

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6488
OFFERED BY M. _____

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Governing Underage
3 Access and Requiring Data Consent In All Networks Act”
4 or the “GUARDIAN Act”.

5 SEC. 2. DEFINITIONS.

6 In this Act:

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

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

13 (A) Is publicly available for use by con-
14 sumers.

15 (B) Enables the creation of a username or
16 user identifier—

1 (i) that is searchable on the platform
2 by other users through a function made
3 available by the platform; and

4 (ii) that can be followed by or is simi-
5 larly accessible to other users of the plat-
6 form.

7 (C) As the primary purpose of the plat-
8 form, facilitates the sharing and access to user-
9 generated content through text, images, video,
10 audio, or any other interactive medium.

11 (D) Uses a design feature to promote user
12 engagement on the platform.

13 (E) Uses the personal information of the
14 user to advertise, market, or make content rec-
15 ommendations.

16 (3) COVERED MINOR.—

17 (A) The term “covered minor” means a
18 user who the provider of a covered online plat-
19 form knows or should have known is under the
20 age of 16.

21 (B) Notwithstanding subparagraph (A), an
22 individual who is under the age of 16 and is
23 emancipated from a parent is not a covered
24 minor.

1 (4) DESIGN FEATURE.—The term “design fea-
2 ture”—

3 (A) means any feature or component of a
4 covered platform that encourages an increase in
5 or increases the frequency of use or time spent
6 by a user who is a covered minor with respect
7 to such covered platform; and

8 (B) includes—

- 9 (i) infinite scrolling or auto play;
10 (ii) rewards or incentives based on
11 frequency of use or time spent;
12 (iii) notifications and push alerts;
13 (iv) badges or other visual award sym-
14 bols based on frequency of use or time
15 spent;
16 (v) appearance altering filters; and
17 (vi) personalized recommendation sys-
18 tems.

19 (5) FULLY AUTOMATED SYSTEM.—The term
20 “fully automated system” means an algorithm the
21 final outputs of which are, once computed, displayed
22 directly to a covered minor without review or alter-
23 ation by a covered platform.

24 (6) PARENT.—The term “parent”, with respect
25 to a minor, means an adult with the legal right to

1 make decisions on behalf of the minor, including any
2 of the following:

3 (A) A natural parent.

4 (B) An adoptive parent.

5 (C) A legal guardian.

6 (D) An individual with legal custody over
7 the minor.

8 (7) PERSONAL DATA.—The term “personal
9 data” has the meaning given the term “personal in-
10 formation” in section 1302 of the Children’s Online
11 Privacy Protection Act of 1998 (15 U.S.C. 6501).

12 (8) PERSONALIZED RECOMMENDATION SYS-
13 TEM.—The term “personalized recommendation sys-
14 tem”—

15 (A) means a fully automated system used
16 to suggest, promote, or rank content, including
17 other users, hashtags, and posts, based on the
18 personal data of a user; and

19 (B) does not include a fully automated sys-
20 tem that suggests, promotes, or ranks content
21 based solely on the language, city or town, or
22 age of a user.

23 (9) PROCESS.—The term “process” means any
24 operation or set of operations performed, whether by
25 manual or automated means, on personal data or on

1 sets of personal data, such as the collection, use,
2 storage, disclosure, analysis, deletion, or modifica-
3 tion of personal data.

4 (10) USER.—The term “user” means, with re-
5 spect to a covered platform, an individual who cre-
6 ates or maintains an account or profile on the cov-
7 ered platform.

8 (11) VERIFIABLE CONSENT.—The term
9 “verifiable consent” means any reasonable effort
10 (taking into consideration available technology) by
11 the provider of a covered platform, including a re-
12 quest for authorization for future collection, use, and
13 disclosure described in the notice, to ensure that a
14 parent of a covered minor—

15 (A) receives direct notice of the collection,
16 use, maintenance, disclosure, and other relevant
17 processing practices of the provider of a covered
18 platform with respect to personal data; and

19 (B) before the personal data of the covered
20 minor is collected, freely and unambiguously
21 authorizes—

22 (i) the collection, use, maintenance,
23 disclosure, and other relevant processing
24 practices, as applicable, of the personal
25 data; and

1 (ii) any subsequent use of the per-
2 sonal data.

3 **SEC. 3. PARENTAL CONSENT REQUIREMENT.**

4 (a) PROHIBITION.—A provider of a covered platform
5 may not process the personal data of a covered minor
6 without obtaining the verifiable consent of a parent of the
7 covered minor.

8 (b) AGE DETERMINATION.—Notwithstanding sub-
9 section (a), a provider of a covered platform may process
10 the personal data of a covered minor if—

11 (1) the provider of the covered platform proc-
12 esses such personal data for the sole purpose of de-
13 termining the age of a user;

14 (2) the provider of the covered platform does
15 not retain such personal data any longer than the
16 period strictly necessary to determine the age of the
17 user and deletes such personal data promptly upon
18 determining the age of the user;

19 (3) prior to processing any personal data for
20 the purpose of determining the age of the user, the
21 provider of the covered platform provides the user
22 with clear and conspicuous notice that such personal
23 data is processed for determining the age of the
24 user;

1 (4) the provider of the covered platform em-
2 ploys reasonable administrative, technical, and phys-
3 ical data security practices to protect the confiden-
4 tiality, integrity, and accessibility of personal data
5 processed for determining the age of the user and
6 such security practices are appropriate to the vol-
7 ume, sensitivity, and nature of such personal data;

8 (5) the provider of the covered platform reason-
9 ably determines that any product, service, method,
10 or third party used for determining the age of the
11 user is likely to provide reasonably accurate results
12 as to the age of the user; and

13 (6) in the case that the provider of the covered
14 platform discloses such personal data to a third
15 party to determine the age of the user, the provider
16 of the covered platform takes reasonable steps to de-
17 termine the third party is capable of maintaining the
18 confidentiality, integrity, and accessibility of such
19 personal data, including by obtaining written assur-
20 ances that such third party will employ reasonable
21 administrative, technical, and physical data security
22 practices to do so, will not process such personal
23 data for any purpose other than determining the age
24 of the user, and will delete the personal data
25 promptly after determining the age of the user.

1 (d) WRITTEN CONFIRMATION.—Upon obtaining
2 verifiable consent from a parent of a covered minor, the
3 provider of a covered platform shall provide the parent of
4 such covered minor with written or electronic confirmation
5 of the consent and a description of the account and data
6 practices to which it applies.

7 (e) WITHDRAWAL OF PARENTAL CONSENT.—

8 (1) IN GENERAL.—A parent may withdraw con-
9 sent for a covered minor at any time through a
10 method that is at least as easy to use as the method
11 by which consent was granted.

12 (2) TERMINATION REQUIRED.—Not later than
13 10 days after withdrawal, the provider of a covered
14 platform shall terminate the covered minor’s account
15 and comply with the deletion obligations of section
16 5.

17 (f) RE-CONSENT.—A provider of a covered platform
18 shall obtain renewed verifiable parental consent upon a
19 material change to the covered platform’s design features
20 or data practices the covered minor’s transition across an
21 age band, if a tiered structure is adopted every 24 months.

22 **SEC. 4. RIGHT TO CURE.**

23 A provider of a covered platform may not be held lia-
24 ble for a violation of section 3(a) if, within five days of

1 identifying or being notified that a user is a covered minor,
2 the provider—

3 (1) promptly deletes all personal data about the
4 covered minor that is processed in connection with
5 the account of the user; or

6 (2) the provider obtains the verifiable consent
7 of a parent of the covered minor.

8 **SEC. 5. DATA DELETION AND PORTABILITY.**

9 (a) IN GENERAL.—Upon termination of a covered
10 minor’s account under this Act, the provider of a covered
11 platform shall delete the personal data of the covered
12 minor, except data the provider of a covered platform is
13 required by law to retain.

14 (b) GRADUATION.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), the provider of a covered platform may
17 not retain the personal data associated with an ac-
18 count of a covered minor after the date on which the
19 covered minor attains the age of 16.

20 (2) PARENTAL CONSENT.—Paragraph (1) shall
21 not apply if a parent of a covered minor submits to
22 the provider of a covered platform a request to re-
23 tain the personal data associated with the account of
24 the covered minor after the covered minor attains
25 the age of 16.

1 (c) AVAILABILITY.—The operator shall, for a period
2 of not fewer than 90 days before deletion pursuant to sub-
3 section (a) or subsection (b), make available to the parent
4 a means to download the covered minor’s personal data
5 in a portable, machine-readable format.

6 **SEC. 6. RULE OF CONSTRUCTION.**

7 (a) IN GENERAL.—Nothing in this Act shall be con-
8 strued to impose liability on a provider of a covered plat-
9 form on the basis of—

10 (1) the viewpoint, subject matter, or content of
11 any user-generated content or of the covered plat-
12 form; or

13 (2) a covered minor’s or provider of a covered
14 platform’s access to, or dissemination of, any par-
15 ticular category of speech.

16 (b) COVERAGE.—Coverage under this Act is deter-
17 mined solely by reference to the structural and design
18 characteristics enumerated in paragraph (4) of section 2.

19 **SEC. 7. ENFORCEMENT.**

20 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
21 SION.—

22 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
23 TICES.—A violation of this Act or a regulation pro-
24 mulgated under this Act shall be treated as a viola-
25 tion of a regulation under section 18(a)(1)(B) of the

1 Federal Trade Commission Act (15 U.S.C.
2 57a(a)(1)(B)) regarding unfair or deceptive acts or
3 practices.

4 (2) POWERS OF COMMISSION.—The Federal
5 Trade Commission shall enforce this Act and the
6 regulations promulgated under this Act in the same
7 manner, by the same means, and with the same ju-
8 risdiction, powers, and duties as though all applica-
9 ble terms and provisions of the Federal Trade Com-
10 mission Act (15 U.S.C. 41 et seq.) were incor-
11 porated into and made a part of this Act. Any per-
12 son who violates this Act or a regulation promul-
13 gated under this Act shall be subject to the penalties
14 and entitled to the privileges and immunities pro-
15 vided in the Federal Trade Commission Act.

16 (b) ACTIONS BY STATES.—

17 (1) IN GENERAL.—In any case in which the at-
18 torney general of a State, or an official or agency of
19 a State, has reason to believe that an interest of the
20 residents of such State has been or is threatened or
21 adversely affected by an act or practice in violation
22 of this Act or a regulation promulgated under this
23 Act, the State, as *parens patriae*, may bring a civil
24 action on behalf of the residents of the State in an

1 appropriate State court or an appropriate district
2 court of the United States to—

3 (A) enjoin such act or practice;

4 (B) enforce compliance with this Act or
5 such regulation;

6 (C) obtain damages, restitution, or other
7 compensation on behalf of residents of the
8 State; or

9 (D) obtain such other legal and equitable
10 relief as the court may consider to be appro-
11 priate.

12 (2) NOTICE.—Before filing an action under this
13 subsection, the attorney general of the State involved
14 shall provide to the Federal Trade Commission a
15 written notice of such action and a copy of the com-
16 plaint for such action. If the attorney general deter-
17 mines that it is not feasible to provide the notice de-
18 scribed in this paragraph before the filing of the ac-
19 tion, the attorney general shall provide written no-
20 tice of the action and a copy of the complaint to the
21 Federal Trade Commission immediately upon the fil-
22 ing of the action.

23 (3) AUTHORITY OF FEDERAL TRADE COMMIS-
24 SION.—

1 (A) IN GENERAL.—On receiving notice
2 under paragraph (2) of an action under this
3 subsection, the Federal Trade Commission shall
4 have the right—

5 (i) to intervene in the action;

6 (ii) upon so intervening, to be heard
7 on all matters arising therein; and

8 (iii) to file petitions for appeal.

9 (B) LIMITATION ON STATE ACTION WHILE
10 FEDERAL ACTION IS PENDING.—If the Federal
11 Trade Commission or the Attorney General of
12 the United States has instituted a civil action
13 for violation of this Act or a regulation promul-
14 gated under this Act (referred to in this sub-
15 paragraph as the “Federal action”), no State
16 attorney general may bring an action under this
17 subsection during the pendency of the Federal
18 action against any defendant named in the com-
19 plaint in the Federal action for any violation of
20 this Act or regulation alleged in such complaint.

21 (4) RULE OF CONSTRUCTION.—For purposes of
22 bringing a civil action under this subsection, nothing
23 in this Act shall be construed to prevent an attorney
24 general of a State from exercising the powers con-
25 ferred on the attorney general by the laws of such

1 State to conduct investigations, administer oaths
2 and affirmations, or compel the attendance of wit-
3 nesses or the production of documentary and other
4 evidence.

5 **SEC. 8. RELATIONSHIP TO STATE LAWS.**

6 (a) IN GENERAL.—The provisions of this Act shall
7 preempt any law, rule, requirement, or regulation of a
8 State, or a political subdivision of a State, only to the ex-
9 tent that such law, rule, requirement, or regulation con-
10 flicts with a provision of this Act.

11 (b) EXCEPTION.—Notwithstanding subsection (a),
12 nothing in this Act may be construed—

13 (1) to preempt any law, rule, requirement, or
14 regulation of a State, or political subdivision of a
15 State, with respect to contract, tort, or product li-
16 ability; or

17 (2) to prohibit a State, or a political subdivision
18 of a State, from enacting or enforcing any law, rule,
19 requirement, or regulation that provides greater pro-
20 tection to minors than the protection provided by the
21 provisions of this Act.

22 **SEC. 9. EFFECTIVE DATE.**

23 This Act shall take effect on the date that is 18
24 months after the date of the enactment of this Act.

