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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R.

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

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

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 Children
6 and Youth Act” or the “Kids PRIVCY Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 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. Implementing regulations.
- Sec. 11. Youth Privacy and Marketing Division.
- Sec. 12. Commission defined.
- Sec. 13. 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 organization, corporation, trust,
18 partnership, sole proprietorship, unincorporated
19 association, or venture over which the Commis-

1 sion has authority pursuant to section 5(a)(2)
2 of the Federal Trade Commission Act (15
3 U.S.C. 45(a)(2));

4 “(B) notwithstanding section 5(a)(2) of
5 the Federal Trade Commission Act (15 U.S.C.
6 45(a)(2)), common carriers; and

7 “(C) notwithstanding sections 4 and
8 5(a)(2) of the Federal Trade Commission Act
9 (15 U.S.C. 44 and 45(a)(2)), any nonprofit or-
10 ganization, including any organization described
11 in section 501(c) of the Internal Revenue Code
12 of 1986 that is exempt from taxation under sec-
13 tion 501(a) of the Internal Revenue Code of
14 1986.

15 “(4) OPERATOR.—The term ‘operator’ means,
16 with respect to a digital service, the covered entity
17 that operates such service, to the extent the covered
18 entity is engaged in operating such service or in
19 processing covered information obtained in connec-
20 tion with such service.”;

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

23 “(6) DISCLOSE.—The term ‘disclose’ means to
24 intentionally or unintentionally release, transfer, sell,
25 disseminate, share, publish, lease, license, make

1 available, allow access to, fail to restrict access to,
2 or otherwise communicate covered information.”;

3 (6) by amending paragraph (9) (as so redesign-
4 nated) to read as follows:

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

7 “(A) means any information, linked or rea-
8 sonably linkable to a specific teenager or child,
9 or specific consumer device of a teenager or
10 child;

11 “(B) may include—

12 “(i) a name, alias, home or other
13 physical address, online identifier, Internet
14 Protocol address, email address, account
15 name, Social Security number, physical
16 characteristics or description, telephone
17 number, State identification card number,
18 driver’s license number, passport number,
19 or other similar identifier;

20 “(ii) actual or perceived race, religion,
21 sex, sexual orientation, sexual behavior, fa-
22 miliary status, gender identity, disability,
23 age, political affiliation, or national origin;

24 “(iii) commercial information, includ-
25 ing records relating to personal property,

1 products or services purchased, obtained,
2 or considered, or other purchasing or con-
3 suming histories, interests, or tendencies;
4 “(iv) biometric information;
5 “(v) device identifiers, online identi-
6 fiers, persistent identifiers, or digital
7 fingerprinting information;
8 “(vi) Internet or other electronic net-
9 work activity information, including brows-
10 ing history, search history, and informa-
11 tion regarding a teenager’s or child’s inter-
12 action with an Internet website, applica-
13 tion, or advertisement;
14 “(vii) geolocation information;
15 “(viii) audio, electronic, visual, ther-
16 mal, olfactory, or similar information;
17 “(ix) education information;
18 “(x) health information;
19 “(xi) facial recognition information;
20 “(xii) contents of, attachments to, and
21 parties to information, including with re-
22 spect to electronic mail, text messages, pic-
23 ture messages, voicemails, audio conversa-
24 tions, and video conversations;

1 “(xiii) financial information, including
2 bank account numbers, credit card num-
3 bers, debit card numbers, or insurance pol-
4 icy numbers; and

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

12 “(C) does not include—

13 “(i) information that is processed
14 solely for the purpose of employment of a
15 teenager; or

16 “(ii) de-identified information.”;

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

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

24 “(A) that is specific, informed, and unam-
25 biguous, taking into account the age and the

1 developmental or cognitive needs and capabili-
2 ties of the teenager or parent of a child, as ap-
3 plicable;

4 “(B) that is given separately for each proc-
5 essing activity;

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

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

15 “(E) that is not obtained through the use
16 of a design, modification, or manipulation of a
17 user interface with the purpose or substantial
18 effect of obscuring, subverting, or impairing
19 user autonomy, decision making, or choice.”;
20 and

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

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

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

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

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

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

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

23 “(iii) contractually obligates any re-
24 cipients of the information to comply with
25 clauses (i) and (ii).

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

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

9 “(16) SERVICE PROVIDER.—The term ‘service
10 provider’ means a covered entity that processes cov-
11 ered information at the direction of, and for the sole
12 benefit of, another covered entity, and—

13 “(A) is contractually or legally prohibited
14 from processing such covered information for
15 any other purpose; and

16 “(B) complies with all of the requirements
17 of this title and the regulations promulgated
18 under this title.

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 wellbeing 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 or at-
2 tractive to children, 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 used on, or
22 used to advertise, the digital service;

23 “(ix) reliable empirical evidence relat-
24 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; or

17 “(x) any other evidence or cir-
18 cumstances the Commission determines ap-
19 propriate.

20 “(B) COVERED INFORMATION FROM
21 OTHER SERVICES.—A digital service shall be
22 deemed to be directed to children if the oper-
23 ator of the digital service has actual or con-
24 structive knowledge that the digital service col-
25 lects covered information directly from users of

1 any other digital service that is directed to chil-
2 dren under the criteria described in subpara-
3 graph (A).

4 “(C) SIGNALS FROM THIRD PARTIES.—A
5 digital service shall be deemed directed to chil-
6 dren if the digital service receives a signal from
7 a third party indicating that the digital service
8 is intended for children or likely to appeal to
9 children, whether directly or using a flag or
10 other formal industry standard or convention.

11 “(D) LIMITATION.—A digital service that
12 does not target children as its primary audience
13 shall not be deemed directed to children if the
14 digital service—

15 “(i) does not collect covered informa-
16 tion from any visitor prior to collecting age
17 information; and

18 “(ii) prevents the collection, use, or
19 disclosure of covered information from visi-
20 tors who identify themselves as under age
21 13 without first complying with the notice
22 and parental consent provisions of this title
23 and the regulations promulgated under
24 this title.

1 “(E) FURTHER LIMITATION.—A digital
2 service shall not be deemed directed to children
3 solely because the digital service refers or links
4 to another digital service that is directed to
5 children by using information location tools, in-
6 cluding a directory, index, reference, pointer, or
7 hypertext link.

8 “(F) DETERMINATION REGARDING A POR-
9 TION OF A DIGITAL SERVICE.—For purposes of
10 determining whether a portion of a digital serv-
11 ice is directed to children, any reference in this
12 paragraph to a digital service shall be consid-
13 ered to refer to such portion.

14 “(22) LIKELY TO BE ACCESSED BY CHILDREN
15 OR TEENAGERS.—The term ‘likely to be accessed by
16 children or teenagers’ means, with respect to a dig-
17 ital service, that the possibility of more than a de-
18 minimis number of children or teenagers accessing
19 the digital service is more probable than not. In de-
20 termining whether a digital service is likely to be
21 accessed by children or teenagers, the operator of
22 the service shall consider whether the service has
23 particular appeal to children or teenagers and
24 whether effective measures (such as age gating) are

1 in place that prevent children or teenagers from
2 gaining access to the service.

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

7 “(24) AGE GATE.—The term ‘age gate’ means
8 to use a verifiable process that meets a documented
9 degree of certainty to restrict or block access to a
10 digital service for users that do not meet an age re-
11 quirement.”.

12 **SEC. 3. REQUIREMENTS FOR PROCESSING OF COVERED IN-**
13 **FORMATION OF CHILDREN OR TEENAGERS.**

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

17 **“SEC. 1303. REQUIREMENTS FOR PROCESSING OF COVERED**
18 **INFORMATION OF CHILDREN OR TEENAGERS.**

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

20 “(1) DATA MINIMIZATION.—An operator of a
21 children’s service shall process covered information
22 under the principle of data minimization, requiring
23 the operator to only process the minimum amount
24 necessary for a specified purpose.

1 “(2) TRANSPARENCY.—An operator of a chil-
2 dren’s service shall develop and make publicly avail-
3 able, at all times and in a machine-readable format,
4 a privacy policy, in a manner that is clear, easily un-
5 derstood, and written in plain and concise language,
6 that includes—

7 “(A) the categories of covered information
8 that the operator processes about teenagers and
9 children;

10 “(B) how and under what circumstances
11 covered information is collected directly from a
12 teenager or child;

13 “(C) the categories and the sources of any
14 covered information processed by the operator
15 that is not collected directly from a teenager or
16 child;

17 “(D) a description of the purposes for
18 which the operator processes covered informa-
19 tion, including—

20 “(i) a description of whether and how
21 the operator customizes products or serv-
22 ices, or adjusts the prices of products or
23 services for teenagers or children or based
24 in any part on processing of covered infor-
25 mation;

1 “(ii) a description of whether and how
2 the operator, or the operator’s affiliates or
3 service providers, de-identifies information,
4 including the methods used to de-identify
5 such information; and

6 “(iii) a description of whether and
7 how the operator, or the operator’s affli-
8 ates or service providers, generates or uses
9 any consumer score to make decisions con-
10 cerning a teenager or child, and the source
11 or sources of any such consumer score;

12 “(E) a description of how long and the cir-
13 cumstances under which the operator retains
14 covered information;

15 “(F) a description of all of the purposes
16 for which the operator discloses covered infor-
17 mation to service providers and, on a biennial
18 basis, the categories of service providers;

19 “(G) a description of whether and for what
20 purposes the operator discloses covered infor-
21 mation to third parties, and the categories of
22 covered information disclosed;

23 “(H) a description of the categories of
24 third parties to which covered information de-
25 scribed in subparagraph (G) is disclosed, by

1 category or categories of covered information
2 for each category of third party to which the
3 covered information is disclosed;

4 “(I) whether the operator discloses covered
5 information to data brokers;

6 “(J) whether the operator collects covered
7 information about teenagers or children over
8 time and across different digital services when
9 a teenager or child uses the operator’s digital
10 service;

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

15 “(L) a listing of all possible consents that
16 may be obtained by the operator for the proc-
17 essing of covered information, how a teenager
18 or the parent of a child can grant, withhold,
19 withdraw, or modify any such consent, and the
20 consequences of withholding, withdrawing, or
21 modifying any such consent;

22 “(M) the effective date of the notice; and

23 “(N) how the operator will communicate
24 material changes of the privacy policy to the
25 teenager or the parent of a child.

1 “(3) CONSENT REQUIRED.—

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

4 “(i) provide clear and concise notice
5 to a teenager or the parent of a child of
6 the items of covered information about
7 such teenager or child, respectively, that is
8 processed by such operator and how such
9 operator processes such covered informa-
10 tion and obtain verifiable consent for such
11 processing; and

12 “(ii) if such operator determines, in-
13 cluding through actual or constructive
14 knowledge, that such operator has not ob-
15 tained verifiable consent for any specific
16 processing of covered information about a
17 teenager or child, not later than 48 hours
18 after such determination—

19 “(I) obtain verifiable consent; or

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

22 “(B) WHEN CONSENT NOT REQUIRED.—

23 Verifiable consent under this paragraph is not
24 required in the case of—

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

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

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

8 “(III) is not retained by the op-
9 erator after responding as described
10 in subclause (I);

11 “(ii) a request for the name or online
12 contact information of a teenager or the
13 parent of a child that is used for the sole
14 purpose of obtaining verifiable consent or
15 providing notice under subparagraph
16 (A)(i), where such information is not re-
17 tained by the operator if verifiable consent
18 is not obtained within 48 hours; or

19 “(iii) the processing of covered infor-
20 mation that is necessary—

21 “(I) to respond to judicial proc-
22 ess; or

23 “(II) to the extent permitted
24 under other provisions of law, to pro-
25 vide information to law enforcement

1 agencies or for an investigation on a
2 matter related to public safety.

3 “(C) WITHDRAWAL OF CONSENT.—

4 “(i) MECHANISM FOR WITH-
5 DRAWAL.—An operator of a children’s
6 service shall provide a teenager or the par-
7 ent of a child, as applicable—

8 “(I) a mechanism to withdraw
9 consent to the processing of covered
10 information at any time in a manner
11 that is as easy as the mechanism to
12 give consent; and

13 “(II) clear and conspicuous no-
14 tice of the mechanism required by
15 subclause (I).

16 “(ii) EFFECT OF WITHDRAWAL ON
17 PRIOR PROCESSING.—Withdrawal of con-
18 sent to the processing of covered informa-
19 tion shall not be construed to affect the
20 lawfulness of any processing of covered in-
21 formation based on verifiable consent that
22 was in effect before such withdrawal.

23 “(D) PROHIBITION ON LIMITING OR DIS-
24 CONTINUING SERVICE.—An operator of a chil-
25 dren’s service may not refuse to provide a serv-

1 ice, or discontinue a service provided, to a teen-
2 ager or child, if the teenager or parent of the
3 child, as applicable, refuses to consent, or with-
4 draws consent, to the processing of any covered
5 information not technically required for the op-
6 erator to provide such service.

7 “(4) RETENTION OF DATA.—

8 “(A) RETENTION LIMITATIONS.—Subject
9 to the exceptions provided in subparagraph (B),
10 an operator of a children’s service may not
11 keep, retain, or otherwise store covered infor-
12 mation for longer than is reasonably necessary
13 for the purposes for which the covered informa-
14 tion is processed.

15 “(B) EXCEPTIONS.—Further retention of
16 covered information shall not be considered to
17 be incompatible with the purposes of processing
18 described in subparagraph (A) if such proc-
19 essing is necessary and done solely for the pur-
20 poses of—

21 “(i) compliance with—

22 “(I) requirements to document
23 compliance under this title; or

24 “(II) other laws, regulations, or
25 legal obligations;

1 “(ii) preventing risks to the health or
2 safety of a child or teenager or groups of
3 children or teenagers; or

4 “(iii) repairing errors that impair ex-
5 isting functionality.

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

8 “(A) DISCLOSURES.—An operator of a
9 children’s service may not disclose covered in-
10 formation to a third party unless the operator
11 has a written agreement with such third party
12 that—

13 “(i) specifies all of the purposes for
14 which the third party may process the cov-
15 ered information for which the operator
16 has verifiable consent;

17 “(ii) prohibits the third party from
18 processing covered information for any
19 purpose other than the purposes specified
20 under clause (i); and

21 “(iii) requires the third party to pro-
22 vide at least the same privacy and security
23 protections as the operator.

1 “(B) RESPONSIBILITIES OF OPERATORS
2 REGARDING THIRD PARTIES.—An operator of a
3 children’s service—

4 “(i) shall perform reasonable due dili-
5 gence in selecting any third party with
6 which to enter into an agreement described
7 in subparagraph (A) and shall exercise rea-
8 sonable oversight over all such third par-
9 ties to assure compliance with the require-
10 ments of this title and the regulations pro-
11 mulgated under this title; and

12 “(ii) if the operator has actual or con-
13 structive knowledge that a third party has
14 violated an agreement described in sub-
15 paragraph (A), shall—

16 “(I) to the extent practicable,
17 promptly take steps to ensure compli-
18 ance with such agreement; and

19 “(II) promptly report to the
20 Commission that such a violation oc-
21 curred.

22 “(6) RIGHT TO ACCESS, CORRECT, AND DELETE
23 COVERED INFORMATION.—

24 “(A) ACCESS.—An operator of a children’s
25 service, subject to the exceptions in subpara-

1 graph (D), shall, upon request of a teenager or
2 the parent of a child and after proper identi-
3 fication of such teenager or parent, promptly
4 provide to such teenager or parent, as applica-
5 ble—

6 “(i) access to all covered information
7 processed by the operator pertaining to
8 such teenager or child, including a descrip-
9 tion of—

10 “(I) each type of covered infor-
11 mation processed by the operator per-
12 taining to the teenager or child, as ap-
13 plicable;

14 “(II) each purpose for which the
15 operator processes each category of
16 covered information pertaining to the
17 teenager or child, as applicable;

18 “(III) the names of each third
19 party to which the operator disclosed
20 the covered information;

21 “(IV) each source other than the
22 teenager or child, as applicable, from
23 which the operator obtained covered
24 information pertaining to that teen-
25 ager or child, as applicable;

1 “(V) how long the covered infor-
2 mation will be retained or stored by
3 the operator and, if not known, the
4 criteria the operator uses to determine
5 how long the covered information will
6 be retained or stored by the operator;
7 and

8 “(VI) with respect to any score
9 of the teenager or child, as applicable,
10 processed by the operator—

11 “(aa) how such score is used
12 by the operator to make decisions
13 with respect to that teenager or
14 child, as applicable; and

15 “(bb) the source that cre-
16 ated the score if not created by
17 the operator; and

18 “(ii) a simple and reasonable mecha-
19 nism by which a teenager or parent of a
20 child may request access to the informa-
21 tion described under clause (i), as applica-
22 ble.

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

1 “(i) establish a simple, publicly and
2 easily accessible, and reasonable mecha-
3 nism by which a teenager or parent of a
4 child with respect to whom the operator
5 processes covered information may request
6 the operator to delete any such covered in-
7 formation (or any component thereof), in-
8 cluding publicly available covered informa-
9 tion submitted to the service by the child
10 or teenager; and

11 “(ii) delete such covered information
12 not later than 45 days after receiving such
13 request.

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

17 “(i) provide each teenager or parent
18 of a child with respect to whom the oper-
19 ator processes covered information, as ap-
20 plicable, a simple, publicly and easily ac-
21 cessible, and reasonable mechanism by
22 which that teenager or parent may submit
23 a request to the operator—

24 “(I) to dispute the accuracy or
25 completeness of that covered informa-

1 tion, or part or component thereof;
2 and

3 “(II) to request that such cov-
4 ered information, or part or compo-
5 nent thereof, be corrected for accuracy
6 or completeness; and

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

9 “(I) determine whether the cov-
10 ered information disputed or re-
11 quested to be corrected is inaccurate
12 or incomplete; and

13 “(II) correct the accuracy or
14 completeness of any covered informa-
15 tion determined by the operator to be
16 inaccurate or incomplete.

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

20 “(i) the operator is unable to verify
21 the identity of the teenager or parent of a
22 child making the request after making a
23 reasonable effort to verify the identity of
24 such teenager or parent;

1 “(ii) with respect to the request made,
2 the operator determines that—

3 “(I) the operator is limited from
4 fulfilling the request by law, legally
5 recognized privilege, or other legal ob-
6 ligation; or

7 “(II) fulfilling the request would
8 create a legitimate risk to the privacy,
9 security, or safety of someone other
10 than the teenager or child, as applica-
11 ble;

12 “(iii) with respect to a request to de-
13 lete covered information made under sub-
14 paragraph (B) or a request to correct cov-
15 ered information made under subpara-
16 graph (C), the operator determines that
17 the retention of the covered information is
18 necessary to—

19 “(I) complete the transaction
20 with the teenager or child, as applica-
21 ble, for which the covered information
22 was collected;

23 “(II) provide a product or service
24 affirmatively requested by the teen-

1 ager or parent of a child, as applica-
2 ble;

3 “**(III)** perform a contract with
4 the teenager or a parent of a child, as
5 applicable, including a contract for
6 billing, financial reporting, or account-
7 ing;

8 “**(IV)** keep a record of the cov-
9 ered information for law enforcement
10 purposes; or

11 “**(V)** identify and repair errors
12 that impair the functionality of the
13 children’s service; or

14 “**(iv)** the covered information is used
15 in public or peer-reviewed scientific, med-
16 ical, or statistical research in the public in-
17 terest that adheres to commonly accepted
18 ethical standards or laws, with informed
19 consent consistent with section 50.20 of
20 title 21, Code of Federal Regulations, if
21 the research is already in progress at the
22 time when the request to access, delete, or
23 correct is made under subparagraph (A),
24 (B), or (C).

1 “(E) PROHIBITION ON LIMITING OR DIS-
2 CONTINUING SERVICE.—An operator of a chil-
3 dren’s service may not refuse to provide a serv-
4 ice, or discontinue a service provided, to a teen-
5 ager or child, if the teenager or parent of the
6 child, as applicable, exercises any of the rights
7 set forth in this paragraph.

8 “(7) ADDITIONAL PROHIBITED PRACTICES
9 WITH RESPECT TO TEENAGERS AND CHILDREN.—

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

12 “(i) process any covered information
13 in a manner that is inconsistent with what
14 a reasonable teenager or parent of a child
15 would expect in the context of a particular
16 transaction or the teenager’s or parent’s
17 relationship with such operator, or seek to
18 obtain verifiable consent for such proc-
19 essing;

20 “(ii) process any covered information
21 in a manner that is harmful or has been
22 shown to be detrimental to the well-being
23 of children or teenagers;

24 “(iii) process covered information for
25 the purpose of providing for targeted per-

1 sonalized advertising or engage in other
2 marketing to a specific child or teenager or
3 group of children or teenagers based on—

4 “(I) using the covered informa-
5 tion, online behavior, or group identi-
6 fiers of such child or teenager or of
7 the children or teenagers in such
8 group; or

9 “(II) using the covered informa-
10 tion or online behavior of children or
11 teenagers who share characteristics
12 with such child or teenager or with
13 the children or teenagers in such
14 group, including income level or pro-
15 tected characteristics or proxies there-
16 of;

17 “(iv) condition the participation of a
18 child or teenager in a game, sweepstakes,
19 or other contest on consenting to the proc-
20 essing of more covered information than is
21 necessary for such child or teenager to par-
22 ticipate;

23 “(v) engage in cross-device tracking of
24 a child or teenager unless the child or
25 teenager is logged-in to a specific service,

1 for the sole purpose of facilitating the pri-
2 mary purpose of the good or service or a
3 specific feature thereof;

4 “(vi) engage in algorithmic processes
5 that discriminate on the basis of race, age,
6 gender, ability, or other protected charac-
7 teristics;

8 “(vii) disclose biometric information;

9 “(viii) disclose geolocation informa-
10 tion; or

11 “(ix) collect geolocation information
12 by default or without making it clear to a
13 user when geolocation tracking is in effect.

14 “(B) EXCEPTIONS.—Nothing in subpara-
15 graph (A) shall prohibit an operator from proc-
16 essing covered information if necessary solely
17 for purposes of—

18 “(i) detecting and preventing security
19 incidents;

20 “(ii) preventing imminent danger to
21 the personal safety of an individual or
22 group of individuals;

23 “(iii) identifying and repairing errors
24 that impair the core functionality of the
25 children’s service; or

1 “(iv) complying with any Federal,
2 State, or local law, rule, regulation, or
3 other legal obligation, including civil, crimi-
4 nal, or regulatory inquiries, investigations,
5 subpoenas, or court orders or other prop-
6 erly executed compulsory process requiring
7 the disclosure of information.

8 “(8) SECURITY REQUIREMENTS.—

9 “(A) IN GENERAL.—An operator of a chil-
10 dren’s service shall establish and implement
11 reasonable security policies, practices, and pro-
12 cedures for the treatment and protection of cov-
13 ered information, taking into consideration—

14 “(i) the size, nature, scope, and com-
15 plexity of the activities engaged in by such
16 operator;

17 “(ii) the sensitivity of any covered in-
18 formation at issue;

19 “(iii) the state of the art in adminis-
20 trative, technical, and physical safeguards
21 for protecting such information; and

22 “(iv) the cost of implementing such
23 policies, practices, and procedures.

24 “(B) SPECIFIC REQUIREMENTS.—The poli-
25 cies, practices, and procedures established by an

1 operator under subparagraph (A) shall include
2 the following:

3 “(i) A written security policy with re-
4 spect to the processing of such covered in-
5 formation.

6 “(ii) The identification of an officer or
7 other individual as the point of contact
8 with responsibility for the management of
9 information security.

10 “(iii) A process for identifying and as-
11 sessing any reasonably foreseeable
12 vulnerabilities in the system or systems
13 maintained by such operator that contains
14 such covered information, including regular
15 monitoring for a breach of security of such
16 system or systems.

17 “(iv) A process for taking preventive
18 and corrective action to mitigate against
19 any vulnerabilities identified in the process
20 required by clause (iii), which may in-
21 clude—

22 “(I) implementing any changes to
23 the security practices, architecture, in-
24 stallation, or implementation of net-
25 work or operating software; and

1 “(II) regular testing or otherwise
2 monitoring the effectiveness of the
3 safeguards.

4 “(v) A process for determining if the
5 covered information is no longer needed
6 and deleting such covered information by
7 shredding, permanently erasing, or other-
8 wise modifying the covered information to
9 make such covered information perma-
10 nently unreadable or indecipherable.

11 “(vi) A process for overseeing persons
12 who have access to covered information, in-
13 cluding through Internet-connected devices,
14 by—

15 “(I) taking reasonable steps to
16 select and retain persons that are ca-
17 pable of maintaining appropriate safe-
18 guards for the covered information or
19 Internet-connected devices at issue;
20 and

21 “(II) requiring all such persons
22 to implement and maintain such secu-
23 rity measures.

24 “(vii) A process for employee training
25 and supervision for implementation of the

1 policies, practices, and procedures required
2 by this subsection.

3 “(viii) A written plan or protocol for
4 internal and public response in the event of
5 a breach of security.

6 “(C) PERIODIC ASSESSMENT AND CON-
7 SUMER PRIVACY AND DATA SECURITY MOD-
8 ERNIZATION.—An operator of a children’s serv-
9 ice shall, not less frequently than every 12
10 months, monitor, evaluate, and adjust, as ap-
11 propriate, the policies, practices, and procedures
12 of such operator in light of any relevant
13 changes in—

14 “(i) technology;

15 “(ii) internal or external threats and
16 vulnerabilities to covered information; and

17 “(iii) the changing business arrange-
18 ments of the operator.

19 “(D) SUBMISSION OF POLICIES TO THE
20 FTC.—An operator of a children’s service shall
21 submit the policies, practices, and procedures
22 established by the operator under subparagraph
23 (A) to the Commission in conjunction with a
24 notification of a breach of security required by

1 any Federal or State statute or regulation or
2 upon request of the Commission.

3 “(b) RULEMAKING REGARDING REQUIREMENTS FOR
4 DIGITAL SERVICES LIKELY TO BE ACCESSED BY CHIL-
5 DREN OR TEENAGERS.—

6 “(1) IN GENERAL.—The Commission shall pro-
7 mulgate regulations under section 553 of title 5,
8 United States Code, that contain requirements for
9 operators of digital services that are not children’s
10 services but are likely to be accessed by children or
11 teenagers, which shall be based on the requirements
12 of subsection (a) but modified as the Commission
13 considers appropriate given a risk-based approach to
14 determine age and to determine and mitigate privacy
15 risks and security risks to the child or teenager, and
16 given differing developmental needs and cognitive ca-
17 pacities of children or teenagers. The Commission
18 may include in such regulations different require-
19 ments for operators of different types of such serv-
20 ices.

21 “(2) BEST INTERESTS OF CHILD OR TEEN-
22 AGER.—The regulations promulgated under para-
23 graph (1) shall require an operator to make the best
24 interests of children and teenagers a primary design
25 consideration when designing its service, including

1 by conducting a privacy and security impact assess-
2 ment and mitigation for the service, addressing all
3 privacy risks to children and teenagers which arise
4 from the processing of covered information, taking
5 into account the best interests of children and teen-
6 agers.

7 “(3) RISK-BASED APPROACH TO DETERMINING
8 AGE OF USER.—

9 “(A) IN GENERAL.—The regulations pro-
10 mulgated under paragraph (1) shall require a
11 risk-based approach to determining the age of
12 a specific user of a digital service under which
13 higher privacy risks and security risks from the
14 processing of covered information require a
15 higher certainty of age assurance.

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

20 “(C) APPROVAL OF AGE ASSURANCE
21 MECHANISMS.—The Commission shall establish
22 in the regulations promulgated under paragraph
23 (1) a process under which an operator may ob-
24 tain the approval of the Commission of par-
25 ticular mechanisms of age assurance as meeting

1 the age assurance requirements of such regula-
2 tions for particular levels of privacy risks.

3 “(D) DATA MINIMIZATION.—The regula-
4 tions required by paragraph (1) shall provide
5 that any data collected for age assurance shall
6 be the minimal amount necessary and destroyed
7 immediately or as determined by the Commis-
8 sion, but consistent with standards that still
9 allow for auditing and compliance.

10 “(c) PROHIBITION ON CERTAIN ADVERTISING OR
11 MARKETING FOR DIGITAL SERVICES LIKELY TO BE
12 ACCESSED BY CHILDREN OR TEENAGERS.—An operator
13 of a digital service that is likely to be accessed by children
14 or teenagers may not process covered information for the
15 purpose of providing for targeted personalized advertising
16 or engage in other marketing to a specific child or teen-
17 ager or group of children or teenagers based on—

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

21 “(2) using the covered information or online be-
22 havior of children or teenagers who share character-
23 istics with such child or teenager or with the chil-
24 dren or teenagers in such group, including income
25 level or protected characteristics or proxies thereof.

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

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

10 (1) in subsection (a)(1)—

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

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

18 (2) in subsection (d)—

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

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

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

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

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

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

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

13 “(d) ACTIONS BY THE COMMISSION.—

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

1 same means, and with the same jurisdiction, power,
2 and duties as though all applicable terms and provi-
3 sions of the Federal Trade Commission Act were in-
4 corporated into and made a part of this title.

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

12 “(3) NATURE OF RELIEF AVAILABLE.—In any
13 action commenced by the Commission under sub-
14 section (a) of section 19 of the Federal Trade Com-
15 mission Act (15 U.S.C. 57b) to enforce section 1303
16 of this title or a regulation promulgated under such
17 section, the Commission shall seek all appropriate
18 relief described in subsection (b) of such section 19,
19 and may, notwithstanding such subsection, seek any
20 exemplary or punitive damages.”.

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

24 (1) in subsection (b)—

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

7 (B) in paragraph (6), by striking “Federal
8 land bank, Federal land bank association, Fed-
9 eral intermediate credit bank, or production
10 credit association” and inserting “Farm Credit
11 Bank, Agricultural Credit Bank (to the extent
12 exercising the authorities of a Farm Credit
13 Bank), Federal Land Credit Association, or ag-
14 ricultural credit association”; and

15 (C) by striking paragraph (2) and redesi-
16 gnating paragraphs (3) through (6) as para-
17 graphs (2) through (5), respectively; and

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

21 **SEC. 6. REVIEW.**

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

24 (1) in the matter preceding paragraph (1), by
25 striking “the regulations initially issued under sec-

1 tion 1303” and inserting “the regulations issued
2 under section 10(a) of the Protecting the Informa-
3 tion of our Vulnerable Children and Youth Act (re-
4 lating to the implementation of the amendments
5 made by such Act to this title)”;

6 (2) by amending paragraph (1) to read as fol-
7 lows:

8 “(1) review the implementation of this title, in-
9 cluding the effect of the implementation of this title
10 on practices relating to the processing of covered in-
11 formation about teenagers or children and teenager’s
12 and children’s ability to obtain access to information
13 of their choice online; and”.

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

15 The Children’s Online Privacy Protection Act of 1998
16 (15 U.S.C. 6501 et seq.) is amended—

17 (1) by redesignating sections 1307 and 1308 as
18 sections 1308 and 1309, respectively; and

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

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

22 “(a) **RIGHT OF ACTION.**—Any parent of a teenager
23 or parent of a child alleging a violation of section 1303
24 or a regulation promulgated under such section with re-
25 spect to the covered information of such teenager or child

1 may bring a civil action in any court of competent jurisdic-
2 tion.

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

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

10 “(1) injunctive relief;

11 “(2) actual damages;

12 “(3) punitive damages;

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

14 “(5) any other relief that the court determines
15 appropriate.

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

17 “(1) IN GENERAL.—No pre-dispute arbitration
18 agreement or pre-dispute joint-action waiver shall be
19 valid or enforceable with respect to any claim arising
20 under section 1303 or a regulation promulgated
21 under such section.

22 “(2) DETERMINATION.—A determination as to
23 whether and how this title or a regulation promul-
24 gated under this title applies to an arbitration agree-
25 ment shall be determined under Federal law by the

1 court, rather than the arbitrator, irrespective of
2 whether the party opposing arbitration challenges
3 such agreement specifically or in conjunction with
4 any other term of the contract containing such
5 agreement.

6 “(3) DEFINITIONS.—As used in this sub-
7 section—

8 “(A) the term ‘pre-dispute arbitration
9 agreement’ means any agreement to arbitrate a
10 dispute that has not arisen at the time of the
11 making of the agreement; and

12 “(B) the term ‘pre-dispute joint-action
13 waiver’ means an agreement, whether or not
14 part of a pre-dispute arbitration agreement,
15 that would prohibit, or waive the right of, one
16 of the parties to the agreement to participate in
17 a joint, class, or collective action in a judicial,
18 arbitral, administrative, or other forum, con-
19 cerning a dispute that has not yet arisen at the
20 time of the making of the agreement.

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

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

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

5 “(f) RELATIONSHIP TO OTHER LAW.—

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

12 “(2) STATE LAW.—Nothing in this title or a
13 regulation promulgated under this title may be con-
14 strued to preempt, displace, or supplant any State
15 common law or statute, except to the extent that any
16 such common law or statute specifically and directly
17 conflicts with the provisions of this title or a regula-
18 tion promulgated under this title, and then only to
19 the extent of the specific and direct conflict. Any
20 such common law or statute is not in specific and
21 direct conflict if it affords a greater level of protec-
22 tion to a child or teenager than the provisions of this
23 title or a regulation promulgated under this title.

24 “(3) SECTION 230 OF THE COMMUNICATIONS
25 ACT OF 1934.—Nothing in section 230 of the Com-
26 munications Act of 1934 (47 U.S.C. 230) may be

1 construed to impair or limit the provisions of this
2 title or a regulation promulgated under this title.”.

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

4 The heading of title XIII of division C of the Omni-
5 bus Consolidated and Emergency Supplemental Appro-
6 priations Act, 1999 (Public Law 105–277; 112 Stat.
7 2681–728) is amended by inserting “**AND TEEN-**
8 **AGER’S**” after “**CHILDREN’S**”.

9 **SEC. 10. IMPLEMENTING REGULATIONS.**

10 (a) IN GENERAL.—Not later than 1 year after the
11 date of the enactment of this Act, the Commission shall
12 promulgate regulations under section 553 of title 5,
13 United States Code, to implement the amendments made
14 by this Act, including the regulations required by sub-
15 section (b) of section 1303 of the Children’s Online Pri-
16 vacy Protection Act of 1998, as amended by this Act.

17 (b) REVIEW AND REVISION.—Not later than 10 years
18 after the date on which the Commission promulgates the
19 regulations required by subsection (a), the Commission
20 shall review such regulations and, if the Commission con-
21 siders revisions to such regulations appropriate, promul-
22 gate such revisions under section 553 of title 5, United
23 States Code.

1 **SEC. 11. YOUTH PRIVACY AND MARKETING DIVISION.**

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

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

8 (c) DUTIES.—The Youth Privacy and Marketing Di-
9 vision shall be responsible for addressing, as it relates to
10 this Act and the amendments made by this Act—

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

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

14 (d) STAFF.—The Director of the Youth Privacy and
15 Marketing Division shall hire adequate staff to carry out
16 the duties under subsection (c), including individuals who
17 are experts in data protection, digital advertising, data
18 analytics, and youth development.

19 (e) REPORTS.—Not later than 1 year after the date
20 of the enactment of this Act, and each year thereafter,
21 the Director of the Youth Privacy and Marketing Division
22 shall submit to the Committee on Commerce, Science, and
23 Transportation of the Senate and the Committee on En-
24 ergy and Commerce of the House of Representatives a re-
25 port that includes—

1 (1) a description of the work of the Youth Pri-
2 vacy and Marketing Division on emerging concerns
3 relating to youth privacy and marketing practices;
4 and

5 (2) an assessment of how effectively the Com-
6 mission has, during the period for which the report
7 is submitted, addressed youth privacy and marketing
8 practices.

9 (f) DEFINITIONS.—In this section, the terms “child”
10 and “teenager” have the meanings given such terms in
11 section 1302 of the Children’s Online Privacy Protection
12 Act of 1998 (15 U.S.C. 6501), as amended by this Act.

13 **SEC. 12. COMMISSION DEFINED.**

14 In this Act, the term “Commission” means the Fed-
15 eral Trade Commission.

16 **SEC. 13. EFFECTIVE DATE.**

17 The amendments made by this Act shall take effect
18 on the date that is 1 year after the Commission promul-
19 gates the regulations required by section 10(a).