Purpose: To improve the bill.


S. 3663

To protect the safety of children on the internet.

Referred to the Committee on ________________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. BLUMENTHAL (for himself and Mrs. BLACKBURN) to the amendment (No. ____________) proposed by Mr. BLUMENTHAL

Viz:

1. In section 3(b), strike “has a duty to” and insert “shall”.

3. In section 3(b), strike “physical, mental, financial, developmental, or other material harms to minors, including”.

6. In section 3(b)(3), strike “harm” and insert “violence”.

8. Strike section 3(b)(5) and insert the following:
(5) promotion and marketing of narcotic drugs
(as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, gambling, or alcohol; and

In section 3(b)(6), insert “, or other financial harms” after “marketing practices”.

Strike section 4(a) and insert the following:

(a) SAFEGUARDS FOR MINORS.—

(1) IN GENERAL.—A covered platform shall provide a minor with readily-accessible and easy-to-use safeguards to, as applicable—

(A) limit the ability of other individuals to contact or find a minor, in particular individuals aged 17 or over with no relationship to the minor;

(B) prevent other users, whether registered or not, from viewing the minor's personal data collected by or shared on the covered platform, in particular restricting public access to personal data;

(C) limit features that increase, sustain, or extend use of the covered platform by a minor,
such as automatic playing of media, rewards for time spent on the platform, and notifications;

(D) control algorithmic recommendation systems that use a minor’s personal data, including the right to—

(i) opt out of such algorithmic recommendation systems; or

(ii) limit types or categories of recommendations from such systems;

(E) delete the minor’s account and delete their personal data;

(F) restrict the sharing of the geolocation of a minor and provide notice regarding the tracking of a minor’s geolocation; and

(G) limit the amount of time spent by a minor on the covered platform.

(2) Default safeguard settings for minors.—A covered platform shall provide that, in the case of a user that the platform knows or reasonably believes to be a minor, the default setting for any safeguard described under paragraph (1) shall be the option available on the platform that provides the most protective level of control that is offered by the platform over privacy and safety for that user.
In section 4(b)(2)(B), insert “, where applicable” after “minor”.

In section 4(c)(1)(A), strike “, including harms described in section 3(b)”.

In section 4(c)(2), insert “substantively” after “receive and”.

Strike section 4(d) and insert the following:

(d) ADVERTISING OF ILLEGAL PRODUCTS.—A covered platform shall not facilitate the advertising of narcotic drugs (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), tobacco products, gambling, or alcohol to minors.

In section 4(e)(1)(A), strike “is age appropriate” and insert “takes into consideration the differing ages, capacities, and developmental needs of the minors most likely to access the covered platform”.

Strike section 4(e)(2) and insert the following:

(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

(A) prevent a covered platform from—
(i) taking reasonable measures to limit algorithmic recommendation systems from distributing unlawful, obscene, or harmful material to minors as described in section 3(b); or

(ii) implementing measures to block or filter spam, prevent criminal activity, or protect the security of a platform or service;

(B) require the disclosure of a minor’s browsing behavior, search history, messages, or other content of their communications; or

(C) restrict a covered platform’s ability to—

(i) cooperate with law enforcement agencies regarding activity that the operator reasonably and in good faith believes may violate Federal, State, or local laws, rules, or regulations;

(ii) comply with a civil, criminal, or regulatory inquiry or any investigation, subpoena, or summons by Federal, State, local, or other government authorities; or

(iii) exercise, respond to, or defend against legal claims.
In section 5(a)(1)(C), strike “harm to a minor, including harms described in section 3(b)” and insert “harms to minors”.

In section 5(a)(3), insert “take reasonable steps to” after “the covered platform shall”.

In section 5(a), insert the following new paragraph after paragraph (3):

(4) RULEMAKING.—The Commission may issue rules pursuant to section 553 of title 5, United States Code, to establish standards for covered platforms to comply with this subsection, including—

(A) a minimum level of information covered platforms must provide pursuant to paragraph (1), where applicable; and

(B) processes for parental notification, which may include templates or models of short-form notices.

Strike subsection (c) of section 5 and insert the following:

(e) ADVERTISING AND MARKETING INFORMATION AND LABELS.—
INFORMATION AND LABELS.—A covered platform that facilitates advertising aimed at minors shall provide clear, conspicuous, and easy-to-understand information and labels on advertisements and marketing material regarding—

(A) the name of the product, service, or brand and the subject matter of an advertisement or marketing material;

(B) why the minor is being targeted for a particular advertisement or marketing material if the covered platform engages in targeted advertising, including material information about how the minor’s personal data was used to target the advertisement or marketing material; and

(C) whether particular media displayed to a user is an advertisement or marketing material, including disclosure of endorsements of products, services, or brands made for commercial consideration by other users of the platform.

RULEMAKING.—The Commission may issue rules pursuant to section 553 of title 5, United States Code, to implement this subsection, specifically establishing the minimum level of information
and labels necessary for the disclosures required under paragraph (1), which may include templates or models of short-form notices.

Strike section 6(a) and insert the following:

(a) In General.—Subject to subsection (b), not less frequently than once a year, a covered platform shall issue a public report identifying the reasonably foreseeable risk of harms to minors and describing the prevention and mitigation measures taken to address such risk based on an independent, third-party audit conducted through reasonable inspection of the covered platform.

In section 6(b), strike “had” and insert “averaged”.

Strike section 6(c)(1)(E) and insert the following:

(E) an accounting of total reports received regarding, and the prevalence of content related to, the harms described in section 3(b), disaggregated by category of harm; and

Strike section 6(c)(2) and insert the following:

(2) Systemic Risks Assessment.—The public reports required of a covered platform under this section shall include—
(A) an audit of the reasonably foreseeable risk of harms to minors posed by the covered platform, including identifying any other physical, mental, developmental, or financial harms in addition to those described in section 3(b);

(B) an assessment of how algorithmic recommendation systems and targeted advertising systems can contribute to harms to minors;

(C) a description of whether and how the covered platform uses system design features to increase, sustain, or extend use of a product or service by a minor, such as automatic playing of media, rewards for time spent, and notifications;

(D) a description of whether, how, and for what purpose the platform collects or processes categories of personal data that may cause reasonably foreseeable risk of harms to minors;

(E) an evaluation of the efficacy of safeguards for minors under section 4, and any issues in delivering such safeguards and the associated parental tools; and

(F) an evaluation of any other relevant matters of public concern over risk of harms to minors.
Strike section 6(c)(3) and insert the following:

(3) MITIGATION.—The public reports required of a covered platform under this section shall include—

(A) a description of the safeguards and parental tools available to minors and parents on the covered platform;

(B) a description of interventions by the covered platform when it had or has reason to believe that harms to minors could occur;

(C) a description of the prevention and mitigation measures intended to be taken in response to the known and emerging risks identified in its audit of system risks, including steps taken to—

(i) prevent harms to minors, including adapting or removing system design features;

(ii) provide the most protective level of control over privacy and safety by default; and

(iii) adapt algorithmic recommendation systems to prioritize the best interests of users who are minors, as described in section 3(b);
(D) a description of internal processes for handling reports and automated detection mechanisms for harms to minors, including the rate, timeliness, and effectiveness of responses under the requirement of section 4(c);

(E) the status of implementing prevention and mitigation measures identified in prior assessments; and

(F) a description of the additional measures to be taken by the covered platform to address the circumvention of safeguards for minors and parental tools.

Strike section 6(f) and insert the following:

(f) Privacy Safeguards.—

(1) In general.—In issuing the public reports required under this section, a covered platform shall take steps to safeguard the privacy of its users, including ensuring that data is presented in a de-identified, aggregated format.

(2) Clarification.—The section shall not be construed to require—

(A) the affirmative collection of any personal data with respect to the age of users that
a covered platform is not already collecting in
the normal course of business; or
(B) the covered platform to implement an
age gating functionality.
(g) Location.—The public reports required under
this section should be posted by a covered platform on an
easy to find location on a publicly-available website.
(h) Rulemaking.—The Commission may issue rules
pursuant to section 553 of title 5, United States Code to
implement this section, specifically establishing processes
and minimum standards for third-party auditors to iden-
tify and assess—
(1) known and emerging risks to minors; and
(2) how algorithmic recommendation systems
and targeted advertising systems can contribute to
harms to minors as described in section 3(b).

In the heading for section 7(b), insert “Relating to
Identified Harms to Minors” after “Program”.

Strike section 7(b)(1) and insert the following:
(1) Establishment.—Subject to paragraph
(2), the Assistant Secretary shall establish a pro-
gram, with public notice and an opportunity to com-
ment, under which an eligible researcher may apply
for, and a covered platform shall provide, access to
data assets from the covered platform for the sole
purpose of conducting public interest research re-
garding the harms described in section 3(b).

In section 7(b)(2), strike “had” and insert “aver-
aged”.

In section 7(b)(3)(A), insert “(related to harms de-
scribed in section 3(b))” after “definitions for data as-
sets”.

In section 7(b)(3)(F), strike “; and” and insert a
semicolon.

In section 7(b)(3)(G), strike the period at the end
and insert “; and”.

In section 7(b)(3), add the following after subpara-
graph (G):

(H) rules to prevent requests for data as-
sets that present financial conflicts of interest,
including efforts by covered platforms to gain a
competitive advantage by directly funding data
access requests, the use of qualified researcher
status for commercial gain, or efforts by covered platforms to obtain access to intellectual property that is otherwise protected by law.

In section 7(b)(4)(A), strike clause (ii) and insert the following:

(ii) LIMITATIONS.—Nothing in this section shall be construed to require a covered platform to provide access to data assets that are intellectual property protected by Federal law, trade secrets, or commercial or financial information.

(iii) FORM OF ACCESS.—A covered platform shall provide to a qualified researcher access to data assets under clause (i) through online databases, application programming interfaces, and data files as appropriate.

In the heading for section 7(e), insert “REGARDING IDENTIFIED HARM TO MINORS” after “RESEARCH”.

In section 7(e), strike “harms to the safety and well-being of minors” and insert “harms described in section 3(b)”.
In section 8(a)(2), strike “13-15, and 16-17” and insert “and 13-16”.

In section 10, strike paragraphs (1) through (3) and insert the following:

(1) assist elementary or secondary schools in using the notice, safeguards and tools provided under this Act and facilitate compliance with student privacy laws; and

(2) provide information and examples for covered platforms and auditors regarding—

   (A) identifying features that are used to increase, sustain, or extend use of the covered platform by a minor;

   (B) safeguarding minors against the possible misuse of parental tools;

   (C) best practices in providing minors and parents the most protective level of control over privacy and safety;

   (D) using indicia or inferences of age of users for assessing use of the covered platform by minors;

   (E) methods for evaluating the efficacy of safeguards; and
(F) providing additional control options that allow parents to address the harms described in section 3(b).

In section 11(a), strike paragraph (3).

In section 11(b)(1)(A)(iii), strike “statutory damages,”.

In section 12(b)(6), insert “acting in State or local government” before the period.

In section 12(c)(1), insert “of harms” after “risks”.

In section 12(c)(2), strike “online harms to minors” and insert “harms to minors online”.

Strike section 14 and insert the following:

SEC. 14. RELATIONSHIP TO OTHER LAWS.

Nothing in this Act shall be construed to—

(1) preempt section 444 of the General Education Provisions Act (20 U.S.C. 1232g, commonly known as the “Family Educational Rights and Privacy Act of 1974”) or other Federal or State laws governing student privacy; or
(2) authorize any action that would conflict with section 18(h) of the Federal Trade Commission Act (15 U.S.C. 57a(h)).