

Calendar No. 85

118TH CONGRESS
1ST SESSION

S. 474

To amend title 18, United States Code, to strengthen reporting to the CyberTipline related to online sexual exploitation of children, to modernize liabilities for such reports, to preserve the contents of such reports for 1 year, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2023

Mrs. BLACKBURN (for herself, Mr. OSSOFF, and Mr. LEE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JUNE 6, 2023

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend title 18, United States Code, to strengthen reporting to the CyberTipline related to online sexual exploitation of children, to modernize liabilities for such reports, to preserve the contents of such reports for 1 year, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Revising Existing Pro-
3 cedures On Reporting via Technology Act” or the “RE-
4 PORT Act”.

5 **SEC. 2. LIMITED LIABILITY MODERNIZATION.**

6 (a) **AMENDMENTS.**—Section 2258B of title 18,
7 United States Code, is amended—

8 (1) in the section heading, by striking “**pro-**
9 **viders or domain name registrars**” and in-
10 sserting “**the reporting, storage, and han-**
11 **dling of certain visual depictions of ap-**
12 **parent child pornography to the National**
13 **Center for Missing and Exploited Chil-**
14 **dren**”;

15 (2) in subsection (b)—

16 (A) in the matter preceding paragraph (1),
17 by inserting “or charge” after “a claim”; and

18 (B) in paragraph (2)(C), by striking “this
19 section,”; and

20 (3) by adding at the end the following:

21 “(d) **LIMITED LIABILITY FOR NCMEC-CONTRACTED**
22 **VENDORS.**—

23 “(1) **IN GENERAL.**—Except as provided in para-
24 graph (2), a civil claim or criminal charge may not
25 be brought in any Federal or State court against a
26 vendor contractually retained and designated by

1 NCMEC to support the clearinghouse role of
 2 NCMEC, as set forth in section 404(b) of the Juve-
 3 nile Justice and Delinquency Prevention Act of 1974
 4 (34 U.S.C. 11293(b)).

5 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
 6 CONDUCT.—Paragraph (1) shall not apply to a claim
 7 or charge if the vendor—

8 “(A) engaged in—

9 “(i) intentional misconduct;

10 “(ii) negligent conduct; or

11 “(iii) conduct not authorized under
 12 the contract of the vendor with NCMEC to
 13 support the clearinghouse role of NCMEC,
 14 as set forth in section 404(b) of the Juve-
 15 nile Justice and Delinquency Prevention
 16 Act of 1974 (34 U.S.C. 11293(b)); or

17 “(B) acted, or failed to act—

18 “(i) with actual malice;

19 “(ii) with reckless disregard to a sub-
 20 stantial risk of causing physical injury
 21 without legal justification; or

22 “(iii) for a purpose unrelated to the
 23 performance of any responsibility or func-
 24 tion—

1 “(I) set forth in paragraph (1);

2 or

3 “(H) under sections 2258A,

4 2258C, 2702, or 2703.

5 “(3) MINIMIZING ACCESS BY VENDOR.—With
6 respect to any visual depiction of child pornography
7 stored or transferred by a vendor contractually re-
8 tained and designated by NCMEC to support the
9 clearing house role of NCMEC, as set forth in sec-
10 tion 404(b) of the Juvenile Justice and Delinquency
11 Prevention Act of 1974 (34 U.S.C. 11293(b)), a
12 vendor shall minimize the number of employees that
13 may be able to obtain access to such visual depic-
14 tion.

15 “(e) LIMITED LIABILITY FOR MINORS, AND PERSONS
16 ACTING ON BEHALF OF A MINOR, REPORTING VISUAL
17 DEPICTIONS OF APPARENT CHILD PORNOGRAPHY IN
18 WHICH THE MINOR IS DEPICTED.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), a civil claim or criminal charge may not
21 be brought in any Federal or State court against a
22 minor, or a person acting on behalf of a minor, aris-
23 ing from a report to the CyberTipline of NCMEC by
24 the minor or the person acting on behalf of a minor
25 of information that relates to a visual depiction of

1 apparent child pornography in which the minor is
 2 depicted, including a copy of the visual depiction of
 3 the minor.

4 ~~“(2) INTENTIONAL, RECKLESS, OR OTHER MIS-~~
 5 ~~CONDUCT.—~~Paragraph (1) shall not apply to a claim
 6 or charge if the minor, or person acting on behalf
 7 of the minor—

8 ~~“(A) engaged in—~~

9 ~~“(i) intentional misconduct in submit-~~
 10 ~~ting the report to the CyberTipline of~~
 11 ~~NCMEC of information that relates to a~~
 12 ~~visual depiction of apparent child pornog-~~
 13 ~~raphy in which the minor is depicted, in-~~
 14 ~~cluding a copy of the visual depiction of~~
 15 ~~the minor; or~~

16 ~~“(ii) negligent conduct; or~~

17 ~~“(B) acted; or failed to act—~~

18 ~~“(i) with actual malice; or~~

19 ~~“(ii) with reckless disregard to a sub-~~
 20 ~~stantial risk of causing physical injury~~
 21 ~~without legal justification.~~

22 ~~“(3) MINIMIZING ACCESS.—~~With respect to any
 23 visual depiction of child pornography reported to the
 24 CyberTipline of NCMEC by a minor, or a person
 25 acting on behalf of a minor, in which the minor is

1 depicted, NCMEC shall minimize access to the vis-
 2 ual depiction and ensure the appropriate deletion of
 3 the visual depiction, as set forth in section 2258D.”.

4 (b) **APPLICABILITY.**—The amendment made by sub-
 5 section (a) shall apply with respect to a civil claim or
 6 criminal charge that is filed on or after the date of enact-
 7 ment of this Act.

8 (c) **TABLE OF SECTIONS AMENDMENT.**—The table of
 9 sections for chapter 110 of title 18, United States Code,
 10 is amended by striking the item relating to section 2258B
 11 and inserting the following:

“2258B. Limited liability for the reporting, storage, and handling of certain vis-
 ual depictions of apparent child pornography to the National
 Center for Missing and Exploited Children.”.

12 **SEC. 3. PRESERVATION OF REPORTS TO CYBERTIPLINE RE-**
 13 **LATED TO ONLINE SEXUAL EXPLOITATION OF**
 14 **CHILDREN.**

15 Section 2258A(h) of title 18, United States Code, is
 16 amended—

17 (1) in paragraph (1), by striking “90 days” and
 18 inserting “1 year”; and

19 (2) by adding at the end the following:

20 “(5) **EXTENSION OF PRESERVATION.**—A pro-
 21 vider of a report to the CyberTipline under sub-
 22 section (a)(1) may voluntarily preserve the contents
 23 provided in the report (including any comingled con-
 24 tent described in paragraph (2)) for longer than 1

year after the submission to the CyberTipline for the purpose of reducing the proliferation of online child sexual exploitation or preventing the online sexual exploitation of children.

“(6) METHOD OF PRESERVATION.—Not later than 1 year after the date of enactment of this paragraph, a provider of a report to the CyberTipline under subsection (a)(1) shall preserve materials under this subsection in a manner that is consistent with the most recent version of the Cybersecurity Framework developed by the National Institute of Standards and Technology, or any successor thereto.”.

SEC. 4. STRENGTHENING OF DUTY TO REPORT APPARENT VIOLATIONS TO CYBERTIPLINE RELATED TO ONLINE EXPLOITATION OF CHILDREN.

(a) AMENDMENTS.—Section 2258A of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A)—

(i) in the matter preceding clause (i),

by inserting “shall” after “provider”;

(ii) in clause (i), by striking “shall”;

and

1 (iii) in clause (ii), by striking “may,”;

2 and

3 (B) in paragraph (2)(A), by inserting “, of
4 section 1591 (if the violation involves a minor);
5 or of 2422(b)” after “child pornography”; and
6 (2) in subsection (c)—

7 (A) in paragraph (1), by striking
8 “\$150,000” and inserting “\$850,000 in the
9 case of a provider with not less than
10 100,000,000 monthly active users or \$600,000
11 in the case of a provider with less than
12 100,000,000 monthly active users”; and

13 (B) in paragraph (2), by striking
14 “\$300,000” and inserting “\$1,000,000 in the
15 case of a provider with not less than
16 100,000,000 monthly active users or \$850,000
17 in the case of a provider with less than
18 100,000,000 monthly active users”.

19 (b) GUIDANCE.—Not later than 180 days after the
20 date of enactment of this Act, the National Center for
21 Missing & Exploited Children shall issue guidance to pro-
22 viders required to take actions described in section
23 2258A(a)(1)(B) of title 18, United States Code, on the
24 facts or circumstances that constitute an apparent viola-

tion of section ~~1591~~ of that title and of section ~~2422(b)~~
of that title.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Revising Existing Procedures On Reporting via Technology Act” or the “REPORT Act”.

SEC. 2. LIMITED LIABILITY MODERNIZATION.

(a) *AMENDMENTS.*—Section 2258B of title 18, United States Code, is amended—

(1) *in the section heading, by striking “providers or domain name registrars” and inserting “the reporting, storage, and handling of certain visual depictions of apparent child pornography to the National Center for Missing & Exploited Children”;*

(2) *in subsection (b)—*

(A) *in the matter preceding paragraph (1), by inserting “or charge” after “a claim”; and*

(B) *in paragraph (2)(C), by striking “this section,”; and*

(3) *by adding at the end the following:*

“(d) *LIMITED LIABILITY FOR NCMEC-CONTRACTED VENDORS.*—

“(1) *IN GENERAL.*—Except as provided in paragraph (2), a civil claim or criminal charge may not

1 *be brought in any Federal or State court against a*
 2 *vendor contractually retained and designated by*
 3 *NCMEC to support the duties of NCMEC under sec-*
 4 *tion 404(b)(1)(K) of the Juvenile Justice and Delin-*
 5 *quency Prevention Act of 1974 (34 U.S.C.*
 6 *11293(b)(1)(K)).*

7 *“(2) INTENTIONAL, RECKLESS, OR OTHER MIS-*
 8 *CONDUCT.—Paragraph (1) shall not apply to a claim*
 9 *or charge if the vendor—*

10 *“(A) engaged in—*

11 *“(i) intentional misconduct; or*

12 *“(ii) negligent conduct; or*

13 *“(B) acted, or failed to act—*

14 *“(i) with actual malice;*

15 *“(ii) with reckless disregard to a sub-*
 16 *stantial risk of causing injury without legal*
 17 *justification; or*

18 *“(iii) for a purpose unrelated to the*
 19 *performance of any responsibility or func-*
 20 *tion—*

21 *“(I) set forth in paragraph (1); or*

22 *“(II) pursuant to sections 2258A,*
 23 *2258C, 2702, or 2703.*

24 *“(3) MINIMIZING ACCESS BY VENDOR.—With re-*
 25 *spect to any visual depiction provided pursuant to*

1 *the duties of NCMEC under section 404(b)(1)(K) of*
 2 *the Juvenile Justice and Delinquency Prevention Act*
 3 *of 1974 (34 U.S.C. 11293(b)(1)(K)) that is stored or*
 4 *transferred by a vendor contractually retained and*
 5 *designated by NCMEC to support such duties of*
 6 *NCMEC, a vendor shall—*

7 *“(A) minimize the number of employees*
 8 *that may be able to obtain access to such visual*
 9 *depiction; and*

10 *“(B) employ end-to-end encryption for data*
 11 *storage and transfer functions, or an equivalent*
 12 *technological standard.*

13 *“(e) LIMITED LIABILITY FOR REPORTING APPARENT*
 14 *CHILD PORNOGRAPHY BY AN INDIVIDUAL DEPICTED IN THE*
 15 *CHILD PORNOGRAPHY AS A MINOR, OR A REPRESENTATIVE*
 16 *OF SUCH INDIVIDUAL.—*

17 *“(1) IN GENERAL.—Except as provided in para-*
 18 *graph (2), a civil claim or criminal charge may not*
 19 *be brought in any Federal or State court against an*
 20 *individual depicted in child pornography as a minor,*
 21 *or a representative of such individual, arising from a*
 22 *report to the NCMEC CyberTipline by the individual,*
 23 *or the representative of such individual, of informa-*
 24 *tion that relates to the child pornography in which*

1 *the individual is depicted as a minor, including a*
 2 *copy of the child pornography.*

3 “(2) *INTENTIONAL, RECKLESS, OR OTHER MIS-*
 4 *CONDUCT.—Paragraph (1) shall not apply to a claim*
 5 *or charge if the individual, or the representative of*
 6 *such individual—*

7 “(A) *engaged in—*

8 “(i) *intentional misconduct;*

9 “(ii) *negligent conduct; or*

10 “(iii) *any activity which constitutes a*
 11 *violation of section 2251; or*

12 “(B) *acted, or failed to act—*

13 “(i) *with actual malice; or*

14 “(ii) *with reckless disregard to a sub-*
 15 *stantial risk of causing injury without legal*
 16 *justification.*

17 “(3) *MINIMIZING ACCESS.—With respect to any*
 18 *child pornography reported to the NCMEC*
 19 *CyberTipline by an individual depicted in the child*
 20 *pornography as a minor, or a representative of such*
 21 *individual, NCMEC shall minimize access to the child*
 22 *pornography and ensure the appropriate deletion of*
 23 *the child pornography, as set forth in section 2258D.*

1 “(4) *DEFINITION.*—For purposes of this sub-
 2 section, the term ‘representative’, with respect to an
 3 individual depicted in child pornography—

4 “(A) means—

5 “(i) the parent or legal guardian of the
 6 individual, if the individual is under 18
 7 years of age;

8 “(ii) the legal guardian or other person
 9 appointed by a court to represent the indi-
 10 vidual;

11 “(iii) a legal representative retained by
 12 the individual;

13 “(iv) a representative of the estate of
 14 the individual; or

15 “(v) a person who is a mandated re-
 16 porter under section 226(a)(1) of the Vic-
 17 tims of Child Abuse Act of 1990 (34 U.S.C.
 18 20341(a)(1)); and

19 “(B) does not include a person who engaged
 20 in any activity which constitutes a violation of
 21 section 2251.”.

22 (b) *APPLICABILITY.*—The amendments made by sub-
 23 section (a) shall apply with respect to a civil claim or
 24 criminal charge that is filed on or after the date of enact-
 25 ment of this Act.

1 (c) *TABLE OF SECTIONS AMENDMENT.*—*The table of*
 2 *sections for chapter 110 of title 18, United States Code, is*
 3 *amended by striking the item relating to section 2258B and*
 4 *inserting the following:*

“2258B. *Limited liability for the reporting, storage, and handling of certain visual depictions of apparent child pornography to the National Center for Missing & Exploited Children.*”.

5 **SEC. 3. PRESERVATION OF REPORTS TO CYBERTIPLINE RE-**
 6 **LATED TO ONLINE SEXUAL EXPLOITATION OF**
 7 **CHILDREN.**

8 Section 2258A(h) of title 18, United States Code, is
 9 amended—

10 (1) in paragraph (1), by striking “90 days” and
 11 inserting “1 year”; and

12 (2) by adding at the end the following:

13 “(5) *EXTENSION OF PRESERVATION.*—*A provider*
 14 *of a report to the CyberTipline under subsection*
 15 *(a)(1) may voluntarily preserve the contents provided*
 16 *in the report (including any comingled content de-*
 17 *scribed in paragraph (2)) for longer than 1 year after*
 18 *the submission to the CyberTipline for the purpose of*
 19 *reducing the proliferation of online child sexual ex-*
 20 *ploitation or preventing the online sexual exploitation*
 21 *of children.*

22 “(6) *METHOD OF PRESERVATION.*—*Not later*
 23 *than 1 year after the date of enactment of this para-*
 24 *graph, a provider of a report to the CyberTipline*

1 *under subsection (a)(1) shall preserve materials under*
 2 *this subsection in a manner that is consistent with*
 3 *the most recent version of the Cybersecurity Frame-*
 4 *work developed by the National Institute of Standards*
 5 *and Technology, or any successor thereto.”.*

6 **SEC. 4. STRENGTHENING OF DUTY TO REPORT APPARENT**
 7 **VIOLATIONS TO CYBERTIPLINE RELATED TO**
 8 **ONLINE EXPLOITATION OF CHILDREN.**

9 *(a) AMENDMENTS.—Section 2258A of title 18, United*
 10 *States Code, is amended—*

11 *(1) in subsection (a)(2)(A), by inserting “, of sec-*
 12 *tion 1591 (if the violation involves a minor), or of*
 13 *2422(b)” after “child pornography”; and*

14 *(2) in subsection (e)—*

15 *(A) in paragraph (1), by striking*
 16 *“\$150,000” and inserting “\$850,000 in the case*
 17 *of a provider with not less than 100,000,000*
 18 *monthly active users or \$600,000 in the case of*
 19 *a provider with less than 100,000,000 monthly*
 20 *active users”; and*

21 *(B) in paragraph (2), by striking*
 22 *“\$300,000” and inserting “\$1,000,000 in the*
 23 *case of a provider with not less than 100,000,000*
 24 *monthly active users or \$850,000 in the case of*

1 *a provider with less than 100,000,000 monthly*
2 *active users”.*

3 **(b) GUIDELINES.**—*Not later than 180 days after the*
4 *date of enactment of this Act, the National Center for Miss-*
5 *ing & Exploited Children may issue guidelines, as appro-*
6 *priate, to providers required or permitted to take actions*
7 *described in section 2258A(a)(1)(B) of title 18, United*
8 *States Code, on the relevant identifiers for content that may*
9 *indicate sex trafficking of children, as described in section*
10 *1591 of that title, or enticement, as described in section*
11 *2422(b) of that title.*

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A BILL

To amend title 18, United States Code, to strengthen reporting to the CyberTipline related to online sexual exploitation of children, to modernize abilities for such reports, to preserve the contents of such reports for 1 year, and for other purposes.

FEBRUARY 16, 2023

Reported by Mr. Durbin, with an amendment