11 (A) a natural parent;

12 (B) an adoptive parent;

13 (C) a legal guardian; or

14 (D) an individual with legal custody over
15 the minor.

16 (16) PARENTAL ACCOUNT.—The term “paren-
17 tal account” means an account with a covered app
18 store provider that is—

19 (A) verified to be established by an indi-
20 vidual who the app store provider has deter-
21 mined is an adult through the age verification
22 method or process of the covered app store pro-
23 vider; and

24 (B) affiliated with one or more account of
25 a user or prospective user who is a minor.

1 (17) PARENTAL CONSENT DISCLOSURE.—The
2 term “parental consent disclosure” means informa-
3 tion that is provided to a parent before obtaining pa-
4 rental consent that includes the following:

5 (A) A description of—

6 (i) the personal information collected
7 by the app from a user; and

8 (ii) the personal information shared
9 by the app with a third party.

10 (B) A description of each measure taken
11 by the app developer to protect the confiden-
12 tiality of the personal information of the user.

13 (C) If there is an age rating for the app
14 or an in-app purchase, the age rating of the
15 app or in-app purchase.

16 (D) If there is a content description for
17 the app or in-app purchase, the content descrip-
18 tion for the app or in-app purchase.

19 (18) PERSONAL INFORMATION.—The term
20 “personal information” has meaning given that term
21 in section 1302 of the Children’s Online Privacy
22 Protection Act (15 U.S.C. 6501).

23 (19) SIGNAL.—The term “signal” means age
24 category data sent by a real-time secure application
25 programming interface or operating system.

1 (20) SIGNIFICANT CHANGE.—The term “signifi-
2 cant change” means a material modification of the
3 terms of service or privacy policy of an app beyond
4 the ordinary course of business that does any of the
5 following:

6 (A) Changes the age category data col-
7 lected or stored.

8 (B) Changes the age category data shared
9 with an unaffiliated third party that is not a
10 service provider or processor.

11 (C) Alters the age rating or content de-
12 scription of the app.

13 (D) Adds a new monetization feature that
14 enables a new category of in-app purchases or
15 materially expands the collection or sharing of
16 personal information associated with a mone-
17 tization feature.

18 (E) Alters the user experience or core
19 functionality of an app in a manner that sub-
20 stantially changes how a user interacts with the
21 app.

22 (21) TEENAGER.—The term “teenager” means
23 an individual who is at least 16 years of age and less
24 than 18 years of age.

1 (22) PARENTAL CONSENT.—The term “paren-
2 tal consent” means authorization that is provided—

3 (A) by a parental account;

4 (B) in response to a clear and conspicuous
5 parental content disclosure; and

6 (C) signifies a freely given, specific, in-
7 formed, and unambiguous agreement by the
8 parent for the minor of the parent to use an
9 app.

10 (23) YOUNG CHILD.—The term “young child”
11 means an individual who is less than 13 years of
12 age.

13 **SEC. 3. APP STORE OBLIGATIONS.**

14 (a) IN GENERAL.—A covered app store provider shall
15 do the following:

16 (1) At the time an individual creates an account
17 with the covered app store provider—

18 (A) request age information from the indi-
19 vidual; and

20 (B) verify the age category of the indi-
21 vidual using a commercially available method or
22 process that is reasonably designed to ensure
23 accuracy.

24 (2) If the age verification method or process de-
25 termines the individual is a minor—

1 (A) require the account to be affiliated
2 with a parental account; and

3 (B) obtain parental consent from the hold-
4 er of the affiliated parental account before al-
5 lowing the minor to download or purchase an
6 app or make an in-app purchase.

7 (3) After receiving notice of a significant
8 change from an app developer for a minor account,
9 notify the holder of the affiliated parental account
10 and obtain a new parental consent.

11 (4) Provide to an app developer the age cat-
12 egory of the user and the status of verified parental
13 consent if the user is a minor.

14 (5) Notify an app developer when a parent re-
15 vokes parental consent.

16 (6) Protect the confidentiality of personal infor-
17 mation related to age verification by—

18 (A) limiting the collection, processing, and
19 storage of such data to what is strictly nec-
20 essary to verify the age, obtain parental con-
21 sent, or maintain compliance records of the
22 user; and

23 (B) safeguarding personal information re-
24 lated to age verification by adopting reasonable
25 administrative, technical, and physical safe-

1 guards to secure the collection, processing, stor-
2 age, and transmission of such data, including
3 through industry-standard encryption.

4 (7) If a covered app store provider displays an
5 age rating or description of the content of an app,
6 the age rating and description shall be clearly and
7 prominently displayed and be in plain and concise
8 language.

9 (8) Provide to an app developer the ability to
10 determine, in real time, the age category of any user
11 and, with respect to any user that is a minor, wheth-
12 er the covered app store provider has obtained pa-
13 rental consent.

14 (b) RULES OF CONSTRUCTION.—Nothing in this sec-
15 tion may be construed to do the following:

16 (1) To prevent a covered app store provider
17 from taking reasonable measures to block, detect, or
18 prevent the distribution of unlawful or obscene mate-
19 rial to minors, to block or filter spam, to prevent
20 criminal activity, or to protect the security of an app
21 store or app.

22 (2) To require a covered app store provider to
23 disclose to an app developer information other than
24 the age category of a user and, with respect to any
25 user that is a minor, whether the covered app store

1 provider has obtained parental consent in accordance
2 with this section.

3 (3) To allow a covered app store provider to use
4 any measure required by this section in a way that
5 is arbitrary, capricious, anti-competitive, or unlaw-
6 ful.

7 (4) To affect or restrict the expression of polit-
8 ical, religious, or any other viewpoint.

9 **SEC. 4. APP DEVELOPER OBLIGATIONS.**

10 (a) IN GENERAL.—An app developer shall do the fol-
11 lowing:

12 (1) Request from the covered app store pro-
13 vider, through a mechanism provided by such cov-
14 ered app store provider, age category data or paren-
15 tal consent—

16 (A) at the time a potential app user
17 downloads or purchases an app;

18 (B) when the app developer implements a
19 significant change to the app; or

20 (C) to comply with an applicable law or
21 regulation.

22 (2) Notify a covered app store provider of a sig-
23 nificant change to the app.

24 (b) APP DEVELOPER REQUESTS.—An app developer
25 may request age category data or parental consent—

1 (1) to confirm the accuracy of user age
2 verification data or continued account use within the
3 verified age category;

4 (2) when there is reasonable suspicion of ac-
5 count transfer or misuse outside the verified age cat-
6 egory; or

7 (3) at the time a user creates a new account
8 with the app developer.

9 (c) PERMISSIBLE USES.—An app developer may only
10 use age category data to do the following:

11 (1) Enforce any app developer-created age-re-
12 lated restrictions.

13 (2) Ensure compliance with applicable laws and
14 regulations.

15 (3) Implement any app developer-created pri-
16 vacy or safety features or defaults.

17 (d) RESTRICTIONS.—An app developer may not do
18 any of the following:

19 (1) Enforce a contract or terms of service
20 against a minor unless the app developer has
21 verified through the covered app store provider that
22 parental consent has been obtained.

23 (2) Knowingly misrepresent any material infor-
24 mation in the parental consent disclosure.

1 (3) Share age category data with an unaffili-
2 ated third party that is not a service provider or
3 processor.

4 (e) APP AGE RATING.—If an app developer provides
5 an age rating or description of the content of an app to
6 a covered app store or user, the age rating or description
7 must be in plain and concise language.

8 (f) COVERED APP STORE PROVIDER SIGNAL.—

9 (1) IN GENERAL.—Each app developer shall use
10 the signal of a covered app store provider to deter-
11 mine the age category of a user.

12 (2) RULE OF CONSTRUCTION.—Receipt of the
13 signal of a covered app store provider serves as ac-
14 tual knowledge of the age category of a user.

15 **SEC. 5. COMPLIANCE.**

16 (a) GUIDANCE.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of the enactment of this Act, the Commis-
19 sion shall issue guidance to assist covered app store
20 providers and app developers in complying with the
21 requirements of this Act.

22 (2) LIMITATIONS.—

23 (A) NO CONFERRING OF RIGHTS OR BIND-
24 ING EFFECT.—Any guidance issued by the
25 Commission with respect to this Act shall not

1 confer any right on any person, State, or local-
2 ity, nor shall such guidance operate to bind the
3 Commission or any person to the approach rec-
4 ommended in such guidance.

5 (B) BASIS OF ENFORCEMENT ACTIONS.—

6 In any enforcement action brought under this
7 Act, the Commission shall allege a specific vio-
8 lation of a provision of this Act. The Commis-
9 sion may not base an enforcement action on, or
10 execute a consent order based on, practices that
11 are alleged to be inconsistent with any such
12 guideline, unless the practices allegedly violate
13 sections 3 or 4.

14 (b) MECHANISM TO CERTIFY COMPLIANCE.—

15 (1) IN GENERAL.—The Commission shall—

16 (A) establish a mechanism, in such form
17 and manner as the Commission determines is
18 appropriate, for any covered app store provider
19 to submit a request for the Commission to re-
20 view their policies relevant to the requirements
21 under section 3; and

22 (B) not later than 30 days after receiving
23 such a request—

24 (i) review such policies to determine
25 whether the covered app store provider

1 that submitted such request is compliant
2 with such requirements; and

3 (ii) if the Commission determines that
4 such provider is compliant with such re-
5 quirements and does not permit or is able
6 to quickly remedy any method of circum-
7 venting such requirements, submit to Con-
8 gress and make publicly available on the
9 website of the Commission a notice certi-
10 fying that such provider is compliant with
11 such requirements.

12 (2) NOTIFICATION OF SIGNIFICANT
13 CHANGES.—If a covered app store provider that the
14 Commission certifies is compliant with the require-
15 ments of section 3 makes a significant change to any
16 policy of such provider that is relevant to such re-
17 quirements, such provider shall notify the Commis-
18 sion of such change to ensure that the change does
19 not impact the certification of compliance under
20 paragraph (1).

21 (3) PERIOD OF ELIGIBILITY.—A certification of
22 compliance under paragraph (1) shall be valid for 1
23 year after the date of the issuance of such certifi-
24 cation.

25 (c) COMPLAINTS.—

1 (1) IN GENERAL.—The Commission shall estab-
2 lish a mechanism to receive complaints regarding the
3 compliance of any covered app store provider with
4 the requirements described in section 3.

5 (2) REVIEW.—The Commission shall regularly
6 review any complaints received through the mecha-
7 nism described in paragraph (1) and, if necessary,
8 evaluate the certification of compliance of covered
9 app store provider under subsection (b)(1).

10 **SEC. 6. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
11 **SION.**

12 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—
13 A violation of this Act or a regulation promulgated there-
14 under shall be treated as a violation of a rule defining
15 an unfair or deceptive act or practice under section
16 18(a)(1)(B) of the Federal Trade Commission Act (15
17 U.S.C. 57a(a)(1)(B)).

18 (b) POWERS OF THE COMMISSION.—

19 (1) IN GENERAL.—The Commission shall en-
20 force this Act in the same manner, by the same
21 means, and with the same jurisdiction, powers, and
22 duties as though all applicable terms and provisions
23 of the Federal Trade Commission Act (15 U.S.C. 41
24 et seq.) were incorporated into and made a part of
25 this Act.

1 (2) PRIVILEGES AND IMMUNITIES.—Any person
2 who violates this Act or a regulation promulgated
3 thereunder shall be subject to the penalties and enti-
4 tled to the privileges and immunities provided in the
5 Federal Trade Commission Act (15 U.S.C. 41 et
6 seq.).

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

10 **SEC. 7. ENFORCEMENT BY STATES.**

11 (a) IN GENERAL.—

12 (1) CIVIL ACTIONS.—In any case in which the
13 attorney general of a State has reason to believe
14 that an interest of the residents of that State has
15 been or is threatened or adversely affected by the
16 engagement of any person in a practice that violates
17 this Act, the State, as *parens patriae*, may bring a
18 civil action on behalf of the residents of the State in
19 a district court of the United States of appropriate
20 jurisdiction to—

21 (A) enjoin that practice;

22 (B) enforce compliance with the regulation;

23 (C) obtain damages, restitution, or other
24 compensation on behalf of residents of the
25 State; or

1 (D) obtain such other relief as the court
2 may consider to be appropriate.

3 (2) NOTICE.—

4 (A) IN GENERAL.—Before filing an action
5 under paragraph (1), the attorney general of
6 the State involved shall provide to the Commis-
7 sion—

8 (i) a written notice of that action; and

9 (ii) a copy of the complaint for that
10 action.

11 (B) EXEMPTION.—

12 (i) IN GENERAL.—Subparagraph (A)
13 does not apply with respect to the filing of
14 an action by an attorney general of a State
15 under this subsection, if the attorney gen-
16 eral determines that it is not feasible to
17 provide the notice described in that sub-
18 paragraph before the filing of the action.

19 (ii) NOTIFICATION.—In an action de-
20 scribed in clause (i), the attorney general
21 of a State shall provide notice and a copy
22 of the complaint to the Commission at the
23 same time as the attorney general files the
24 action.

25 (b) INTERVENTION.—

1 (1) IN GENERAL.—On receiving notice under
2 subsection (a)(2), the Commission shall have the
3 right to intervene in the action that is the subject
4 of the notice.

5 (2) EFFECT OF INTERVENTION.—If the Com-
6 mission intervenes in an action under subsection (a),
7 it shall have the right—

8 (A) to be heard with respect to any matter
9 that arises in that action; and

10 (B) to file a petition for appeal.

11 (c) CONSTRUCTION.—For purposes of bringing any
12 civil action under subsection (a), nothing in this Act may
13 be construed to prevent an attorney general of a State
14 from exercising the powers conferred on the attorney gen-
15 eral by the laws of that State to—

16 (1) conduct investigations;

17 (2) administer oaths or affirmations; or

18 (3) compel the attendance of witnesses or the
19 production of documentary and other evidence.

20 (d) ACTIONS BY THE COMMISSION.—In any case in
21 which an action is instituted by or on behalf of the Com-
22 mission for a violation of this Act, no State may, during
23 the pendency of that action, institute an action under sub-
24 section (a) against any defendant named in the complaint
25 in that action for such violation.

1 (e) VENUE; SERVICE OF PROCESS.—

2 (1) VENUE.—Any action brought under sub-
3 section (a) may be brought in the district court of
4 the United States that meets applicable require-
5 ments relating to venue under section 1391 of title
6 28, United States Code.

7 (2) SERVICE OF PROCESS.—In an action
8 brought under subsection (a), process may be served
9 in any district in which the defendant—

10 (A) is an inhabitant; or

11 (B) may be found.

12 **SEC. 8. SAFE HARBOR.**

13 (a) IN GENERAL.—An app developer is deemed not
14 liable for a violation of this Act if the app developer dem-
15 onstrates the developer has—

16 (1) relied in good faith on age verification data
17 provided by a covered app store provider or the app
18 developer obtained a signal from a covered app store
19 provider that indicates the user is a minor;

20 (2) complied with the requirements of section 4;
21 and

22 (3) reasonably conformed to widely accepted in-
23 dustry standards or best practices, or to standards
24 or best practices identified by the Commission, for
25 age ratings and app content descriptions and applies

1 those standards or best practices consistently and in
2 good faith.

3 (b) LIMITATIONS.—The safe harbor described in this
4 section applies only to actions brought under this Act and
5 does not limit the liability of an app developer under any
6 other applicable law.

7 **SEC. 9. PREEMPTION.**

8 (a) IN GENERAL.—A State or political subdivision of
9 a State may not maintain, enforce, prescribe, or continue
10 in effect any law, rule, regulation, requirement, standard,
11 or other provision having the force and effect of law of
12 any State, or political subdivision of a State, related to
13 the provisions of this Act.

14 (b) RULE OF CONSTRUCTION.—Nothing in this sub-
15 section may be construed as preempting, displacing, or
16 supplanting contract or tort law.

17 **SEC. 10. SEVERABILITY.**

18 If any provision of this Act, or the application thereof
19 to any person or circumstance, is held invalid, the remain-
20 der of this Act, and the application of such provision to
21 other persons not similarly situated or to other cir-
22 cumstances, shall not be affected by the invalidation.

1 **SEC. 11. EFFECTIVE DATE.**

2 Except as otherwise provided in this Act, this Act
3 shall take effect on the date that is 1 year after the date
4 of the enactment of this Act.

