

The Final Countdown: President Biden Signs Potential TikTok Ban into Law

April 25, 2024

On April 24, 2024, President Biden signed a sweeping [foreign aid package](#) into law. Tucked into the law is a [slightly amended version](#) of the “Protecting Americans from Foreign Adversary Controlled Applications Act” (the Act), which will force TikTok’s parent company, ByteDance, to sell TikTok or have it banned in the U.S. A [nearly identical version](#) of the Act passed the U.S. House of Representatives in March 2024, but at that time, the Act faced an uncertain future in the Senate. However, proponents of the Act in the U.S. House of Representatives saw an opportunity to pass the Act by including it within the foreign aid package that both the Senate and President Biden were eager to pass.

Changes from the Prior Version

The amended Act now gives TikTok’s parent company ByteDance (and other qualifying entities) 270 days (up from 180 days) to sell or otherwise divest TikTok to an entity based in a non-foreign adversary country (i.e., China, Iran, North Korea, and Russia, as defined by 10 U.S.C. Section 4872(d)(2)). Although the Act primarily concerns TikTok at present, it is not limited only to TikTok. Additionally, the Act authorizes the President to grant a one-time extension of 90 additional days for a covered app to be sold or divested.

If ByteDance fails to sell TikTok to a non-foreign adversary-based entity within 270 days, the Act provides for a nationwide ban on the distribution, maintenance, and update of TikTok (or any other app to which the Act applies). That would essentially spell the end of TikTok in the U.S., at least in its current form.

Anticipated Legal Challenges

TikTok [stated that it would sue](#) to block the law. The Act grants exclusive jurisdiction for any legal challenge to the Act to the U.S. Court of Appeals for the D.C. Circuit. Also, the Act sets a 165-day statute of limitations from the date of enactment for any party to challenge it.

TikTok will look to build on its [recent legal success in Montana](#), where it challenged a statewide TikTok ban in 2023 on First Amendment and other grounds. There, the U.S. District Court for the District of Montana granted a preliminary injunction that prevented Montana’s ban from taking effect. That case is currently pending before the U.S. Court of Appeals for the Ninth Circuit.

The Takeaway

President Biden and Congress may now face criticism from TikTok users who will blame them if TikTok is banned or limited within the U.S. Additionally, the U.S. Solicitor General may have to prepare for a legal challenge to the Act if TikTok sues to block its enforcement. Meanwhile, the 270-day clock has started running on ByteDance's time to find a buyer for TikTok to avoid it being banned in the U.S. Although unlikely, TikTok could be banned in the U.S. as soon as January 19, 2025. It is possible that TikTok will use its massive platform to lobby Congress to repeal or amend the Act to give ByteDance more time to find a buyer or to drop the divestment requirement altogether.

Please reach out to the authors if you have questions about the new legislation or related business compliance with new regulations.

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