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S. 2314

To prohibit social media companies from using practices that exploit human psychology or brain physiology to substantially impede freedom of choice, to require social media companies to take measures to mitigate the risks of internet addiction and psychological exploitation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2019

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

A BILL

To prohibit social media companies from using practices that exploit human psychology or brain physiology to substantially impede freedom of choice, to require social media companies to take measures to mitigate the risks of internet addiction and psychological exploitation, 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; FINDINGS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Social Media Addiction Reduction Technology Act” or
6 the “SMART Act”.

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

2 (1) The business model for many internet com-
3 panies, especially social media companies, is to cap-
4 ture as much of their users’ attention as possible.

5 (2) To achieve this end, some of these internet
6 companies design their platforms and services to ex-
7 ploit brain physiology and human psychology.

8 (3) By exploiting psychological and physio-
9 logical vulnerabilities, these design choices interfere
10 with the free choice of users.

11 **SEC. 2. DEFINITIONS.**

12 In this Act:

13 (1) COMMISSION.—The term “Commission”
14 means the Federal Trade Commission.

15 (2) CONTENT FEED.—The term “content feed”
16 means a service of a social media platform that ag-
17 gregates and displays information such as text,
18 photos, videos, links, and application activity pro-
19 vided by two or more users.

20 (3) SOCIAL MEDIA COMPANY.—The term “social
21 media company” means any person that operates a
22 social media platform in interstate or foreign com-
23 merce.

24 (4) SOCIAL MEDIA PLATFORM.—The term “so-
25 cial media platform” means any online electronic

1 medium, such as Facebook, Instagram, YouTube, or
 2 Twitter (as such services existed in 2019), a live-
 3 chat system, or an electronic dating service—

4 (A) that primarily serves as a medium for
 5 users to interact with content generated by
 6 other third-party users of the medium;

7 (B) that enables users to create accounts
 8 or profiles specific to the medium or to import
 9 profiles from another medium; and

10 (C) that enables one or more users to gen-
 11 erate content that can be viewed by other third-
 12 party users of the medium.

13 (5) OPERATOR.—The term “operator” means
 14 any person who, in interstate or foreign commerce,
 15 operates a website on the internet, an online service,
 16 an online application, or a mobile application.

17 **SEC. 3. PROHIBITED PRACTICES FOR SOCIAL MEDIA COM-**
 18 **PANIES.**

19 Beginning 3 months after the date of enactment of
 20 this Act, it shall be unlawful for a social media company
 21 to operate a social media platform that uses any of the
 22 following practices:

23 (1) INFINITE SCROLL OR AUTO REFILL.—The
 24 use of a process that automatically loads and dis-
 25 plays additional content, other than music or video

1 content that the user has prompted to play, when a
2 user approaches or reaches the end of loaded content
3 without requiring the user to specifically request
4 (such as by pushing a button or clicking an icon, but
5 not by simply continuing to scroll) that additional
6 content be loaded and displayed.

7 (2) ELIMINATION OF NATURAL STOPPING
8 POINTS.—The use of a process that, without the
9 user expressly requesting additional content, loads
10 and displays more content into a content feed than
11 the typical user scrolls through in 3 minutes.

12 (3) AUTOPLAY.—The use of a process that
13 automatically plays music or videos (other than ad-
14 vertisements) without an express, separate prompt
15 by the user (such as pushing a button or clicking an
16 icon), unless—

17 (A) before any content is loaded to the
18 user's display, that user or a different user
19 compiled a playlist of multiple music videos or
20 audio files that the user designated should be
21 played without interruption, and the immediate
22 user selected one of the videos or files in that
23 precompiled playlist; or

24 (B) the predominant purpose of the social
25 media platform is to allow users to stream

1 music, but only if the only files the platform
2 automatically plays are audio files or advertise-
3 ments.

4 (4) BADGES AND OTHER AWARDS LINKED TO
5 ENGAGEMENT WITH THE PLATFORM.—Providing a
6 user with an award for engaging with the social
7 media platform (such as a badge or other recogni-
8 tion of a user’s level of engagement with the plat-
9 form) if such award does not substantially increase
10 access to new or additional services, content, or
11 functionality.

12 **SEC. 4. REQUIREMENTS FOR SOCIAL MEDIA COMPANIES.**

13 (a) IN GENERAL.—Beginning 6 months after the
14 date of enactment of this Act, it shall be unlawful for a
15 social media company to operate a social media platform
16 if the platform does not include a user-friendly interface
17 that, with respect to such platform and any other social
18 media platform that is owned by the same social media
19 company or a subsidiary of that company—

20 (1) allows a user to set a time limit that blocks
21 the user’s own access to those platforms across all
22 devices if the amount of time the user spends on
23 those platforms within a certain period exceeds a
24 time limit set by the user using 1-minute increments

1 and, at minimum, allows the user to set such time
2 limits for daily and weekly use;

3 (2) automatically limits the amount of time that
4 a user may spend on those platforms across all de-
5 vices to 30 minutes a day unless the user elects to
6 adjust or remove the time limit and, if the user
7 elects to increase or remove the time limit, resets the
8 time limit to 30 minutes a day on the first day of
9 every month;

10 (3) provides users with regular disclosures, in-
11 cluding immediate disclosures when prompted by the
12 user, of the amount of time the user has spent on
13 those platforms across all devices, broken down by
14 day, week, month, year, and platform; and

15 (4) displays a conspicuous pop-up to a user not
16 less than once every 30 minutes that the user spends
17 on those platforms, regardless of whether the user
18 spent the 30 minutes on multiple devices, that shows
19 how much time the user has spent on those plat-
20 forms that day.

21 (b) LIMITATION.—Subsection (a) shall not apply to
22 any portion of a social media platform that consists only
23 of a predominantly text-based, direct message service such
24 as email or a service that is substantially similar to email.

1 **SEC. 5. REQUIREMENTS FOR OPERATORS.**

2 Beginning 6 months after the date of enactment of
3 this Act, it shall be unlawful for an operator to operate
4 an internet website, online service, online application, or
5 mobile application if the operator does not obtain the con-
6 sent of users or allow users to select from among options
7 in the following manner:

8 (1) NEUTRAL PRESENTATION.—If the operator
9 requests that a user accept or consent to terms, or
10 anything similar—

11 (A) by clicking an icon, the operator shall
12 present the user with an option to decline by
13 clicking an icon that is identical to the other
14 icon in terms of size, shape, font, and other vis-
15 ual or auditory design, except that the options
16 need not be identical in color as long as the op-
17 tion to decline is conspicuously shaded dif-
18 ferently than the immediate background color,
19 and such option to decline shall be placed be-
20 fore the option to consent as measured by the
21 direction the language in which the option is
22 written is conventionally read; and

23 (B) by taking some other action to consent
24 or accept, the operator shall present the user
25 with the option to decline by taking a similar,
26 equivalent action.

1 (2) NO PRESELECTED OPTIONS.—When an op-
2 erator requests a user to make a selection from
3 among options, no option may be preselected.

4 **SEC. 6. COMMISSION REPORT ON INTERNET ADDICTION.**

5 Not less frequently than once every 3 years, the Com-
6 mission shall submit to Congress a report on the issue of
7 internet addiction and the processes through which social
8 media companies and other internet companies, by exploit-
9 ing human psychology and brain physiology, interfere with
10 free choices of individuals on the internet (including with
11 respect to the amount of time individuals spend online).

12 **SEC. 7. POWERS OF THE COMMISSION.**

13 (a) TEMPORARY JOINT RULEMAKING AUTHORITY.—

14 (1) IN GENERAL.—The Commission and the
15 Secretary of Health and Human Services (referred
16 to in this subsection as the “Secretary”) may jointly
17 promulgate rules under this subsection to prohibit
18 practices by social media companies and operators
19 that exploit human psychology or brain physiology to
20 substantially interfere with consumers’ freedom of
21 choice.

22 (2) PROCEDURE.—The Commission and the
23 Secretary may jointly promulgate rules under this
24 subsection in accordance with section 553 of title 5,
25 United States Code.

1 (3) SUNSET.—No rule promulgated by the
2 Commission and the Secretary under this subsection
3 shall be effective for a period that is longer than 3
4 years, but no period of time during which the Com-
5 mission is enjoined from enforcing such a rule pur-
6 suant to a court order issuing an injunction against
7 such rule or declaring such rule unlawful shall be
8 counted against such 3-year period.

9 (4) REPORT TO CONGRESS.—With respect to
10 any rule promulgated under this subsection, 1 year
11 before such rule is scheduled to expire the Commis-
12 sion and the Secretary shall issue a report to Con-
13 gress explaining the basis for the rule and its impor-
14 tance and notifying Congress of the date on which
15 the rule will expire if Congress does not enact the
16 requirements of the rule into statutory law.

17 (b) ENFORCEMENT BY THE COMMISSION.—

18 (1) IN GENERAL.—Except as otherwise pro-
19 vided, this Act and the regulations prescribed under
20 this Act shall be enforced by the Commission under
21 the Federal Trade Commission Act (15 U.S.C. 41 et
22 seq.).

23 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
24 TICES.—A violation of this Act or a regulation pre-
25 scribed under this Act shall be treated as a violation

1 of a rule defining an unfair or deceptive act or prac-
2 tice prescribed under section 18(a)(1)(B) of the Fed-
3 eral Trade Commission Act (15 U.S.C.
4 57a(a)(1)(B)).

5 (3) ACTIONS BY THE COMMISSION.—Except as
6 provided in subsection (c)(1), the Commission shall
7 prevent any person from violating this Act or a reg-
8 ulation prescribed under this Act in the same man-
9 ner, by the same means, and with the same jurisdic-
10 tion, powers, and duties as though all applicable
11 terms and provisions of the Federal Trade Commis-
12 sion Act (15 U.S.C. 41 et seq.) were incorporated
13 into and made a part of this Act, and any person
14 who violates this Act or a regulation prescribed
15 under this Act shall be subject to the penalties and
16 entitled to the privileges and immunities provided in
17 the Federal Trade Commission Act.

18 (4) AUTHORITY PRESERVED.—Nothing in this
19 Act shall be construed to limit the authority of the
20 Commission under any other provision of law.

21 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
22 ERAL.—

23 (1) IN GENERAL.—

24 (A) CIVIL ACTIONS.—In any case in which
25 the attorney general of a State has reason to

1 believe that an interest of the residents of that
2 State has been or is threatened or adversely af-
3 fected by the engagement of any person in a
4 practice that violates this Act or a regulation
5 prescribed under this Act, the State, as *parens*
6 *patriae*, may bring a civil action on behalf of
7 the residents of the State in a district court of
8 the United States or a State court of appro-
9 priate jurisdiction to—

10 (i) enjoin that practice;

11 (ii) enforce compliance with this Act
12 or such regulation;

13 (iii) on behalf of residents of the
14 State, obtain damages, statutory damages,
15 restitution, or other compensation, each of
16 which shall be distributed in accordance
17 with State law; or

18 (iv) obtain such other relief as the
19 court may consider to be appropriate.

20 (B) NOTICE.—

21 (i) IN GENERAL.—Before filing an ac-
22 tion under subparagraph (A), the attorney
23 general of the State involved shall provide
24 to the Commission—

1 (I) written notice of that action;
2 and

3 (II) a copy of the complaint for
4 that action.

5 (ii) EXEMPTION.—

6 (I) IN GENERAL.—Clause (i)
7 shall not apply with respect to the fil-
8 ing of an action by an attorney gen-
9 eral of a State under this paragraph
10 if the attorney general of the State
11 determines that it is not feasible to
12 provide the notice described in that
13 clause before the filing of the action.

14 (II) NOTIFICATION.—In an ac-
15 tion described in subclause (I), the at-
16 torney general of a State shall provide
17 notice and a copy of the complaint to
18 the Commission at the same time as
19 the attorney general files the action.

20 (2) INTERVENTION.—

21 (A) IN GENERAL.—On receiving notice
22 under paragraph (1)(B), the Commission shall
23 have the right to intervene in the action that is
24 the subject of the notice.

1 (B) EFFECT OF INTERVENTION.—If the
2 Commission intervenes in an action under para-
3 graph (1), it shall have the right—

4 (i) to be heard with respect to any
5 matter that arises in that action; and

6 (ii) to file a petition for appeal.

7 (3) CONSTRUCTION.—For purposes of bringing
8 any civil action under paragraph (1), nothing in this
9 Act shall be construed to prevent an attorney gen-
10 eral of a State from exercising the powers conferred
11 on the attorney general by the laws of that State
12 to—

13 (A) conduct investigations;

14 (B) administer oaths or affirmations; or

15 (C) compel the attendance of witnesses or
16 the production of documentary and other evi-
17 dence.

18 (4) ACTIONS BY THE COMMISSION.—In any
19 case in which an action is instituted by or on behalf
20 of the Commission for violation of this Act or a reg-
21 ulation prescribed under this Act, no State may,
22 during the pendency of that action, institute an ac-
23 tion under paragraph (1) against any defendant
24 named in the complaint in the action instituted by
25 or on behalf of the Commission for that violation.

1 (5) VENUE; SERVICE OF PROCESS.—

2 (A) VENUE.—Any action brought under
3 paragraph (1) may be brought in—

4 (i) the district court of the United
5 States that meets applicable requirements
6 relating to venue under section 1391 of
7 title 28, United States Code; or

8 (ii) a State court of competent juris-
9 diction.

10 (B) SERVICE OF PROCESS.—In an action
11 brought under paragraph (1) in a district court
12 of the United States, process may be served
13 wherever defendant—

14 (i) is an inhabitant; or

15 (ii) may be found.

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