

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6273

OFFERED BY M .

Strike all after the enacting clause and insert the following:

1 **SEC. 1. SHORT TITLE.**

2 This Act may be cited as the “Stop Profiling Youth
3 and Kids Act” or the “SPY Kids Act”.

4 SEC. 2. DEFINITIONS.

5 In this Act:

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

(3) COVERED PLATFORM.—The term “covered platform” means a platform that is a website, software, application, or electronic service connected to the internet that—

(A) is publicly available for use by consumers;

14 (B) enables the creation of a username or
15 user identifier—

16 (i) that is searchable on the platform;

17 and

1 (ii) that can be followed by or is oth-
2 erwise accessible to other users of the plat-
3 form;

4 (C) as the primary purpose of the plat-
5 form, facilitates the sharing and access to user-
6 generated content through text, images, video,
7 audio, or any other interactive medium;

8 (D) uses a design feature to promote user
9 engagement on the platform; and

10 (E) uses the personal information of the
11 user to advertise, market, or make content rec-
12 ommendations.

13 (4) DESIGN FEATURE.—The term “design fea-
14 ture”—

15 (A) means any feature or component of a
16 covered platform that encourages or increases
17 the frequency, time spent, or activity of a user
18 on the covered platform; and

19 (B) includes any of the following:

20 (i) Infinite scrolling or auto play.

21 (ii) Rewards or incentives based on
22 the frequency, time spent, or activity of a
23 minor on the covered platform.

24 (iii) Notifications and push alerts.

1 (iv) Badges or other visual award
2 symbols based on the frequency, time
3 spent, or activity of a user on the covered
4 platform.

5 (v) Appearance altering filters.

6 (5) KNOW; KNOWS.—The term “know” or
7 “knows” means to have actual knowledge or to have
8 acted in willful disregard.

9 (6) MINOR.—The term “minor” means an indi-
10 vidual who is under the age of 17.

11 (8) PARENT.—The term “parent” means the
12 legal guardian of a minor.

13 (9) PERSONAL INFORMATION.—The term “per-
14 sonal information” has the meaning given that term
15 in section 1302 of the Children’s Online Privacy
16 Protection Act of 1998 (15 U.S.C. 6501).

17 (10) STATE.—The term “State” means each
18 State of the United States, the District of Columbia,
19 each commonwealth, territory, or possession of the
20 United States, and each federally recognized Indian
21 Tribe.

22 (11) USER.—The term “user” means, with re-
23 spect to a covered platform, an individual who reg-
24 isters an account or creates a profile on the covered
25 platform.

1 **SEC. 3. MARKET RESEARCH.**

2 (a) PROHIBITION OF RESEARCH ON MINORS.—A cov-
3 ered platform may not, in the case of a user or visitor
4 that the covered platform knows is a minor, conduct mar-
5 ket or product-focused research on such minor unless the
6 research is—

7 (1) used solely to improve the privacy, security,
8 transparency, or safety of a covered platform, in-
9 cluding of a design feature or any safeguard, setting,
10 or tool offered to a minor or the parent of a minor;
11 or

12 (2) necessary for compliance with a Federal or
13 State law.

14 (c) RULE OF CONSTRUCTION.—Nothing in this Act
15 may be construed to limit the processing of personal infor-
16 mation solely for measuring or reporting advertising or
17 content performance, reach, or frequency, including
18 through an independent measurement.

19 **SEC. 4. ENFORCEMENT.**

20 (a) ENFORCEMENT BY COMMISSION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of this Act shall be treated as
23 a violation of a regulation under section 18(a)(1)(B)
24 of the Federal Trade Commission Act (15 U.S.C.
25 57a(a)(1)(B)) regarding unfair or deceptive acts or
26 practices.

1 (2) POWERS OF COMMISSION.—The Commis-
2 sion shall enforce this Act in the same manner, by
3 the same means, and with the same jurisdiction,
4 powers, and duties as though all applicable terms
5 and provisions of the Federal Trade Commission Act
6 (15 U.S.C. 41 et seq.) were incorporated into and
7 made a part of this Act. Any person who violates
8 this Act shall be subject to the penalties and entitled
9 to the privileges and immunities provided in the
10 Federal Trade Commission Act.

11 (b) ACTIONS BY STATES.—

12 (1) IN GENERAL.—In any case in which the at-
13 torney general of a State, or an official or agency of
14 a State, has reason to believe that an interest of the
15 residents of such State has been or is threatened or
16 adversely affected by an act or practice in violation
17 of this Act, the State, as *parens patriae*, may bring
18 a civil action on behalf of the residents of the State
19 in an appropriate State court or an appropriate dis-
20 trict court of the United States to—

21 (A) enjoin such act or practice;

22 (B) enforce compliance with this Act;

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

1 (D) obtain such other legal and equitable
2 relief as the court may consider to be appro-
3 priate.

4 (2) NOTICE.—Before filing an action under this
5 subsection, the attorney general, official, or agency
6 of the State involved shall provide to the Commis-
7 sion a written notice of such action and a copy of
8 the complaint for such action. If the attorney gen-
9 eral, official, or agency determines that it is not fea-
10 sible to provide the notice described in this para-
11 graph before the filing of the action, the attorney
12 general, official, or agency shall provide written no-
13 tice of the action and a copy of the complaint to the
14 Commission immediately upon the filing of the ac-
15 tion.

16 (3) AUTHORITY OF COMMISSION.—

17 (A) IN GENERAL.—On receiving notice
18 under paragraph (2) of an action under this
19 subsection, the Commission shall have the
20 right—

21 (i) to intervene in the action; and

22 (ii) upon so intervening—

23 (I) to be heard on all matters
24 arising therein; and

25 (II) to file petitions for appeal.

1 (B) LIMITATION ON STATE ACTION WHILE
2 FEDERAL ACTION IS PENDING.—If the Commis-
3 sion or the Attorney General of the United
4 States has instituted a civil action for violation
5 of this Act (referred to in this subparagraph as
6 the “Federal action”), no State attorney gen-
7 eral, official, or agency may bring an action
8 under this subsection during the pendency of
9 the Federal action against any defendant
10 named in the complaint in the Federal action
11 for any violation of this Act alleged in such
12 complaint.

13 (4) RULE OF CONSTRUCTION.—For purposes of
14 bringing a civil action under this subsection, nothing
15 in this Act shall be construed to prevent an attorney
16 general, official, or agency of a State from exercising
17 the powers conferred on the attorney general, offi-
18 cial, or agency by the laws of such State to conduct
19 investigations, administer oaths and affirmations, or
20 compel the attendance of witnesses or the production
21 of documentary and other evidence.

22 **SEC. 5. RULES OF CONSTRUCTION.**

23 Nothing in this Act may be construed to—

24 (1) limit or impair the Children’s Online Pri-
25 vacy Protection Act of 1998 (15 U.S.C. 6501 et

1 seq.) or any rule or regulation promulgated under
2 such Act; or

3 (2) limit the authority of the Commission under
4 any other provision of law.

5 **SEC. 6. RELATIONSHIP TO STATE LAWS.**

6 (a) IN GENERAL.—No State or political subdivision
7 of a State may prescribe, maintain, or enforce any law,
8 rule, regulation, requirement, standard, or other provision
9 having the force and effect of law, to the extent such law,
10 rule, regulation, requirement, standard, or other provision
11 regulates the ability of a covered platform to conduct mar-
12 ket or product-focused research on a minor.

13 (b) RULE OF CONSTRUCTION.—Nothing in sub-
14 section (a) may be construed to—

15 (1) limit the enforcement of any consumer pro-
16 tection law of a State or political subdivision of a
17 State;

18 (2) preempt the applicability of State trespass,
19 contract, or tort law; or

20 (3) preempt the applicability of any State law
21 to the extent that the law relates to acts of fraud,
22 unauthorized access to personal information, or noti-
23 fication of unauthorized access to personal informa-
24 tion.

1 **SEC. 7. EFFECTIVE DATE.**

2 Except as otherwise provided in this Act, this Act
3 shall take effect on the date that is 90 days after the date
4 of the enactment of this Act.

