

Calendar No. 642

117TH CONGRESS }
2d Session }

SENATE

{ REPORT
117-256 }

NO TIKTOK ON GOVERNMENT DEVICES ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1143

TO PROHIBIT CERTAIN INDIVIDUALS FROM
DOWNLOADING OR USING TIKTOK ON ANY DEVICE
ISSUED BY THE UNITED STATES OR A GOVERNMENT
CORPORATION



DECEMBER 14, 2022.—Ordered to be printed

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Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1143]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1143) to prohibit certain individuals from downloading or using TikTok on any device issued by the United States or a government corporation, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 1143, the *No TikTok on Government Devices Act*, requires the Director of the Office of Management and Budget (OMB) to develop standards and guidelines, consistent with the Federal Information Security Modernization Act (FISMA) of 2014, to remove the TikTok application from Federal information technology devices and platforms. The OMB standards and guidelines must be developed in consultation with the General Services Administration (GSA), the Cybersecurity and Infrastructure Security Agency (CISA), the Office of the Director of National Intelligence (ODNI), and the Department of Defense (DoD). The bill includes an exemption for law

enforcement activities, national security interests and activities, and security researchers.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

Beijing-based media and technology company, ByteDance Limited (ByteDance) owns the social media short-form video app, TikTok, managed by its subsidiary TikTok, Inc.² While TikTok has grown in its global popularity, China's national intelligence and security laws raise serious concerns over the obligations of Chinese-owned technology companies to participate in intelligence gathering operations and share data with government officials.³ The requirements mandated by China's National Intelligence Law allow for the potential that Chinese government officials could use TikTok to violate the civil rights and privacy of users in the United States, or otherwise gather data that may have national security implications.⁴ On this basis, in November 2019, the Committee on Foreign Investment in the United States (CFIUS) began a review of ByteDance's acquisition of the social media service TikTok.⁵

In order to address the national security concerns raised by TikTok, both the Trump and Biden administrations have taken actions to examine any potential threats posed by the application's presence on mobile devices operating in the United States. On August 6, 2020, President Trump signed an executive order that would have banned TikTok transactions in 45 days if ByteDance did not sell the company.⁶ President Trump also issued an order on August 14, 2020, which gave ByteDance 90 days to sell or spin off its U.S. TikTok business.⁷ TikTok filed a lawsuit on September 18, 2020, and a U.S. District Court Judge temporarily blocked the order that would have prevented the application from being downloaded on U.S. app stores.⁸ Three TikTok users also filed a lawsuit that prevented the Department of Commerce's (DoC) initial ban on downloading or updating the TikTok app.⁹ In June 9, 2021, President Biden signed an executive order that revoked the Trump Administration's ban on TikTok, and instead asked the Secretary of Commerce to investigate the app to determine if it poses a threat to national security.¹⁰ CFIUS continues to have concerns and the

¹ On July 22, 2020, the Committee approved S. 3455, the No TikTok on Government Devices Act, which is substantially similar to S. 1143. Accordingly, this committee report is in many respects similar to the committee report for S. 3455, S. Rept. No. 116-250.

² *Social-Media App Musical.ly Is Acquired for as Much as \$1 Billion*, Wall Street Journal (Nov. 9, 2017) (<https://www.wsj.com/articles/lip-syncing-app-musical-ly-is-acquired-for-as-much-as-1-billion-1510278123>) and *Inside the Rise of TikTok, the Viral Video-Sharing App that Trump is Trying to Order its Chinese Parent to Sell*, Business Insider (Aug. 7, 2020) (<https://www.businessinsider.com/tiktok-app-online-website-video-sharing-2019-7>).

³ *TikTok Said to Be Under National Security Review*, New York Times (Nov. 1, 2019) (<https://www.nytimes.com/2019/11/01/technology/tiktok-national-security-review.html>).

⁴ See, e.g. Senate Subcommittee on Crime and Terrorism, Testimony Submitted for the Record of Samm Sacks, Senior Fellow, Yale Law School Paul Tsai China Center, *Dangerous Partners: Big Tech and Beijing*, 116th Cong., at (Mar. 3, 2020) (<https://www.judiciary.senate.gov/meetings/dangerous-partners-big-tech-and-beijing>).

⁵ *U.S. Government Investigating TikTok Over National Security Concerns*, Washington Post (Nov. 1, 2019) (<https://www.washingtonpost.com/technology/2019/11/01/us-government-investigating-tiktok-over-national-security-concerns/>).

⁶ Exec. Order No. 13942, 85 Fed. Reg. 51297 (Aug. 14, 2020).

⁷ Presidential Proclamation No. 10061, 85 Fed. Reg. 51297 (Aug. 14, 2020).

⁸ *U.S. Judge Halts Trump's TikTok Ban, Hours Before It Was Set To Start*, NPR (Sept. 27, 2020) (<https://www.npr.org/2020/09/27/917452668/u-s-judge-halts-trumps-tiktok-ban-hours-before-it-was-set-to-start>).

⁹ *TikTok Stars Proved Key in Strategy to Fight U.S. Ban*, Wall Street Journal (Nov. 26, 2020) (<https://www.wsj.com/articles/how-three-tiktok-stars-beat-back-u-s-plans-to-ban-the-app-11606418513>).

¹⁰ Exec. Order No. 14034, 86 Fed. Reg. 31423 (June 9, 2020).

DoC is actively considering new rules to address potential data security risks at TikTok.¹¹

Several Federal agencies, including DoD, the State Department, and the Department of Homeland Security, have banned TikTok on devices those agencies are responsible for, but these decisions have been made by individual agencies and do not apply to the Federal Government as a whole.¹² Under FISMA, OMB is responsible for developing and overseeing Federal cybersecurity policies, and as such, it has the power to produce standards and guidance for the removal of TikTok across the Federal enterprise.¹³ This bill requires the Director of OMB, in consultation with key agency stakeholders, to develop standards and guidelines requiring the removal of TikTok and any successor applications developed or provided by ByteDance or any ByteDance subsidiary.

III. LEGISLATIVE HISTORY

Senator Hawley (R–MO) introduced S. 1143, the *No TikTok on Government Devices Act*, on April 15, 2021, with Senators Cotton (R–AK), Scott (R–FL), and Rubio (R–FL). The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee considered S. 1143 at a business meeting on May 12, 2021. The Committee ordered the bill reported favorably *en bloc* by voice vote. Senators present for the vote on the bill were: Peters, Carper, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Paul, Lankford, Romney, Scott, and Hawley.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes that the bill may be referred to as the “No TikTok on Government Devices Act”.

Section 2. Prohibition of the use of TikTok

Subsection (a) defines the terms “covered application”, “executive agency”, and “information technology.”

Subsection (b) requires the Director of OMB, in consultation with the Administrator of GSA, the Director of CISA, the Director of National Intelligence, and the Secretary of Defense, and consistent with the information security requirements of FISMA, to develop standards and guidelines for the removal of covered applications from information technology.

This subsection also directs OMB to include in its standards and guidelines exemptions for law enforcement activities, national security interests, and security researchers.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will

¹¹*Exclusive TikTok nears Oracle deal in bid to allay U.S. data concerns—sources*, Reuters (March 10, 2022) (<https://www.reuters.com/technology/exclusive-tiktok-nears-deal-with-oracle-store-its-data-sources-2022-03-10/>).

¹²*TSA Bans Employee Use of TikTok for the Agency’s Outreach Amid National Security Concerns*, CNN.com (Feb. 25, 2020) (<https://www.cnn.com/2020/02/25/politics/tsa-tiktok-national-security/index.html>).

¹³44 U.S.C. § 3553.

have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation would make no change in existing law, within the meaning of clauses (a) and (b) of subparagraph 12 of rule XXVI of the Standing Rules of the Senate, because this legislation would not repeal or amend any provision of current law.

