

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5082
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 “Revising Existing Pro-
3 cedures On Reporting via Technology Act” or the “RE-
4 PORT Act”.

5 **SEC. 2. LIMITED LIABILITY MODERNIZATION.**

6 (a) **AMENDMENTS.**—Section 2258B of title 18,
7 United States Code, is amended—

8 (1) in the section heading, by striking “**pro-**
9 **viders or domain name registrars**” and in-
10 sserting “**the reporting, storage, and han-**
11 **dling of certain visual depictions of ap-**
12 **parent child pornography to the National**
13 **Center for Missing & Exploited Chil-**
14 **dren**”;

15 (2) in subsection (b)—

16 (A) in the matter preceding paragraph (1),
17 by inserting “or charge” after “a claim”; and

1 (B) in paragraph (2)(C), by striking “this
2 section,”; and

3 (3) by adding at the end the following:

4 “(d) LIMITED LIABILITY FOR NCMEC-CONTRACTED
5 VENDORS.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), a civil claim or criminal charge may not
8 be brought in any Federal or State court against a
9 vendor contractually retained and designated by
10 NCMEC to support the duties of NCMEC under
11 section 404(b)(1)(K) of the Juvenile Justice and De-
12 linquency Prevention Act of 1974 (34 U.S.C.
13 11293(b)(1)(K)).

14 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
15 CONDUCT.—Paragraph (1) shall not apply to a claim
16 or charge if the vendor—

17 “(A) engaged in—

18 “(i) intentional misconduct; or

19 “(ii) negligent conduct; or

20 “(B) acted, or failed to act—

21 “(i) with actual malice;

22 “(ii) with reckless disregard to a sub-
23 stantial risk of causing injury without legal
24 justification; or

1 “(iii) for a purpose unrelated to the
2 performance of any responsibility or func-
3 tion—

4 “(I) set forth in paragraph (1);
5 or

6 “(II) pursuant to sections
7 2258A, 2258C, 2702, or 2703.

8 “(3) VENDOR CYBERSECURITY REQUIRE-
9 MENTS.—With respect to any visual depiction pro-
10 vided pursuant to the duties of NCMEC under sec-
11 tion 404(b)(1)(K) of the Juvenile Justice and Delin-
12 quency Prevention Act of 1974 (34 U.S.C.
13 11293(b)(1)(K)) that is stored or transferred by a
14 vendor contractually retained and designated by
15 NCMEC to support such duties of NCMEC, a ven-
16 dor shall—

17 “(A) secure such visual depiction in a
18 manner that is consistent with the most recent
19 version of the Cybersecurity Framework devel-
20 oped by the National Institute of Standards
21 and Technology, or any successor thereto;

22 “(B) minimize the number of employees
23 that may be able to obtain access to such visual
24 depiction;

1 “(C) employ end-to-end encryption for data
2 storage and transfer functions, or an equivalent
3 technological standard;

4 “(D) undergo an independent annual cy-
5 bersecurity audit to determine whether such vis-
6 ual depiction is secured as required under sub-
7 paragraph (A); and

8 “(E) promptly address all issues identified
9 by an audit described in subparagraph (D).

10 “(e) LIMITED LIABILITY FOR REPORTING APPARENT
11 CHILD PORNOGRAPHY BY AN INDIVIDUAL DEPICTED IN
12 THE CHILD PORNOGRAPHY AS A MINOR, OR A REP-
13 RESENTATIVE OF SUCH INDIVIDUAL.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), a civil claim or criminal charge may not
16 be brought in any Federal or State court against an
17 individual depicted in child pornography as a minor,
18 or a representative of such individual, arising from
19 a report to the NCMEC CyberTipline by the indi-
20 vidual, or the representative of such individual, of
21 information that relates to the child pornography in
22 which the individual is depicted as a minor, includ-
23 ing a copy of the child pornography.

24 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
25 CONDUCT.—Paragraph (1) shall not apply to a claim

1 or charge if the individual, or the representative of
2 such individual—

3 “(A) engaged in—

4 “(i) intentional misconduct;

5 “(ii) negligent conduct; or

6 “(iii) any activity which constitutes a
7 violation of section 2251; or

8 “(B) acted, or failed to act—

9 “(i) with actual malice; or

10 “(ii) with reckless disregard to a sub-
11 stantial risk of causing injury without legal
12 justification.

13 “(3) MINIMIZING ACCESS.—With respect to any
14 child pornography reported to the NCMEC
15 CyberTipline by an individual depicted in the child
16 pornography as a minor, or a representative of such
17 individual, NCMEC shall minimize access to the
18 child pornography and ensure the appropriate dele-
19 tion of the child pornography, as set forth in section
20 2258D.

21 “(4) DEFINITION.—For purposes of this sub-
22 section, the term ‘representative’, with respect to an
23 individual depicted in child pornography—

24 “(A) means—

1 “(i) the parent or legal guardian of
2 the individual, if the individual is under 18
3 years of age;

4 “(ii) the legal guardian or other per-
5 son appointed by a court to represent the
6 individual;

7 “(iii) a legal representative retained
8 by the individual;

9 “(iv) a representative of the estate of
10 the individual; or

11 “(v) a person who is a mandated re-
12 porter under section 226(a)(1) of the Vic-
13 tims of Child Abuse Act of 1990 (34
14 U.S.C. 20341(a)(1)); and

15 “(B) does not include a person who en-
16 gaged in any activity which constitutes a viola-
17 tion of section 2251.”.

18 (b) APPLICABILITY.—The amendments made by sub-
19 section (a) shall apply with respect to a civil claim or
20 criminal charge that is filed on or after the date of enact-
21 ment of this Act.

22 (c) TABLE OF SECTIONS AMENDMENT.—The table of
23 sections for chapter 110 of title 18, United States Code,
24 is amended by striking the item relating to section 2258B
25 and inserting the following:

“2258B. Limited liability for the reporting, storage, and handling of certain visual depictions of apparent child pornography to the National Center for Missing & Exploited Children.”.

1 **SEC. 3. PRESERVATION OF REPORTS TO CYBERTIPLINE RE-**
2 **LATED TO ONLINE SEXUAL EXPLOITATION OF**
3 **CHILDREN.**

4 Section 2258A(h) of title 18, United States Code, is
5 amended—

6 (1) in paragraph (1), by striking “90 days” and
7 inserting “1 year”; and

8 (2) by adding at the end the following:

9 “(5) EXTENSION OF PRESERVATION.—A pro-
10 vider of a report to the CyberTipline under sub-
11 section (a)(1) may voluntarily preserve the contents
12 provided in the report (including any comingled con-
13 tent described in paragraph (2)) for longer than 1
14 year after the submission to the CyberTipline for the
15 purpose of reducing the proliferation of online child
16 sexual exploitation or preventing the online sexual
17 exploitation of children.

18 “(6) METHOD OF PRESERVATION.—Not later
19 than 1 year after the date of enactment of this para-
20 graph, a provider of a report to the CyberTipline
21 under subsection (a)(1) shall preserve materials
22 under this subsection in a manner that is consistent
23 with the most recent version of the Cybersecurity
24 Framework developed by the National Institute of

1 Standards and Technology, or any successor there-
2 to.”.

3 **SEC. 4. STRENGTHENING OF DUTY TO REPORT APPARENT**
4 **VIOLATIONS TO CYBERTIPLINE RELATED TO**
5 **ONLINE EXPLOITATION OF CHILDREN.**

6 (a) AMENDMENTS.—Section 2258A of title 18,
7 United States Code, is amended—

8 (1) in subsection (a)(2)(A), by inserting “, of
9 section 1591 (if the violation involves a minor), or
10 of 2422(b)” after “child pornography”; and

11 (2) in subsection (e)—

12 (A) in paragraph (1), by striking
13 “\$150,000” and inserting “\$850,000 in the
14 case of a provider with not less than
15 100,000,000 monthly active users or \$600,000
16 in the case of a provider with less than
17 100,000,000 monthly active users”; and

18 (B) in paragraph (2), by striking
19 “\$300,000” and inserting “\$1,000,000 in the
20 case of a provider with not less than
21 100,000,000 monthly active users or \$850,000
22 in the case of a provider with less than
23 100,000,000 monthly active users”.

24 (b) GUIDELINES.—Not later than 180 days after the
25 date of enactment of this Act, the National Center for

1 Missing & Exploited Children may issue guidelines, as ap-
2 propriate, to providers required or permitted to take ac-
3 tions described in section 2258A(a)(1)(B) of title 18,
4 United States Code, on the relevant identifiers for content
5 that may indicate sex trafficking of children, as described
6 in section 1591 of that title, or enticement, as described
7 in section 2422(b) of that title.

