

**AMENDMENT TO H.R. 5376, AS REPORTED  
OFFERED BY MRS. MCCLAIN OF MICHIGAN**

In title IV, add at the end the following:

1     **Subtitle F—Anti-CCP Espionage**  
2                     **Via Social Media**

3     **SEC. 40501. SHORT TITLE.**

4             This subtitle may be cited as the “Anti-CCP Espio-  
5 nage via Social Media Act of 2021” or the “ACES Act  
6 of 2021”.

7     **SEC. 40502. FINDINGS.**

8             Congress makes the following findings:

9                     (1) TikTok engages in political censorship, in-  
10                    cluding related to awareness of Uighur Muslim in-  
11                    ternment camps in China.

12                    (2) The U.S. government fined TikTok \$5.7  
13                    million for illegally collecting children’s data.

14                    (3) TikTok’s Chinese parent company  
15                    ByteDance has agreed to pay \$92 million in a settle-  
16                    ment to U.S. users who are part of a class-action  
17                    lawsuit alleging that the video-sharing app failed to  
18                    get their consent to collect data in violation of a  
19                    strict Illinois biometric privacy law.

1           (4) Chinese companies, such as TikTok, have  
2           no meaningful ability to tell the Chinese Communist  
3           Party “no” if officials request user data.

4           (5) The presence of Chinese surveillance in ap-  
5           plications such as TikTok raises U.S. national secu-  
6           rity concerns.

7   **SEC. 40503. STATEMENT OF POLICY.**

8           It is the policy of the United States to secure the  
9           information and communications technology and services  
10          supply chain and to counter the threat posed by mobile  
11          applications and software services developed and owned by  
12          foreign adversaries, specifically the People’s Republic of  
13          China and the Chinese Communist Party, which continue  
14          to threaten the national security, foreign policy, and econ-  
15          omy of the United States.

16   **SEC. 40504. CODIFICATION OF THE EXECUTIVE ORDER AD-**  
17                           **DRESSING THE THREAT POSED BY TIKTOK.**

18          (a) Executive Order 13942 of August 6, 2020 as in  
19          effect as of January 19, 2021, shall remain in effect and  
20          continue to apply.

21          (b) Notwithstanding section 203(b) of the Inter-  
22          national Emergency Economic Powers Act, the President  
23          shall have the authority to implement Executive Order  
24          13942.

1 **SEC. 40505. DIVESTMENT OF ASSETS BY BYTEDANCE.**

2 (a) IN GENERAL.—ByteDance shall divest itself of—

3 (1) any tangible or intangible assets or prop-  
4 erty, wherever located, used to enable or support  
5 ByteDance’s operation of the TikTok application in  
6 the United States, as determined by CFIUS; and

7 (2) any data obtained or derived from TikTok  
8 application or Musical.ly application users in the  
9 United States.

10 (b) DEADLINE.—

11 (1) IN GENERAL.—Subject to paragraph (2),  
12 ByteDance shall complete the divestment of assets  
13 required under subsection (a) before the end of the  
14 90-day period beginning on the date of enactment of  
15 this Act.

16 (2) EXTENSIONS.—CFIUS may provide one or  
17 more 30-day extensions with respect to the deadline  
18 described under paragraph (1), but under no cir-  
19 cumstances may such extensions extend the deadline  
20 beyond the end of the 12-month period beginning on  
21 the date of enactment of this Act.

22 (3) PROGRESS REPORT.—Not later than the  
23 end of the 45-day period beginning on the date of  
24 enactment of this Act, ByteDance shall provide evi-  
25 dence to the President that ByteDance is in the

1 process of divesting itself of all assets described  
2 under subsection (a).

3 (c) CERTIFICATIONS AND AUDITS.—

4 (1) WEEKLY CERTIFICATION.—Until  
5 ByteDance provides the certification under para-  
6 graph (2)(A), ByteDance and TikTok shall certify to  
7 CFIUS on a weekly basis that they are in compli-  
8 ance with this subtitle and ByteDance shall include  
9 a description of efforts to make divestment required  
10 under this section and a timeline for projected com-  
11 pletion of remaining actions necessary to complete  
12 such divestment.

13 (2) DATA DESTRUCTION CERTIFICATION AND  
14 AUDIT.—After the deadline described under sub-  
15 section (b)(1)—

16 (A) ByteDance shall certify in writing to  
17 CFIUS that ByteDance has destroyed all data  
18 that ByteDance is required to divest pursuant  
19 to this section, including all copies of such data  
20 wherever located; and

21 (B) CFIUS may audit ByteDance, on such  
22 terms as CFIUS determines appropriate, in  
23 order to ensure that such destruction of data is  
24 complete.

25 (d) LIMITATION ON DIVESTMENTS.—

1           (1) IN GENERAL.—In carrying out a divestment  
2           required under this section, ByteDance may not  
3           complete a sale or transfer to any third party—

4                   (A) until ByteDance notifies CFIUS in  
5                   writing of the intended recipient or buyer; and

6                   (B) unless 10 business days have passed  
7                   from such notification and CFIUS has not  
8                   issued an objection to ByteDance.

9           (2) CFIUS CONSIDERATIONS.—Among the fac-  
10           tors CFIUS may consider in reviewing a proposed  
11           sale or transfer described under paragraph (1) are—

12                   (A) whether the buyer or transferee—

13                           (i) is a U.S. citizen or is owned by  
14                           U.S. citizens;

15                           (ii) has or has had a direct or indirect  
16                           contractual, financial, familial, employ-  
17                           ment, or other close and continuous rela-  
18                           tionship with ByteDance, or its officers,  
19                           employees, or shareholders; and

20                           (iii) can demonstrate a willingness  
21                           and ability to support compliance with this  
22                           subtitle; and

23                   (B) whether the proposed sale or transfer  
24                   would threaten to impair the national security  
25                   of the United States or undermine the purpose

1 of this subtitle, and whether the sale effec-  
2 tuates, to CFIUS's satisfaction and in CFIUS's  
3 discretion, a complete divestment of all tangible  
4 or intangible assets or property, wherever lo-  
5 cated, used to enable or support the operation  
6 of the TikTok application in the United States.

7 (e) CFIUS VERIFICATION MEASURES.—

8 (1) IN GENERAL.—Without limitation on the  
9 exercise of authority by any agency under other pro-  
10 visions of law, and until such time as the divestment  
11 required under this section is completed and verified  
12 to the satisfaction of CFIUS, CFIUS is authorized  
13 to implement measures CFIUS determines necessary  
14 and appropriate to verify compliance with this sec-  
15 tion and to ensure that the operations of the TikTok  
16 application are carried out in such a manner as to  
17 ensure protection of the national security interests of  
18 the United States. Such measures may include, on  
19 reasonable notice to ByteDance and TikTok Inc.,  
20 employees of the United States Government, as des-  
21 ignated by CFIUS, shall be permitted access, for  
22 purposes of verifying compliance with this section, to  
23 all premises and facilities of ByteDance and TikTok  
24 Inc., and any of their respective subsidiaries, oper-

1       ated in furtherance of the TikTok application lo-  
2       cated in the United States—

3               (A) to inspect and copy any books, ledgers,  
4               accounts, correspondence, memoranda, and  
5               other records and documents in the possession  
6               or under the control of ByteDance or TikTok  
7               Inc., or any of their respective subsidiaries, that  
8               concern any matter relating to this section;

9               (B) to inspect or audit any information  
10              systems, networks, hardware, software, data,  
11              communications, or property in the possession  
12              or under the control of ByteDance or TikTok  
13              Inc., or any of their respective subsidiaries; and

14              (C) to interview officers, employees, or  
15              agents of ByteDance or TikTok Inc., or any of  
16              their respective subsidiaries, concerning any  
17              matter relating to this section.

18              (2) DEADLINE FOR VERIFICATION.— CFIUS  
19              shall conclude all verification procedures described  
20              under this subsection within 90 days after the cer-  
21              tification of divestment is provided to CFIUS pursu-  
22              ant to subsection (c)(1).

23 **SEC. 40506. PROHIBITED TRANSACTIONS.**

24              (a) IN GENERAL.—A transaction is prohibited if the  
25              transaction is by any person, or with respect to any prop-

1 erty, subject to the jurisdiction of the United States, with  
2 ByteDance Ltd. (a.k.a. Zī`jie` Tia`odo`ng), Beijing,  
3 China, or its subsidiaries, including TikTok Inc., in which  
4 any such company has any interest, involving the fol-  
5 lowing:

6           (1) Any provision of services, occurring after  
7 the end of the 45-day period beginning on the date  
8 of enactment of this Act, to distribute or maintain  
9 the TikTok mobile application, constituent code, or  
10 application updates through an online mobile appli-  
11 cation store, or any online marketplace where mobile  
12 users within the land or maritime borders of the  
13 United States and its territories may download or  
14 update applications for use on their mobile devices.

15           (2) Any provision of internet hosting services,  
16 occurring after the end of the 45-day period begin-  
17 ning on the date of enactment of this Act, enabling  
18 the functioning or optimization of the TikTok mobile  
19 application within the land and maritime borders of  
20 the United States and its territories.

21           (3) Any provision of content delivery network  
22 services, occurring after the end of the 45-day period  
23 beginning on the date of enactment of this Act, ena-  
24 bling the functioning or optimization of the TikTok



1 mobile application within the land and maritime bor-  
2 ders of the United States and its territories.

3 (4) Any provision of directly contracted or ar-  
4 ranged internet transit or peering services, occurring  
5 after the end of the 45-day period beginning on the  
6 date of enactment of this Act, enabling the func-  
7 tioning or optimization of the TikTok mobile appli-  
8 cation within the land and maritime borders of the  
9 United States and its territories.

10 (5) Any utilization, occurring after the end of  
11 the 45-day period beginning on the date of enact-  
12 ment of this Act, of the TikTok mobile application's  
13 constituent code, functions, or services in the func-  
14 tioning of software or services developed or acces-  
15 sible within the land and maritime borders of the  
16 United States and its territories.

17 (b) EXCEPTIONS.—The prohibition under subsection  
18 (a) shall not apply to the following:

19 (1) Any transaction that is not a business-to-  
20 business transactions.

21 (2) The payment of wages, salaries, and benefit  
22 packages to employees or contractors.

23 (3) The exchange between or among TikTok  
24 mobile application users of personal or business in-  
25 formation using the TikTok mobile application.

1           (4) Activities related to mobile applications in-  
2           tended for distribution, installation or use outside of  
3           the United States by any person, including to any  
4           person subject to U.S. jurisdiction, and all ancillary  
5           activities, including activities performed by any U.S.  
6           person, which are ordinarily incident to, and nec-  
7           essary for, the distribution, installation, and use of  
8           mobile applications outside of the United States.

9           (5) The storing of TikTok mobile application  
10          user data in the United States.

11          (6) Any transactions necessary to effectuate the  
12          divestment required by this section.

13          (c) WAIVER.—A person may submit a request to  
14          CFIUS for a waiver of the requirements under subsection  
15          (a).

16          **SEC. 40507. ENFORCEMENT.**

17          (a) PROHIBITION ON EVASION AND CIRCUMVEN-  
18          TION.—Any transaction or other device entered into or  
19          employed for the purpose of, or with the effect of, evading  
20          or circumventing this subtitle is prohibited.

21          (b) INJUNCTION.—Whenever it appears to the Attor-  
22          ney General that any person is engaged in, or is about  
23          to engage in, any act that constitutes, or would constitute,  
24          a violation of this subtitle, the Attorney General may ini-

1 tiate civil action in a district court of the United States  
2 to enjoin such violation.

3 (c) PENALTIES.—

4 (1) MATERIAL MISSTATEMENT OR OMISSION.—

5 Any person who submits a report with a material  
6 misstatement or omission or makes a false certifi-  
7 cation under this subtitle may be liable to the  
8 United States for a civil penalty not to exceed  
9 \$250,000 per violation. The amount of the penalty  
10 imposed for a violation shall be based on the nature  
11 of the violation.

12 (2) VIOLATIONS.—

13 (A) IN GENERAL.—Any person who fails to  
14 comply with the requirements of this subtitle  
15 may be liable to the United States for a civil  
16 penalty not to exceed the greater of \$250,000  
17 or the value of the transaction.

18 (B) AMOUNT.—The amount of a penalty  
19 imposed for a violation shall be based on the  
20 nature of the violation.

21 (3) DETERMINATION AND NOTICE OF PEN-  
22 ALTY.—A determination to impose penalties under  
23 paragraph (1) or (2) shall be made by CFIUS. No-  
24 tice of the penalty, including a written explanation  
25 of the conduct to be penalized and the amount of the

1 penalty, shall be sent to the subject person electroni-  
2 cally and by U.S. mail or courier service. Notice  
3 shall be deemed to have been effected by the earlier  
4 of the date of electronic transmission and the date  
5 of receipt of U.S. mail or courier service.

6 (4) PETITION FOR RECONSIDERATION.—Upon  
7 receiving notice of a penalty to be imposed under  
8 paragraph (1) or (2), the subject person may, within  
9 15 business days of receipt of such notice, submit a  
10 petition for reconsideration to the Staff Chairperson,  
11 including a defense, justification, or explanation for  
12 the conduct to be penalized. CFIUS shall review the  
13 petition and issue any final penalty determination  
14 within 15 business days of receipt of the petition.  
15 The Staff Chairperson and the subject person may  
16 extend either such period through written agree-  
17 ment. CFIUS and the subject person may reach an  
18 agreement on an appropriate remedy at any time be-  
19 fore CFIUS issues any final penalty determination.

20 (5) RECOVERY OF PENALTIES.—The penalties  
21 authorized in paragraphs (1) and (2) may be recov-  
22 ered in a civil action brought by the United States  
23 in Federal district court.

24 (6) APPLICATION OF FALSE STATEMENTS AC-  
25 COUNTABILITY ACT OF 1996.—Section 2 of the False

1       Statements Accountability Act of 1996 (18 U.S.C.  
2       1001) shall apply to all information provided to  
3       CFIUS or the President under this subtitle.

4               (7) EFFECT ON OTHER PENALTIES.—The pen-  
5       alties available under this subsection are without  
6       prejudice to other penalties, civil or criminal, avail-  
7       able under law.

8               (8) PENALTIES AS DEBT DUE TO THE U.S. GOV-  
9       ERNMENT.—The imposition of a civil monetary pen-  
10      alty under this subsection creates a debt due to the  
11      U.S. Government. The Department of the Treasury  
12      may take action to collect the penalty assessed if not  
13      paid within the time prescribed by CFIUS and noti-  
14      fied to the applicable party or parties. In addition or  
15      instead, the matter may be referred to the Depart-  
16      ment of Justice for appropriate action to recover the  
17      penalty.

18              (9) DEFINITIONS.—In this subsection:

19                      (A) STAFF CHAIRPERSON.—The term  
20                      “Staff Chairperson” means the Department of  
21                      the Treasury official so designated by the Sec-  
22                      retary of the Treasury or by the Secretary’s  
23                      designee.

24                      (B) SUBJECT PERSON.—In this subsection,  
25                      the term “subject person” means the person or

1 persons who may be liable to the United States  
2 for a civil penalty.

3 **SEC. 40508. NATIONAL SECURITY REVIEW OF BUSINESS RE-**  
4 **LATIONSHIPS WITH BYTEDANCE.**

5 (a) NATIONAL SECURITY INVESTIGATIONS.—

6 (1) IN GENERAL.—CFIUS shall—

7 (A) review the relationship of each covered  
8 United States business with ByteDance to de-  
9 termine the effects of such relationship on the  
10 national security of the United States; and

11 (B) issue a report to the President con-  
12 taining the findings of such review.

13 (2) PRESIDENTIAL AUTHORITY.—After review-  
14 ing a report issued under paragraph (1) with respect  
15 to a relationship, the President may take such action  
16 for such time as the President considers appropriate  
17 to suspend or prohibit the relationship if the rela-  
18 tionship threatens to impair the national security of  
19 the United States.

20 (3) PROCEDURES.—To the extent practicable,  
21 CFIUS and the President shall carry out a review  
22 of a relationship under this subsection in the same  
23 manner as a covered transaction is reviewed under  
24 section 721 of the Defense Production Act of 1950  
25 (50 U.S.C. 4565).

1 **SEC. 40509. REPORT ON NATIONAL SECURITY THREAT OF**  
2 **MOBILE APPLICATIONS UTILIZED BY THE**  
3 **PEOPLE'S REPUBLIC OF CHINA AND CHINESE**  
4 **COMMUNIST PARTY.**

5 (a) REPORTING REQUIREMENT.—Not later than 180  
6 days after the enactment of this Act, and annually there-  
7 after, the Secretary of State and the Attorney General,  
8 in consultation with the Director of National Intelligence,  
9 shall submit to the appropriate congressional committees  
10 a report describing—

11 (1) the scope of efforts by the People's Republic  
12 of China and Chinese Communist Party to utilize  
13 mobile applications to perform espionage on U.S.  
14 citizens, and business and organizations located in  
15 the United States;

16 (2) the means and objectives of the People's  
17 Republic of China and Chinese Communist Party in  
18 utilizing mobile applications to perform espionage  
19 and spread disinformation in the United States; and

20 (3) a detailed strategy regarding how the Sec-  
21 retary of State and the Attorney General intend to  
22 counter espionage and disinformation efforts con-  
23 ducted by the People's Republic of China and the  
24 Chinese Communist Party using mobile applications.

25 (b) FORM.—The report required by subsection (a)  
26 shall be submitted in unclassified form, but may include

1 a classified annex if necessary. The unclassified portion  
2 of such report shall be made available on a publicly avail-  
3 able internet website of the Federal Government.

4 (c) APPROPRIATE CONGRESSIONAL COMMITTEES DE-  
5 FINED.—In this section, the term “appropriate congres-  
6 sional committees” means—

7 (1) the Committee on Armed Services, the  
8 Committee on Foreign Affairs, the Committee on Fi-  
9 nancial Services, and the Committee on the Judici-  
10 ary of the House of Representatives; and

11 (2) the Committee on Armed Services, the  
12 Committee on Foreign Relations, the Committee on  
13 Banking, Housing, and Urban Affairs, and the Com-  
14 mittee on the Judiciary of the Senate.

15 **SEC. 40510. DEFINITIONS.**

16 In this subtitle:

17 (1) CFIUS.—The term “CFIUS” means the  
18 Committee on Foreign Investment in the United  
19 States.

20 (2) COVERED UNITED STATES BUSINESS.—The  
21 term “covered United States business” means a per-  
22 son (other than an individual) engaged in interstate  
23 commerce in the United States who—



1                   (A) is partnering or contracting with  
2                   ByteDance with respect to technology plat-  
3                   forms, applications, or other ventures; or

4                   (B) is a shareholder of ByteDance.

