To establish a Federal tort against social media companies that cause bodily injury to children or harm the mental health of children.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To establish a Federal tort against social media companies that cause bodily injury to children or harm the mental health of children.

1

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

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SECTION 1. SHORT TITLE.

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This Act may be cited as the “Federal Big Tech Tort Act”.

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SEC. 2. FEDERAL TORT FOR SOCIAL MEDIA HARM TO CHILDREN.

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(a) DEFINITIONS.—In this section—

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(1) the term “covered interactive computer service” means an interactive computer service—
(A) provided through a website, online application, or mobile application (including a single interactive computer service that is provided through more than 1 such website or application);

(B) through which information provided by another information content provider is distributed;

(C) that enables an individual user to create an account for the purpose of viewing, generating, or modifying content that can be viewed, shared, or otherwise interacted with by other third-party users of the interactive computer service; and

(D) that does not have peer-to-peer messaging as its principal function;

(2) the term “interactive computer service” has the meaning given the term in section 230 of the Communications Act of 1934 (47 U.S.C. 230); and

(3) the term “social media company”—

(A) means a company that provides, in or affecting interstate or foreign commerce, a covered interactive computer service; and

(B) does not include an organization described in section 501(c) of the Internal Rev-
enue Code of 1986 and exempt from taxation under section 501(a) of such Code.

(b) LIABILITY.—A social media company shall be liable in accordance with this section to any individual who suffers bodily injury or harm to mental health that is attributable, in whole or in part, to the individual’s use of a covered interactive computer service provided by the social media company when the individual was less than 16 years of age.

c) PRIVATE RIGHT OF ACTION.—An individual who suffers bodily injury or harm to mental health that is attributable, in whole or in part, to the individual’s use of a covered interactive computer service provided by a social media company as described in subsection (b) may bring a civil action against the social media company in an appropriate district court of the United States or a State court of competent jurisdiction for—

1 compensatory damages in an amount equal to the greater of—

(A) the amount obtained by—

(i) for each year in which the individual suffered such injury or harm attributable, in whole or in part, to such use, divid—
(I) the annual revenue of the social media company in the United States during that year, by

(II) the number of active users of the covered interactive computer service during the month that had the fewest such users during that year;

and

(ii) adding together the amounts calculated under clause (i) for each year in which the individual suffered such injury or harm attributable, in whole or in part, to such use; or

(B) actual damages;

(2) punitive damages; and

(3) attorney’s fees and costs.

(d) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to an action brought by or on behalf of a user of a covered interactive computer service provided by a social media company under subsection (c) that the social media company, at all relevant times—

(1) took reasonable, affirmative steps to ascertain the age of each user of the covered interactive computer service; and
(2) did not know and had no reason to know that the user in question was less than 16 years of age when the user used the interactive computer service.

(e) EFFECTIVE DATE; APPLICABILITY.—This Act—

(1) shall take effect on the date that is 180 days after the date of enactment of this Act; and

(2) shall not apply to any use of a covered interactive computer service that took place before the effective date under paragraph (1).