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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To require ByteDance to divest itself of certain assets, and to require the Committee on Foreign Investment in the United States to review certain business relationships between ByteDance and United States businesses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. MCCLAIN introduced the following bill; which was referred to the Committee on _____

A BILL

To require ByteDance to divest itself of certain assets, and to require the Committee on Foreign Investment in the United States to review certain business relationships between ByteDance and United States businesses, 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. SHORT TITLE.**

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

1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

3 (1) TikTok engages in political censorship, in-
4 cluding related to awareness of Uighur Muslim in-
5 ternment camps in China.

6 (2) The U.S. government fined TikTok \$5.7
7 million for illegally collecting children's data.

8 (3) TikTok's Chinese parent company
9 ByteDance has agreed to pay \$92 million in a settle-
10 ment to U.S. users who are part of a class-action
11 lawsuit alleging that the video-sharing app failed to
12 get their consent to collect data in violation of a
13 strict Illinois biometric privacy law.

14 (4) Chinese companies, such as TikTok, have
15 no meaningful ability to tell the Chinese Communist
16 Party "no" if officials request user data.

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

20 **SEC. 3. STATEMENT OF POLICY.**

21 It is the policy of the United States to secure the
22 information and communications technology and services
23 supply chain and to counter the threat posed by mobile
24 applications and software services developed and owned by
25 foreign adversaries, specifically the People's Republic of
26 China and the Chinese Communist Party, which continue

1 to threaten the national security, foreign policy, and econ-
2 omy of the United States.

3 **SEC. 4. CODIFICATION OF THE EXECUTIVE ORDER AD-**
4 **DRESSING THE THREAT POSED BY TIKTOK.**

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

8 (b) Notwithstanding section 203(b) of the Inter-
9 national Emergency Economic Powers Act, the President
10 shall have the authority to implement Executive Order
11 13942.

12 **SEC. 5. DIVESTMENT OF ASSETS BY BYTEDANCE.**

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

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

18 (2) any data obtained or derived from TikTok
19 application or Musical.ly application users in the
20 United States.

21 (b) DEADLINE.—

22 (1) IN GENERAL.—Subject to paragraph (2),
23 ByteDance shall complete the divestment of assets
24 required under subsection (a) before the end of the

1 90-day period beginning on the date of enactment of
2 this Act.

3 (2) EXTENSIONS.—CFIUS may provide one or
4 more 30-day extensions with respect to the deadline
5 described under paragraph (1), but under no cir-
6 cumstances may such extensions extend the deadline
7 beyond the end of the 12-month period beginning on
8 the date of enactment of this Act.

9 (3) PROGRESS REPORT.—Not later than the
10 end of the 45-day period beginning on the date of
11 enactment of this Act, ByteDance shall provide evi-
12 dence to the President that ByteDance is in the
13 process of divesting itself of all assets described
14 under subsection (a).

15 (c) CERTIFICATIONS AND AUDITS.—

16 (1) WEEKLY CERTIFICATION.—Until
17 ByteDance provides the certification under para-
18 graph (2)(A), ByteDance and TikTok shall certify to
19 CFIUS on a weekly basis that they are in compli-
20 ance with this Act and ByteDance shall include a
21 description of efforts to make divestment required
22 under this section and a timeline for projected com-
23 pletion of remaining actions necessary to complete
24 such divestment.

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

4 (A) ByteDance shall certify in writing to
5 CFIUS that ByteDance has destroyed all data
6 that ByteDance is required to divest pursuant
7 to this section, including all copies of such data
8 wherever located; and

9 (B) CFIUS may audit ByteDance, on such
10 terms as CFIUS determines appropriate, in
11 order to ensure that such destruction of data is
12 complete.

13 (d) LIMITATION ON DIVESTMENTS.—

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

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

19 (B) unless 10 business days have passed
20 from such notification and CFIUS has not
21 issued an objection to ByteDance.

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

25 (A) whether the buyer or transferee—

1 (i) is a U.S. citizen or is owned by
2 U.S. citizens;

3 (ii) has or has had a direct or indirect
4 contractual, financial, familial, employ-
5 ment, or other close and continuous rela-
6 tionship with ByteDance, or its officers,
7 employees, or shareholders; and

8 (iii) can demonstrate a willingness
9 and ability to support compliance with this
10 Act; and

11 (B) whether the proposed sale or transfer
12 would threaten to impair the national security
13 of the United States or undermine the purpose
14 of this Act, and whether the sale effectuates, to
15 CFIUS's satisfaction and in CFIUS's discre-
16 tion, a complete divestment of all tangible or in-
17 tangible assets or property, wherever located,
18 used to enable or support the operation of the
19 TikTok application in the United States.

20 (e) CFIUS VERIFICATION MEASURES.—

21 (1) IN GENERAL.—Without limitation on the
22 exercise of authority by any agency under other pro-
23 visions of law, and until such time as the divestment
24 required under this section is completed and verified
25 to the satisfaction of CFIUS, CFIUS is authorized

1 to implement measures CFIUS determines necessary
2 and appropriate to verify compliance with this sec-
3 tion and to ensure that the operations of the TikTok
4 application are carried out in such a manner as to
5 ensure protection of the national security interests of
6 the United States. Such measures may include, on
7 reasonable notice to ByteDance and TikTok Inc.,
8 employees of the United States Government, as des-
9 ignated by CFIUS, shall be permitted access, for
10 purposes of verifying compliance with this section, to
11 all premises and facilities of ByteDance and TikTok
12 Inc., and any of their respective subsidiaries, oper-
13 ated in furtherance of the TikTok application lo-
14 cated in the United States—

15 (A) to inspect and copy any books, ledgers,
16 accounts, correspondence, memoranda, and
17 other records and documents in the possession
18 or under the control of ByteDance or TikTok
19 Inc., or any of their respective subsidiaries, that
20 concern any matter relating to this section;

21 (B) to inspect or audit any information
22 systems, networks, hardware, software, data,
23 communications, or property in the possession
24 or under the control of ByteDance or TikTok
25 Inc., or any of their respective subsidiaries; and

1 (C) to interview officers, employees, or
2 agents of ByteDance or TikTok Inc., or any of
3 their respective subsidiaries, concerning any
4 matter relating to this section.

5 (2) DEADLINE FOR VERIFICATION.— CFIUS
6 shall conclude all verification procedures described
7 under this subsection within 90 days after the cer-
8 tification of divestment is provided to CFIUS pursu-
9 ant to subsection (c)(1).

10 **SEC. 6. PROHIBITED TRANSACTIONS.**

11 (a) IN GENERAL.—A transaction is prohibited if the
12 transaction is by any person, or with respect to any prop-
13 erty, subject to the jurisdiction of the United States, with
14 ByteDance Ltd. (a.k.a. Zī`jie` Tia`odo`ng), Beijing,
15 China, or its subsidiaries, including TikTok Inc., in which
16 any such company has any interest, involving the fol-
17 lowing:

18 (1) Any provision of services, occurring after
19 the end of the 45-day period beginning on the date
20 of enactment of this Act, to distribute or maintain
21 the TikTok mobile application, constituent code, or
22 application updates through an online mobile appli-
23 cation store, or any online marketplace where mobile
24 users within the land or maritime borders of the

1 United States and its territories may download or
2 update applications for use on their mobile devices.

3 (2) Any provision of internet hosting services,
4 occurring after the end of the 45-day period begin-
5 ning on the date of enactment of this Act, enabling
6 the functioning or optimization of the TikTok mobile
7 application within the land and maritime borders of
8 the United States and its territories.

9 (3) Any provision of content delivery network
10 services, occurring after the end of the 45-day period
11 beginning on the date of enactment of this Act, ena-
12 bling the functioning or optimization of the TikTok
13 mobile application within the land and maritime bor-
14 ders of the United States and its territories.

15 (4) Any provision of directly contracted or ar-
16 ranged internet transit or peering services, occurring
17 after the end of the 45-day period beginning on the
18 date of enactment of this Act, enabling the func-
19 tioning or optimization of the TikTok mobile appli-
20 cation within the land and maritime borders of the
21 United States and its territories.

22 (5) Any utilization, occurring after the end of
23 the 45-day period beginning on the date of enact-
24 ment of this Act, of the TikTok mobile application's
25 constituent code, functions, or services in the func-

1 tioning of software or services developed or acces-
2 sible within the land and maritime borders of the
3 United States and its territories.

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

6 (1) Any transaction that is not a business-to-
7 business transactions.

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

10 (3) The exchange between or among TikTok
11 mobile application users of personal or business in-
12 formation using the TikTok mobile application.

13 (4) Activities related to mobile applications in-
14 tended for distribution, installation or use outside of
15 the United States by any person, including to any
16 person subject to U.S. jurisdiction, and all ancillary
17 activities, including activities performed by any U.S.
18 person, which are ordinarily incident to, and nec-
19 essary for, the distribution, installation, and use of
20 mobile applications outside of the United States.

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

23 (6) Any transactions necessary to effectuate the
24 divestment required by this section.

1 (c) WAIVER.—A person may submit a request to
2 CFIUS for a waiver of the requirements under subsection
3 (a).

4 **SEC. 7. ENFORCEMENT.**

5 (a) PROHIBITION ON EVASION AND CIRCUMVEN-
6 TION.—Any transaction or other device entered into or
7 employed for the purpose of, or with the effect of, evading
8 or circumventing this Act is prohibited.

9 (b) INJUNCTION.—Whenever it appears to the Attor-
10 ney General that any person is engaged in, or is about
11 to engage in, any act that constitutes, or would constitute,
12 a violation of this Act, the Attorney General may initiate
13 civil action in a district court of the United States to en-
14 join such violation.

15 (c) PENALTIES.—

16 (1) MATERIAL MISSTATEMENT OR OMISSION.—
17 Any person who submits a report with a material
18 misstatement or omission or makes a false certifi-
19 cation under this Act may be liable to the United
20 States for a civil penalty not to exceed \$250,000 per
21 violation. The amount of the penalty imposed for a
22 violation shall be based on the nature of the viola-
23 tion.

24 (2) VIOLATIONS.—

1 (A) IN GENERAL.—Any person who fails to
2 comply with the requirements of this Act may
3 be liable to the United States for a civil penalty
4 not to exceed the greater of \$250,000 or the
5 value of the transaction.

6 (B) AMOUNT.—The amount of a penalty
7 imposed for a violation shall be based on the
8 nature of the violation.

9 (3) DETERMINATION AND NOTICE OF PEN-
10 ALTY.—A determination to impose penalties under
11 paragraph (1) or (2) shall be made by CFIUS. No-
12 tice of the penalty, including a written explanation
13 of the conduct to be penalized and the amount of the
14 penalty, shall be sent to the subject person electroni-
15 cally and by U.S. mail or courier service. Notice
16 shall be deemed to have been effected by the earlier
17 of the date of electronic transmission and the date
18 of receipt of U.S. mail or courier service.

19 (4) PETITION FOR RECONSIDERATION.—Upon
20 receiving notice of a penalty to be imposed under
21 paragraph (1) or (2), the subject person may, within
22 15 business days of receipt of such notice, submit a
23 petition for reconsideration to the Staff Chairperson,
24 including a defense, justification, or explanation for
25 the conduct to be penalized. CFIUS shall review the

1 petition and issue any final penalty determination
2 within 15 business days of receipt of the petition.
3 The Staff Chairperson and the subject person may
4 extend either such period through written agree-
5 ment. CFIUS and the subject person may reach an
6 agreement on an appropriate remedy at any time be-
7 fore CFIUS issues any final penalty determination.

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

12 (6) APPLICATION OF FALSE STATEMENTS AC-
13 COUNTABILITY ACT OF 1996.—Section 2 of the False
14 Statements Accountability Act of 1996 (18 U.S.C.
15 1001) shall apply to all information provided to
16 CFIUS or the President under this Act.

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

21 (8) PENALTIES AS DEBT DUE TO THE U.S. GOV-
22 ERNMENT.—The imposition of a civil monetary pen-
23 alty under this subsection creates a debt due to the
24 U.S. Government. The Department of the Treasury
25 may take action to collect the penalty assessed if not

1 paid within the time prescribed by CFIUS and noti-
2 fied to the applicable party or parties. In addition or
3 instead, the matter may be referred to the Depart-
4 ment of Justice for appropriate action to recover the
5 penalty.

6 (9) DEFINITIONS.—In this subsection:

7 (A) STAFF CHAIRPERSON.—The term
8 “Staff Chairperson” means the Department of
9 the Treasury official so designated by the Sec-
10 retary of the Treasury or by the Secretary’s
11 designee.

12 (B) SUBJECT PERSON.—In this subsection,
13 the term “subject person” means the person or
14 persons who may be liable to the United States
15 for a civil penalty.

16 **SEC. 8. NATIONAL SECURITY REVIEW OF BUSINESS RELA-**
17 **TIONSHIPS WITH BYTEDANCE.**

18 (a) NATIONAL SECURITY INVESTIGATIONS.—

19 (1) IN GENERAL.—CFIUS shall—

20 (A) review the relationship of each covered
21 United States business with ByteDance to de-
22 termine the effects of such relationship on the
23 national security of the United States; and

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

1 (2) PRESIDENTIAL AUTHORITY.—After review-
2 ing a report issued under paragraph (1) with respect
3 to a relationship, the President may take such action
4 for such time as the President considers appropriate
5 to suspend or prohibit the relationship if the rela-
6 tionship threatens to impair the national security of
7 the United States.

8 (3) PROCEDURES.—To the extent practicable,
9 CFIUS and the President shall carry out a review
10 of a relationship under this subsection in the same
11 manner as a covered transaction is reviewed under
12 section 721 of the Defense Production Act of 1950
13 (50 U.S.C. 4565).

14 **SEC. 9. REPORT ON NATIONAL SECURITY THREAT OF MO-**
15 **BILE APPLICATIONS UTILIZED BY THE PEO-**
16 **PLE’S REPUBLIC OF CHINA AND CHINESE**
17 **COMMUNIST PARTY.**

18 (a) REPORTING REQUIREMENT.—Not later than 180
19 days after the enactment of this Act, and annually there-
20 after, the Secretary of State and the Attorney General,
21 in consultation with the Director of National Intelligence,
22 shall submit to the appropriate congressional committees
23 a report describing—

24 (1) the scope of efforts by the People’s Republic
25 of China and Chinese Communist Party to utilize

1 mobile applications to perform espionage on U.S.
2 citizens, and business and organizations located in
3 the United States;

4 (2) the means and objectives of the People's
5 Republic of China and Chinese Communist Party in
6 utilizing mobile applications to perform espionage
7 and spread disinformation in the United States; and

8 (3) a detailed strategy regarding how the Sec-
9 retary of State and the Attorney General intend to
10 counter espionage and disinformation efforts con-
11 ducted by the People's Republic of China and the
12 Chinese Communist Party using mobile applications.

13 (b) FORM.—The report required by subsection (a)
14 shall be submitted in unclassified form, but may include
15 a classified annex if necessary. The unclassified portion
16 of such report shall be made available on a publicly avail-
17 able internet website of the Federal Government.

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

21 (1) the Committee on Armed Services, the
22 Committee on Foreign Affairs, the Committee on Fi-
23 nancial Services, and the Committee on the Judici-
24 ary of the House of Representatives; and

1 (2) the Committee on Armed Services, the
2 Committee on Foreign Relations, the Committee on
3 Banking, Housing, and Urban Affairs, and the Com-
4 mittee on the Judiciary of the Senate.

5 **SEC. 10. DEFINITIONS.**

6 In this Act:

7 (1) CFIUS.—The term “CFIUS” means the
8 Committee on Foreign Investment in the United
9 States.

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

14 (A) is partnering or contracting with
15 ByteDance with respect to technology plat-
16 forms, applications, or other ventures; or

17 (B) is a shareholder of ByteDance.