

119TH CONGRESS
1ST SESSION

S. _____

To amend the Protecting Americans from Foreign Adversary Controlled
Applications Act to establish a new exemption under the Act.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To amend the Protecting Americans from Foreign Adversary
Controlled Applications Act to establish a new exemption
under the Act.

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 “TikTok Transparency
5 and Data Security Act”.

6 **SEC. 2. NEW DIVESTITURE EXEMPTION.**

7 (a) IN GENERAL.—Section 2(c) of the Protecting
8 Americans from Foreign Adversary Controlled Applica-
9 tions Act (15 U.S.C. 9901 note; division H of Public Law
10 118–50) is amended by adding at the end the following:

1 “(3) EXEMPTIONS FOR APPLICATIONS WITH
2 ADDITIONAL SAFEGUARDS.—

3 “(A) IN GENERAL.—Subsection (a) shall
4 not apply to a foreign adversary controlled ap-
5 plication described in subsection (g)(4)(A) if the
6 entity that owns or controls the application
7 meets the requirements under—

8 “(i) subparagraph (B) of this para-
9 graph (relating to algorithmic trans-
10 parency); and

11 “(ii) subparagraph (C) of this para-
12 graph (relating to data access trans-
13 parency).

14 “(B) ALGORITHMIC TRANSPARENCY RE-
15 QUIREMENTS.—

16 “(i) QUALIFIED RESEARCHER TRANS-
17 PARENCY.—

18 “(I) IN GENERAL.—In order for
19 a foreign adversary controlled applica-
20 tion described in subsection (g)(4)(A)
21 to qualify for the exemption under
22 subparagraph (A) of this paragraph,
23 the entity that owns or controls the
24 application shall, subject to subclause
25 (II) of this clause, make available to

1 qualified researchers a repository con-
 2 taining information regarding reason-
 3 ably public content on the applica-
 4 tion—

- 5 “(aa) free of charge;
- 6 “(bb) on an ongoing basis;
- 7 “(cc) in a specific section of
- 8 the online interface of the appli-
- 9 cation;
- 10 “(dd) through a searchable
- 11 and reliable tool that allows
- 12 multicriteria queries; and
- 13 “(ee) through application
- 14 programming interfaces.

15 “(II) CONDITIONS ON RE-
 16 SEARCHER ACCESS.—The entity that
 17 owns or controls a foreign adversary
 18 controlled application described in
 19 subsection (g)(4)(A) shall impose rea-
 20 sonable conditions on access by a
 21 qualified researcher to the information
 22 required to be made available under
 23 subclause (I) of this clause, including
 24 that—

1 “(aa) the qualified re-
2 searcher be employed by an insti-
3 tution that can provide appro-
4 priate ethical oversight from an
5 institutional review board or
6 other ethics review panel;

7 “(bb) the research using the
8 provided data be conducted on a
9 non-commercial and public inter-
10 est basis; and

11 “(cc) the qualified re-
12 searcher identify and follow a
13 data security and confidentiality
14 plan that has been reviewed by
15 an institutional review board or
16 other ethics review panel.

17 “(III) REQUIRED INFORMA-
18 TION.—The information required to
19 be made available under subclause (I)
20 about reasonably public content on a
21 foreign adversary controlled applica-
22 tion shall include—

23 “(aa) the content itself, in-
24 cluding any text, images, videos,
25 links, and keywords;

1 “(bb) information generated
2 by the application that is dis-
3 played in connection with the
4 content, including any dates, la-
5 bels, disclaimers, or metrics;

6 “(cc) metrics about the ex-
7 tent of dissemination of or en-
8 gagement with the content, in-
9 cluding the number of impres-
10 sions, reach, and engagements;

11 “(dd) information about the
12 extent to which the content was
13 amplified or restricted by an al-
14 gorithm or policy of the applica-
15 tion;

16 “(ee) reasonably public in-
17 formation about the user ac-
18 counts responsible for the con-
19 tent; and

20 “(ff) public uniform resource
21 locators that uniquely link to the
22 content and identify related ma-
23 terials such as the parent con-
24 tent, replying content, and cross-
25 posted content.

1 “(IV) NO RATE LIMITING.—The
2 entity that owns or controls a foreign
3 adversary controlled application de-
4 scribed in subsection (g)(4)(A) may
5 not impose any limits on the number
6 of queries that a qualified researcher
7 may submit, or the number of results
8 that may be returned by a given
9 query, with respect to information re-
10 quired to be made available under
11 subclause (I) of this clause.

12 “(V) OBLIGATIONS AND IMMUN-
13 ITY FOR QUALIFIED RESEARCH-
14 ERS.—

15 “(aa) IN GENERAL.—A
16 qualified researcher shall use any
17 information obtained under sub-
18 clause (I) only for the purpose of
19 conducting research.

20 “(bb) PROHIBITION ON DIS-
21 CLOSURE.—A qualified re-
22 searcher may not disclose, pub-
23 lish, or use for a commercial pur-
24 pose personal information derived

1 from information obtained under
2 subclause (I).

3 “(cc) IMMUNITY FOR QUALI-
4 FIED RESEARCHERS.—No civil
5 claim will lie, nor will any crimi-
6 nal liability accrue, against a
7 qualified researcher for the col-
8 lection or use of information ob-
9 tained under subclause (I), so
10 long as—

11 “(AA) the purpose of
12 the research is to inform the
13 general public about matters
14 of public concern;

15 “(BB) the information
16 is not used except to inform
17 the general public about
18 matters of public concern;
19 and

20 “(CC) the qualified re-
21 searcher takes reasonable
22 measures to protect the pri-
23 vacy of the users of the for-
24 eign adversary controlled ap-
25 plication.

1 “(dd) IMMUNITY FOR FOR-
2 EIGN ADVERSARY CONTROLLED
3 APPLICATIONS.—No cause of ac-
4 tion under Federal or State law
5 arising solely from the release of
6 information about reasonably
7 public content in accordance with
8 subclause (I) may be brought
9 against the entity that owns or
10 controls a foreign adversary con-
11 trolled application described in
12 subsection (g)(4)(A) that com-
13 plies with this paragraph.

14 “(ii) PUBLIC RESEARCH TRANS-
15 PARENCY.—

16 “(I) IN GENERAL.—In order for
17 a foreign adversary controlled applica-
18 tion described in subsection (g)(4)(A)
19 to qualify for the exemption under
20 subparagraph (A) of this paragraph,
21 the entity that owns or controls the
22 application shall make available to the
23 public a repository containing infor-
24 mation regarding reasonably public
25 content on the application that has

1 been highly disseminated or was origi-
2 nated or spread by major public ac-
3 counts—

4 “(aa) free of charge;

5 “(bb) on an ongoing basis;

6 “(cc) in a specific section of
7 the online interface of the appli-
8 cation;

9 “(dd) through a searchable
10 and reliable tool that allows
11 multicriteria queries; and

12 “(ee) through application
13 programming interfaces.

14 “(II) REQUIRED INFORMA-
15 TION.—The information required to
16 be made available under subclause (I)
17 about reasonably public content on a
18 foreign adversary controlled applica-
19 tion that has been highly disseminated
20 or was originated or spread by major
21 public accounts shall include—

22 “(aa) the content itself, in-
23 cluding any text, images, videos,
24 links, and keywords;

1 “(bb) information generated
2 by the application that is dis-
3 played in connection with the
4 content, including any dates, la-
5 bels, disclaimers, or metrics;

6 “(cc) metrics about the ex-
7 tent of dissemination of or en-
8 gagement with the content, in-
9 cluding the number of impres-
10 sions, reach, and engagements;

11 “(dd) information about the
12 extent to which the content was
13 amplified or restricted by an al-
14 gorithm or policy of the applica-
15 tion;

16 “(ee) reasonably public in-
17 formation about the user ac-
18 counts responsible for the con-
19 tent; and

20 “(ff) public uniform resource
21 locators that uniquely link to the
22 content and identify related ma-
23 terials such as the parent con-
24 tent, replying content, and cross-
25 posted content.

“(III) NO RATE LIMITING.—The entity that owns or controls a foreign adversary controlled application described in subsection (g)(4)(A) may not impose any limits on the number of queries that a person may submit, or the number of results that may be returned by a given query, with respect to information required to be made available under subclause (I) of this clause.

12 “(iii) RESEARCH SAFE HARBOR.—

“(I) IN GENERAL.—No civil claim will lie, nor will any criminal liability accrue, against any person for collecting reasonably public content from a foreign adversary controlled application described in subsection (g)(4)(A) through a reasonable method of digital investigation as part of a news-gathering or research project on the application, so long as—

23 “(aa) the purpose of the
24 project is to inform the general

1 public about matters of public
2 concern;

3 “(bb) the information is not
4 used except to inform the general
5 public about matters of public
6 concern;

7 “(cc) the person takes rea-
8 sonable measures to protect the
9 privacy of the users of the appli-
10 cation;

11 “(dd) with respect to the
12 creation and use of a research
13 account, the person takes reason-
14 able measures to avoid mis-
15 leading the users of the applica-
16 tion; and

17 “(ee) the project does not
18 materially burden the technical
19 operation of the application.

20 “(II) REASONABLE METHOD OF
21 DIGITAL INVESTIGATION.—For pur-
22 poses of subclause (I), the term ‘rea-
23 sonable method of digital investiga-
24 tion’ includes—

1 “(aa) the collection of infor-
2 mation from the user-facing
3 interface of an application
4 through automated means;

5 “(bb) the collection of infor-
6 mation donated by a user, includ-
7 ing through a browser extension
8 or plug-in, where the donation is
9 in connection with the news-gath-
10 ering or research project and
11 with the explicit consent of the
12 user; and

13 “(cc) the creation or use of
14 a research account.

15 “(iv) TRANSPARENCY REPORTS.—

16 “(I) IN GENERAL.—In order for
17 a foreign adversary controlled applica-
18 tion described in subsection (g)(4)(A)
19 to qualify for the exemption under
20 subparagraph (A) of this paragraph,
21 the entity that owns or controls the
22 application shall issue publicly avail-
23 able transparency reports relating to
24 content moderation by the application.

1 “(II) INFORMATION TO BE IN-
2 CLUDED.—The entity that owns or
3 controls a foreign adversary controlled
4 application shall include in each trans-
5 parency report issued under subclause
6 (I) information (both quantitative and
7 qualitative) on the following:

8 “(aa) A description of the
9 content moderation practices of
10 the application, including statis-
11 tics regarding the amount and
12 type of content moderation ac-
13 tions taken that affect the avail-
14 ability, visibility, and accessibility
15 of content provided by users, cat-
16 egorized by the type of action
17 and reason for taking the action.

18 “(bb) Statistics regarding
19 the method of detection of con-
20 tent with respect to which a con-
21 tent moderation enforcement ac-
22 tion was taken, such as whether
23 the content was detected by—

24 “(AA) an employee or
25 contractor of the entity;

1 “(BB) artificial intel-
2 ligence software;

3 “(CC) a trusted organi-
4 zation; or

5 “(DD) a user.

6 “(cc) Statistics regarding
7 the number of legally enforceable
8 government requirements, non-le-
9 gally enforceable government re-
10 ferrals (specifying the portion
11 that came from internet referral
12 units alleging violations of the
13 community standards of the ap-
14 plication), and requests from
15 other entities or private third
16 parties, received by the applica-
17 tion, to—

18 “(AA) provide content
19 or personal information of
20 users; or

21 “(BB) restrict access to
22 or block content.

23 “(dd) Significant changes to
24 the content moderation practices
25 of the application during the pe-

1 riod covered by the report from
2 the previous report under this
3 clause issued by the entity with
4 respect to the application.

5 “(C) DATA ACCESS LIMITATIONS.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in clause (ii), in order for a foreign
8 adversary controlled application described
9 in subsection (g)(4)(A) to qualify for the
10 exemption under subparagraph (A) of this
11 paragraph, the entity that owns or controls
12 the application—

13 “(I) shall maintain any personal
14 information of a United States user in
15 a physical server located in the United
16 States;

17 “(II) may not sell, license, rent,
18 trade, transfer, release, disclose, pro-
19 vide access to, or otherwise make
20 available personal information of a
21 United States user to—

22 “(aa) any foreign adversary
23 country; or

1 “(bb) any entity that is con-
2 trolled by a foreign adversary;
3 and

4 “(III) enable an organization in-
5 corporated in the United States to re-
6 view the flow of personal information
7 of United States users

8 “(ii) EXCEPTIONS TO DATA CON-
9 TROLS.—The requirements under clause (i)
10 shall not apply—

11 “(I) to reasonably public personal
12 information; or

13 “(II) if the foreign adversary
14 controlled application is maintaining,
15 licensing, renting, trading, transfer-
16 ring, releasing, disclosing, providing
17 access to, or otherwise making avail-
18 able personal information of a United
19 States user for the purposes of—

20 “(aa) validating the region
21 in which the user is located for
22 proper routing;

23 “(bb) combating spam or
24 bot accounts, transnational orga-

1 nized crime, or international
2 fraud;

3 “(cc) taking action in re-
4 sponse to an emergency; or

5 “(dd) protecting the security
6 or integrity of the application.”.

7 (b) AMENDMENTS TO DEFINITIONS.—

8 (1) IN GENERAL.—Section 2(g) of the Pro-
9 tecting Americans from Foreign Adversary Con-
10 trolled Applications Act (15 U.S.C. 9901 note; divi-
11 sion H of Public Law 118–50) is amended—

12 (A) by redesignating paragraphs (3), (4),
13 (5), (6), (7), and (8) as paragraphs (4), (5),
14 (8), (11), (15), and (16), respectively;

15 (B) by inserting after paragraph (2) the
16 following new paragraph:

17 “(3) ENGAGEMENT.—The term ‘engagement’
18 means, with respect to content on a foreign adver-
19 sary controlled application, the number of times a
20 user interacts with the content, whether through
21 comments, indications of approval or disapproval
22 (such as likes or dislikes), reshares, or any other
23 form of active interaction.”;

24 (C) by inserting after paragraph (5), as so
25 redesignated, the following new paragraphs:

1 “(6) HIGHLY DISSEMINATED.—The term ‘high-
2 ly disseminated’ means, with respect to content on
3 a foreign adversary controlled application, that such
4 content has been viewed by not fewer than 5,000
5 unique users.

6 “(7) IMPRESSION.—The term ‘impression’
7 means, with respect to content on a foreign adver-
8 sary controlled application, the display or delivery of
9 the content to a user, regardless of whether the user
10 engages with the content.”;

11 (D) by inserting after paragraph (8), as so
12 redesignated, the following new paragraph:

13 “(9) MAJOR PUBLIC ACCOUNT.—The term
14 ‘major public account’ means a reasonably public ac-
15 count that—

16 “(A) is followed by not fewer than 25,000
17 users; or

18 “(B) otherwise regularly reaches not fewer
19 than 25,000 users per month.

20 “(10) PERSONAL INFORMATION.—The term
21 ‘personal information’ means any information, re-
22 gardless of how the information is collected, in-
23 ferred, or obtained, that is linked or reasonably
24 linkable to a specific user or the device of a user.”;

1 (E) by inserting after paragraph (11), as
2 so redesignated, the following new paragraphs:

3 “(12) QUALIFIED RESEARCHER.—The term
4 ‘qualified researcher’ means a researcher affiliated
5 with a university or a nonprofit organization (as de-
6 scribed in section 501(c)(3) of the Internal Revenue
7 Code of 1986) located in the United States.

8 “(13) REACH.—The term ‘reach’ means, with
9 respect to content on a foreign adversary controlled
10 application, the number of unique users to whom the
11 content is displayed or delivered during a particular
12 period.

13 “(14) REASONABLY PUBLIC.—The term ‘rea-
14 sonably public’, with respect to information—

15 “(A) means information that an author
16 made available in a manner and under such cir-
17 cumstances such that the author does not re-
18 tain a reasonable expectation of privacy with re-
19 spect to the information; and

20 “(B) includes information that may only
21 be viewed by a user if the user needs to register
22 or create an account with a foreign adversary
23 controlled application to view such informa-
24 tion.”; and

1 (F) by adding at the end the following new
2 paragraphs:

3 “(17) UNITED STATES USER.—The term
4 ‘United States user’ means a user residing in the
5 United States.

6 “(18) USER.—The term ‘user’ means a person,
7 including an advertiser or seller, that uses a foreign
8 adversary controlled application for any purpose re-
9 gardless of whether that person has an account or
10 is otherwise registered with the foreign adversary
11 controlled application.”.

12 (2) CONFORMING AMENDMENTS.—Section 2 of
13 the Protecting Americans from Foreign Adversary
14 Controlled Applications Act (15 U.S.C. 9901 note;
15 division H of Public Law 118–50) is amended—

16 (A) in subsection (a)(2)—

17 (i) in subparagraph (A), by striking
18 “subsection (g)(3)(A)” and inserting “sub-
19 section (g)(4)(A)”;

20 (ii) in subparagraph (B), by striking
21 “subsection (g)(3)(B)” and inserting “sub-
22 section (g)(4)(B)”;

23 (B) in subsection (e)(2)—

24 (i) by striking “subsection (g)(3)(A)”
25 and inserting “subsection (g)(4)(A)”;

22

- 1 (ii) by striking “subsection (g)(3)(B)”
- 2 and inserting “subsection (g)(4)(B)”.