

116TH CONGRESS

1ST SESSION **S.** _____

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
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 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.

11 (2) **COMMISSION.**—The term “Commission”
12 means the National Commission on Online Child Ex
13 ploitation Prevention.

14 (3) **INTERACTIVE COMPUTER SERVICE.**—The
15 term “interactive computer service” has the meaning
16 given the term in section 230(f)(2) of the Commu
17 nications Act of 1934 (47 U.S.C. 230(f)(2)).

18 (4) **INSTITUTION OF HIGHER EDUCATION.**—The
19 term “institution of higher education” has the
20 meaning given the term in section 101 of the Higher
21 Education Act of 1965 (20 U.S.C. 1001).

22 **SEC. 3. NATIONAL COMMISSION ON ONLINE CHILD EXPLOI
23 TATION PREVENTION.**

24 (a) **ESTABLISHMENT.**—There is established a Na
25 tional Commission on Online Child Exploitation Preven

16 tion.

17 (b) PURPOSE.—The purpose of the Commission is to
18 develop recommended best practices for providers of inter
19 active computer services regarding the prevention of online
20 child exploitation conduct.

21 (c) MEMBERSHIP.—

22 (1) COMPOSITION.—

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

1 (B) AGENCY HEADS.—The following Fed
2 eral officials shall serve as members of the
3 Commission:

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

6 (ii) The Secretary of Homeland Secu
7 rity or his or her representative.

8 (iii) The Chairman or his or her rep
9 resentative.

10 (C) OTHER MEMBERS.—Of the remaining
11 12 members of the Commission—

12 (i) 3 shall be appointed by the Major
13 ity Leader of the Senate;

14 (ii) 3 shall be appointed by the Minor
15 ity Leader of the Senate;

16 (iii) 3 shall be appointed by the
17 Speaker of the House of Representatives;
18 and

19 (iv) 3 shall be appointed by the Mi
20 nority Leader of the House of Representa
21 tives.

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

1 (A) 2 shall have experience in handling
2 internet crimes against children in a law en
3 forcement capacity;

4 (B) 2 shall have experience in handling

5 internet crimes against children in a prosecu
6 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
10 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
20 bers to the Commission under paragraph (1)(C)
21 shall be made not later than 90 days after the date
22 of enactment of this Act.

23 (d) PERIOD OF APPOINTMENT; VACANCIES.—

1 (1) PERIOD OF APPOINTMENT.—A member of
2 the Commission shall be appointed for a term of 5
3 years.

4 (2) VACANCIES.—

5 (A) AFFECT ON COMMISSION.—Any va
6 cancy in the Commission shall not affect the
7 powers of the Commission.

8 (B) FILLING OF VACANCIES.—A vacancy
9 in the Commission shall be filled in the same
10 manner as the original appointment under sub
11 section (c)(1).

12 (e) INITIAL MEETING.—The Commission shall hold
13 the first meeting of the Commission not later than 60 days
14 after the date on which a majority of the members of the
15 Commission have been appointed.

16 (f) CHAIRPERSON.—The Attorney General or his or
17 her representative shall serve as the Chairperson of the
18 Commission.

19 (g) QUORUM.—A majority of the members of the
20 Commission shall constitute a quorum, but a lesser num

21 ber of members may hold a meeting.

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

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

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

4 (j) INFORMATION FROM FEDERAL AGENCIES.—

5 (1) IN GENERAL.—The Commission may secure
6 directly from any Federal department or agency
7 such information as the Commission considers nec
8 essary to carry out this section and section 4.

9 (2) FURNISHING INFORMATION.—Upon request
10 of the Chairperson of the Commission for informa
11 tion under paragraph (1), the head of a Federal de
12 partment or agency shall furnish the information to
13 the Commission.

14 (k) TRAVEL EXPENSES.—A member of the Commis
15 sion shall serve without compensation, but shall be allowed
16 travel expenses, including per diem in lieu of subsistence,
17 at rates authorized for employees of agencies under sub
18 chapter I of chapter 57 of title 5, United States Code,
19 while away from the home or regular places of business
20 of the member in the performance of services for the Com
21 mission.

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

1 **SEC. 4. DUTIES OF THE COMMISSION.**

2 (a) RECOMMENDED BEST PRACTICES.—

3 (1) INITIAL RECOMMENDATIONS.—

4 (A) IN GENERAL.—Not later than [18
5 months] after the date on which a majority of
6 the members of the Commission required to be
7 appointed under section 3(c)(1)(C) have been so
8 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

1 oped 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 ation 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 egorize 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.—

(1) IN GENERAL.—Not later than []
17 after

18 the date on which the Commission submits rec
19 ommended best practices under subsection (a), in
20 cluding updated recommended best practices under
21 paragraph (5) of that subsection, the Attorney Gen
22 eral shall—

23 (A) review, and modify if necessary, the
24 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
10 than 1 year after the Attorney General first publishes the
11 best practices under subsection (b), and annually there
12 after, an officer of a provider of an interactive computer
13 service shall submit a written certification to the Attorney
14 General stating that—
15 (1) the provider has conducted a thorough re
16 view of the implementation and operation of the best
17 practices; and
18 (2) such review does not reveal any material
19 non-compliance with the requirements of the best
20 practices.
21 (d) CIVIL INVESTIGATIVE DEMANDS.—
22 (1) ISSUANCE; SERVICE; PRODUCTION OF MATE
23 RIAL; TESTIMONY.—
24 (A) IN GENERAL.—Whenever the Attorney
25 General has reason to believe that an officer of

1 a provider of an interactive computer service
2 has filed a false certification under subsection
3 (c), the Attorney General may issue in writing,
4 and cause to be served upon the provider, a
5 civil investigative demand requiring the provider
6 to—
7 (i) produce any documentary material
8 relevant to such certification for inspection
9 and copying;
10 (ii) answer in writing written interro
11 atories with respect to such documentary
12 material;
13 (iii) give oral testimony concerning
14 such documentary material; or
15 (iv) furnish any combination of such
16 material, answers, or testimony.
17 (B) SERVICE.—If a civil investigative de
18 mand issued under subparagraph (A) is an ex
19 press demand for any product of discovery, the
20 Attorney General shall—
21 (i) cause to be served, in any manner

22 authorized under section 3733 of title 31,
23 United States Code, a copy of the demand
24 upon the person from whom the discovery
25 was obtained; and

1 (ii) notify the person to whom the de
2 mand is issued of the date on which the
3 copy was served.

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

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

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

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

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

18 (II) prescribe a return date or
19 dates that will provide a reasonable
20 period of time within which the mate
21 rial so demanded may be assembled
22 and made available for inspection and
23 copying; and

1 (III) identify the custodian to
2 whom the material shall be made
3 available;

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

6 (I) propound with definiteness
7 and certainty the written interrog
8 atories to be answered;

9 (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
2 shall be deemed to be a reference to the fil
3 ing of a false certification under subsection
4 (c) of this section;
5 (ii) a false claims law investigation
6 shall be deemed to be a reference to an in
7 quiry into whether any person is or has
8 been engaged in filing a false certification
9 under subsection (c) of this section; and
10 (iii) a false claims law investigator
11 shall be deemed to be a reference to—
12 (I) any attorney or investigator
13 employed by the Department of Jus
14 tice who is charged with the duty of
15 enforcing or carrying into effect this
16 section; or
17 (II) any officer or employee of
18 the United States acting under the di
19 rection and supervision of an attorney
20 or investigator described in subclause
21 (I) in connection with an inquiry into
22 whether any person is or has been en
23 gaged in filing a false certification
24 under subsection (c) of this section.

1 **SEC. 5. ENFORCEMENT.**

2 (a) **OFFENSE.**—It shall be unlawful for an officer of
3 a provider of an interactive computer service to knowingly
4 submit a written certification under section 4(c) that con
5 tains a false statement.

6 (b) **CRIMINAL PENALTIES.**—Any person who violates
7 subsection (a) shall be fined in accordance with title 18,
8 United States Code, imprisoned for not more than 2 years,
9 or both.

10 **SEC. 6. EARNING IMMUNITY.**

11 (a) **IN GENERAL.**—Section 230(e) of the Commu
12 nications 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)

25 shall not apply to a claim in a civil action or

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

4 “(i) the provider has implemented rea-
5 sonable measures relating to the matters
6 described in section 4(a)(2) of the Elimi-
7 nating Abusive and Rampant Neglect of
8 Interactive Technologies Act of 2019 to
9 prevent the use of the interactive computer
10 service for the exploitation of minors; or
11 “(ii) an officer of the provider has
12 certified to the Attorney General under
13 subsection (c) of section 4 of the Elimi-
14 nating Abusive and Rampant Neglect of
15 Interactive Technologies Act of 2019 that
16 the provider has implemented, and is in
17 compliance with, the child exploitation pre-
18 vention best practices published by the At-
19 torney General under subsection (b) of
20 that section.”.

21 (b) MENS REA FOR CIVIL SUITS.—Section 2255 of
22 title 18, United States Code, is amended—
23 (1) by redesignating subsection (a) as para-
24 graph (1) and adjusting the margin accordingly;

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

3 “(a) RIGHT OF ACTION.—”; and

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

6 “(2) CIVIL REMEDY FOR CERTAIN ACTIVITIES

7 RELATING TO MATERIAL INVOLVING THE SEXUAL

8 EXPLOITATION OF MINORS.—Conduct by a provider

9 of an interactive computer service (as defined in sec-

10 tion 230 of the Communications Act of 1934 (47

11 U.S.C. 230)) that would violate section 2252 if that

12 section were applied by substituting ‘recklessly’ for
13 ‘knowingly’ each place that term appears shall be
14 considered a violation of section 2252 for purposes
15 of paragraph (1) of this subsection.’’.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the earlier of—
18 (1) the date that is 1 year after the date on
19 which the Attorney General first publishes the best
20 practices under section 4(b); or
21 (2) the date that is [4] years after the date of
22 enactment of this Act.

23 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

24 There are authorized to be appropriated such sums
25 as may be necessary to carry out this Act.