

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 7890
OFFERED BY MR. JAMES OF MICHIGAN**

Add at the end of the bill the following:

1 **SEC. 5. APP STORE ACCOUNTABILITY.**

2 (a) FINDINGS; SENSE OF CONGRESS.—

3 (1) FINDINGS.—Congress finds the following:

4 (A) Minors do not have the same capacity
5 to consent to a contract as adults.

6 (B) Many apps allow in-app purchases
7 without confirming that an adult has consented
8 to such a purchase.

9 (C) Many apps contain content or features
10 inappropriate for minors, such as obscene or ex-
11 plicitly sexual content, addictive features, and
12 adult themes.

13 (D) 95 percent of teenagers in the United
14 States own a smart phone and have access to
15 apps through an app store.

16 (E) The leading app stores provide some
17 ability for parents to oversee a minor's use of
18 apps, but those abilities are incomplete to ap-
19 propriately protect minors.

1 (F) The leading app stores provide some
2 age rating for apps, but those ratings can be in-
3 accurate, vague, deceptive, or otherwise
4 unhelpful to parents.

5 (G) Some developers claim to limit or pro-
6 hibit the use of their app by minors but too
7 often fail to enforce those policies.

8 (H) Several online services provide the ca-
9 pability to verify the age of a user.

10 (I) App stores have the ability to, but too
11 often do not, verify the age of a user.

12 (J) Requiring age verification by the larg-
13 est app store providers may empower parental
14 oversight of minors' use of apps while mini-
15 mizing the burden on developers, entrepreneurs,
16 parents, and other adult users of apps.

17 (K) Two app stores, the Apple App Store
18 and the Google Play Store, almost entirely con-
19 trol the app distribution market in the United
20 States, and these 2 stores provide methods for
21 parents to oversee a minor's use of apps, but
22 those methods are incomplete to appropriately
23 protect minors.

24 (2) SENSE OF CONGRESS.—It is the sense of
25 Congress that—

1 (A) requiring age verification by the larg-
2 est app store providers may empower parental
3 oversight of minors' use of apps while mini-
4 mizing the burden on developers, entrepreneurs,
5 parents, and other adult users of apps;

6 (B) mobile device usage depends on access
7 to certain apps;

8 (C) mobile devices have evolved to com-
9 mand a uniquely pervasive presence as a me-
10 dium of expression, are impossible to completely
11 avoid, and are foundational to both public and
12 private life; and

13 (D) disclosure of offensive content within
14 apps—

15 (i) empowers parents to better under-
16 stand what apps their children are using
17 and exercise their parental oversight; and

18 (ii) ensures that minors are better
19 able to avoid content they are instructed
20 against accessing or would otherwise desire
21 to personally avoid.

22 (b) DEFINITIONS.—In this section:

23 (1) AGE CATEGORY.—The term “age category”
24 means the category of an individual based on their
25 age, including the following categories:

1 (A) ADULT.—An “adult” is such an indi-
2 vidual who has attained 18 years of age.

3 (B) TEENAGER.—A “teenager” is such an
4 individual who has attained 16 years of age but
5 has not attained 18 years of age.

6 (C) CHILD.—A “child” is such an indi-
7 vidual who has attained 13 years of age but has
8 not attained 16 years of age.

9 (D) YOUNG CHILD.—A “young child” is
10 such an individual who has not attained 13
11 years of age.

12 (2) AGE RATING.—The term “age rating”
13 means a public display that indicates the appro-
14 priateness of an app for different age categories.

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

19 (4) APP STORE.—The term “app store” means
20 a publicly available website, software application, or
21 other electronic service that distributes and facili-
22 tates the download of an app from a third-party de-
23 veloper by a user of a computer, mobile device, or
24 any other general purpose computing device.

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

3 (6) COVERED APP STORE PROVIDER.—The
4 term “covered app store provider” means any person
5 that owns or controls an app store available in the
6 United States and for which users in the United
7 States exceed 5,000,000.

8 (7) DEVELOPER.—The term “developer” means
9 any person that owns or controls an app on the app
10 store of a covered app store provider and available
11 in the United States.

12 (8) KNOW.—The term “know” means to have
13 actual knowledge or knowledge fairly inferred based
14 on objective circumstances.

15 (9) MINOR.—The term “minor” means an indi-
16 vidual who has not attained 18 years of age.

17 (10) MOBILE DEVICE.—The term “mobile de-
18 vice” means a tablet or smart phone that is capable
19 of running a mobile operating system.

20 (11) MOBILE OPERATING SYSTEM.—The term
21 “mobile operating system” means a set of software
22 that manages mobile device hardware resources and
23 provides common services for mobile device pro-
24 grams.

1 (12) PARENT.—The term “parent”, with re-
2 spect to a minor, means an adult with the legal right
3 to make decisions on behalf of the minor, includ-
4 ing—

5 (A) a natural parent;

6 (B) an adoptive parent;

7 (C) a legal guardian; or

8 (D) an individual with legal custody over
9 the minor.

10 (13) SIGNAL.—The term “signal” means age
11 bracketed data sent by a real-time secure application
12 programming interface or operating system that is
13 likely to be accessed by minors.

14 (14) VERIFIABLE PARENTAL CONSENT.—The
15 term “verifiable parental consent” means authoriza-
16 tion that is provided—

17 (A) by a parent who a covered app store
18 provider has verified is an adult;

19 (B) in response to a disclosure from a cov-
20 ered app store provider that identifies what is
21 specifically being consented to, including the
22 age rating for the app or in-app purchase at
23 issue; and

1 (C) in response to a clear choice to consent
2 or to decline to consent to the request from the
3 covered app store provider.

4 (c) APP STORE OBLIGATIONS.—

5 (1) IN GENERAL.—Each covered app store pro-
6 vider shall do the following:

7 (A) AGE VERIFICATION.—Determine the
8 age category for each individual in the United
9 States that uses the app store of such provider
10 and verify such individual’s age using commer-
11 cially reasonable methods.

12 (B) PARENTAL OVERSIGHT OF APP STORE
13 USAGE.—Obtain verifiable parental consent
14 prior to allowing a minor to use the app store
15 of such provider, including by providing a
16 mechanism for a parent to block a minor from
17 downloading any app that is not suitable for the
18 age category of the minor.

19 (C) PARENTAL OVERSIGHT OF APP
20 DOWNLOADS.—Obtain verifiable parental con-
21 sent, on a download-by-download basis, prior to
22 allowing a minor to download an app from the
23 app store of such provider, including by pro-
24 viding an easily accessible mechanism for a par-
25 ent to consent to the download of an app.

1 (D) PARENTAL OVERSIGHT OF APP PUR-
2 CHASES.—Obtain verifiable parental consent, on
3 a purchase-by-purchase basis, prior to allowing
4 a minor to purchase any app through the app
5 store of such provider, and such consent shall
6 be valid for up to 7 days.

7 (E) PARENTAL OVERSIGHT OF IN-APP
8 PURCHASES.—Obtain verifiable parental con-
9 sent, on a purchase-by-purchase basis, prior to
10 allowing a minor to make an in-app purchase
11 through the app store of such provider.

12 (F) PARENTAL OVERSIGHT OF APP
13 USAGE.—With respect to any covered app store
14 provider that owns or controls a mobile device’s
15 mobile operating system, to the extent prac-
16 ticable, provide to parents a clear and easy
17 mechanism to set—

18 (i) filters that prevent a minor from
19 accessing any adult website on the web
20 browser of the mobile device; and

21 (ii) usage limits, including daily limits
22 and limitations during school and evening
23 hours.

24 (G) APP AGE RATING DISPLAY.—To the
25 extent the covered app store provider displays

1 age ratings or descriptions of content, clearly
2 and prominently display the age rating or de-
3 scription of content for each app available in
4 the app store of the provider, including infor-
5 mation regarding the minimum age category
6 suitable for usage of an app.

7 (H) AGE CATEGORY SIGNAL TO DEVEL-
8 OPERS.—Provide to developers the ability to de-
9 termine, in real time, the age category of any
10 user and, with respect to any user that is a
11 minor, whether the covered app store provider
12 has obtained verifiable parental consent in ac-
13 cordance with this subsection.

14 (2) RULES OF CONSTRUCTION.—Nothing in
15 this subsection shall be construed—

16 (A) to prevent a covered app store provider
17 from taking reasonable measures to block, de-
18 tect, or prevent the distribution of unlawful, ob-
19 scene, or other harmful material to minors, to
20 block or filter spam, to prevent criminal activ-
21 ity, or to protect the security of an app store
22 or app;

23 (B) to require a covered app store provider
24 to disclose to a developer any information about
25 a user other than such user’s age category and,

1 with respect to any user that is a minor, wheth-
2 er the covered app store provider has obtained
3 verifiable parental consent in accordance with
4 this subsection;

5 (C) to allow a covered app store provider
6 to use any measures required by this section in
7 a way that is arbitrary, capricious, anti-com-
8 petitive, or unlawful; or

9 (D) to affect or restrict the expression of
10 political, religious, or other viewpoints.

11 (d) DEVELOPER OBLIGATIONS.—

12 (1) APP AGE RATING.—To the extent that a de-
13 veloper provides age ratings or descriptions of con-
14 tent to users, the developer shall—

15 (A) clearly provide the description of con-
16 tent and clearly identify the age category eligi-
17 ble for usage of an app consistent with the rat-
18 ing system developed in accordance with the
19 best practices established by the Advisory Com-
20 mittee under subsection (e); and

21 (B) provide such information to each app
22 store available in the United States.

23 (2) PARENTAL OVERSIGHT OF APP USAGE.—To
24 the extent technically feasible, each developer shall

1 use the application programming interface of a covered app store provider to verify—

2 (A) the age category of its users; and

3 (B) in the case of a minor, whether
4 verifiable parental consent has been obtained
5 before allowing the use of the app or in-app
6 purchases.
7

8 (3) TIME RESTRICTIONS.—Each developer shall
9 provide readily available features for a parent to im-
10 plement time restrictions with respect to the app of
11 such developer, including the ability to view metrics
12 reflecting the amount of time that a minor is using
13 the app and set daily time limits on a minor’s use
14 of such app.

15 (4) USE OF APP STORE PROVIDER SIGNAL.—
16 Each developer shall use a covered app store pro-
17 vider’s signal to determine the age category of a
18 user.

19 (e) APP AGE RATINGS TRANSPARENCY ADVISORY
20 COMMITTEE.—

21 (1) ESTABLISHMENT.—Not later than 60 days
22 after the date of the enactment of this section, the
23 Commission shall establish and convene the App Age
24 Ratings Transparency Advisory Committee (in this
25 section referred to as the “Advisory Committee”) to

1 recommend best practices regarding the age rating
2 of apps offered on the app store of any covered app
3 store provider for different age categories.

4 (2) PARTICIPATION.—The Advisory Committee
5 shall include members from—

6 (A) content creators;

7 (B) developers;

8 (C) public interest groups focused on child
9 welfare;

10 (D) parents; and

11 (E) any other representatives deemed ap-
12 propriate by the Commission.

13 (3) REPORT.—Not later than 1 year after the
14 date on which the Advisory Committee is estab-
15 lished, and every 3 years thereafter until the date
16 described in paragraph (4), the Advisory Committee
17 shall submit to Congress, and publish in a publicly-
18 available manner, a report that includes rec-
19 ommendations for best practices regarding the age
20 rating of apps offered on the app store of any cov-
21 ered app store provider.

22 (4) TERMINATION.—The Advisory Committee
23 shall terminate on the date that is 15 years after the
24 date on which the Advisory Committee is estab-
25 lished, unless the Commission determines that the

1 continued involvement and guidance of the Advisory
2 Committee is in the public interest.

3 (5) NON-APPLICABILITY OF FACA.—Chapter 10
4 of title 5, United States Code, other than section
5 1009 of such Chapter, shall not apply to the Advi-
6 sory Committee established under this subsection.

7 (f) COMPLIANCE.—Not later than 1 year after the
8 date of the enactment of this section, the Commission
9 shall issue guidance to assist covered app store providers
10 and developers in complying with the requirements of this
11 Act.

12 (g) ENFORCEMENT.—

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

19 (2) POWERS OF THE COMMISSION.—

20 (A) IN GENERAL.—Subject to paragraph
21 (3), the Commission shall enforce this section in
22 the same manner, by the same means, and with
23 the same jurisdiction, powers, and duties as
24 though all applicable terms and provisions of
25 the Federal Trade Commission Act (15 U.S.C.

1 41 et seq.) were incorporated into and made a
2 part of this section.

3 (B) PRIVILEGES AND IMMUNITIES.—Any
4 person who violates this section or a regulation
5 promulgated thereunder shall be subject to the
6 penalties and entitled to the privileges and im-
7 munities provided in the Federal Trade Com-
8 mission Act (15 U.S.C. 41 et seq.).

9 (C) AUTHORITY PRESERVED.—Nothing in
10 this section shall be construed to limit the au-
11 thority of the Commission under any other pro-
12 vision of law.

13 (3) ADDITIONAL PENALTIES AND AUTHOR-
14 ITY.—In addition to the authority and penalties pro-
15 vided in the Federal Trade Commission Act (15
16 U.S.C. 41 et seq.), the following authority and pen-
17 alties shall apply with respect to a violation of this
18 section:

19 (A) SPECIFIC CIVIL PENALTIES.—

20 (i) KNOWING MISSTATEMENT OF CON-
21 TENT.—Any covered app store provider or
22 developer who knowingly and willfully mis-
23 states the content of an app as required
24 under subsection (c)(1)(G) or subsection
25 (d)(1) shall be subject to a civil penalty of

1 \$500 for each user as determined by the
2 Commission.

3 (ii) NEGLIGENT MISSTATEMENTS OF
4 CONTENT.—Any covered app store pro-
5 vider or developer who negligently mis-
6 states the content of an app as required
7 under subsection (c)(1)(G) or subsection
8 (d)(1) shall be subject to a civil penalty of
9 \$250 for each user as determined by the
10 Commission.

11 (iii) FAILURE TO VERIFY PARENTAL
12 CONSENT.—Any covered app store provider
13 or developer who knowingly or negligently
14 fails to comply with parental consent
15 verification as required under this section
16 shall be subject to a civil penalty of \$1,000
17 for each user as determined by the Com-
18 mission.

19 (iv) MAXIMUM PENALTY.—The
20 amount of any civil penalty under this sub-
21 paragraph shall not exceed a total of
22 \$4,000,000,000 per violation.

23 (v) CONSTRUING SPECIFIC CIVIL PEN-
24 ALTIES.—Each instance of misstatement of
25 content or failure to obtain verifiable pa-

1 rental consent shall be defined by the num-
2 ber of individual downloads or purchases of
3 an app that occurred in noncompliance
4 with this section.

5 (B) GENERAL CIVIL PENALTIES.—

6 (i) IN GENERAL.—Any covered app
7 store provider or developer who violates
8 any provision of this section or any regula-
9 tion promulgated under this section, other
10 than violations described in subparagraph
11 (A), shall be subject to a civil penalty for
12 each violation.

13 (ii) MAXIMUM PENALTY.—The
14 amount of any civil penalty under this sub-
15 paragraph shall not exceed \$2,000,000,000
16 per violation.

17 (C) INJUNCTIVE RELIEF.—

18 (i) IN GENERAL.—The Commission
19 may seek a temporary restraining order,
20 preliminary injunction, or permanent in-
21 junction to prevent any violation of this
22 section or any regulation promulgated
23 thereunder.

24 (ii) ADDITIONAL RELIEF.—The Com-
25 mission may seek other forms of equitable

1 relief, including rescission or reformation
2 of contracts, restitution, the refund of
3 money, and the return of property.

4 (D) CONSUMER REDRESS.—The Commis-
5 sion may seek monetary redress for consumers
6 affected by a violation of this section or any
7 regulation promulgated thereunder, including
8 through a refund, reimbursement, or other form
9 of compensation.

10 (E) CEASE AND DESIST ORDERS.—

11 (i) IN GENERAL.—The Commission
12 may issue a cease and desist order to pro-
13 hibit further violation of this section or any
14 regulation promulgated thereunder.

15 (ii) COMPLIANCE REQUIREMENTS.—
16 Cease and desist orders issued under this
17 subparagraph may include specific compli-
18 ance requirements such as changes to busi-
19 ness practices, disclosures, and record-
20 keeping.

21 (F) MAXIMUM PENALTIES.—The max-
22 imum penalty described in subparagraph (A)(iv)
23 or subparagraph (B)(ii) shall be doubled upon
24 a finding by the Commission that the covered
25 app store provider or developer in violation of

1 this section or a regulation promulgated there-
2 under has repeatedly or flagrantly violated this
3 section or a regulation promulgated thereunder.

4 (h) SEVERABILITY.—If any provision of this section,
5 or the application thereof to any person or circumstance,
6 is held invalid, the remainder of this section, and the ap-
7 plication of such provision to other persons not similarly
8 situated or to other circumstances, shall not be affected
9 by the invalidation.

10 (i) EFFECTIVE DATE.—Except as otherwise provided
11 in this section, this section shall take effect on the date
12 that is 1 year after the date of the enactment of this sec-
13 tion.

