

116TH CONGRESS
1ST SESSION

S. 1629

To regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 22), 2019

Mr. HAWLEY (for himself, Mr. BLUMENTHAL, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To regulate certain pay-to-win microtransactions and sales of loot boxes in interactive digital entertainment products, 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. REGULATION OF PAY-TO-WIN MICROTRANS-**
4 **ACTIONS AND SALES OF LOOT BOXES IN**
5 **VIDEO GAMES.**

6 (a) PROHIBITION OF PAY-TO-WIN MICROTRANS-
7 ACTIONS AND SALES OF LOOT BOXES IN MINOR-ORI-
8 ENTED GAMES.—

1 (1) GAME PUBLISHERS.—It is unlawful for a
2 game publisher to publish—

3 (A) a minor-oriented game that includes
4 pay-to-win microtransactions or loot boxes; or

5 (B) an update to an existing minor-ori-
6 ented game that would enable pay-to-win micro-
7 transactions or loot boxes in such game.

8 (2) DIGITAL GAME DISTRIBUTORS.—It is un-
9 lawful for a digital game distributor to distribute—

10 (A) a minor-oriented game that includes
11 pay-to-win microtransactions or loot boxes; or

12 (B) an update to an existing minor-ori-
13 ented game that would enable pay-to-win micro-
14 transactions or loot boxes in such game.

15 (b) PROHIBITION ON PUBLICATION OR DISTRIBUTION OF VIDEO GAMES CONTAINING PAY-TO-WIN MICRO-
16 TRANSACTIONS OR PURCHASING LOOT BOXES WHERE
17 THE PUBLISHER OR DISTRIBUTOR HAS CONSTRUCTIVE
18 KNOWLEDGE THAT ANY USERS ARE UNDER AGE 18.—

19 (1) GAME PUBLISHERS.—It is unlawful for a
20 game publisher to publish an interactive digital en-
21 tertainment product that is not a minor-oriented
22 game (or an update to such a product) if—

23 (A) such product or update contains pay-
24 to-win microtransactions or loot boxes; and
25

1 (B) the publisher has constructive knowl-
2 edge that any of its users are under the age of
3 18.

4 (2) DIGITAL GAME DISTRIBUTORS.—It is un-
5 lawful for a digital game distributor to distribute an
6 interactive digital entertainment product that is not
7 a minor-oriented game (or an update to such a prod-
8 uct) if—

9 (A) such product or update contains pay-
10 to-win microtransactions or loot boxes; and

11 (B) the distributor has constructive knowl-
12 edge that any of its users are under the age of
13 18.

14 **SEC. 2. DEFINITIONS.**

15 In this Act:

16 (1) COMMISSION.—The term “Commission”
17 means the Federal Trade Commission.

18 (2) INTERACTIVE DIGITAL ENTERTAINMENT
19 PRODUCT.—

20 (A) IN GENERAL.—The term “interactive
21 digital entertainment product” means a pro-
22 gram such as a video game that is accessed by
23 a connected device and provides an interactive
24 entertainment experience for the user.

1 (B) EXCLUSION.—Such term shall not in-
2 clude a program if—

3 (i) a user’s interaction with the pro-
4 gram is limited to selecting options from a
5 menu of choices; and

6 (ii) the program would not be consid-
7 ered a game by a reasonable user.

8 (3) DIGITAL GAME DISTRIBUTOR.—The term
9 “digital game distributor” means a person that, for
10 commercial purposes, in interstate or foreign com-
11 merce, distributes an interactive digital entertain-
12 ment product over an online platform to over 1,000
13 users annually.

14 (4) GAME PUBLISHER.—The term “game pub-
15 lisher” means a person that, for commercial pur-
16 poses, in interstate or foreign commerce, develops or
17 finances the development of an interactive digital en-
18 tertainment product that is distributed to over 1,000
19 users annually.

20 (5) MINOR-ORIENTED GAME.—The term
21 “minor-oriented video game” means an interactive
22 digital entertainment product for which the target
23 audience is individuals under the age of 18, as may
24 be demonstrated by—

25 (A) the subject matter of the product;

1 (B) the visual content of the product;

2 (C) the music or audio content of the prod-
3 uct;

4 (D) the use of animated characters or ac-
5 tivities that appeal to individuals under the age
6 of 18;

7 (E) the age of the characters or models in
8 the product;

9 (F) the presence in the product of—

10 (i) celebrities who are under the age
11 of 18; or

12 (ii) celebrities who appeal to individ-
13 uals under the age of 18;

14 (G) the language used in the product;

15 (H) the content of materials used to adver-
16 tise the product and the platforms on which
17 such materials appear;

18 (I) the content of any advertising materials
19 that appear in the product;

20 (J) other reliable empirical evidence relat-
21 ing to—

22 (i) the composition of the audience of
23 the product; or

1 (ii) the audience of the product, as in-
2 tended by the publisher or distributor of
3 the product; or

4 (K) other evidence demonstrating that the
5 product is targeted at individuals under the age
6 of 18.

7 (6) ADD-ON TRANSACTION.—

8 (A) IN GENERAL.—The term “add-on
9 transaction” means, with respect to an inter-
10 active digital entertainment product, a payment
11 to the game publisher of an interactive digital
12 entertainment product, an affiliate of the pub-
13 lisher, or any other person who accepts such
14 payment for the benefit of the publisher, of ei-
15 ther money or an in-game proxy for money,
16 such as a virtual currency, that can be pur-
17 chased with money, that—

18 (i) unlocks a feature of the product;

19 or

20 (ii) adds to or enhances the entertain-
21 ment value of the product.

22 (B) EXCLUSION.—Such a term shall not
23 include a payment (including a payment of a
24 regular subscription fee) which is made only to
25 allow a user to access the content of an inter-

1 active digital entertainment product, provided
2 that users do not have the option to pay dif-
3 ferent amounts to access the same content in
4 order to unlock a feature of the product or to
5 enhance the entertainment value of the product.

6 (7) PAY-TO-WIN MICROTRANSACTION.—

7 (A) IN GENERAL.—The term “pay-to-win
8 microtransaction” means an add-on transaction
9 to a interactive digital entertainment product
10 that—

11 (i) with respect to an interactive dig-
12 ital entertainment product that, from the
13 perspective of a reasonable user of the
14 product, is a game offering a scoring sys-
15 tem, a set of goals to achieve, a set of re-
16 wards, or a sense of interactive progression
17 through the product’s content including
18 but not limited to narrative progression—

19 (I) eases a user’s progression
20 through content otherwise available
21 within the game without the purchase
22 of such transaction;

23 (II) assists a user in accom-
24 plishing an achievement within the
25 game that can otherwise be accom-

1 plished without the purchase of such
2 transaction;

3 (III) assists a user in receiving
4 an award associated with the game
5 that is otherwise available in associa-
6 tion with the game without the pur-
7 chase of such transaction; or

8 (IV) permits a user to continue
9 to access content of the game that
10 had previously been accessible to the
11 user but has been made inaccessible
12 after the expiration of a timer or a
13 number of gameplay attempts; or

14 (ii) with respect to an interactive dig-
15 ital entertainment product that, from the
16 perspective of a reasonable user of the
17 product, is a game featuring competition
18 with other users, provides a user with a
19 competitive advantage with respect to the
20 game's competitive aspects over users who
21 do not make such a transaction.

22 (B) EXCLUSIONS.—

23 (i) DIFFICULTY MODES.—Such term
24 shall not include an add-on transaction to
25 an interactive digital entertainment prod-

1 uct that provides the user with access to a
2 new mode of play that makes progression
3 through the content of the product more
4 difficult than it would be without the
5 transaction (as perceived by a reasonable
6 user).

7 (ii) COSMETIC ALTERATIONS.—Such
8 term shall not include an add-on trans-
9 action to an interactive digital entertain-
10 ment product whose only effect is to alter
11 a user’s visual representation within the
12 game provided that it does not, from the
13 perspective of a reasonable user, provide
14 the user with a competitive advantage over
15 other users who do not make such trans-
16 action.

17 (iii) ADDITIONAL GAME CONTENT.—
18 Such term shall not include an add-on
19 transaction to an interactive digital enter-
20 tainment product that adds new content to
21 the product provided that the add-on
22 transaction can be purchased only once by
23 a user and the perceived value offered by
24 such transaction, from the perspective of a
25 reasonable user, is not that it—

- 1 (I) eases a user's progression
2 through content otherwise available
3 within the product without the pur-
4 chase of such transaction;
- 5 (II) assists a user in accom-
6 plishing an achievement within the
7 product that can otherwise be accom-
8 plished without the purchase of such
9 transaction;
- 10 (III) assists a user in receiving
11 an award associated with the product
12 that is otherwise available in associa-
13 tion with the product without the pur-
14 chase of such transaction;
- 15 (IV) permits a user to continue
16 to access content of the product that
17 had previously been accessible to the
18 user but is made inaccessible after the
19 expiration of a timer or a number of
20 gameplay attempts; or
- 21 (V) provides a competitive advan-
22 tage over other users with respect to
23 a product's competitive aspects.

1 (8) LOOT BOX.—The term “loot box” means an
2 add-on transaction to an interactive digital enter-
3 tainment product that—

4 (A) in a randomized or partially random-
5 ized fashion—

6 (i) unlocks a feature of the product;

7 or

8 (ii) adds to or enhances the entertain-
9 ment value of the product; or

10 (B) allows the user to make 1 or more ad-
11 ditional add-on transactions—

12 (i) that the user could not have made
13 without making the first add-on trans-
14 action; and

15 (ii) the content of which is unknown
16 to the user until after the user has made
17 the first add-on transaction.

18 **SEC. 3. ENFORCEMENT AND APPLICABILITY.**

19 (a) ENFORCEMENT BY THE COMMISSION.—

20 (1) IN GENERAL.—Except as otherwise pro-
21 vided, this Act shall be enforced by the Commission
22 under the Federal Trade Commission Act (15
23 U.S.C. 41 et seq.).

24 (2) UNFAIR OR DECEPTIVE ACTS OR PRAC-
25 TICES.—A violation of this Act shall be treated as

1 a violation of a rule defining an unfair or deceptive
2 act or practice prescribed under section 18(a)(1)(B)
3 of the Federal Trade Commission Act (15 U.S.C.
4 57a(a)(1)(B)).

5 (3) ACTIONS BY THE COMMISSION.—

6 (A) IN GENERAL.—Except as provided in
7 subsection (c)(1), the Commission shall prevent
8 any person from violating this Act in the same
9 manner, by the same means, and with the same
10 jurisdiction, powers, and duties as though all
11 applicable terms and provisions of the Federal
12 Trade Commission Act (15 U.S.C. 41 et seq.)
13 were incorporated into and made a part of this
14 Act, and any person who violates this Act shall
15 be subject to the penalties and entitled to the
16 privileges and immunities provided in the Fed-
17 eral Trade Commission Act.

18 (B) VIOLATIONS.—

19 (i) IN GENERAL.—In an action
20 brought by the Commission to enforce this
21 Act, each pay-to-win microtransaction or
22 loot box sold to a user who is under the
23 age of 18 through an interactive digital en-
24 tertainment product that does not meet a

1 requirement of this Act shall be treated as
2 a separate violation.

3 (ii) CIVIL PENALTY.—Notwith-
4 standing section 5(m) of the Federal Trade
5 Commission Act (15 U.S.C. 45(m)), a civil
6 penalty recovered for a violation of this Act
7 may be in excess of the amounts provided
8 for in that section as the court finds ap-
9 propriate to deter violations of this Act.

10 (iii) FIRST VIOLATIONS.—In an action
11 brought by the Commission to enforce this
12 Act, the Commission may seek a civil pen-
13 alty for any violation of this Act, including
14 any violation that is the first violation of
15 this Act that a person against whom the
16 action is brought has committed.

17 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
18 ERAL.—

19 (1) IN GENERAL.—

20 (A) CIVIL ACTIONS.—In any case in which
21 the attorney general of a State has reason to
22 believe that an interest of the residents of that
23 State has been or is threatened or adversely af-
24 fected by the engagement of any person in a
25 practice that violates this Act, the State, as

1 parens patriae, may bring a civil action on be-
2 half of the residents of the State in an appro-
3 priate State court to—

4 (i) enjoin that practice;

5 (ii) enforce compliance with this Act;

6 (iii) obtain damages, restitution, or
7 other compensation on behalf of residents
8 of the State; or

9 (iv) obtain such other relief as the
10 court may consider to be appropriate.

11 (B) NOTICE.—

12 (i) IN GENERAL.—Before filing an ac-
13 tion under subparagraph (A), the attorney
14 general of the State involved shall provide
15 to the Commission—

16 (I) written notice of that action;

17 and

18 (II) a copy of the complaint for
19 that action.

20 (ii) EXEMPTION.—

21 (I) IN GENERAL.—Clause (i)
22 shall not apply with respect to the fil-
23 ing of an action by an attorney gen-
24 eral of a State under this paragraph
25 if the attorney general of the State

1 determines that it is not feasible to
2 provide the notice described in that
3 clause before the filing of the action.

4 (II) NOTIFICATION.—In an ac-
5 tion described in subclause (I), the at-
6 torney general of a State shall provide
7 notice and a copy of the complaint to
8 the Commission at the same time as
9 the attorney general files the action.

10 (2) INTERVENTION.—

11 (A) IN GENERAL.—On receiving notice
12 under paragraph (1)(B), the Commission shall
13 have the right to intervene in the action that is
14 the subject of the notice.

15 (B) EFFECT OF INTERVENTION.—If the
16 Commission intervenes in an action under para-
17 graph (1), it shall have the right—

18 (i) to be heard with respect to any
19 matter that arises in that action; and

20 (ii) to file a petition for appeal.

21 (3) CONSTRUCTION.—For purposes of bringing
22 any civil action under paragraph (1), nothing in this
23 Act shall be construed to prevent an attorney gen-
24 eral of a State from exercising the powers conferred

1 on the attorney general by the laws of that State
2 to—

3 (A) conduct investigations;

4 (B) administer oaths or affirmations; or

5 (C) compel the attendance of witnesses or
6 the production of documentary and other evi-
7 dence.

8 (4) ACTIONS BY THE COMMISSION.—In any
9 case in which an action is instituted by or on behalf
10 of the Commission for violation of this Act, no State
11 may, during the pendency of that action, institute an
12 action under paragraph (1) against any defendant
13 named in the complaint in the action instituted by
14 or on behalf of the Commission for that violation.

15 (5) VENUE; SERVICE OF PROCESS.—

16 (A) VENUE.—Any action brought under
17 paragraph (1) may be brought in any State
18 court of competent jurisdiction.

19 (B) SERVICE OF PROCESS.—In an action
20 brought under paragraph (1), process may be
21 served wherever the defendant—

22 (i) is an inhabitant; or

23 (ii) may be found.

1 **SEC. 4. STUDY OF COMPLIANCE.**

2 Not later than 2 years after the date of enactment
3 of this Act, the Commission shall submit to each com-
4 mittee of Congress with jurisdiction over the Commission
5 a report on—

6 (1) the actions taken by game publishers and
7 digital game distributors to comply with this Act;
8 and

9 (2) other Federal or State laws relating to pay-
10 to-win microtransactions and loot boxes.

11 **SEC. 5. STUDY OF THE EFFECT OF PAY-TO-WIN MICRO-**
12 **TRANSACTIONS AND LOOT BOXES.**

13 (a) IN GENERAL.—Not later than 2 years after the
14 date of enactment of this Act, the Commission shall sub-
15 mit to each committee of Congress with jurisdiction over
16 the Commission a report on the use of add-on content,
17 including pay-to-win microtransactions, loot boxes, and
18 other kinds of add-on transactions in the design of inter-
19 active digital entertainment products for audiences of all
20 ages.

21 (b) CONTENT OF REPORT.—The report required
22 under subsection (a) shall—

23 (1) analyze the use of pay-to-win microtrans-
24 action and loot box design practices in specific inter-
25 active digital entertainment products;

1 (2) analyze the psychological effects of pay-to-
2 win microtransactions and loot boxes on users;

3 (3) study game development practices relating
4 to pay-to-win microtransactions and loot boxes, in-
5 cluding A/B testing of various pay-to-win micro-
6 transaction or loot box designs;

7 (4) analyze the effects of pay-to-win microtrans-
8 actions and loot boxes on investment and production
9 in the digital entertainment industry;

10 (5) document different types of pay-to-win
11 microtransactions and loot boxes found in interactive
12 digital entertainment products; and

13 (6) analyze whether other forms of add-on
14 transactions to interactive digital entertainment
15 products, such as those altering a user's visual rep-
16 resentation within a product, can induce compulsive
17 purchasing behavior by minors.

18 (c) USE OF PSYCHOLOGICAL RESEARCH.—The Com-
19 mission may conduct or commission psychological research
20 on users of interactive digital entertainment products to
21 inform the report required under subsection (a).

○