Suspend the Rules and Pass the Bill, H.R. 7521, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

118TH CONGRESS
2D SESSION

H. R. 7521

To protect the national security of the United States from the threat posed by foreign adversary controlled applications, such as TikTok and any successor application or service and any other application or service developed or provided by ByteDance Ltd. or an entity under the control of ByteDance Ltd.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2024

Mr. GALLAGHER (for himself, Mr. KRISHNAMOORTHI, Ms. STEFANIK, Ms. CASTOR of Florida, Mr. LATTA, Mr. CARSON, Mr. HERN, Mr. MOULTON, Mr. ROY, Ms. SHEERRILL, Mr. DUNN of Florida, Ms. STEVENS, Mr. NORMAN, Mr. AUCHINCLOSS, Mrs. CAMMACK, Mr. TORRES of New York, Mr. MOOLENAAR, Ms. BROWN, Mr. GOTTHEIMER, and Mrs. HINSON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect the national security of the United States from the threat posed by foreign adversary controlled applications, such as TikTok and any successor application or service and any other application or service developed or provided by ByteDance Ltd. or an entity under the control of ByteDance Ltd.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting Americans from Foreign Adversary Controlled Applications Act”.

SEC. 2. PROHIBITION OF FOREIGN ADVERSARY CON-
TROLLED APPLICATIONS.

(a) In General.—

(1) Prohibition of foreign adversary con-
trolled applications.—It shall be unlawful for an entity to distribute, maintain, or update (or en-
able the distribution, maintenance, or updating of) a foreign adversary controlled application by carrying out, within the land or maritime borders of the United States, any of the following:

(A) Providing services to distribute, main-
tain, or update such foreign adversary con-
trolled application (including any source code of such application) by means of a marketplace (including an online mobile application store) through which users within the land or mar-
time borders of the United States may access, maintain, or update such application.

(B) Providing internet hosting services to enable the distribution, maintenance, or update-
ing of such foreign adversary controlled application for users within the land or maritime borders of the United States.

(2) Applicability.—Subsection (a) shall apply—

(A) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(A), beginning on the date that is 180 days after the date of the enactment of this Act; and

(B) in the case of an application that satisfies the definition of a foreign adversary controlled application pursuant to subsection (g)(3)(B), beginning on the date that is 180 days after the date of the relevant determination of the President under such subsection.

(b) Data and Information Portability to Alternative Applications.—Before the date on which a prohibition under subsection (a) applies to a foreign adversary controlled application, the entity that owns or controls such application shall provide, upon request by a user of such application within the land or maritime borders of United States, to such user all the available data related to the account of such user with respect to such applica-
tion. Such data shall be provided in a machine readable format and shall include any data maintained by such application with respect to the account of such user, including content (including posts, photos, and videos) and all other account information.

(c) EXEMPTIONS.—

(1) Exemptions for qualified divestitures.—Subsection (a)—

(A) does not apply to a foreign adversary controlled application with respect to which a qualified divestiture is executed before the date on which a prohibition under subsection (a) would begin to apply to such application; and

(B) shall cease to apply in the case of a foreign adversary controlled application with respect to which a qualified divestiture is executed after the date on which a prohibition under subsection (a) applies to such application.

(2) Exemptions for certain necessary services.—Subsections (a) and (b) do not apply to services provided with respect to a foreign adversary controlled application that are necessary for an entity to attain compliance with such subsections.

(d) Enforcement.—

(1) Civil penalties.—
(A) FOREIGN ADVERSARY CONTROLLED
APPLICATION VIOLATIONS.—An entity that vio-
lates subsection (a) shall be subject to pay a
civil penalty in an amount not to exceed the
amount that results from multiplying $5,000 by
the number of users within the land or mar-
time borders of the United States determined to
have accessed, maintained, or updated a foreign
adversary controlled application as a result of
such violation.

(B) DATA AND INFORMATION VIOLA-
TIONS.—An entity that violates subsection (b)
shall be subject to pay a civil penalty in an
amount not to exceed the amount that results
from multiplying $500 by the number of users
within the land or maritime borders of the
United States affected by such violation.

(2) ACTIONS BY ATTORNEY GENERAL.—The At-
torney General—

(A) shall conduct investigations related to
potential violations of subsection (a) or (b),
and, if such an investigation results in a deter-
mination that a violation has occurred, the At-
torney General shall pursue enforcement under
paragraph (1); and
(B) may bring an action in an appropriate district court of the United States for appropriate relief, including civil penalties under paragraph (1) or declaratory and injunctive relief.

(e) SEVERABILITY.—

(1) IN GENERAL.—If any provision of this section or the application of this section to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or applications of this section that can be given effect without the invalid provision or application.

(2) SUBSEQUENT DETERMINATIONS.—If the application of any provision of this section is held invalid with respect to a foreign adversary controlled application that satisfies the definition of such term pursuant to subsection (g)(3)(A), such invalidity shall not affect or preclude the application of the same provision of this section to such foreign adversary controlled application by means of a subsequent determination pursuant to subsection (g)(3)(B).

(f) RULE OF CONSTRUCTION.—Nothing in this Act may be construed—
(1) to authorize the Attorney General to pursue enforcement, under this section, other than enforcement of subsection (a) or (b);

(2) to authorize the Attorney General to pursue enforcement, under this section, against an individual user of a foreign adversary controlled application; or

(3) except as expressly provided herein, to alter or affect any other authority provided by or established under another provision of Federal law.

(g) DEFINITIONS.—In this section:

(1) CONTROLLED BY A FOREIGN ADVERSARY.—The term “controlled by a foreign adversary” means, with respect to a covered company or other entity, that such company or other entity is—

(A) a foreign person that is domiciled in, is headquartered in, has its principal place of business in, or is organized under the laws of a foreign adversary country;

(B) an entity with respect to which a foreign person or combination of foreign persons described in subparagraph (A) directly or indirectly own at least a 20 percent stake; or
(C) a person subject to the direction or control of a foreign person or entity described in subparagraph (A) or (B).

(2) COVERED COMPANY.—

(A) IN GENERAL.—The term “covered company” means an entity that operates, directly or indirectly (including through a parent company, subsidiary, or affiliate), a website, desktop application, mobile application, or augmented or immersive technology application that—

(i) permits a user to create an account or profile to generate, share, and view text, images, videos, real-time communications, or similar content;

(ii) has more than 1,000,000 monthly active users with respect to at least 2 of the 3 months preceding the date on which a relevant determination of the President is made pursuant to paragraph (3)(B);

(iii) enables 1 or more users to generate or distribute content that can be viewed by other users of the website, desktop application, mobile application, or aug-
mented or immersive technology application; and

(iv) enables 1 or more users to view content generated by other users of the website, desktop application, mobile application, or augmented or immersive technology application.

(B) EXCLUSION.—The term “covered company” does not include an entity that operates a website, desktop application, mobile application, or augmented or immersive technology application whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews.

(3) FOREIGN ADVERSARY CONTROLLED APPLICATION.—The term “foreign adversary controlled application” means a website, desktop application, mobile application, or augmented or immersive technology application that is operated, directly or indirectly (including through a parent company, subsidiary, or affiliate), by—

(A) any of—

(i) ByteDance, Ltd.;

(ii) TikTok;
(iii) a subsidiary of or a successor to
an entity identified in clause (i) or (ii) that
is controlled by a foreign adversary; or

(iv) an entity owned or controlled, di-
rectly or indirectly, by an entity identified
in clause (i), (ii), or (iii); or

(B) a covered company that—

(i) is controlled by a foreign adver-
sary; and

(ii) that is determined by the Presi-
dent to present a significant threat to the
national security of the United States fol-
lowing the issuance of—

(I) a public notice proposing such
determination; and

(II) a public report to Congress,
submitted not less than 30 days be-
fore such determination, describing
the specific national security concern
involved and containing a classified
annex and a description of what as-
sets would need to be divested to exe-
cute a qualified divestiture.

(4) FOREIGN ADVERSARY COUNTRY.—The term
“foreign adversary country” means a country speci-
fied in section 4872(d)(2) of title 10, United States Code.

(5) INTERNET HOSTING SERVICE.—The term “internet hosting service” means a service through which storage and computing resources are provided to an individual or organization for the accommodation and maintenance of 1 or more websites or online services, and which may include file hosting, domain name server hosting, cloud hosting, and virtual private server hosting.

(6) QUALIFIED DIVESTITURE.—The term “qualified divestiture” means a divestiture or similar transaction that—

(A) the President determines, through an interagency process, would result in the relevant foreign adversary controlled application no longer being controlled by a foreign adversary; and

(B) the President determines, through an interagency process, precludes the establishment or maintenance of any operational relationship between the United States operations of the relevant foreign adversary controlled application and any formerly affiliated entities that are controlled by a foreign adversary, in-
cluding any cooperation with respect to the operation of a content recommendation algorithm or an agreement with respect to data sharing.

(7) SOURCE CODE.—The term “source code” means the combination of text and other characters comprising the content, both viewable and nonviewable, of a software application, including any publishing language, programming language, protocol, or functional content, as well as any successor languages or protocols.

(8) UNITED STATES.—The term “United States” includes the territories of the United States.

SEC. 3. JUDICIAL REVIEW.

(a) RIGHT OF ACTION.—A petition for review challenging this Act or any action, finding, or determination under this Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit.

(b) EXCLUSIVE JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over any challenge to this Act or any action, finding, or determination under this Act.

(c) STATUTE OF LIMITATIONS.—A challenge may only be brought—
(1) in the case of a challenge to this Act, not later than 165 days after the date of the enactment of this Act; and

(2) in the case of a challenge to any action, finding, or determination under this Act, not later than 90 days after the date of such action, finding, or determination.