

117TH CONGRESS  
2D SESSION

# S. 5259

To require certain interactive computer services to adopt and operate technology verification measures to ensure that users of the platform are not minors, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 2022

Mr. LEE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To require certain interactive computer services to adopt and operate technology verification measures to ensure that users of the platform are not minors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shielding Children’s  
5 Retinas from Egregious Exposure on the Net Act” or the  
6 “SCREEN Act”.

7 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

8 (a) FINDINGS.—Congress finds the following:

1           (1) Over the 3 decades preceding the date of  
2           enactment of this Act, Congress has passed several  
3           bills to protect minors from access to online porno-  
4           graphic content, including title V of the Tele-  
5           communications Act of 1996 (Public Law 104–104)  
6           (commonly known as the “Communications Decency  
7           Act”), section 231 of the Communications Act of  
8           1934 (47 U.S.C. 231) (commonly known as the  
9           “Child Online Protection Act”), and the Children’s  
10          Internet Protection Act (title XVII of division B of  
11          Public Law 106–554).

12          (2) With the exception of the Children’s Inter-  
13          net Protection Act (title XVII of division B of Public  
14          Law 106–554), the Supreme Court of the United  
15          States has struck down the previous efforts of Con-  
16          gress to shield children from pornographic content,  
17          finding that such legislation constituted a “compel-  
18          ling government interest” but that it was not the  
19          least restrictive means to achieve such interest. In  
20          Ashcroft v. ACLU, 542 U.S. 656 (2004), the Court  
21          even suggested at the time that “blocking and fil-  
22          tering software” could conceivably be a “primary al-  
23          ternative” to the requirements passed by Congress.

24          (3) In the nearly 2 decades since the Supreme  
25          Court of the United States suggested the use of

1 “blocking and filtering software”, such technology  
2 has proven to be ineffective in protecting minors  
3 from accessing online pornographic content. The  
4 Kaiser Family Foundation has found that filters do  
5 not work on 1 in 10 pornography sites accessed in-  
6 tentionally and 1 in 3 pornography sites that are  
7 accessed unintentionally. Further, it has been proven  
8 that children are able to bypass “blocking and fil-  
9 tering” software by employing strategic searches or  
10 measures to bypass the software completely.

11 (4) Additionally, Pew Research has revealed  
12 studies showing that only 39-percent of parents use  
13 blocking or filtering software for their minor’s online  
14 activities, meaning that 61-percent of children only  
15 have restrictions on their internet access when they  
16 are at school or at a library.

17 (5) 17 States have now recognized pornography  
18 as a public health hazard that leads to a broad  
19 range of individual harms, societal harms, and pub-  
20 lic health impacts.

21 (6) It is estimated that 80-percent of minors  
22 between the ages of 12 to 17 have been exposed to  
23 pornography, with 54-percent of teenagers seeking it  
24 out. The internet is the most common source for mi-  
25 nors to access pornography with pornographic

1 websites receiving more web traffic in the United  
2 States than Twitter, Netflix, Pinterest, and  
3 LinkedIn combined.

4 (7) Exposure to online pornography has created  
5 unique psychological effects for minors, including  
6 anxiety, addiction, low self-esteem, body image dis-  
7 orders, an increase in problematic sexual activity at  
8 younger ages, and an increased desire among minors  
9 to engage in risky sexual behavior.

10 (8) The Supreme Court of the United States  
11 has recognized on multiple occasions that Congress  
12 has a “compelling government interest” to protect  
13 the physical and psychological well-being of minors,  
14 which includes shielding them from “indecent” con-  
15 tent that may not necessarily be considered “ob-  
16 scene” by adult standards.

17 (9) Because “blocking and filtering software”  
18 has not produced the results envisioned nearly 2 dec-  
19 ades ago, it is necessary for Congress to pursue al-  
20 ternative policies to enable the protection of the  
21 physical and psychological well-being of minors.

22 (10) The evolution of our technology has now  
23 enabled the use of age verification technology that is  
24 cost efficient, not unduly burdensome, and can be  
25 operated narrowly in a manner that ensures only

1 adults have access to a website’s online pornographic  
2 content.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-  
4 gress that—

5 (1) shielding minors from access to online por-  
6 nographic content is a compelling government inter-  
7 est that protects the physical and psychological well-  
8 being of minors; and

9 (2) requiring interactive computer services that  
10 are in the business of creating, hosting, or making  
11 available pornographic content to enact technological  
12 measures that shield minors from accessing porno-  
13 graphic content on their platforms is the least re-  
14 strictive means for Congress to achieve its compel-  
15 ling government interest.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) CHILD PORNOGRAPHY; MINOR.—The terms  
19 “child pornography” and “minor” have the mean-  
20 ings given those terms in section 2256 of title 18,  
21 United States Code.

22 (2) COMMISSION.—The term “Commission”  
23 means the Federal Communications Commission.

24 (3) COVERED PLATFORM.—The term “covered  
25 platform”—

1 (A) means an entity—

2 (i) that is an interactive computer  
3 service;

4 (ii) that—

5 (I) is engaged in interstate or  
6 foreign commerce; or

7 (II) purposefully avails itself of  
8 the United States market or a portion  
9 thereof; and

10 (iii) for which it is in the regular  
11 course of the trade or business of the enti-  
12 ty to create, host, or make available con-  
13 tent that meets the definition of harmful to  
14 minors under paragraph (4) and that is  
15 provided by the entity, a user, or other in-  
16 formation content provider, with the objec-  
17 tive of earning a profit; and

18 (B) includes an entity described in sub-  
19 paragraph (A) regardless of whether—

20 (i) the entity earns a profit on the ac-  
21 tivities described in subparagraph (A)(iii);  
22 or

23 (ii) creating, hosting, or making avail-  
24 able content that meets the definition of  
25 harmful to minors under paragraph (4) is

1           the sole source of income or principal busi-  
2           ness of the entity.

3           (4) HARMFUL TO MINORS.—The term “harmful  
4           to minors”, with respect to a picture, image, graphic  
5           image file, film, videotape, or other visual depiction,  
6           means that the picture, image, graphic image file,  
7           film, videotape, or other depiction—

8                   (A)(i) taken as a whole and with respect to  
9                   minors, appeals to the prurient interest in nu-  
10                   dity, sex, or excretion;

11                   (ii) depicts, describes, or represents, in a  
12                   patently offensive way with respect to what is  
13                   suitable for minors, an actual or simulated sex-  
14                   ual act or sexual contact, actual or simulated  
15                   normal or perverted sexual acts, or lewd exhi-  
16                   bition of the genitals; and

17                   (iii) taken as a whole, lacks serious, lit-  
18                   erary, artistic, political, or scientific value as to  
19                   minors;

20                   (B) is obscene; or

21                   (C) is child pornography.

22           (5) INFORMATION CONTENT PROVIDER; INTER-  
23           ACTIVE COMPUTER SERVICE.—The terms “informa-  
24           tion content provider” and “interactive computer  
25           service” have the meanings given those terms in sec-

1       tion 230(f) of the Communications Act of 1934 (47  
2       U.S.C. 230(f)).

3           (6) SEXUAL ACT; SEXUAL CONTACT.—The  
4       terms “sexual act” and “sexual contact” have the  
5       meanings given those terms in section 2246 of title  
6       18, United States Code.

7           (7) TECHNOLOGY VERIFICATION MEASURE.—  
8       The term “technology verification measure” means  
9       technology that—

10           (A) employs a system or process to deter-  
11       mine whether it is more likely than not that a  
12       user of a covered platform is a minor; and

13           (B) prevents access by minors to any con-  
14       tent on a covered platform.

15 **SEC. 4. TECHNOLOGY VERIFICATION MEASURES.**

16       (a) RULE MAKING.—The Commission shall—

17           (1) not later than 30 days after the date of en-  
18       actment of this Act, issue a notice of proposed rule  
19       making to require covered platforms to adopt and  
20       operate technology verification measures on the plat-  
21       form to ensure that—

22           (A) users of the covered platform are not  
23       minors; and



1 (B) minors are prevented from accessing  
2 any content on the covered platform that is  
3 harmful to minors; and

4 (2) not later than 1 year after issuing the no-  
5 tice of proposed rule making under paragraph (1),  
6 issue the final rule.

7 (b) REQUIREMENTS.—The rule described in sub-  
8 section (a) shall—

9 (1) set the applicable verification standards and  
10 metrics to which a covered platform using a tech-  
11 nology verification measure is required to adhere  
12 when determining whether it is more likely than not  
13 that a user of the covered platform is not a minor;

14 (2) require covered platforms to—

15 (A) adopt technology verification measures  
16 that adhere to the standards and metrics set by  
17 the Commission under paragraph (1); and

18 (B) make publicly available the verification  
19 process that the covered platform is employing  
20 to comply with the requirements under this Act;

21 (3) provide that requiring a user to confirm  
22 that the user is not a minor shall not be sufficient  
23 to satisfy the requirements under subparagraphs (A)  
24 and (B) of subsection (a)(1);

1           (4) subject the Internet Protocol (IP) addresses  
2 of all users, including known virtual proxy network  
3 IP addresses, of a covered platform to the require-  
4 ments described in subparagraphs (A) and (B) of  
5 subsection (a)(1) unless the covered platform (or  
6 third-party described in paragraph (6)), according to  
7 standards set by the Commission, determines based  
8 on available technology a user is not located within  
9 the United States;

10           (5) permit covered platforms to choose the tech-  
11 nology verification measure that ensures the  
12 verification of users in accordance with the stand-  
13 ards and metrics set by the Commission under para-  
14 graph (1), provided that the technology verification  
15 measure employed by the covered platform prohibits  
16 a minor from accessing the platform or any informa-  
17 tion on the platform that is obscene, child pornog-  
18 raphy, or harmful to minors;

19           (6) permit covered platforms to contract with a  
20 third-party to employ a technology verification meas-  
21 ures, and provide that use of such a third-party shall  
22 not relieve the covered platform of the requirements  
23 under subparagraphs (A) and (B) of subsection  
24 (a)(1) or the enforcement actions described in sec-  
25 tion 6;

1           (7) require the Commission to establish a proc-  
2           ess for each covered platform to submit only such  
3           documents or other materials as are necessary for  
4           the Commission to ensure full compliance with the  
5           requirements of the rule; and

6           (8) require the Commission to—

7                   (A) conduct regular audits of covered plat-  
8                   forms to ensure compliance with the require-  
9                   ments under this subsection; and

10                   (B) make public the terms and processes  
11                   for the audits conducted under subparagraph  
12                   (A), including the processes for any third-party  
13                   conducting an audit on behalf of the Commis-  
14                   sion.

15           (c) COMPLIANCE.—

16                   (1) DEADLINE.—Not later than 180 days after  
17                   the date on which the final rule is issued under sub-  
18                   section (a)(2), each covered platform shall comply  
19                   with the requirements under the final rule.

20                   (2) APPROPRIATE DOCUMENTS, MATERIALS,  
21                   AND MEASURES.—The Commission shall prescribe  
22                   the appropriate documents, materials, or other  
23                   measures required to ensure full compliance with the  
24                   requirements of the final rule issued under sub-  
25                   section (a)(2).

1 (d) CONTRACTING WITH THIRD PARTIES.—The  
2 Commission may create a process to contract with inde-  
3 pendent third-party auditors to conduct regular audits on  
4 behalf of the Commission under subsection (b)(8).

5 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
6 tion shall be construed to require a covered platform to  
7 submit any information that identifies, is linked to, or is  
8 reasonably linkable to a user of the covered platform or  
9 a device that is linked or reasonable linkable to a user  
10 of the covered platform.

11 **SEC. 5. CONSULTATION REQUIREMENTS.**

12 In issuing the rule required under section 4, the Com-  
13 mission shall consult with the following individuals, includ-  
14 ing with respect to the applicable standards and metrics  
15 for making a determination on whether it is more likely  
16 than not that a user of a covered platform is not a minor:

17 (1) Individuals with experience in computer  
18 science and software engineering.

19 (2) Individuals with experience in—

20 (A) advocating for online child safety; or

21 (B) providing services to minors who have  
22 been victimized by online child exploitation.

23 (3) Individuals with experience in consumer  
24 protection and online privacy.

1           (4) Individuals who supply technology  
2 verification measure products or have expertise in  
3 technology verification measure solutions.

4           (5) Individuals with experience in data security  
5 and cryptography.

6 **SEC. 6. CIVIL PENALTY FOR VIOLATIONS.**

7           (a) NOTIFICATION.—If the Commission has a sound  
8 basis to conclude that a covered platform has violated the  
9 final rule issued under section 4, the Commission shall no-  
10 tify the covered platform with a brief description of the  
11 specific violation with recommended measures to correct  
12 the violation.

13           (b) PENALTY.—

14           (1) IN GENERAL.—A covered platform that has  
15 not provided evidence of compliance or corrected a  
16 violation that has been noticed by the Commission  
17 under subsection (a) within 72 hours of the receipt  
18 of such notice shall be subject to a civil penalty in  
19 an amount that is not more than \$25,000 per viola-  
20 tion.

21           (2) SEPARATE VIOLATIONS.—For the purposes  
22 of paragraph (1), each day of violation of the final  
23 rule issued under section 4 shall constitute a sepa-  
24 rate violation.

1           (3) APPEAL.—A covered platform may appeal  
2 any civil penalty issued by the Commission under  
3 this subsection in an appropriate district court of  
4 the United States.

5           (4) USE OF AMOUNTS.—Any amounts collected  
6 under this subsection shall be used by the Commis-  
7 sion to carry out enforcement of the final rule issued  
8 under section 4.

9           (c) ENFORCEMENT.—The Commission may—

10           (1) file a claim in an appropriate district court  
11 of the United States to enforce this section;

12           (2) seek a temporary or permanent injunction  
13 from an appropriate district court of the United  
14 States on such terms as the court deems reasonable  
15 to prevent or restrain a violation of the final rule  
16 issued under section 4;

17           (3) after 30 days of non-compliance with sec-  
18 tion 4 and a demonstration of a lack of good faith  
19 on the part of the covered platform to comply with  
20 section 4, seek a permanent or temporary injunction  
21 to restrict the operation of the covered platform  
22 within the United States; and

23           (4) after 30 days of non-compliance with sec-  
24 tion 4 and a demonstration of a lack of good faith  
25 on the part of the covered platform to comply with

1 section 4, seek an order to allow the Commission to  
2 prohibit a covered platform from engaging in any  
3 online economic transactions within the United  
4 States.

5 (d) DURATION.—The terms of an injunction or an  
6 order issued under paragraph (2), (3), or (4) of subsection  
7 (c) with respect to a covered platform shall only be valid  
8 until such time as the covered platform demonstrates to  
9 the Commission full compliance with the requirements of  
10 the final rule issued under section 4.

11 **SEC. 7. GAO REPORT.**

12 Not later than 2 years after the date on which cov-  
13 ered platforms are required to comply with the final rule  
14 issued under section 4(a)(2), the Comptroller General of  
15 the United States shall submit to Congress a report that  
16 includes—

17 (1) an analysis of the effectiveness of the tech-  
18 nology verification measures required under the final  
19 rule;

20 (2) recommendations to the Commission for im-  
21 provements to the final rule; and

22 (3) recommendations to Congress on future leg-  
23 islative improvements.

1 **SEC. 8. SEVERABILITY CLAUSE.**

2       If any provision of this Act, or the application of such  
3 a provision to any person or circumstance, is held to be  
4 unconstitutional, the remaining provisions of this Act, and  
5 the application of such provisions to any other person or  
6 circumstance, shall not be affected thereby.

○