

Blumenthal_1 Modified



AMENDMENT NO. _____

Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.**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
2 “shall”.

3 In section 3(b), strike “physical, mental, financial,
4 developmental, or other material harms to minors, includ-
5 ing”.

6 In section 3(b)(3), strike “harm” and insert “vio-
7 lence”.

8 Strike section 3(b)(5) and insert the following:

1 (5) promotion and marketing of narcotic drugs
2 (as defined in section 102 of the Controlled Sub-
3 stances Act (21 U.S.C. 802)), tobacco products,
4 gambling, or alcohol; and

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

7 Strike section 4(a) and insert the following:

8 (a) SAFEGUARDS FOR MINORS.—

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

12 (A) limit the ability of other individuals to
13 contact or find a minor, in particular individ-
14 uals aged 17 or over with no relationship to the
15 minor;

16 (B) prevent other users, whether registered
17 or not, from viewing the minor’s personal data
18 collected by or shared on the covered platform,
19 in particular restricting public access to per-
20 sonal data;

21 (C) limit features that increase, sustain, or
22 extend use of the covered platform by a minor,

1 such as automatic playing of media, rewards for
2 time spent on the platform, and notifications;

3 (D) control algorithmic recommendation
4 systems that use a minor's personal data, in-
5 cluding the right to—

6 (i) opt out of such algorithmic rec-
7 ommendation systems; or

8 (ii) limit types or categories of rec-
9 ommendations from such systems;

10 (E) delete the minor's account and delete
11 their personal data;

12 (F) restrict the sharing of the geolocation
13 of a minor and provide notice regarding the
14 tracking of a minor's geolocation; and

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

17 (2) DEFAULT SAFEGUARD SETTINGS FOR MI-
18 NORS.—A covered platform shall provide that, in the
19 case of a user that the platform knows or reasonably
20 believes to be a minor, the default setting for any
21 safeguard described under paragraph (1) shall be
22 the option available on the platform that provides
23 the most protective level of control that is offered by
24 the platform over privacy and safety for that user.

1 In section 4(b)(2)(B), insert “, where applicable”
2 after “minor”.

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

5 In section 4(c)(2), insert “substantively” after “re-
6 ceive and”.

7 Strike section 4(d) and insert the following:

8 (d) ADVERTISING OF ILLEGAL PRODUCTS.—A cov-
9 ered platform shall not facilitate the advertising of nar-
10 cotic drugs (as defined in section 102 of the Controlled
11 Substances Act (21 U.S.C. 802)), tobacco products, gam-
12 bling, or alcohol to minors.

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

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

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

20 (A) prevent a covered platform from—

1 (i) taking reasonable measures to
2 limit algorithmic recommendation systems
3 from distributing unlawful, obscene, or
4 harmful material to minors as described in
5 section 3(b); or

6 (ii) implementing measures to block
7 or filter spam, prevent criminal activity, or
8 protect the security of a platform or serv-
9 ice;

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

13 (C) restrict a covered platform's ability
14 to—

15 (i) cooperate with law enforcement
16 agencies regarding activity that the oper-
17 ator reasonably and in good faith believes
18 may violate Federal, State, or local laws,
19 rules, or regulations;

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

24 (iii) exercise, respond to, or defend
25 against legal claims.

1 In section 5(a)(1)(C), strike “harm to a minor, in-
2 cluding harms described in section 3(b)” and insert
3 “harms to minors”.

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

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

8 (4) RULEMAKING.—The Commission may issue
9 rules pursuant to section 553 of title 5, United
10 States Code, to establish standards for covered plat-
11 forms to comply with this subsection, including—

12 (A) a minimum level of information cov-
13 ered platforms must provide pursuant to para-
14 graph (1), where applicable; and

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

18 Strike subsection (c) of section 5 and insert the fol-
19 lowing:

20 (c) ADVERTISING AND MARKETING INFORMATION
21 AND LABELS.—

1 (1) INFORMATION AND LABELS.—A covered
2 platform that facilitates advertising aimed at minors
3 shall provide clear, conspicuous, and easy-to-under-
4 stand information and labels on advertisements and
5 marketing material regarding—

6 (A) the name of the product, service, or
7 brand and the subject matter of an advertise-
8 ment or marketing material;

9 (B) why the minor is being targeted for a
10 particular advertisement or marketing material
11 if the covered platform engages in targeted ad-
12 vertising, including material information about
13 how the minor’s personal data was used to tar-
14 get the advertisement or marketing material;
15 and

16 (C) whether particular media displayed to
17 a user is an advertisement or marketing mate-
18 rial, including disclosure of endorsements of
19 products, services, or brands made for commer-
20 cial consideration by other users of the plat-
21 form.

22 (2) RULEMAKING.—The Commission may issue
23 rules pursuant to section 553 of title 5, United
24 States Code, to implement this subsection, specifi-
25 cally establishing the minimum level of information

1 and labels necessary for the disclosures required
2 under paragraph (1), which may include templates
3 or models of short-form notices.

4 Strike section 6(a) and insert the following:

5 (a) IN GENERAL.—Subject to subsection (b), not less
6 frequently than once a year, a covered platform shall issue
7 a public report identifying the reasonably foreseeable risk
8 of harms to minors and describing the prevention and
9 mitigation measures taken to address such risk based on
10 an independent, third-party audit conducted through rea-
11 sonable inspection of the covered platform.

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

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

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

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

19 (2) SYSTEMIC RISKS ASSESSMENT.—The public
20 reports required of a covered platform under this
21 section shall include—

1 (A) an audit of the reasonably foreseeable
2 risk of harms to minors posed by the covered
3 platform, including identifying any other phys-
4 ical, mental, developmental, or financial harms
5 in addition to those described in section 3(b);

6 (B) an assessment of how algorithmic rec-
7 ommendation systems and targeted advertising
8 systems can contribute to harms to minors;

9 (C) a description of whether and how the
10 covered platform uses system design features to
11 increase, sustain, or extend use of a product or
12 service by a minor, such as automatic playing
13 of media, rewards for time spent, and notifica-
14 tions;

15 (D) a description of whether, how, and for
16 what purpose the platform collects or processes
17 categories of personal data that may cause rea-
18 sonably foreseeable risk of harms to minors;

19 (E) an evaluation of the efficacy of safe-
20 guards for minors under section 4, and any
21 issues in delivering such safeguards and the as-
22 sociated parental tools; and

23 (F) an evaluation of any other relevant
24 matters of public concern over risk of harms to
25 minors.

1 Strike section 6(c)(3) and insert the following:

2 (3) MITIGATION.—The public reports required
3 of a covered platform under this section shall in-
4 clude—

5 (A) a description of the safeguards and pa-
6 rental tools available to minors and parents on
7 the covered platform;

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

11 (C) a description of the prevention and
12 mitigation measures intended to be taken in re-
13 sponse to the known and emerging risks identi-
14 fied in its audit of system risks, including steps
15 taken to—

16 (i) prevent harms to minors, including
17 adapting or removing system design fea-
18 tures;

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

22 (iii) adapt algorithmic recommenda-
23 tion systems to prioritize the best interests
24 of users who are minors, as described in
25 section 3(b);

1 (D) a description of internal processes for
2 handling reports and automated detection
3 mechanisms for harms to minors, including the
4 rate, timeliness, and effectiveness of responses
5 under the requirement of section 4(c);

6 (E) the status of implementing prevention
7 and mitigation measures identified in prior as-
8 sessments; and

9 (F) a description of the additional meas-
10 ures to be taken by the covered platform to ad-
11 dress the circumvention of safeguards for mi-
12 nors and parental tools.

13 Strike section 6(f) and insert the following:

14 (f) PRIVACY SAFEGUARDS.—

15 (1) IN GENERAL.—In issuing the public reports
16 required under this section, a covered platform shall
17 take steps to safeguard the privacy of its users, in-
18 cluding ensuring that data is presented in a de-iden-
19 tified, aggregated format.

20 (2) CLARIFICATION.—The section shall not be
21 construed to require—

22 (A) the affirmative collection of any per-
23 sonal data with respect to the age of users that

1 a covered platform is not already collecting in
2 the normal course of business; or

3 (B) the covered platform to implement an
4 age gating functionality.

5 (g) LOCATION.—The public reports required under
6 this section should be posted by a covered platform on an
7 easy to find location on a publicly-available website.

8 (h) RULEMAKING.—The Commission may issue rules
9 pursuant to section 553 of title 5, United States Code to
10 implement this section, specifically establishing processes
11 and minimum standards for third-party auditors to iden-
12 tify and assess—

13 (1) known and emerging risks to minors; and

14 (2) how algorithmic recommendation systems
15 and targeted advertising systems can contribute to
16 harms to minors as described in section 3(b).

17 In the heading for section 7(b), insert “RELATING TO
18 IDENTIFIED HARMS TO MINORS” after “PROGRAM”.

19 Strike section 7(b)(1) and insert the following:

20 (1) ESTABLISHMENT.—Subject to paragraph
21 (2), the Assistant Secretary shall establish a pro-
22 gram, with public notice and an opportunity to com-
23 ment, under which an eligible researcher may apply

1 for, and a covered platform shall provide, access to
2 data assets from the covered platform for the sole
3 purpose of conducting public interest research re-
4 garding the harms described in section 3(b).

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

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

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

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

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

16 (H) rules to prevent requests for data as-
17 sets that present financial conflicts of interest,
18 including efforts by covered platforms to gain a
19 competitive advantage by directly funding data
20 access requests, the use of qualified researcher

1 status for commercial gain, or efforts by cov-
2 ered platforms to obtain access to intellectual
3 property that is otherwise protected by law.

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

6 (ii) LIMITATIONS.—Nothing in this
7 section shall be construed to require a cov-
8 ered platform to provide access to data as-
9 sets that are intellectual property protected
10 by Federal law, trade secrets, or commer-
11 cial or financial information.

12 (iii) FORM OF ACCESS.—A covered
13 platform shall provide to a qualified re-
14 searcher access to data assets under clause
15 (i) through online databases, application
16 programming interfaces, and data files as
17 appropriate.

18 In the heading for section 7(c), insert “REGARDING
19 IDENTIFIED HARMS TO MINORS” after “RESEARCH”.

20 In section 7(c), strike “harms to the safety and well-
21 being of minors” and insert “harms described in section
22 3(b)”.

1 In section 8(a)(2), strike “13-15, and 16-17” and in-
2 sert “and 13-16”.

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

5 (1) assist elementary or secondary schools in
6 using the notice, safeguards and tools provided
7 under this Act and facilitate compliance with stu-
8 dent privacy laws; and

9 (2) provide information and examples for cov-
10 ered platforms and auditors regarding—

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

14 (B) safeguarding minors against the pos-
15 sible misuse of parental tools;

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

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

22 (E) methods for evaluating the efficacy of
23 safeguards; and

1 (F) providing additional control options
2 that allow parents to address the harms de-
3 scribed in section 3(b).

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

5 In section 11(b)(1)(A)(iii), strike “statutory dam-
6 ages,”.

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

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

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

12 Strike section 14 and insert the following:

13 **SEC. 14. RELATIONSHIP TO OTHER LAWS.**

14 Nothing in this Act shall be construed to—

15 (1) preempt section 444 of the General Edu-
16 cation Provisions Act (20 U.S.C. 1232g, commonly
17 known as the “Family Educational Rights and Pri-
18 vacy Act of 1974”) or other Federal or State laws
19 governing student privacy; or

1 (2) authorize any action that would conflict
2 with section 18(h) of the Federal Trade Commission
3 Act (15 U.S.C. 57a(h)).