116TH CONGRESS

1ST SESSION

To establish a National Commission on Online Child Exploitation Prevention, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. GRAHAM introduced the following bill; which was read twice and referred to the Committee on

A BILL

To establish a National Commission on Online Child Exploitation Prevention, and for other purposes.

1 Be it enacted by the Senate and House of Representa
tives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.
3 This Act may be cited as the “Eliminating Abusive
5 and Rampant Neglect of Interactive Technologies Act of
6 2019” or the “EARN IT Act of 2019”.

7 SEC. 2. DEFINITIONS.
8 In this Act:
9 (1) CHAIRMAN.—The term “Chairman” means
10 the Chairman of the Federal Trade Commission.

1 (2) COMMISSION.—The term “Commission”
2 means the National Commission on Online Child Ex
3 ploitation Prevention.
4 (3) INTERACTIVE COMPUTER SERVICE.—The
5 term “interactive computer service” has the meaning
6 given the term in section 230(f)(2) of the Commu
7 nications Act of 1934 (47 U.S.C. 230(f)(2)).
8 (4) INSTITUTION OF HIGHER EDUCATION.—The
9 term “institution of higher education” has the
10 meaning given the term in section 101 of the Higher

12 SEC. 3. NATIONAL COMMISSION ON ONLINE CHILD EXPOI
13 TATION PREVENTION.
14 (a) ESTABLISHMENT.—There is established a Na
15 tional Commission on Online Child Exploitation Preven
(b) PURPOSE.—The purpose of the Commission is to develop recommended best practices for providers of interactive computer services regarding the prevention of online child exploitation conduct.

(c) MEMBERSHIP.—

(1) COMPOSITION.—

(A) IN GENERAL.—The Commission shall be composed of 15 members.

(B) AGENCY HEADS.—The following Federal officials shall serve as members of the Commission:

(i) The Attorney General or his or her representative.

(ii) The Secretary of Homeland Security or his or her representative.

(iii) The Chairman or his or her representative.

(C) OTHER MEMBERS.—Of the remaining 12 members of the Commission—

(i) 3 shall be appointed by the Majority Leader of the Senate;

(ii) 3 shall be appointed by the Minority Leader of the Senate;

(iii) 3 shall be appointed by the Speaker of the House of Representatives;

(iv) 3 shall be appointed by the Minority Leader of the House of Representatives.

(2) QUALIFICATIONS.—Of the 12 members of the Commission appointed under paragraph (1)(C)—

(A) 2 shall have experience in handling internet crimes against children in a law enforcement capacity; 

(B) 2 shall have experience in handling
5 internet crimes against children in a prosecu
torial capacity;
7 (C) 2 shall have experience in providing
8 victims services for victims of child exploitation;
9 (D) 2 shall have experience in computer
science or software engineering;
11 (E) 2 shall have experience in child safety
12 at an interactive computer service with not less
13 than 30,000,000 registered monthly users in
14 the United States; and
15 (F) 2 shall have experience in child safety
16 at an interactive computer service with less
17 than 10,000,000 registered monthly users in
18 the United States.
19 (3) DATE.—The initial appointments of mem-
bers to the Commission under paragraph (1)(C)
shall be made not later than 90 days after the date
of enactment of this Act.
23 (d) PERIOD OF APPOINTMENT; VACANCIES.—

1 (1) PERIOD OF APPOINTMENT.—A member of
the Commission shall be appointed for a term of 5
3 years.
4 (2) VACANCIES.—
5 (A) AFFECT ON COMMISSION.—Any va-
cancy in the Commission shall not affect the
powers of the Commission.
6 (B) FILLING OF VACANCIES.—A vacancy
in the Commission shall be filled in the same
manner as the original appointment under sub-
section (c)(1).
7 (e) INITIAL MEETING.—The Commission shall hold
the first meeting of the Commission not later than 60 days
after the date on which a majority of the members of the
Commission have been appointed.
8 (f) CHAIRPERSON.—The Attorney General or his or
her representative shall serve as the Chairperson of the
Commission.
9 (g) QUORUM.—A majority of the members of the
Commission shall constitute a quorum, but a lesser num
ber of members may hold a meeting.

(h) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(i) AUTHORITY OF COMMISSION.—The Commission may, for the purpose of carrying out this section and sec

1 tion 4, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(j) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission may secure directly from any Federal department or agency such information as the Commission considers nec

8 essary to carry out this section and section 4.

(2) FURNISHING INFORMATION.—Upon request of the Chairperson of the Commission for informa

tion under paragraph (1), the head of a Federal de

partment or agency shall furnish the information to the Commission.

(k) TRAVEL EXPENSES.—A member of the Commis

sion shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under sub chapter I of chapter 57 of title 5, United States Code, while away from the home or regular places of business of the member in the performance of services for the Com

mission.

(l) DURATION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

SEC. 4. DUTIES OF THE COMMISSION.

(a) RECOMMENDED BEST PRACTICES.—

(1) INITIAL RECOMMENDATIONS.—

(A) IN GENERAL.—Not later than [18 months] after the date on which a majority of the members of the Commission required to be appointed under section 3(c)(1)(C) have been so appointed, the Commission shall develop and
9 submit to the Attorney General recommended 10 best practices regarding the prevention of online 11 child exploitation conduct.

12 (B) ALTERNATIVE BEST PRACTICES.—In 13 carrying out subparagraph (A), in addition to 14 the primary set of best practices developed and 15 submitted, the Commission may develop and 16 submit alternative best practices that take into 17 consideration the size, type of product, or busi 18 ness model of a provider of an interactive com 19 puter service.

20 (2) SUPPORT REQUIREMENT.—The Commission 21 may only recommend a best practice under para 22 graph (1) if not fewer than 10 members of the Com 23 mission support the best practice.

24 (3) MATTERS ADDRESSED.—The matters ad 25 dressed by the recommended best practices devel 26

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1 opened and submitted by the Commission under para 2 graph (1) shall include—

3 (A) identifying, categorizing, and reporting 4 material related to child exploitation or child 5 sexual abuse;

6 (B) coordinating with law enforcement 7 agencies and other industry participants to pre 8 serve, remove from view, and report material 9 relating to child exploitation or child sexual 10 abuse;

11 (C) retention of evidence and attribution or 12 user identification data relating to child exploit 13 tation or child sexual abuse, including such re 14 tention by subcontractors;

15 (D) receiving and triaging reports of child 16 exploitation or child sexual abuse from users of 17 interactive computer services;

18 (E) implementing a rating system to cat 19 ergorize the severity of images and videos related 20 to child exploitation or child sexual abuse;

21 (F) employing age limits and age
22 verification systems;  
23 (G) employing age ratings and related dis  
24 closures;  

1 (H) outsourcing child exploitation or child  
2 sexual abuse prevention services to third par  
3 ties; and  
4 (I) offering parental control products that  
5 enable customers to limit the types of internet  
6 websites and content accessible to children.  
7 (4) RELEVANT CONSIDERATIONS.——In devel  
8 oping best practices under paragraph (1), the Com  
9 mission shall consider the interest of providers of  
10 interactive computer services in providing customers  
11 with quality products, data security, and privacy.  
12 (5) BIENNIAL UPDATES.——Not less frequently  
13 than once every 2 years, the Commission shall up  
14 date and resubmit to the Attorney General rec  
15 ommended best practices under paragraph (1).  
16 (b) PUBLICATION OF BEST PRACTICES.——  
17 (1) IN GENERAL.——Not later than [__]  
18 after  
19 the date on which the Commission submits rec  
20 ommended best practices under subsection (a), in  
21 cluding updated recommended best practices under  
22 paragraph (5) of that subsection, the Attorney Gen  
23 eral shall—  
24 (A) review, and modify if necessary, the  
25 recommended best practices; and  

1 (B) publish a final version of the best  
2 practices on the website of the Department of  
3 Justice and in the Federal Register.  
4 (2) WRITTEN FINDINGS.——Any modification  
5 made by the Attorney General under paragraph (1)  
6 shall be accompanied by written findings setting  
7 forth the basis for, and reasons supporting, the  
8 modification.
9 (c) Certification of Best Practices.—Not later than 1 year after the Attorney General first publishes the best practices under subsection (b), and annually thereafter, an officer of a provider of an interactive computer service shall submit a written certification to the Attorney General stating that—
   
   (1) the provider has conducted a thorough review of the implementation and operation of the best practices; and
   
   (2) such review does not reveal any material non-compliance with the requirements of the best practices.

(d) Civil Investigative Demands.—

(1) Issuance; Service; Production of Material; Testimony.—

(A) In General.—Whenever the Attorney General has reason to believe that an officer of a provider of an interactive computer service has filed a false certification under subsection (c), the Attorney General may issue in writing, and cause to be served upon the provider, a civil investigative demand requiring the provider to—

   (i) produce any documentary material relevant to such certification for inspection and copying;
   
   (ii) answer in writing written interrogatories with respect to such documentary material;
   
   (iii) give oral testimony concerning such documentary material; or
   
   (iv) furnish any combination of such material, answers, or testimony.

(B) Service.—If a civil investigative demand issued under subparagraph (A) is an express demand for any product of discovery, the Attorney General shall—

   (i) cause to be served, in any manner
authorized under section 3733 of title 31, United States Code, a copy of the demand upon the person from whom the discovery was obtained; and

1 (ii) notify the person to whom the demand is issued of the date on which the copy was served.

(2) CONTENTS; RETURN DATE FOR DEMAND FOR PRODUCT OF DISCOVERY.—

(A) IN GENERAL.—Each civil investigative demand issued under paragraph (1) shall—

(i) state the nature of the Attorney General’s belief that a false certification has been filed under subsection (c);

(ii) if the demand is for production of documentary material—

(I) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(II) prescribe a return date or dates that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) if the demand is for answers to written interrogatories—

(I) propound with definiteness and certainty the written interrogatories to be answered;

(II) prescribe a date or dates at
10 which time answers to written inter
11 rogatories shall be submitted; and
12 (III) identify the custodian to
13 whom the answers shall be submitted;
14 and
15 (iv) if the demand is for the giving of
16 oral testimony—
17 (I) prescribe a date, time, and
18 place at which oral testimony shall be
19 commenced; and
20 (II) identify—
21 (aa) an investigator who
22 shall conduct the examination;
23 and

1 (bb) the custodian to whom
2 the transcript of the examination
3 shall be submitted.
4 (B) RETURN DATE FOR PRODUCT OF DIS
5 COVERY.—Any civil investigative demand issued
6 under paragraph (1) that is an express demand
7 for any product of discovery shall not be re
8 turned or returnable until 20 days after a copy
9 of the demand has been served upon the person
10 from whom the discovery was obtained.
11 (3) APPLICABILITY OF OTHER PROVISIONS.—
12 (A) IN GENERAL.—Subject to subpara
13 graph (B), subsections (b) through (l) of sec
14 tion 3733 of title 31, United States Code, shall
15 apply with respect to a civil investigative de
16 mand issued under paragraph (1) of this sub
17 section in the same manner as those sub
18 sections apply to a civil investigative demand
19 issued under subsection (a) of such section
20 3733.
21 (B) FALSE CLAIMS REFERENCES.—For
22 purposes of subparagraph (A), a reference in
23 section 3733 of title 31, United States Code,
24 to—
1 (i) a violation of a false claims law shall be deemed to be a reference to the filing of a false certification under subsection (c) of this section;
2 (ii) a false claims law investigation shall be deemed to be a reference to an inquiry into whether any person is or has been engaged in filing a false certification under subsection (c) of this section; and
3 (iii) a false claims law investigator shall be deemed to be a reference to—
4 (I) any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect this section; or
5 (II) any officer or employee of the United States acting under the direction and supervision of an attorney or investigator described in subclause (I) in connection with an inquiry into whether any person is or has been engaged in filing a false certification under subsection (c) of this section.

SEC. 5. ENFORCEMENT.
1 (a) OFFENSE.—It shall be unlawful for an officer of a provider of an interactive computer service to knowingly submit a written certification under section 4(c) that contains a false statement.
2 (b) CRIMINAL PENALTIES.—Any person who violates subsection (a) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

SEC. 6. EARNING IMMUNITY.
1 (a) IN GENERAL.—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by
13 adding at the end the following:
14 ""(6) NO EFFECT ON CHILD SEXUAL EXPLOI
15 TATION LAW.—
16 ""(A) LIABILITY OF PROVIDERS OF INTER
17 ACTIVE COMPUTER SERVICE.—Nothing in this
18 section (other than subsection (c)(2)(A)) shall
19 be construed to impair or limit—
20 ""(i) any claim in a civil action
21 brought against a provider of an inter
22 active computer service under section 2255
23 of title 18, United States Code, if the con
24 duct underlying the claim—
25 ""(I) constitutes a violation of sec
26 tion 2252 of that title; or

1 ""(II) is considered a violation of
2 section 2252 of that title by operation
3 of subsection (a)(2) of such section
4 2255;
5 ""(ii) any charge in a criminal prosecu
6 tion brought against a provider of an inter
7 active computer service under State law if
8 the conduct underlying the charge would
9 constitute a violation of section 2252 of
10 title 18, United States Code; or
11 ""(iii) any claim in a civil action
12 brought against a provider of an inter
13 active computer service under State law if
14 the conduct underlying the claim—
15 ""(I) would constitute a violation
16 of section 2252 of title 18, United
17 States Code; or
18 ""(II) would be considered a viola
19 tion of section 2252 of title 18,
20 United States Code, for purposes of
21 subsection (a)(1) of section 2255 of
22 that title, by operation of subsection
23 (a)(2) of such section 2255.
24 ""(B) SAFE HARBOR.—Subparagraph (A)
shall not apply to a claim in a civil action or

charge in a criminal prosecution brought
against a provider of an interactive computer
service if—

‘‘(i) the provider has implemented rea
sonable measures relating to the matters
described in section 4(a)(2) of the Elimi
nating Abusive and Rampant Neglect of
Interactive Technologies Act of 2019 to
prevent the use of the interactive computer
service for the exploitation of minors; or

‘‘(ii) an officer of the provider has
certified to the Attorney General under
subsection (c) of section 4 of the Elimi
nating Abusive and Rampant Neglect of
Interactive Technologies Act of 2019 that
the provider has implemented, and is in
compliance with, the child exploitation pre
vention best practices published by the At
torney General under subsection (b) of
that section.’’.

(b) MENS REA FOR CIVIL SUITS.—Section 2255 of
title 18, United States Code, is amended—

(1) by redesignating subsection (a) as para
graph (1) and adjusting the margin accordingly;

(2) by inserting before paragraph (1), as so
designated, the following:

‘‘(a) RIGHT OF ACTION.—’’; and

(3) in subsection (a), as so designated, by add
ing at the end the following:

‘‘(2) CIVIL REMEDY FOR CERTAIN ACTIVITIES
RELATING TO MATERIAL INVOLVING THE SEXUAL
EXPLOITATION OF MINORS.—Conduct by a provider
of an interactive computer service (as defined in sec
tion 230 of the Communications Act of 1934 (47
U.S.C. 230)) that would violate section 2252 if that
section were applied by substituting ‘recklessly’ for
‘knowingly’ each place that term appears shall be
considered a violation of section 2252 for purposes
of paragraph (1) of this subsection.’’.
(c) EFFECTIVE DATE.—The amendments made by
this section shall take effect on the earlier of—
(1) the date that is 1 year after the date on
which the Attorney General first publishes the best
practices under section 4(b); or
(2) the date that is [4] years after the date of
enactment of this Act.
SEC. 7. AUTHORIZATION OF APPROPRIATIONS.
There are authorized to be appropriated such sums
as may be necessary to carry out this Act.