

118TH CONGRESS
1ST SESSION

H. R. 2801

To amend the Children’s Online Privacy Protection Act of 1998 to update and expand the coverage of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2023

Ms. CASTOR of Florida introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Children’s Online Privacy Protection Act of 1998 to update and expand the coverage of such Act, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting the Information of our Vulnerable Adoles-
6 cents, Children, and Youth Act” or the “Kids PRIVACY
7 Act”.

8 (b) TABLE OF CONTENTS.—The table of contents for
9 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Definitions.
- Sec. 3. Requirements for processing of covered information of children or teenagers.
- Sec. 4. Repeal of safe harbors provision.
- Sec. 5. Administration and applicability of Act.
- Sec. 6. Review.
- Sec. 7. Private right of action.
- Sec. 8. Relationship to other law.
- Sec. 9. Additional conforming amendment.
- Sec. 10. Youth Privacy and Marketing Division.
- Sec. 11. Commission defined.
- Sec. 12. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 Section 1302 of the Children’s Online Privacy Protec-
 3 tion Act of 1998 (15 U.S.C. 6501) is amended—

4 (1) by striking paragraphs (5) and (10);

5 (2) by redesignating paragraphs (2), (3), (4),
 6 (6), (7), (8), and (9) as paragraphs (3), (5), (6),
 7 (7), (8), (9), and (10), respectively;

8 (3) by inserting after paragraph (1) the fol-
 9 lowing:

10 “(2) TEENAGER.—The term ‘teenager’ means
 11 an individual over the age of 12 and under the age
 12 of 18.”;

13 (4) by striking paragraph (3) (as so redesign-
 14 ated) and inserting the following:

15 “(3) COVERED ENTITY.—The term ‘covered en-
 16 tity’ means—

17 “(A) any person over which the Commis-
 18 sion has authority under section 5(a)(2) of the
 19 Federal Trade Commission Act (15 U.S.C.
 20 45(a)(2));

1 “(B) any organization not organized to
2 carry on business for its own profit or that of
3 its members; and

4 “(C) any common carrier subject to the
5 Communications Act of 1934 (47 U.S.C. 151 et
6 seq.) and all Acts amendatory thereof and sup-
7 plementary thereto.

8 “(4) OPERATOR.—The term ‘operator’ means,
9 with respect to a digital service, the covered entity
10 that operates such service, to the extent the covered
11 entity is engaged in operating such service or in
12 processing covered information obtained in connec-
13 tion with such service.”;

14 (5) by amending paragraph (6) (as so redesign-
15 ated) to read as follows:

16 “(6) DISCLOSE.—The term ‘disclose’ means,
17 with respect to covered information, to intentionally
18 or unintentionally release, transfer, sell, disseminate,
19 share, publish, lease, license, make available, allow
20 access to, fail to restrict access to, or otherwise com-
21 municate such information.”;

22 (6) by amending paragraph (9) (as so redesign-
23 ated) to read as follows:

24 “(9) COVERED INFORMATION.—The term ‘cov-
25 ered information’—

1 “(A) means any information that is linked
2 or reasonably linkable to a specific teenager or
3 child or to a specific consumer device used
4 mainly by a teenager or child;

5 “(B) may include—

6 “(i) a name, alias, home or other
7 physical address, online identifier, Internet
8 Protocol address, email address, account
9 name, Social Security number, physical
10 characteristics or description, telephone
11 number, State identification card number,
12 driver’s license number, passport number,
13 or other similar identifier;

14 “(ii) actual or perceived race, religion,
15 sex, sexual orientation, sexual behavior, fa-
16 milial status, gender identity, disability,
17 age, political affiliation, or national origin;

18 “(iii) commercial information, includ-
19 ing records relating to personal property,
20 products or services purchased, obtained,
21 or considered, or other purchasing or con-
22 suming histories, interests, or tendencies;

23 “(iv) biometric information;

1 “(v) device identifiers, online identi-
2 fiers, persistent identifiers, or digital
3 fingerprinting information;

4 “(vi) internet or other electronic net-
5 work activity information, including brows-
6 ing history, search history, and informa-
7 tion regarding a teenager’s or child’s inter-
8 action with an internet website, applica-
9 tion, or advertisement;

10 “(vii) geolocation information;

11 “(viii) audio, electronic, visual, ther-
12 mal, olfactory, or similar information;

13 “(ix) education information;

14 “(x) health information;

15 “(xi) facial recognition information;

16 “(xii) contents of, attachments to, and
17 parties to information, including with re-
18 spect to electronic mail, text messages, pic-
19 ture messages, voicemails, audio conversa-
20 tions, and video conversations;

21 “(xiii) financial information, including
22 bank account numbers, credit card num-
23 bers, debit card numbers, or insurance pol-
24 icy numbers; and

1 “(xiv) inferences drawn from any of
2 the information described in this para-
3 graph to create a profile about a teenager
4 or child reflecting the teenager’s or child’s
5 preferences, characteristics, psychological
6 trends, predispositions, behavior, attitudes,
7 intelligence, abilities, or aptitudes; and

8 “(C) does not include—

9 “(i) information that is processed
10 solely for the purpose of employment of a
11 teenager; or

12 “(ii) de-identified information.”;

13 (7) by amending paragraph (10) (as so redesign-
14 nated) to read as follows:

15 “(10) VERIFIABLE CONSENT.—The term
16 ‘verifiable consent’ means express, affirmative con-
17 sent freely given by a teenager, or by the parent of
18 a child, to the processing of covered information of
19 that teenager or child, respectively—

20 “(A) that is specific, informed, and unam-
21 biguous, taking into account the age and the
22 developmental and cognitive needs and capabili-
23 ties of teenagers or parents of children, as ap-
24 plicable;

1 “(B) that is given separately for each un-
2 related processing activity;

3 “(C) where the teenager or parent of a
4 child, as applicable, has not received any finan-
5 cial or other incentive in exchange for such con-
6 sent;

7 “(D) that is given before any processing
8 occurs, at a time and in a context in which the
9 teenager or parent of a child, as applicable,
10 would reasonably expect to make choices con-
11 cerning such processing;

12 “(E) that is not obtained through the use
13 of a design, modification, or manipulation of a
14 user interface with the purpose or substantial
15 effect of obscuring, subverting, or impairing
16 user autonomy, decision making, or choice; and

17 “(F) that, in the case of consent to the
18 processing of covered information of a child, is
19 obtained in a manner that is reasonably cal-
20 culated to ensure that the individual giving con-
21 sent is the parent of the child.”; and

22 (8) by adding at the end the following:

23 “(13) PROCESS.—The term ‘process’ means to
24 perform any operation or set of operations on cov-
25 ered information, whether or not by automated

1 means, including collecting, creating, acquiring, dis-
2 closing, sharing, classifying, sorting, recording, de-
3 riving, inferring, obtaining, assembling, organizing,
4 structuring, storing, retaining, adapting or altering,
5 using, or retrieving covered information.

6 “(14) DE-IDENTIFIED INFORMATION; RE-IDENTIFY.—
7

8 “(A) DE-IDENTIFIED INFORMATION.—The
9 term ‘de-identified information’ means informa-
10 tion that cannot reasonably be used to infer in-
11 formation about, or otherwise be linked to, a
12 specific teenager or child or specific consumer
13 device of a teenager or child, if the covered enti-
14 ty that possesses the information—

15 “(i) takes reasonable measures to en-
16 sure that the information cannot be associ-
17 ated with a teenager or child;

18 “(ii) publicly commits to maintain and
19 use the information in de-identified form
20 and not to attempt to re-identify the infor-
21 mation, except for the purpose of testing
22 the sufficiency of the de-identification
23 measures; and

24 “(iii) contractually obligates any enti-
25 ty to which the covered entity discloses the

1 information to comply with clauses (i) and
2 (ii).

3 “(B) RE-IDENTIFY.—The term ‘re-identify’
4 means to link information that has been de-
5 identified to a specific teenager or child or spe-
6 cific consumer device of a teenager or child.

7 “(15) STATE.—The term ‘State’ means each of
8 the several States, the District of Columbia, each
9 territory of the United States, and each federally
10 recognized Indian Tribe.

11 “(16) SERVICE PROVIDER.—The term ‘service
12 provider’ means a covered entity that—

13 “(A) processes covered information at the
14 direction of, and for the sole benefit of, another
15 covered entity; and

16 “(B) is contractually or legally prohibited
17 from processing such covered information for
18 any other purpose.

19 “(17) DIGITAL SERVICE.—The term ‘digital
20 service’ means a website, online service, online appli-
21 cation, mobile application, or any other service that
22 processes covered information digitally.

23 “(18) CHILDREN’S SERVICE.—The term ‘chil-
24 dren’s service’ means—

1 “(A) a digital service or portion thereof
2 that is directed to children; or

3 “(B) any other digital service or portion
4 thereof, if the operator of the service decides to
5 treat all users of the service or portion, as the
6 case may be, as children.

7 “(19) PRIVACY RISK.—The term ‘privacy risk’
8 means potential adverse consequences to an indi-
9 vidual, group of individuals, or society arising from
10 the processing of covered information, including—

11 “(A) physical harm;

12 “(B) psychological or emotional harm;

13 “(C) negative or harmful outcomes or deci-
14 sions with respect to an individual’s eligibility
15 for rights, benefits, or opportunities;

16 “(D) reputational and dignity harm;

17 “(E) financial harm, including price dis-
18 crimination;

19 “(F) inconvenience or expenditure of time;

20 “(G) disruption and intrusion from un-
21 wanted communications or contacts;

22 “(H) other effects that limit an individ-
23 ual’s choices, influence an individual’s re-
24 sponses, or predetermine results or outcomes
25 for that individual; and

1 “(I) other demonstrable adverse con-
2 sequences that affect an individual’s private
3 life, including private family matters, actions,
4 and communications within an individual’s
5 home or similar physical, online, or digital loca-
6 tion.

7 “(20) PRIVACY AND SECURITY IMPACT ASSESS-
8 MENT AND MITIGATION (PSIAM).—

9 “(A) IN GENERAL.—The terms ‘privacy
10 and security impact assessment and mitigation’
11 and ‘PSIAM’ mean, with respect to a digital
12 service, an assessment and mitigation by the
13 operator of the service of risks to the children
14 and teenagers who access the service that arise
15 from the processing of covered information, tak-
16 ing into account privacy risks, security risks,
17 the rights and best interests of children and
18 teenagers, differing ages, capacities, and devel-
19 opmental needs of children and teenagers, and
20 any significant internal or external emerging
21 risks, and ensuring that the PSIAM builds in
22 risk mitigation and compliance with the other
23 requirements of this title.

1 “(B) REQUIREMENTS.—In conducting a
2 PSIAM with respect to a digital service, the op-
3 erator of the service shall do the following:

4 “(i) Embed the PSIAM into the de-
5 sign process of the service and complete
6 the PSIAM before the launch of the service
7 and on an ongoing basis, and before mak-
8 ing significant changes to the processing of
9 covered information.

10 “(ii) Publicly disclose the nature,
11 scope, context, and purposes of the pro-
12 cessing of covered information.

13 “(iii) Depending on the size of the
14 service and level of risks identified—

15 “(I) seek and document the views
16 of children, teenagers, and parents (or
17 their representatives), as well as ex-
18 perts in children’s and teenagers’ de-
19 velopmental needs; and

20 “(II) take such views into ac-
21 count in the design of the service.

22 “(iv) Publicly disclose an explanation
23 of why the operator’s processing of covered
24 information is necessary and proportionate
25 vis a vis the risks for the service, and how

1 the operator complies with the require-
2 ments of this title.

3 “(v) Assess any processing of covered
4 information that is not in the best inter-
5 ests of children or teenagers or that can be
6 detrimental to their well-being and safety,
7 whether physical, emotional, develop-
8 mental, or material.

9 “(vi) Identify, assess, and mitigate
10 high-risk processing of covered informa-
11 tion.

12 “(vii) Identify measures taken to miti-
13 gate the risks identified under clause (vi)
14 and comply with the other requirements of
15 this title.

16 “(viii) Provide for regular internal re-
17 porting on the effectiveness of controls and
18 residual risks of the operator.

19 “(C) AUDITABLE BY COMMISSION.—The
20 Commission may audit a PSLAM conducted by
21 an operator as the Commission considers nec-
22 essary.

23 “(21) DIRECTED TO CHILDREN.—

24 “(A) IN GENERAL.—The term ‘directed to
25 children’ means, with respect to a digital serv-

1 ice, that the digital service is targeted to chil-
2 dren, as demonstrated by—

3 “(i) the subject matter of the digital
4 service;

5 “(ii) the visual content of the digital
6 service;

7 “(iii) the use of animated characters
8 or child-oriented activities for children, and
9 related incentives, on the digital service;

10 “(iv) the music or other audio content
11 on the digital service;

12 “(v) the age of models on the digital
13 service;

14 “(vi) the presence on the digital serv-
15 ice of—

16 “(I) child celebrities; or

17 “(II) celebrities who appeal to
18 children;

19 “(vii) the language used on the digital
20 service;

21 “(viii) advertising content or pro-
22 motional materials used on, or used to ad-
23 vertise or promote, the digital service;

24 “(ix) reliable empirical evidence relat-
25 ing to—

1 “(I) the composition of the audi-
2 ence of the digital service, including—

3 “(aa) data the operator of
4 the digital service may directly or
5 indirectly collect, use, profile,
6 buy, sell, classify, or analyze (via
7 algorithms or other forms of data
8 analytics, including look-alike
9 modeling) about a user or groups
10 of users to estimate, identify, or
11 classify the age or age range (or
12 a proxy thereof) of such user or
13 groups of users;

14 “(bb) advertising informa-
15 tion or results, such as data, re-
16 porting, or information from the
17 internal communications of the
18 operator of the digital service, in-
19 cluding documentation about its
20 advertising practices, such as an
21 advertisement insertion order, or
22 other promotional material to
23 marketers, that indicates that
24 covered information is being col-

1 lected from children that are
2 using the digital service;

3 “(cc) data or reporting from
4 the general or trade press of the
5 digital service indicating that
6 children are using the digital
7 service;

8 “(dd) complaints from par-
9 ents or other third parties about
10 child users using the digital serv-
11 ice, whether through the com-
12 plaint mechanism of the digital
13 service, by email, or by other
14 means; and

15 “(ee) data or reporting from
16 a privacy and security impact as-
17 sessment and mitigation, compli-
18 ance program, or other compli-
19 ance, risk management, or inter-
20 nal process that documents pri-
21 vacy risks and controls related to
22 children’s privacy, including the
23 existence of data analytics con-
24 trolled by the operator of the dig-
25 ital service, including those of

1 service providers, and content
2 analytics capabilities and func-
3 tions or outputs; and

4 “(II) the intended audience of
5 the digital service, including data the
6 operator of the digital service directly
7 or indirectly collects, uses, profiles,
8 buys, sells, classifies, or analyzes (via
9 algorithms or other forms of data
10 analytics, including look-alike mod-
11 eling) about the nature of the content
12 of the digital service that estimates,
13 identifies, or classifies the content as
14 child-directed or similarly estimates,
15 identifies, or classifies the intended or
16 likely audience for the content;

17 “(x) representations to third parties
18 relating to the composition of the audience
19 or the intended audience of the digital
20 service;

21 “(xi) actual knowledge that the digital
22 service is processing the covered informa-
23 tion of children; or

1 “(xii) any other evidence or cir-
2 cumstances the Commission determines ap-
3 propriate.

4 “(B) COVERED INFORMATION FROM
5 OTHER SERVICES.—A digital service shall be
6 deemed to be directed to children if the oper-
7 ator of the digital service has actual or con-
8 structive knowledge that the digital service col-
9 lects covered information from users of any
10 other digital service that is directed to children
11 under the criteria described in subparagraph
12 (A).

13 “(C) SIGNALS FROM THIRD PARTIES.—A
14 digital service shall be deemed directed to chil-
15 dren if the digital service receives a signal, such
16 as a flag or other formal industry standard or
17 convention, from another digital service on
18 which the digital service receiving the signal is
19 embedded, indicating that the digital service
20 sending the signal is intended for children or
21 likely to appeal to children.

22 “(D) LIMITATION.—A digital service that
23 does not target children as its primary audience
24 shall not be deemed directed to children if the
25 digital service—

1 “(i) does not collect covered informa-
2 tion from any visitor prior to collecting age
3 information; and

4 “(ii) prevents the collection, use, or
5 disclosure of covered information from visi-
6 tors who identify themselves as under age
7 13 without first complying with the notice
8 and parental consent provisions of this title
9 and the regulations promulgated under
10 this title.

11 “(E) FURTHER LIMITATION.—A digital
12 service shall not be deemed directed to children
13 solely because the digital service refers or links
14 to another digital service that is directed to
15 children by using information location tools, in-
16 cluding a directory, index, reference, pointer, or
17 hypertext link.

18 “(F) DETERMINATION REGARDING A POR-
19 TION OF A DIGITAL SERVICE.—For purposes of
20 determining whether a portion of a digital serv-
21 ice is directed to children, any reference in this
22 paragraph to a digital service shall be consid-
23 ered to refer to such portion.

24 “(22) LIKELY TO BE ACCESSED BY CHILDREN
25 OR TEENAGERS.—The term ‘likely to be accessed by

1 children or teenagers’ means, with respect to a dig-
2 ital service, that the possibility of more than a de-
3 minimis number of children or teenagers accessing
4 the digital service is more probable than not. In de-
5 termining whether a digital service is likely to be
6 accessed by children or teenagers, the operator of
7 the service shall consider whether the service has
8 particular appeal to children or teenagers and
9 whether effective measures are in place that prevent
10 children or teenagers from gaining access to the
11 service.

12 “(23) AGE ASSURANCE.—The term ‘age assur-
13 ance’ means a verifiable process to estimate or de-
14 termine the age of a user of a digital service with
15 a given and documented degree of certainty.”

16 **SEC. 3. REQUIREMENTS FOR PROCESSING OF COVERED IN-**
17 **FORMATION OF CHILDREN OR TEENAGERS.**

18 (a) IN GENERAL.—Section 1303 of the Children’s
19 Online Privacy Protection Act of 1998 (15 U.S.C. 6502)
20 is amended to read as follows:

21 **“SEC. 1303. REQUIREMENTS FOR PROCESSING OF COVERED**
22 **INFORMATION OF CHILDREN OR TEENAGERS.**

23 “(a) REQUIREMENTS FOR CHILDREN’S SERVICES.—

24 “(1) DATA MINIMIZATION.—An operator of a
25 children’s service shall process covered information

1 under the principle of data minimization, requiring
2 the operator to process only the minimum amount
3 necessary for each purpose for which the covered in-
4 formation is processed.

5 “(2) TRANSPARENCY.—An operator of a chil-
6 dren’s service shall develop and make publicly avail-
7 able, at all times and in a machine-readable format,
8 a privacy policy, in a manner that is clear, easily un-
9 derstood, and written in plain and concise language,
10 that includes, with respect to operating the chil-
11 dren’s service—

12 “(A) the categories of covered information
13 that the operator processes about teenagers and
14 children;

15 “(B) how and under what circumstances
16 covered information is collected directly from a
17 teenager or child;

18 “(C) the categories and the sources of any
19 covered information processed by the operator
20 that is not collected directly from a teenager or
21 child;

22 “(D) a description of the purposes for
23 which the operator processes covered informa-
24 tion, including—

1 “(i) a description of whether and how
2 the operator customizes products or serv-
3 ices for teenagers or children, or adjusts
4 the prices of products or services for teen-
5 agers or children, based in any part on
6 processing of covered information;

7 “(ii) a description of whether and how
8 the operator, or the operator’s affiliates or
9 service providers, de-identify information,
10 including the methods used to de-identify
11 such information; and

12 “(iii) a description of whether and
13 how the operator, or the operator’s affili-
14 ates or service providers, generate or use
15 any consumer score to make decisions con-
16 cerning a teenager or child, and the source
17 or sources of any such consumer score;

18 “(E) a description of how long and the cir-
19 cumstances under which the operator retains
20 covered information;

21 “(F) a description of all of the purposes
22 for which the operator discloses covered infor-
23 mation to service providers and, on a biennial
24 basis, the categories of service providers;

1 “(G) a description of whether and for what
2 purposes the operator discloses covered infor-
3 mation to third parties, and the categories of
4 covered information disclosed;

5 “(H) a description of the categories of
6 third parties to which covered information de-
7 scribed in subparagraph (G) is disclosed, by
8 category or categories of covered information
9 for each category of third party to which the
10 covered information is disclosed;

11 “(I) whether the operator discloses covered
12 information to third parties that sell or plan to
13 sell such covered information;

14 “(J) whether the operator collects covered
15 information about teenagers or children over
16 time and across different digital services if a
17 teenager or child uses the operator’s digital
18 service;

19 “(K) how a teenager or a parent of a child
20 can exercise their rights to access, correct, and
21 delete such teenager’s or child’s covered infor-
22 mation as set forth in paragraph (6);

23 “(L) a listing of all possible consents that
24 may be obtained by the operator for the proc-
25 essing of covered information, how a teenager

1 or the parent of a child can grant, withhold,
2 withdraw, or modify any such consent, and the
3 consequences of withholding, withdrawing, or
4 modifying any such consent;

5 “(M) the effective date of the privacy pol-
6 icy; and

7 “(N) how the operator will communicate
8 material changes to the privacy policy to the
9 teenager or the parent of a child.

10 “(3) CONSENT REQUIRED.—

11 “(A) IN GENERAL.—An operator of a chil-
12 dren’s service shall—

13 “(i) provide clear and concise notice
14 to a teenager or the parent of a child of
15 the items of covered information about
16 such teenager or child, respectively, that
17 are processed by such operator and how
18 such operator processes such covered infor-
19 mation;

20 “(ii) obtain verifiable consent for such
21 processing; and

22 “(iii) if such operator determines, in-
23 cluding through actual or constructive
24 knowledge, that such operator has not ob-
25 tained verifiable consent for any specific

1 processing of covered information about a
2 teenager or child, not later than 48 hours
3 after such determination—

4 “(I) obtain verifiable consent; or

5 “(II) delete all covered informa-
6 tion about such teenager or child.

7 “(B) WHEN CONSENT NOT REQUIRED.—

8 Verifiable consent under this paragraph is not
9 required in the case of—

10 “(i) online contact information col-
11 lected from a teenager or child that—

12 “(I) is used only to respond di-
13 rectly on a one-time basis to a specific
14 request from the teenager or child;

15 “(II) is not used to re-contact the
16 teenager or child; and

17 “(III) is not retained by the op-
18 erator after responding as described
19 in subclause (I);

20 “(ii) a request for the name or online
21 contact information of a teenager or the
22 parent of a child that is used for the sole
23 purpose of obtaining verifiable consent or
24 providing notice under subparagraph
25 (A)(i), where such information is not re-

1 tained by the operator if verifiable consent
2 is not obtained within 48 hours; or

3 “(iii) the processing of covered infor-
4 mation that is necessary—

5 “(I) to respond to judicial proc-
6 ess; or

7 “(II) to the extent permitted
8 under other provisions of law, to pro-
9 vide information to law enforcement
10 agencies or for an investigation on a
11 matter related to public safety.

12 “(C) WITHDRAWAL OF CONSENT.—

13 “(i) MECHANISM FOR WITH-
14 DRAWAL.—An operator of a children’s
15 service shall provide a teenager or the par-
16 ent of a child, as applicable—

17 “(I) a mechanism to withdraw
18 consent to the processing of covered
19 information at any time in a manner
20 that is as easy as the mechanism to
21 give consent; and

22 “(II) clear and conspicuous no-
23 tice of the mechanism required by
24 subclause (I).

1 “(ii) EFFECT OF WITHDRAWAL ON
2 PRIOR PROCESSING.—Withdrawal of con-
3 sent to the processing of covered informa-
4 tion shall not be construed to affect the
5 lawfulness of any processing of covered in-
6 formation based on verifiable consent that
7 was in effect before such withdrawal.

8 “(D) PROHIBITION ON LIMITING OR DIS-
9 CONTINUING SERVICE.—An operator of a chil-
10 dren’s service may not refuse to provide a serv-
11 ice, or discontinue a service provided, to a teen-
12 ager or child, if the teenager or parent of the
13 child, as applicable, refuses to consent, or with-
14 draws consent, to the processing of any covered
15 information not technically required for the op-
16 erator to provide such service.

17 “(4) RETENTION OF DATA.—

18 “(A) RETENTION LIMITATIONS.—Subject
19 to the exceptions provided in subparagraph (B),
20 an operator of a children’s service may not
21 keep, retain, or otherwise store covered infor-
22 mation for longer than is reasonably necessary
23 for the purposes for which the covered informa-
24 tion is processed.

1 “(B) EXCEPTIONS.—Further retention of
2 covered information does not violate subpara-
3 graph (A) if the processing of the covered infor-
4 mation is necessary and done solely for the pur-
5 poses of—

6 “(i) compliance with—

7 “(I) requirements to document
8 compliance under this title; or

9 “(II) other laws, regulations, or
10 legal obligations;

11 “(ii) preventing risks to the health or
12 safety of a child or teenager or groups of
13 children or teenagers; or

14 “(iii) repairing errors that impair the
15 existing (as of the time when the repairs
16 are made) functionality of the children’s
17 service.

18 “(5) LIMITATION ON DISCLOSING COVERED IN-
19 FORMATION TO THIRD PARTIES.—

20 “(A) DISCLOSURES.—Subject to the excep-
21 tions provided in subparagraph (C), an operator
22 of a children’s service may not disclose covered
23 information to a third party unless the operator
24 has a written agreement with such third party
25 that—

1 “(i) specifies all of the purposes for
2 which the third party may process the cov-
3 ered information for which the operator
4 has verifiable consent;

5 “(ii) prohibits the third party from
6 processing covered information for any
7 purpose other than the purposes specified
8 under clause (i); and

9 “(iii) requires the third party to pro-
10 vide at least the same level of privacy and
11 security protections as the operator.

12 “(B) RESPONSIBILITIES OF OPERATORS
13 REGARDING THIRD PARTIES.—An operator of a
14 children’s service—

15 “(i) shall perform reasonable due dili-
16 gence in selecting any third party with
17 which to enter into an agreement described
18 in subparagraph (A) and shall exercise rea-
19 sonable oversight over all such third par-
20 ties to assure compliance with the require-
21 ments of this title and the regulations pro-
22 mulgated under this title; and

23 “(ii) if the operator has actual or con-
24 structive knowledge that a third party has

1 violated an agreement described in sub-
2 paragraph (A), shall—

3 “(I) to the extent practicable,
4 promptly take steps to ensure compli-
5 ance with such agreement; and

6 “(II) promptly report to the
7 Commission that such a violation oc-
8 curred.

9 “(C) EXCEPTIONS.—An operator of a chil-
10 dren’s service may disclose covered information
11 to a third party other than under an agreement
12 described in subparagraph (A) if such disclo-
13 sure is necessary and done solely for the pur-
14 poses of—

15 “(i) compliance with—

16 “(I) requirements to document
17 compliance under this title; or

18 “(II) other laws, regulations, or
19 legal obligations;

20 “(ii) preventing risks to the health or
21 safety of a child or teenager or groups of
22 children or teenagers; or

23 “(iii) repairing errors that impair the
24 existing (as of the time when the repairs

1 are made) functionality of the children’s
2 service.

3 “(6) RIGHT TO ACCESS, CORRECT, AND DELETE
4 COVERED INFORMATION.—

5 “(A) ACCESS.—An operator of a children’s
6 service, subject to the exceptions in subpara-
7 graph (D), shall, upon request of a teenager or
8 the parent of a child and after proper identi-
9 fication of such teenager or parent, promptly
10 provide to such teenager or parent, as applica-
11 ble—

12 “(i) access to all covered information
13 processed by the operator pertaining to
14 such teenager or child, including a descrip-
15 tion of—

16 “(I) each type of covered infor-
17 mation processed by the operator per-
18 taining to the teenager or child, as ap-
19 plicable;

20 “(II) each purpose for which the
21 operator processes each category of
22 covered information pertaining to the
23 teenager or child, as applicable;

1 “(III) the names of each third
2 party to which the operator disclosed
3 the covered information;

4 “(IV) each source other than the
5 teenager or child, as applicable, from
6 which the operator obtained covered
7 information pertaining to that teen-
8 ager or child, as applicable;

9 “(V) how long the covered infor-
10 mation will be retained or stored by
11 the operator and, if not known, the
12 criteria the operator uses to determine
13 how long the covered information will
14 be retained or stored by the operator;
15 and

16 “(VI) with respect to any con-
17 sumer score of the teenager or child,
18 as applicable, processed by the oper-
19 ator—

20 “(aa) how such score is used
21 by the operator to make decisions
22 with respect to that teenager or
23 child, as applicable; and

1 “(bb) the source that cre-
2 ated the score if not created by
3 the operator; and

4 “(ii) a simple and reasonable mecha-
5 nism by which a teenager or parent of a
6 child may request access to the informa-
7 tion described under clause (i), as applica-
8 ble.

9 “(B) DELETION.—An operator of a chil-
10 dren’s service, subject to the exceptions in sub-
11 paragraph (D), shall—

12 “(i) establish a simple, publicly and
13 easily accessible, and reasonable mecha-
14 nism by which a teenager or parent of a
15 child with respect to whom the operator
16 processes covered information may request
17 the operator to delete any such covered in-
18 formation (or any component thereof), in-
19 cluding publicly available covered informa-
20 tion submitted to the service by the child
21 or teenager; and

22 “(ii) delete such covered information
23 not later than 45 days after receiving such
24 request.

1 “(C) CORRECTION.—An operator of a chil-
2 dren’s service, subject to the exceptions in sub-
3 paragraph (D), shall—

4 “(i) provide each teenager or parent
5 of a child with respect to whom the oper-
6 ator processes covered information, as ap-
7 plicable, a simple, publicly and easily ac-
8 cessible, and reasonable mechanism by
9 which that teenager or parent may submit
10 a request to the operator—

11 “(I) to dispute the accuracy or
12 completeness of that covered informa-
13 tion, or part or component thereof;
14 and

15 “(II) to request that such cov-
16 ered information, or part or compo-
17 nent thereof, be corrected for accuracy
18 or completeness; and

19 “(ii) not later than 45 days after re-
20 ceiving a request under clause (i)—

21 “(I) determine whether the cov-
22 ered information disputed or re-
23 quested to be corrected is inaccurate
24 or incomplete; and

1 “(II) correct the accuracy or
2 completeness of any covered informa-
3 tion determined by the operator to be
4 inaccurate or incomplete.

5 “(D) EXCEPTIONS.—An operator of a chil-
6 dren’s service may deny a request made under
7 subparagraph (A), (B), or (C) if—

8 “(i) the operator is unable to verify
9 the identity of the teenager or parent of a
10 child making the request after making a
11 reasonable effort to verify the identity of
12 such teenager or parent;

13 “(ii) with respect to the request made,
14 the operator determines that—

15 “(I) the operator is limited from
16 fulfilling the request by law, legally
17 recognized privilege, or other legal ob-
18 ligation; or

19 “(II) fulfilling the request would
20 create a legitimate risk to the privacy,
21 security, or safety of someone other
22 than the teenager or child, as applica-
23 ble;

24 “(iii) with respect to a request to de-
25 lete covered information made under sub-

1 paragraph (B) or a request to correct cov-
2 ered information made under subpara-
3 graph (C), the operator determines that
4 the retention of the covered information is
5 necessary to—

6 “(I) complete the transaction
7 with the teenager or child, as applica-
8 ble, for which the covered information
9 was collected;

10 “(II) provide a product or service
11 affirmatively requested by the teen-
12 ager or parent of a child, as applica-
13 ble;

14 “(III) perform a contract with
15 the teenager or a parent of a child, as
16 applicable, including a contract for
17 billing, financial reporting, or account-
18 ing;

19 “(IV) keep a record of the cov-
20 ered information for law enforcement
21 purposes; or

22 “(V) repair errors that impair
23 the existing (as of the time when the
24 repairs are made) functionality of the
25 children’s service; or

1 “(iv) the covered information is used
2 in public or peer-reviewed scientific, med-
3 ical, or statistical research in the public in-
4 terest that adheres to commonly accepted
5 ethical standards or laws, with informed
6 consent consistent with section 50.20 of
7 title 21, Code of Federal Regulations, if
8 the research is already in progress at the
9 time when the request to access, delete, or
10 correct is made under subparagraph (A),
11 (B), or (C).

12 “(E) PROHIBITION ON LIMITING OR DIS-
13 CONTINUING SERVICE.—An operator of a chil-
14 dren’s service may not refuse to provide a serv-
15 ice, or discontinue a service provided, to a teen-
16 ager or child on the basis of the exercise by the
17 teenager or the parent of the child, as applica-
18 ble, of any of the rights set forth in this para-
19 graph.

20 “(7) ADDITIONAL PROHIBITED PRACTICES
21 WITH RESPECT TO TEENAGERS AND CHILDREN.—

22 “(A) IN GENERAL.—An operator of a chil-
23 dren’s service may not—

24 “(i) process any covered information
25 in a manner that is inconsistent with what

1 a reasonable teenager or parent of a child
2 would expect in the context of a particular
3 transaction or the teenager’s or parent’s
4 relationship with such operator, or seek to
5 obtain verifiable consent for such proc-
6 essing;

7 “(ii) process any covered information
8 in a manner that is harmful or has been
9 shown to be detrimental to the well-being
10 of children or teenagers;

11 “(iii) process covered information for
12 the purpose of providing for targeted per-
13 sonalized advertising or engage in other
14 marketing to a specific child or teenager or
15 group of children or teenagers based on—

16 “(I) using the covered informa-
17 tion, online behavior, or group identi-
18 fiers of such child or teenager or of
19 the children or teenagers in such
20 group; or

21 “(II) using the covered informa-
22 tion or online behavior of children or
23 teenagers who share characteristics
24 with such child or teenager or with
25 the children or teenagers in such

1 group, including income level or pro-
2 tected characteristics or proxies there-
3 of;

4 “(iv) condition the participation of a
5 child or teenager in a game, sweepstakes,
6 or other contest on consenting to the pro-
7 cessing of more covered information than is
8 necessary for such child or teenager to par-
9 ticipate;

10 “(v) engage in cross-device tracking of
11 a child or teenager unless the child or
12 teenager is logged in to a specific service,
13 for the sole purpose of facilitating the pri-
14 mary purpose of the service or a specific
15 feature thereof;

16 “(vi) engage in algorithmic processes
17 that harmfully discriminate on the basis of
18 race, age, gender, ability, or other pro-
19 tected characteristics;

20 “(vii) disclose biometric information,
21 except to a service provider of the oper-
22 ator;

23 “(viii) disclose geolocation informa-
24 tion, except to a service provider of the op-
25 erator; or

1 “(ix) collect geolocation information
2 by default or without disclosing clearly
3 when geolocation tracking is in effect.

4 “(B) EXCEPTIONS.—Nothing in subpara-
5 graph (A) shall prohibit an operator from proc-
6 essing covered information if the processing of
7 the covered information is necessary and done
8 solely for the purposes of—

9 “(i) compliance with—

10 “(I) requirements to document
11 compliance under this title; or

12 “(II) other laws, regulations, or
13 legal obligations;

14 “(ii) preventing risks to the health or
15 safety of a child or teenager or groups of
16 children or teenagers; or

17 “(iii) repairing errors that impair the
18 existing (as of the time when the repairs
19 are made) functionality of the children’s
20 service.

21 “(8) SECURITY REQUIREMENTS.—

22 “(A) IN GENERAL.—An operator of a chil-
23 dren’s service shall establish, implement, and
24 maintain reasonable security policies, practices,

1 and procedures for the protection of covered in-
2 formation, taking into consideration—

3 “(i) the size, nature, scope, and com-
4 plexity of the activities engaged in by such
5 operator;

6 “(ii) the sensitivity of any covered in-
7 formation at issue; and

8 “(iii) the cost of implementing such
9 policies, practices, and procedures.

10 “(B) SPECIFIC REQUIREMENTS.—The poli-
11 cies, practices, and procedures established by an
12 operator under subparagraph (A) shall include
13 the following:

14 “(i) A written security policy with re-
15 spect to the processing of such covered in-
16 formation.

17 “(ii) The identification of an officer or
18 other individual as the point of contact
19 with responsibility for the management of
20 information security.

21 “(iii) A process for identifying and as-
22 sessed any reasonably foreseeable
23 vulnerabilities in the system or systems
24 maintained by such operator that contain
25 such covered information, including regular

1 monitoring for a breach of security of such
2 system or systems.

3 “(iv) A process for taking preventive
4 and corrective action to mitigate against
5 any vulnerabilities identified in the process
6 required by clause (iii), which may in-
7 clude—

8 “(I) implementing any changes to
9 the security practices, architecture, in-
10 stallation, or implementation of net-
11 work or operating software; and

12 “(II) regular testing or otherwise
13 monitoring the effectiveness of the
14 safeguards.

15 “(v) A process for determining if the
16 covered information is no longer needed
17 and deleting such covered information by
18 shredding, permanently erasing, or other-
19 wise modifying the covered information to
20 make such covered information perma-
21 nently unreadable or indecipherable.

22 “(vi) A process for overseeing persons
23 (other than users of the children’s service)
24 who have access to covered information, in-

1 cluding through internet-connected devices,
2 by—

3 “(I) taking reasonable steps to
4 select and retain persons that are ca-
5 pable of maintaining appropriate safe-
6 guards for the covered information or
7 internet-connected devices at issue;
8 and

9 “(II) requiring all such persons
10 to implement and maintain such safe-
11 guards.

12 “(vii) A process for employee training
13 and supervision for implementation of the
14 policies, practices, and procedures required
15 by this subsection.

16 “(viii) A written plan or protocol for
17 internal and public response in the event of
18 a breach of security.

19 “(C) PERIODIC ASSESSMENT AND CON-
20 SUMER PRIVACY AND DATA SECURITY MOD-
21 ERNIZATION.—An operator of a children’s serv-
22 ice shall, not less frequently than every 12
23 months, monitor, evaluate, and adjust, as ap-
24 propriate, the policies, practices, and procedures

1 of such operator in light of any relevant
2 changes in—

3 “(i) technology;

4 “(ii) internal or external threats and
5 vulnerabilities to covered information; and

6 “(iii) the changing business arrange-
7 ments of the operator.

8 “(D) SUBMISSION OF POLICIES TO THE
9 FTC.—An operator of a children’s service shall
10 submit the policies, practices, and procedures
11 established by the operator under subparagraph
12 (A) to the Commission in conjunction with a
13 notification of a breach of security required by
14 any Federal or State statute or regulation or
15 upon request of the Commission.

16 “(b) RULEMAKING REGARDING REQUIREMENTS FOR
17 DIGITAL SERVICES LIKELY TO BE ACCESSED BY CHIL-
18 DREN OR TEENAGERS.—

19 “(1) IN GENERAL.—The Commission shall pro-
20 mulgate regulations under section 553 of title 5,
21 United States Code, that contain requirements for
22 operators of digital services that are not children’s
23 services but are likely to be accessed by children or
24 teenagers, which shall be based on the requirements
25 of subsection (a) but modified as the Commission

1 considers appropriate given a risk-based approach to
2 determine age and to determine and mitigate privacy
3 risks and security risks to the child or teenager, and
4 given differing developmental needs and cognitive ca-
5 pacities of children or teenagers. The Commission
6 may include in such regulations different require-
7 ments for operators of different types of such serv-
8 ices.

9 “(2) BEST INTERESTS OF CHILD OR TEEN-
10 AGER.—The regulations promulgated under para-
11 graph (1) shall require an operator to make the best
12 interests of children and teenagers a primary design
13 consideration when designing its service, including
14 by conducting a privacy and security impact assess-
15 ment and mitigation for the service.

16 “(3) RISK-BASED APPROACH TO DETERMINING
17 AGE OF USER.—

18 “(A) IN GENERAL.—The regulations pro-
19 mulgated under paragraph (1) shall require a
20 risk-based approach to determining the age of
21 a specific user of a digital service under which
22 higher privacy risks and security risks from the
23 processing of covered information require a
24 higher certainty of age assurance.

1 “(B) AGE ASSURANCE.—The regulations
2 promulgated under paragraph (1) shall require
3 an operator to conduct an age assurance to de-
4 termine the age of each specific user.

5 “(C) APPROVAL OF AGE ASSURANCE
6 MECHANISMS.—The Commission shall establish
7 in the regulations promulgated under paragraph
8 (1) a process under which an operator may ob-
9 tain the approval of the Commission of par-
10 ticular mechanisms of age assurance as meeting
11 the age assurance requirements of such regula-
12 tions for particular levels of privacy risks.

13 “(D) DATA MINIMIZATION.—The regula-
14 tions required by paragraph (1) shall provide
15 that any data collected for age assurance shall
16 be the minimal amount necessary and destroyed
17 immediately or as determined by the Commis-
18 sion, but consistent with standards that still
19 allow for auditing and compliance.

20 “(e) PROHIBITION ON CERTAIN ADVERTISING OR
21 MARKETING FOR DIGITAL SERVICES LIKELY TO BE
22 ACCESSED BY CHILDREN OR TEENAGERS.—An operator
23 of a digital service that is likely to be accessed by children
24 or teenagers may not process covered information for the
25 purpose of providing for targeted personalized advertising

1 or engage in other marketing to a specific child or teen-
2 ager or group of children or teenagers based on—

3 “(1) using the covered information, online be-
4 havior, or group identifiers of such child or teenager
5 or of the children or teenagers in such group; or

6 “(2) using the covered information or online be-
7 havior of children or teenagers who share character-
8 istics with such child or teenager or with the chil-
9 dren or teenagers in such group, including income
10 level or protected characteristics or proxies thereof.

11 “(d) IMPLEMENTING REGULATIONS.—

12 “(1) IN GENERAL.—Not later than 1 year after
13 the date of the enactment of the Protecting the In-
14 formation of our Vulnerable Adolescents, Children,
15 and Youth Act, the Commission shall promulgate,
16 under section 553 of title 5, United States Code,
17 such regulations as may be necessary to carry out
18 this section, including the regulations required by
19 subsection (b).

20 “(2) REVIEW AND REVISION.—Not later than
21 10 years after the date on which the Commission
22 promulgates the regulations required by paragraph
23 (1), the Commission shall review such regulations
24 and, if the Commission considers revisions to such

1 regulations appropriate, promulgate such revisions
2 under section 553 of title 5, United States Code.

3 “(e) ENFORCEMENT.—Subject to section 1306, a vio-
4 lation of this section or a regulation promulgated under
5 this section shall be treated as a violation of a rule defin-
6 ing an unfair or deceptive act or practice prescribed under
7 section 18(a)(1)(B) of the Federal Trade Commission Act
8 (15 U.S.C. 57a(a)(1)(B)).”.

9 (b) CONFORMING AMENDMENTS.—Section 1305 of
10 the Children’s Online Privacy Protection Act of 1998 (15
11 U.S.C. 6504) is amended—

12 (1) in subsection (a)(1)—

13 (A) by striking “any regulation of the
14 Commission prescribed under section 1303(b)”
15 and inserting “section 1303 or a regulation pro-
16 mulgated under such section”; and

17 (B) in subparagraph (B), by striking “the
18 regulation” and inserting “such section or such
19 regulation”; and

20 (2) in subsection (d)—

21 (A) by striking “any regulation prescribed
22 under section 1303” and inserting “section
23 1303 or a regulation promulgated under such
24 section”; and

1 (B) by striking “that regulation” and in-
2 serting “such section or such regulation”.

3 **SEC. 4. REPEAL OF SAFE HARBORS PROVISION.**

4 (a) IN GENERAL.—Section 1304 of the Children’s
5 Online Privacy Protection Act of 1998 (15 U.S.C. 6503)
6 is repealed.

7 (b) CONFORMING AMENDMENT.—Section 1305(b) of
8 the Children’s Online Privacy Protection Act of 1998 (15
9 U.S.C. 6504(b)) is amended by striking paragraph (3).

10 **SEC. 5. ADMINISTRATION AND APPLICABILITY OF ACT.**

11 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—Section 1306(d) of the Children’s Online Privacy
13 Protection Act of 1998 (15 U.S.C. 6505(d)) is amended
14 to read as follows:

15 “(d) ACTIONS BY THE COMMISSION.—

16 “(1) IN GENERAL.—Except as provided in para-
17 graphs (2) and (3), the Commission shall prevent
18 any person from violating section 1303 or a regula-
19 tion promulgated under such section in the same
20 manner, by the same means, and with the same ju-
21 risdiction, powers, and duties as though all applica-
22 ble terms and provisions of the Federal Trade Com-
23 mission Act (15 U.S.C. 41 et seq.) were incor-
24 porated into and made a part of this title, and any
25 person who violates such section or such regulation

1 shall be subject to the penalties and entitled to the
2 privileges and immunities provided in the Federal
3 Trade Commission Act in the same manner, by the
4 same means, and with the same jurisdiction, power,
5 and duties as though all applicable terms and provi-
6 sions of the Federal Trade Commission Act were in-
7 corporated into and made a part of this title.

8 “(2) INCREASED CIVIL PENALTY AMOUNT.—In
9 the case of a civil penalty under subsection (l) or
10 (m) of section 5 of the Federal Trade Commission
11 Act (15 U.S.C. 45) relating to acts or practices in
12 violation of section 1303 or a regulation promul-
13 gated under such section, the maximum dollar
14 amount per violation shall be \$63,795.

15 “(3) NONPROFIT ORGANIZATIONS AND COMMON
16 CARRIERS.—Notwithstanding section 4, 5(a)(2), or 6
17 of the Federal Trade Commission Act (15 U.S.C.
18 44; 45(a)(2); 46) or any other jurisdictional limita-
19 tion of the Commission, the Commission shall also
20 enforce section 1303 or a regulation promulgated
21 under such section in the same manner as otherwise
22 provided in this title with respect to—

23 “(A) any organization not organized to
24 carry on business for its own profit or that of
25 its members; and

1 “(B) any common carrier subject to the
2 Communications Act of 1934 (47 U.S.C. 151 et
3 seq.) and all Acts amendatory thereof and sup-
4 plementary thereto.”.

5 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
6 CIES.—Section 1306 of the Children’s Online Privacy Pro-
7 tection Act of 1998 (15 U.S.C. 6505) is amended—

8 (1) in subsection (b)—

9 (A) in paragraph (1), by striking “, in the
10 case of” and all that follows and inserting the
11 following: “by the appropriate Federal banking
12 agency, with respect to any insured depository
13 institution (as those terms are defined in sec-
14 tion 3 of that Act (12 U.S.C. 1813));”;

15 (B) in paragraph (6), by striking “Federal
16 land bank, Federal land bank association, Fed-
17 eral intermediate credit bank, or production
18 credit association” and inserting “Farm Credit
19 Bank, Agricultural Credit Bank (to the extent
20 exercising the authorities of a Farm Credit
21 Bank), Federal Land Credit Association, or ag-
22 ricultural credit association”; and

23 (C) by striking paragraph (2) and redesign-
24 ating paragraphs (3) through (6) as para-
25 graphs (2) through (5), respectively; and

1 (2) in subsection (c), by striking “subsection
2 (a)” each place it appears and inserting “subsection
3 (b)”.

4 **SEC. 6. REVIEW.**

5 Section 1307 of the Children’s Online Privacy Protec-
6 tion Act of 1998 (15 U.S.C. 6506) is amended—

7 (1) in the matter preceding paragraph (1), by
8 striking “the regulations initially issued under sec-
9 tion 1303” and inserting “the regulations required
10 by subsection (d)(1) of section 1303, as amended by
11 the Protecting the Information of our Vulnerable
12 Adolescents, Children, and Youth Act”; and

13 (2) by amending paragraph (1) to read as fol-
14 lows:

15 “(1) review the implementation of this title, in-
16 cluding the effect of the implementation of this title
17 on practices relating to the processing of covered in-
18 formation about teenagers or children and teenager’s
19 and children’s ability to obtain access to information
20 of their choice online; and”.

21 **SEC. 7. PRIVATE RIGHT OF ACTION.**

22 The Children’s Online Privacy Protection Act of 1998
23 (15 U.S.C. 6501 et seq.) is amended—

24 (1) by redesignating sections 1307 and 1308 as
25 sections 1308 and 1309, respectively; and

1 (2) by inserting after section 1306 the fol-
2 lowing:

3 **“SEC. 1307. PRIVATE RIGHT OF ACTION.**

4 “(a) RIGHT OF ACTION.—Any parent of a teenager
5 or parent of a child alleging a violation of section 1303
6 or a regulation promulgated under such section with re-
7 spect to the covered information of such teenager or child
8 may bring a civil action in any court of competent jurisdic-
9 tion.

10 “(b) INJURY IN FACT.—A violation of section 1303
11 or a regulation promulgated under such section with re-
12 spect to the covered information of a teenager or child con-
13 stitutes an injury in fact to that teenager or child.

14 “(c) RELIEF.—In a civil action brought under sub-
15 section (a) in which the plaintiff prevails, the court may
16 award—

17 “(1) injunctive relief;

18 “(2) actual damages;

19 “(3) punitive damages;

20 “(4) reasonable attorney’s fees and costs; and

21 “(5) any other relief that the court determines
22 appropriate.

23 “(d) PRE-DISPUTE ARBITRATION AGREEMENTS.—

24 “(1) IN GENERAL.—No pre-dispute arbitration
25 agreement or pre-dispute joint-action waiver shall be

1 valid or enforceable with respect to any claim arising
2 under section 1303 or a regulation promulgated
3 under such section.

4 “(2) DETERMINATION.—A determination as to
5 whether and how this title or a regulation promul-
6 gated under this title applies to an arbitration agree-
7 ment shall be determined under Federal law by the
8 court, rather than the arbitrator, irrespective of
9 whether the party opposing arbitration challenges
10 such agreement specifically or in conjunction with
11 any other term of the contract containing such
12 agreement.

13 “(3) DEFINITIONS.—As used in this sub-
14 section—

15 “(A) the term ‘pre-dispute arbitration
16 agreement’ means any agreement to arbitrate a
17 dispute that has not arisen at the time of the
18 making of the agreement; and

19 “(B) the term ‘pre-dispute joint-action
20 waiver’ means an agreement, whether or not
21 part of a pre-dispute arbitration agreement,
22 that would prohibit, or waive the right of, one
23 of the parties to the agreement to participate in
24 a joint, class, or collective action in a judicial,
25 arbitral, administrative, or other forum, con-

1 cerning a dispute that has not yet arisen at the
2 time of the making of the agreement.

3 “(e) NON-WAIVEABILITY.—The rights and remedies
4 provided under this title may not be waived or limited by
5 contract or otherwise.”.

6 **SEC. 8. RELATIONSHIP TO OTHER LAW.**

7 Section 1306 of the Children’s Online Privacy Protec-
8 tion Act of 1998 (15 U.S.C. 6505) is further amended
9 by adding at the end the following:

10 “(f) RELATIONSHIP TO OTHER LAW.—

11 “(1) OTHER FEDERAL PRIVACY OR SECURITY
12 PROVISIONS.—Nothing in this title or a regulation
13 promulgated under this title may be construed to
14 modify, limit, or supersede the operation of any pri-
15 vacy or security provision in any other Federal stat-
16 ute or regulation.

17 “(2) STATE LAW.—Nothing in this title or a
18 regulation promulgated under this title may be con-
19 strued to preempt, displace, or supplant any State
20 common law or statute, except to the extent that any
21 such common law or statute specifically and directly
22 conflicts with the provisions of this title or a regula-
23 tion promulgated under this title, and then only to
24 the extent of the specific and direct conflict. Any
25 such common law or statute is not in specific and

1 direct conflict if it affords a greater level of protec-
2 tion to a child or teenager than the provisions of this
3 title or a regulation promulgated under this title.

4 “(3) SECTION 230 OF THE COMMUNICATIONS
5 ACT OF 1934.—Nothing in section 230 of the Com-
6 munications Act of 1934 (47 U.S.C. 230) may be
7 construed to impair or limit the provisions of this
8 title or a regulation promulgated under this title.”.

9 **SEC. 9. ADDITIONAL CONFORMING AMENDMENT.**

10 The heading of title XIII of division C of the Omni-
11 bus Consolidated and Emergency Supplemental Appro-
12 priations Act, 1999 (Public Law 105–277; 112 Stat.
13 2681–728) is amended by inserting “**AND TEEN-**
14 **AGER’S**” after “**CHILDREN’S**”.

15 **SEC. 10. YOUTH PRIVACY AND MARKETING DIVISION.**

16 (a) ESTABLISHMENT.—There is established within
17 the Commission a division to be known as the Youth Pri-
18 vacy and Marketing Division.

19 (b) DIRECTOR.—The Youth Privacy and Marketing
20 Division shall be headed by a Director, who shall be ap-
21 pointed by the Chairman of the Commission.

22 (c) DUTIES.—The Youth Privacy and Marketing Di-
23 vision shall be responsible for assisting the Commission
24 in addressing, as it relates to this Act and the amend-
25 ments made by this Act—

1 (1) the privacy of children and teenagers; and

2 (2) marketing directed at children and teen-
3 agers.

4 (d) STAFF.—The Youth Privacy and Marketing Divi-
5 sion shall be comprised of adequate staff to carry out the
6 duties under subsection (c), including individuals who are
7 experts in data protection, digital advertising, data ana-
8 lytics, and youth development.

9 (e) REPORTS.—Not later than 1 year after the date
10 of the enactment of this Act, and every 2 years thereafter,
11 the Director of the Youth Privacy and Marketing Division
12 shall submit to the Committee on Commerce, Science, and
13 Transportation of the Senate and the Committee on En-
14 ergy and Commerce of the House of Representatives a re-
15 port that includes—

16 (1) a description of the work of the Youth Pri-
17 vacy and Marketing Division on emerging concerns
18 relating to youth privacy and marketing practices;
19 and

20 (2) an assessment of how effectively the Com-
21 mission has, during the period for which the report
22 is submitted, addressed youth privacy and marketing
23 practices.

24 (f) DEFINITIONS.—In this section, the terms “child”
25 and “teenager” have the meanings given such terms in

1 section 1302 of the Children’s Online Privacy Protection
2 Act of 1998 (15 U.S.C. 6501), as amended by this Act.

3 **SEC. 11. COMMISSION DEFINED.**

4 In this Act, the term “Commission” means the Fed-
5 eral Trade Commission.

6 **SEC. 12. EFFECTIVE DATE.**

7 The amendments made by this Act, except for sub-
8 section (d)(1) of section 1303 of the Children’s Online Pri-
9 vacy Protection Act of 1998 (15 U.S.C. 6502), shall take
10 effect on the date that is 1 year after the date on which
11 the Commission promulgates the regulations required by
12 such subsection (d)(1).

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