



KEEP KIDS  
**SAFE** AND  
**CONNECTED**

# KOSA

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**Not Keeping Kids Safe Online**



# SECTION 102

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# DUTY OF CARE



# Duty of Care/Negligence Standard Will Lead to Online Censorship and Cut Off Access to Information, Communities, Services

5 **SEC. 102. DUTY OF CARE.**

6 (a) **PREVENTION OF HARM TO MINORS.**—A covered  
7 platform shall exercise reasonable care in the creation and  
8 implementation of any design feature to prevent and miti-  
9 gate the following harms to minors:

- Requiring platforms to “exercise reasonable care” is a negligence standard; and will lead to removal of any possible objectionable content. Subject to broad interpretation by courts and the FTC, which is made up of political appointees.
- Content removal is likely to be influenced by the political climate and will cause a race to the bottom and restrict content available to all internet users including adults.



# Ambiguous Categories Compound First Amendment Concerns

10 (1) Consistent with evidence-informed medical  
11 information, the following mental health disorders:  
12 anxiety, depression, eating disorders, substance use  
13 disorders, and suicidal behaviors.

14 (2) Patterns of use that indicate or encourage  
15 addiction-like behaviors by minors.

16 (3) Physical violence, online bullying, and har-  
17 assment of the minor.

18 (4) Sexual exploitation and abuse of minors.

19 (5) Promotion and marketing of narcotic drugs  
20 (as defined in section 102 of the Controlled Sub-  
21 stances Act (21 U.S.C. 802)), tobacco products,  
22 gambling, or alcohol.

23 (6) Predatory, unfair, or deceptive marketing  
24 practices, or other financial harms.

- **Restricted content includes protected speech and ambiguous categories of content that will be impossible to implement consistently.**
- **Will compound censorship and First Amendment concerns. Censorship will be subject to the discretion of companies and partisan politicians.**



# Subjective Interpretations May Lead to Censorship

1 (b) LIMITATION.—Nothing in subsection (a) shall be  
2 construed to require a covered platform to prevent or pre-  
3 clude—  
4 (1) any minor from deliberately and independ-  
5 ently searching for, or specifically requesting, con-  
6 tent; or  
7 (2) the covered platform or individuals on the  
8 platform from providing resources for the prevention  
9 or mitigation of the harms described in subsection  
10 (a), including evidence-informed information and  
11 clinical resources.

- Intended to address censorship concerns, but no reliable way to distinguish between “good” and “bad” content in each harm category.
- In practice, limitation will permit access only to pockets of pre-approved content like government-approved public service announcements.





# SECTION 103

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# SAFEGUARDS FOR MINORS



# Censorship Disguised as Child Safety Protections

## **SEC. 103. SAFEGUARDS FOR MINORS.**

Required safeguards and control mechanisms will lead companies to limit, block, or filter content created or accessed by all internet users.



# Requires Age Verification; Introduces Significant Privacy & Cybersecurity Risks

14 (1) SAFEGUARDS.—A covered platform shall  
15 provide a user or visitor that the covered platform  
16 knows is a minor with readily-accessible and easy-to-  
17 use safeguards to, as applicable—

- Will require platforms to implement age verification methods, not feasible with current technology absent collecting significantly more data from users of all ages - not just kids.
- Age verification requirements are privacy-invasive. This subsection does not protect a minor's personal data from being collected or shared.





# Application to Schools Will Undermine Educational Objectives

20 (B) prevent other users or visitors, wheth-  
21 er registered or not, from viewing the minor's  
22 personal data collected by or shared on the cov-  
23 ered platform, in particular restricting public  
24 access to personal data;

- Expansive definitions of what types of companies are covered in this legislation include technologies used in classrooms.
- In a school setting, this language creates problems for a teacher needing to review a student's work or inhibit group learning experiences in school.



# Application to Schools Will Permit Students to Delete School Records

20 (2) OPTIONS.—A covered platform shall provide  
21 a user that the covered platform knows is a minor  
22 with readily-accessible and easy-to-use options to—  
23 (A) delete the minor’s account and delete  
24 any personal data collected from, or shared by,  
25 the minor on the covered platform; or

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1 (B) limit the amount of time spent by the  
2 minor on the covered platform.

- **Expansive definitions of what types of companies are covered in this legislation include technologies used in classrooms.**
- **This language could require providers of classroom technologies to provide children the ability to delete the account and data without the knowledge of parents or their school.**





# SECTION 104

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# DISCLOSURE



# Application to Schools Will Undermine Adaptive Learning

8 (b) PERSONALIZED RECOMMENDATION SYSTEM.—A  
9 covered platform that operates a personalized rec-  
10 ommendation system shall set out in its terms and condi-  
11 tions, in a clear, conspicuous, and easy-to-understand  
12 manner—

13 (1) an overview of how such personalized rec-  
14 ommendation system is used by the covered platform  
15 to provide information to minors, including how such  
16 systems use the personal data of minors; and

17 (2) information about options for minors or  
18 their parents to opt out of or control the personal-  
19 ized recommendation system (as applicable).

- **Opt-out may impact technologies used for adaptive learning that allow a student to progress through a lesson based on their skills and knowledge - e.g., if a student has mastered addition they may move on to subtraction.**
- **Without this adaptive learning, they would need to complete all lessons despite mastery.**



# Limitations on Providing Age-Appropriate Content

17           (2) information about options for minors or  
18           their parents to opt out of or control the personal-  
19           ized recommendation system (as applicable).

Limits the ability of platforms to provide age-appropriate and interest-appropriate content, potentially cutting off access to information and communities.





# SECTION 105

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# TRANSPARENCY



# Guilty Before Proven Innocent

17 (a) IN GENERAL.—Subject to subsection (b), not less  
18 frequently than once a year, a covered platform shall issue  
19 a public report describing the reasonably foreseeable risks  
20 of harms to minors and assessing the prevention and miti-  
21 gation measures taken to address such risk based on an  
22 independent, third-party audit conducted through reason-  
23 able inspection of the covered platform.

- Transparency requirements amount to placing all covered platforms under FTC monitorship; these occur when a person has violated the law and needs to implement remediation to establish compliance.
- This section presumes that all covered platforms have already violated the law and will continue to do so into the future.



# Guilty Before Proven Innocent

10 (e) CONTENT.—  
11 (1) TRANSPARENCY.—The public reports re-  
12 quired of a covered platform under this section shall  
13 include—  
14 (A) an assessment of the extent to which  
15 the platform is likely to be accessed by minors;  
16 (B) a description of the commercial inter-  
17 ests of the covered platform in use by minors;  
18 (C) an accounting, based on the data held  
19 by the covered platform, of—  
20 (i) the number of users using the cov-  
21 ered platform that the platform knows to  
22 be minors in the United States;  
23 (ii) the median and mean amounts of  
24 time spent on the platform by users known  
25 to be minors in the United States who

- Requires platforms to disclose detailed information that essentially establishes legal liability, removing the burden on FTC and state AGs to develop evidence of potential violations.
- Likely exacerbates censorship concerns and the availability of quality information for users of all ages.







# SECTION 109

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# GUIDANCE



# Implementation Guidance will Heighten Confusion and Online Censorship

9 (a) IN GENERAL.—Not later than 18 months after  
10 the date of enactment of this Act, the Federal Trade Com-  
11 mission, in consultation with the Kids Online Safety Coun-  
12 cil established under section 111, shall issue guidance to—  
13 (1) provide information and examples for cov-  
14 ered platforms and auditors regarding the following,  
15 with consideration given to differences across  
16 English and non-English languages—  
17 (A) identifying design features that en-  
18 courage or increase the frequency, time spent,  
19 or activity of minors on the covered platform;  
20 (B) safeguarding minors against the pos-  
21 sible misuse of parental tools;  
22 (C) best practices in providing minors and  
23 parents the most protective level of control over  
24 privacy and safety;

1 (D) using indicia or inferences of age of  
2 users for assessing use of the covered platform  
3 by minors;  
4 (E) methods for evaluating the efficacy of  
5 safeguards set forth in this Act; and  
6 (F) providing additional parental tool op-  
7 tions that allow parents to address the harms  
8 described in section 102(a); and  
9 (2) outline conduct that does not have the pur-  
10 pose or substantial effect of subverting or impairing  
11 user autonomy, decision-making, or choice, or of  
12 causing, increasing, or encouraging compulsive usage  
13 for a minor, such as—  
14 (A) de minimis user interface changes de-  
15 rived from testing consumer preferences, includ-  
16 ing different styles, layouts, or text, where such  
17 changes are not done with the purpose of weak-  
18 ening or disabling safeguards or parental tools;  
19 (B) algorithms or data outputs outside the  
20 control of a covered platform; and  
21 (C) establishing default settings that pro-  
22 vide enhanced privacy protection to users or  
23 otherwise enhance their autonomy and decision-  
24 making ability.

- KOSA requires guidance instead of formal rulemaking; under 109(d), guidance cannot be binding or basis for enforcement action. Guidance will carry weight in FTC, state AG, and court interpretation of statute.
- Highly unusual direction to FTC to issue guidance of this nature without following standard rulemaking procedures (which requires public input). Detailed requirements will heighten First Amendment and censorship concerns of sections 102-103.

(A) IN GENERAL [PGS 40 LINES 9-24, PG 41 LINES 1-24]



# Creates Ambiguity for Schools

1 (b) GUIDANCE TO SCHOOLS.—Not later than 18  
2 months after the date of enactment of this Act, the Sec-  
3 retary of Education, in consultation with the Federal  
4 Trade Commission and the Kids Online Safety Council es-  
5 tablished under section 111, shall issue guidance to assist  
6 elementary and secondary schools in using the notice, safe-  
7 guards and tools provided under this Act and providing  
8 information on online safety for students and teachers.

It is unclear what this guidance should be as this Act does not apply to schools.





# SECTION 110

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# ENFORCEMENT



# Expansive FTC Enforcement Authority Will Create Confusion and Aggravate Censorship Concerns

17 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-  
18 SION.—  
19 (1) UNFAIR AND DECEPTIVE ACTS OR PRAC-  
20 TICES.—A violation of this Act shall be treated as  
21 a violation of a rule defining an unfair or deceptive  
22 act or practice prescribed under section 18(a)(1)(B)  
23 of the Federal Trade Commission Act (15 U.S.C.  
24 57a(a)(1)(B)).  
25 (2) POWERS OF THE COMMISSION.—

1 (A) IN GENERAL.—The Federal Trade  
2 Commission (referred to in this section as the  
3 “Commission”) shall enforce this Act in the  
4 same manner, by the same means, and with the  
5 same jurisdiction, powers, and duties as though  
6 all applicable terms and provisions of the Fed-  
7 eral Trade Commission Act (15 U.S.C. 41 et  
8 seq.) were incorporated into and made a part of  
9 this Act.  
10 (B) PRIVILEGES AND IMMUNITIES.—Any  
11 person that violates this Act shall be subject to  
12 the penalties, and entitled to the privileges and  
13 immunities, provided in the Federal Trade  
14 Commission Act (15 U.S.C. 41 et seq.).

- All requirements triggered by a platform “knowing” that a user is a minor or a child will be interpreted broadly.
- This is likely to be a significant source of confusion and, absent language focusing the knowledge threshold, will exacerbate the censorship and chilling effect associated with this bill.



# Authorizes Enforcement Based on Online Content Views of State Politicians (Pt. 1)

18 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-  
19 ERAL.—  
20 (1) IN GENERAL.—  
21 (A) CIVIL ACTIONS.—In any case in which  
22 the attorney general of a State has reason to  
23 believe that a covered platform has violated or  
24 is violating section 103, 104, or 105, the State,  
25 as parens patriae, may bring a civil action on

1 behalf of the residents of the State in a district  
2 court of the United States or a State court of  
3 appropriate jurisdiction to—  
4 (i) enjoin any practice that violates  
5 section 103, 104, or 105;  
6 (ii) enforce compliance with section  
7 103, 104, or 105;  
8 (iii) on behalf of residents of the  
9 State, obtain damages, restitution, or other  
10 compensation, each of which shall be dis-  
11 tributed in accordance with State law; or  
12 (iv) obtain such other relief as the  
13 court may consider to be appropriate.  
14 (B) NOTICE.—  
15 (i) IN GENERAL.—Before filing an ac-  
16 tion under subparagraph (A), the attorney  
17 general of the State involved shall provide  
18 to the Commission—  
19 (I) written notice of that action;  
20 and  
21 (II) a copy of the complaint for  
22 that action.  
23 (ii) EXEMPTION.—  
24 (I) IN GENERAL.—Clause (i)  
25 shall not apply with respect to the fil-

1 ing of an action by an attorney gen-  
2 eral of a State under this paragraph  
3 if the attorney general of the State  
4 determines that it is not feasible to  
5 provide the notice described in that  
6 clause before the filing of the action.  
7 (II) NOTIFICATION.—In an ac-  
8 tion described in subclause (I), the at-  
9 torney general of a State shall provide  
10 notice and a copy of the complaint to  
11 the Commission at the same time as  
12 the attorney general files the action.  
13 (2) INTERVENTION.—  
14 (A) IN GENERAL.—On receiving notice  
15 under paragraph (1)(B), the Commission shall  
16 have the right to intervene in the action that is  
17 the subject of the notice.  
18 (B) EFFECT OF INTERVENTION.—If the  
19 Commission intervenes in an action under para-  
20 graph (1), it shall have the right—  
21 (i) to be heard with respect to any  
22 matter that arises in that action; and  
23 (ii) to file a petition for appeal.  
24 (3) CONSTRUCTION.—For purposes of bringing  
25 any civil action under paragraph (1), nothing in this

- All requirements triggered by a platform “knowing” that a user is a minor or a child will be interpreted broadly.
- This is likely to be a significant source of confusion and, absent language focusing the knowledge threshold, will exacerbate the censorship and chilling effect associated with this bill.



# Authorizes Enforcement Based on Online Content Views of State Politicians (Pt. 2)

1 Act shall be construed to prevent an attorney gen-  
2 eral of a State from exercising the powers conferred  
3 on the attorney general by the laws of that State  
4 to—  
5 (A) conduct investigations;  
6 (B) administer oaths or affirmations; or  
7 (C) compel the attendance of witnesses or  
8 the production of documentary and other evi-  
9 dence.  
10 (4) ACTIONS BY THE COMMISSION.—In any  
11 case in which an action is instituted by or on behalf  
12 of the Commission for violation of this Act, no State  
13 may, during the pendency of that action, institute a  
14 separate action under paragraph (1) against any de-  
15 fendant named in the complaint in the action insti-  
16 tuted by or on behalf of the Commission for that  
17 violation.  
18 (5) VENUE; SERVICE OF PROCESS.—  
19 (A) VENUE.—Any action brought under  
20 paragraph (1) may be brought in—  
21 (i) the district court of the United  
22 States that meets applicable requirements  
23 relating to venue under section 1391 of  
24 title 28, United States Code; or

1 (ii) a State court of competent juris-  
2 diction.  
3 (B) SERVICE OF PROCESS.—In an action  
4 brought under paragraph (1) in a district court  
5 of the United States, process may be served  
6 wherever defendant—  
7 (i) is an inhabitant; or  
8 (ii) may be found.  
9 (6) LIMITATION.—A violation of section 102  
10 shall not form the basis of liability in any action  
11 brought by the attorney general of a State under a  
12 State law.  
13 **SEC. 111. KIDS ONLINE SAFETY COUNCIL.**  
14 (a) ESTABLISHMENT.—Not later than 180 days after  
15 the date of enactment of this Act, the Secretary of Com-  
16 merce shall establish and convene the Kids Online Safety  
17 Council for the purpose of providing advice on matters re-  
18 lated to this Act.  
19 (b) PARTICIPATION.—The Kids Online Safety Coun-  
20 cil shall include diverse participation from—  
21 (1) academic experts, health professionals, and  
22 members of civil society with expertise in mental  
23 health, substance use disorders, and the prevention  
24 of harms to minors;

- As previously noted, the required safeguards are exactly the sort of design elements deemed unconstitutional by two separate federal courts.





# SECTION 111

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# KIDS ONLINE SAFETY COUNCIL





# Advisory Council Will Operate in Secret and Without Public Input (Pt. 1)

13 **SEC. 111. KIDS ONLINE SAFETY COUNCIL.**

14 (a) ESTABLISHMENT.—Not later than 180 days after  
15 the date of enactment of this Act, the Secretary of Com-  
16 merce shall establish and convene the Kids Online Safety  
17 Council for the purpose of providing advice on matters re-  
18 lated to this Act.

19 (b) PARTICIPATION.—The Kids Online Safety Coun-  
20 cil shall include diverse participation from—

21 (1) academic experts, health professionals, and  
22 members of civil society with expertise in mental  
23 health, substance use disorders, and the prevention  
24 of harms to minors;

- The Kids Online Safety Council will gather representatives from government, industry, academia, civil society, and education.



# Advisory Council Will Operate in Secret and Without Public Input (Pt. 2)

1 (2) representatives in academia and civil society  
2 with specific expertise in privacy and civil liberties;  
3 (3) parents and youth representation;  
4 (4) representatives of covered platforms;  
5 (5) representatives of the National Tele-  
6 communications and Information Administration,  
7 the National Institute of Standards and Technology,  
8 the Federal Trade Commission, the Department of  
9 Justice, and the Department of Health and Human  
10 Services;  
11 (6) State attorneys general or their designees  
12 acting in State or local government;  
13 (7) educators; and  
14 (8) representatives of communities of socially  
15 disadvantaged individuals (as defined in section 8 of  
16 the Small Business Act (15 U.S.C. 637)).  
17 (c) ACTIVITIES.—The matters to be addressed by the  
18 Kids Online Safety Council shall include—  
19 (1) identifying emerging or current risks of  
20 harms to minors associated with online platforms;  
21 (2) recommending measures and methods for  
22 assessing, preventing, and mitigating harms to mi-  
23 nors online;

1 (3) recommending methods and themes for con-  
2 ducting research regarding online harms to minors,  
3 including in English and non-English languages; and  
4 (4) recommending best practices and clear, con-  
5 sensus-based technical standards for transparency  
6 reports and audits, as required under this Act, in-  
7 cluding methods, criteria, and scope to promote  
8 overall accountability.  
9 (d) NON-APPLICABILITY OF FACA.—The Kids On-  
10 line Safety Council shall not be subject to chapter 10 of  
11 title 5, United States Code (commonly referred to as the  
12 “Federal Advisory Committee Act”).

- The non-applicability of the Federal Advisory Committee Act means all meetings could occur in secret with little to no opportunities for participation from experts or stakeholders not serving on the council to contribute to the matters addressed by the council.





# SECTION 113

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# RULES OF CONSTRUCTION



# “Knowledge” Standard is Ambiguous and Subject to Many Interpretations

1           (2) preempt the Children’s Online Privacy Pro-  
2           tection Act of 1998 (15 U.S.C. 6501 et seq.) or any  
3           rule or regulation promulgated under such Act; or  
4           (3) authorize any action that would conflict  
5           with section 18(h) of the Federal Trade Commission  
6           Act (15 U.S.C. 57a(h)).  
7           (b) DETERMINATION OF “FAIRLY IMPLIED ON THE  
8           BASIS OF OBJECTIVE CIRCUMSTANCES”.—For purposes  
9           of enforcing this title, in making a determination as to  
10          whether covered platform has knowledge fairly implied on  
11          the basis of objective circumstances that a specific user  
12          is a minor, the Federal Trade Commission or a State at-  
13          torney general shall rely on competent and reliable evi-  
14          dence, taking into account the totality of the cir-  
15          cumstances, including whether a reasonable and prudent  
16          person under the circumstances would have known that  
17          the user is a minor.

- Subsection (b) is a reference to the knowledge standard applicable for UDAP cases brought by the FTC.
- It is a reminder that the “knowledge” standard for KOSA remains unclear, ambiguous, and subject to multiple interpretations.



# Bill Text Does Not Solve Very Real Privacy & Cybersecurity Concerns

18 (c) PROTECTIONS FOR PRIVACY.—Nothing in this  
19 title, including a determination described in subsection  
20 (b), shall be construed to require—  
21 (1) the affirmative collection of any personal  
22 data with respect to the age of users that a covered  
23 platform is not already collecting in the normal  
24 course of business; or

- To comply with KOSA, platforms will need to collect additional data from all users to comply or drastically limit access to content.
- This subsection has no effect on these options.





# SECTION 301

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# RELATIONSHIP TO STATE LAWS



# Enables Politically-Motivated Cases Based on Online Content or Censorship of First Amendment Protected Content

20 **TITLE III—RELATIONSHIP TO**  
21 **STATE LAWS**

22 **SEC. 301. RELATIONSHIP TO STATE LAWS.**

23 The provisions of this Act shall preempt any State  
24 law, rule, or regulation only to the extent that such State  
25 law, rule, or regulation conflicts with a provision of this

1 Act. Nothing in this Act shall be construed to prohibit a  
2 State from enacting a law, rule, or regulation that pro-  
3 vides greater protection to minors than the protection pro-  
4 vided by the provisions of this Act.

- Nothing in the law restricts state AGs from pursuing cases based on other state laws.
- Limited preemption provision that applies only to state laws in conflict with this and expressly permits states to enact laws that go beyond the requirements of this one.

