

107TH CONGRESS  
1ST SESSION

# S. 792

To prohibit the targeted marketing to minors of adult-rated media as an unfair or deceptive practice, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 26, 2001

Mr. LIEBERMAN (for himself, Mr. KOHL, Mrs. CLINTON, and Mr. BYRD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To prohibit the targeted marketing to minors of adult-rated media as an unfair or deceptive practice, 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.**

4       This Act may be cited as the “Media Marketing Ac-  
5       countability Act of 2001”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) Children have easy access to a variety of  
9       media and entertainment options without leaving

1        their own homes. The vast majority of homes with  
2        children have a VCR, a CD player, and either a  
3        video game console or a personal computer.

4            (2) Children, and especially teenagers, spend a  
5        large amount of time listening to music, seeing mov-  
6        ies, and playing video games. Specifically:

7            (A) Children ages 8 through 13 spend ap-  
8        proximately 3 hours per week in a movie the-  
9        ater, on average. In addition, 62 percent of chil-  
10       dren ages 9 through 17 spent an average of 52  
11       minutes per day watching video tapes.

12           (B) 82 percent of children play video  
13        games, and do so for 33 minutes per day, on  
14        average.

15           (C) Children ages 14 through 18 listen to  
16        music approximately 2½ hours per day on av-  
17        erage.

18           (3) Teenagers spend tens of millions of dollars  
19        annually on movies, music, and video games, making  
20        them a highly valuable demographic group to the  
21        producers and distributors of entertainment prod-  
22        ucts.

23           (4) Media violence can be harmful to children.  
24        Most scholarly studies on the impact of media vio-  
25        lence find a high correlation between exposure to

1 violent content and aggressive or violent behavior.  
2 Additional studies find a high correlation between  
3 exposure to violent content and a desensitization to  
4 and acceptance of violence in society.

5 (5) On September 11, 2000, the Federal Trade  
6 Commission reported that companies in the music,  
7 movie, and video game industries routinely target  
8 children under age 17 in the advertisement of adult-  
9 rated products. Specifically:

10 (A) The Commission found that 80 percent  
11 of the R-rated movies studied had been targeted  
12 to children. In addition, marketing plans for 64  
13 percent of the R-rated movies studied explicitly  
14 mentioned children under age 17 as part of the  
15 target audience.

16 (B) The Commission found that all mar-  
17 keting plans for music recordings with explicit  
18 content labels either explicitly mentioned chil-  
19 dren under age 17 as part of the target audi-  
20 ence or called for ad placement in media that  
21 would reach a majority or substantial percent-  
22 age of children under age 17.

23 (C) The Commission found that 70 percent  
24 of Mature-rated video games studied were tar-  
25 geted to children under age 17, and 51 percent

1 explicitly mentioned children under age 17 as  
2 part of the target audience. Additionally, the  
3 Commission found that 91 percent of the video  
4 game manufacturers studied had at one time  
5 expressly identified children under age 17 as  
6 the core, primary, or secondary audience of an  
7 M-rated game.

8 (6) To correct this problem, the Commission  
9 called on these industries to adopt voluntary, uni-  
10 form policies expressly prohibiting these practices  
11 and to enforce these policies with real sanctions for  
12 violations.

13 (7) To date, as the Commission noted in a fol-  
14 low-up report released on April 24, 2001, only the  
15 video game industry has agreed to adopt such a  
16 marketing code. The Commission also noted that,  
17 despite some encouraging changes in behavior since  
18 the release of the Commission's original report in  
19 2000, a number of companies in all three industries  
20 have nevertheless continued to market adult-rated  
21 products in venues popular with children.

22 (8) Because the entertainment industry con-  
23 tinues to target its advertising of adult-rated prod-  
24 ucts to children, there is need for narrowly targeted  
25 legislation to prohibit, as a false and deceptive trade

practice, the targeting of children in the advertisement and other marketing of products rated for adults, and to authorize the Federal Trade Commission to stop these practices.

## **TITLE I—TARGETED MARKETING OF ADULT-RATED MEDIA TO CHILDREN**

### **SEC. 101. PROHIBITION ON TARGETED MARKETING TO MINORS OF ADULT-RATED MEDIA AS UNFAIR OR DECEPTIVE PRACTICE.**

(a) IN GENERAL.—The targeted advertising or other marketing to minors of an adult-rated motion picture, music recording, or electronic game, in or affecting commerce, shall be treated as a deceptive act or practice within the meaning of section 5 of the Federal Trade Commission Act (15 U.S.C. 45), and is hereby declared unlawful.

(b) TREATMENT AS TARGETED ADVERTISING OR MARKETING TO MINORS.—For purposes of this section, the advertising or other marketing of an adult-rated motion picture, music recording, or electronic game shall be treated as targeted advertising or other marketing of such product to minors if—

(1) the advertising or marketing—

(A) is intentionally directed to minors; or

1 (B) is presented to an audience of which a  
 2 substantial proportion is minors; or

3 (2) the Commission determines that the adver-  
 4 tising or marketing is otherwise directed or targeted  
 5 to minors.

6 **SEC. 102. SAFE HARBOR.**

7 (a) IN GENERAL.—The advertising or other mar-  
 8 keting to minors of an adult-rated motion picture, music  
 9 recording, or electronic game shall not be treated as tar-  
 10 geted advertising or other marketing to minors, for pur-  
 11 poses of section 101, if the producer or distributor respon-  
 12 sible for the advertising or marketing adheres to a vol-  
 13 untary self-regulatory system with respect to such product  
 14 that satisfies the criteria under subsection (b) and is sub-  
 15 ject to the sanctions referred to in subsection (b)(3).

16 (b) CRITERIA.—The Federal Trade Commission  
 17 shall, by rule, establish the criteria referred to in sub-  
 18 section (a). Under such criteria, a voluntary self-regu-  
 19 latory system shall include the following elements:

20 (1) An age-based rating or labeling system for  
 21 the product in question.

22 (2) For all products that are rated or labeled  
 23 as adult-rated under such system—

1           (A) prohibitions on the targeted adver-  
 2           tising or other marketing to minors of such  
 3           products; and

4           (B) other policies to restrict, to the extent  
 5           feasible, the sale, rental, or viewing to or by mi-  
 6           nors of such products.

7           (3) Procedures, including sanctions for non-  
 8           complying producers and distributors, meeting such  
 9           requirements as the Commission includes in such  
 10          criteria in order to assure compliance with the prohi-  
 11          bitons and other policies referred to in paragraph  
 12          (2).

13 **SEC. 103. REGULATIONS.**

14          (a) IN GENERAL.—The Federal Trade Commission  
 15          shall prescribe rules that define with specificity the acts  
 16          or practices that are deceptive acts or practices under sec-  
 17          tion 101.

18          (b) IN PARTICULAR.—The rules under subsection  
 19          (a)—

20               (1) shall specify criteria for determining wheth-  
 21          er or not an audience is comprised of a substantial  
 22          proportion of minors for purposes of section  
 23          101(b)(1)(B); and

1           (2) may include requirements for the purpose of  
2       preventing acts or practices that are deceptive acts  
3       or practices under section 101.

4   **SEC. 104. MATTERS RELATING TO REGULATIONS.**

5       (a) IN GENERAL.—The Federal Trade Commission  
6       shall prescribe rules under sections 102 and 103 in accord-  
7       ance with the provisions of section 553 of title 5, United  
8       States Code.

9       (b) TIME LIMIT.—The Commission shall prescribe  
10      the regulations required under sections 102 and 103(b)(1)  
11      not later than 12 months after the date of the enactment  
12      of this Act.

13   **SEC. 105. ENFORCEMENT.**

14      (a) IN GENERAL.—This title shall be enforced by the  
15      Federal Trade Commission under the provisions of the  
16      Federal Trade Commission Act (15 U.S.C. 41 et seq.).

17      (b) ACTIONS BY COMMISSION.—

18          (1) IN GENERAL.—The Commission shall pre-  
19      vent any person from violating section 101, or a rule  
20      of the Commission under section 103, in the same  
21      manner, by the same means, and with the same ju-  
22      risdiction, powers, and duties as though all applica-  
23      ble terms and provisions of the Federal Trade Com-  
24      mission Act were incorporated into and made a part  
25      of this title.



1           (2) PARTICULAR RULES.—A rule prescribed  
2       under section 103(b)(1) shall be treated as a rule  
3       prescribed under section 18(a)(1)(B) of the Federal  
4       Trade Commission Act (15 U.S.C. 57a(a)(1)(B)),  
5       and any violation of a rule prescribed under such  
6       section 103 shall be treated as a violation of a rule  
7       respecting unfair or deceptive acts or practices  
8       under section 5 of the Federal Trade Commission  
9       Act (15 U.S.C. 45).

10          (3) RIGHTS AND LIABILITIES OF PARTIES.—  
11       Any person or entity that violates section 101, or a  
12       rule of the Commission under section 103, shall be  
13       subject to the penalties, and entitled to the privileges  
14       and immunities, provided in the Federal Trade Com-  
15       mission Act in the same manner, by the same  
16       means, and with the same jurisdiction, powers, and  
17       duties as though all applicable terms and provisions  
18       of that Act were incorporated into and made a part  
19       of this title.

20          (c) EFFECT ON OTHER LAWS.—Nothing in this title  
21       shall be construed to limit the authority of the Commission  
22       under any other provision of law.

23       **SEC. 106. DEFINITIONS.**

24       In this title:

1           (1) ADULT-RATED.—The term “adult-rated”, in  
 2           the case of a motion picture, music recording, or  
 3           electronic game, means a rating or label voluntarily  
 4           assigned by the producer or distributor of such prod-  
 5           uct, including a rating or label assigned pursuant to  
 6           an industry-wide rating or labeling system, which  
 7           rating or label—

8                   (A) indicates or signifies that—

9                           (i) such product is or may be appro-  
 10                           priate or suitable only for adults; or

11                           (ii) access to such product by minors  
 12                           should be restricted; or

13                   (B) in the case of a music recording, ad-  
 14                   vises or signifies that such product may contain  
 15                   explicit content, including strong language or  
 16                   expressions of violence, sex, or substance abuse.

17           (2) MINOR.—The term “minor” means an indi-  
 18           vidual below the age established under the rating or  
 19           labeling system in question to be an appropriate au-  
 20           dience for adult-oriented material, but in no event  
 21           includes an individual 17 years of age or older. If no  
 22           specific age is so established under the rating or la-  
 23           beling system in question, the term means an indi-  
 24           vidual less than 17 years of age.

1           (3) ADULT.—The term “adult” means an indi-  
2       vidual who is no longer a minor.

3           (4) ELECTRONIC GAME.—The term “electronic  
4       game” means any interactive entertainment soft-  
5       ware, including any computer game, video game, or  
6       on-line game, sold or rented on any tangible medium  
7       or by any electronic or on-line medium by which the  
8       right to play a specified interactive-entertainment-  
9       software product is purchased.

10          (5) MOTION PICTURE.—The term “motion pic-  
11       ture” means any theatrical motion picture shown in  
12       a commercial theater or sold or rented by videotape,  
13       digital recording, or other tangible medium or by  
14       any electronic or on-line medium by which the right  
15       to play an individual theatrical motion picture is  
16       purchased, except that such term shall not include  
17       anything shown on broadcast television or cable tele-  
18       vision.

19          (6) MUSIC RECORDING.—The term “music re-  
20       cording” means any recording of music sold or  
21       rented on compact disk, tape cassette, vinyl record,  
22       music video, or other tangible medium or by any  
23       electronic or on-line medium by which the right to  
24       hear a specified work of music is purchased, except

1       that such term shall not include anything shown on  
2       broadcast television or cable television.

3   **SEC. 107. EFFECTIVE DATE.**

4       This title shall take effect 90 days after the date of  
5   the enactment of this Act.

6       **TITLE II—OTHER MATTERS**

7   **SEC. 201. STUDY OF MARKETING PRACTICES OF ENTER-**  
8                   **TAINMENT INDUSTRIES REGARDING ADULT-**  
9                   **RATED MATERIALS.**

10       (a) IN GENERAL.—The Federal Trade Commission  
11   shall conduct a study of the advertising and other mar-  
12   keting practices of the motion picture industry, music re-  
13   cording industry, and electronic game industry regarding  
14   adult-rated motion pictures, music recordings, and elec-  
15   tronic games.

16       (b) MATTERS TO BE STUDIED.—In conducting the  
17   study under subsection (a), the Commission may  
18   examine—

19           (1) whether and to what extent the industries  
20       referred to in that subsection direct to minors the  
21       advertising and marketing of adult-rated materials,  
22       including—

23                   (A) whether such materials are advertised  
24       or promoted in media outlets in which minors

1 are present in substantial numbers or comprise  
2 a substantial percentage of the audience; and

3 (B) whether such industries use other mar-  
4 keting practices designed to attract minors to  
5 such materials;

6 (2) whether and to what extent retail mer-  
7 chants, movie theaters, or others who engage in the  
8 sale or rental for a fee of products of such  
9 industries—

10 (A) have policies to restrict the sale, rent-  
11 al, or viewing to or by minors of adult-rated  
12 materials; and

13 (B) have procedures to ensure compliance  
14 with such policies;

15 (3) whether and to what extent such industries  
16 require, monitor, or encourage the enforcement of  
17 their voluntary rating or labeling systems by indus-  
18 try members, retail merchants, movie theaters, or  
19 others who engage in the sale or rental for a fee of  
20 the products of such industries;

21 (4) whether and to what extent such industries  
22 engage in activities to educate the public in the ex-  
23 istence, use, or efficacy of their voluntary rating or  
24 labeling systems; and

1           (5) whether and to what extent the policies and  
2           procedures referred to in paragraph (2), any activi-  
3           ties referred to in paragraphs (3) and (4), and any  
4           other activities of such industries are effective in re-  
5           stricting the access of minors to adult-rated mate-  
6           rials.

7           (c) FACTORS IN DETERMINATION.—In determining  
8           whether the products of an industry are adult-rated for  
9           purposes of subsection (b), the Commission shall use the  
10          voluntary industry rating or labeling system of the indus-  
11          try, both as in effect on the date of the enactment of this  
12          Act and as modified after that date.

13          (d) AUTHORITIES.—In conducting the study under  
14          subsection (a), the Commission may use its authority  
15          under section 6(b) of the Federal Trade Commission Act  
16          (15 U.S.C. 46(b)) to require the filing of reports or an-  
17          swers in writing to specific questions, as well as to obtain  
18          information, oral testimony, documentary material, or tan-  
19          gible things.

20          (e) REPORTS.—

21               (1) REQUIREMENT.—The Commission shall  
22               submit to Congress and the public two reports on  
23               the study under subsection (a), as follows:

1           (A) An initial report, not later than two  
 2           years after the date of the enactment of this  
 3           Act.

4           (B) A final report, not later than six years  
 5           after that date.

6           (2) ELEMENTS.—Each report under paragraph  
 7           (1) shall include—

8           (A) a description of the study conducted  
 9           under subsection (a) during the period covered  
 10          by the report;

11          (B) any findings and recommendations of  
 12          the Commission arising out of the study as of  
 13          the end of that period; and

14          (C) the identification of the particular pro-  
 15          ducers and distributors, if any, engaged in ad-  
 16          vertising or other marketing practices relevant  
 17          to such findings and recommendations.

18          (f) DEFINITIONS.—In this section, the terms “adult-  
 19          rated”, “electronic game”, “motion picture”, “music re-  
 20          cording”, and “minor” have the meanings given those  
 21          terms in section 106.

22   **SEC. 202. SEPARABILITY.**

23          If any provision of this Act, or the application of such  
 24          provision to any person, partnership, corporation, or cir-  
 25          cumstance, is held invalid, the remainder of this Act, and

1 the application of such provision to any other person, part-  
2 nership, corporation, or circumstance, shall not be affected  
3 thereby.

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