

117TH CONGRESS
2D SESSION

H. R. 6416

To prohibit targeted advertising by advertising facilitators and advertisers,
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2022

Ms. ESHOO (for herself, Ms. SCHAKOWSKY, and Mr. RUSH) introduced the
following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit targeted advertising by advertising facilitators
and advertisers, 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 “Banning Surveillance
5 Advertising Act of 2022”.

6 **SEC. 2. PROHIBITION ON TARGETED ADVERTISING.**

7 (a) PROHIBITION ON TARGETING BY ADVERTISING
8 FACILITATORS.—

9 (1) IN GENERAL.—An advertising facilitator
10 may not—

1 (A) target the dissemination of an adver-
2 tisement; or

3 (B) knowingly enable an advertiser or a
4 third party to target the dissemination of an
5 advertisement, including by providing the adver-
6 tiser or third party with—

7 (i) a list of individuals or connected
8 devices;

9 (ii) contact information of an indi-
10 vidual;

11 (iii) a unique identifier that may be
12 used to identify an individual or a con-
13 nected device; or

14 (iv) other personal information that
15 can be used to identify an individual or a
16 connected device.

17 (2) CONTEXTUAL ADVERTISEMENTS.—

18 (A) IN GENERAL.—For purposes of para-
19 graph (1), an advertising facilitator shall not be
20 considered to target the dissemination of an ad-
21 vertisement, or to knowingly enable an adver-
22 tiser or third party to target the dissemination
23 of an advertisement, to an individual (or a con-
24 nected device associated with an individual) if
25 the advertisement—

1 (i) is disseminated based on informa-
2 tion—

3 (I) that the individual is viewing
4 or with which the individual is other-
5 wise engaging; or

6 (II) for which the individual
7 searched; and

8 (ii) is displayed or otherwise dissemi-
9 nated in close proximity to information de-
10 scribed in clause (i).

11 (B) PROHIBITION ON FURTHER USE OF
12 INFORMATION RELATED TO THE DELIVERY OF
13 CONTEXTUAL ADVERTISEMENTS.—Information
14 collected in connection with the dissemination
15 of an advertisement as described in subpara-
16 graph (A) may not be used to target the dis-
17 semination of additional advertisements or to
18 knowingly enable an advertiser or third party to
19 target the dissemination of additional advertise-
20 ments.

21 (3) INFORMATION PROVIDED BY OR ON BEHALF
22 OF ADVERTISER WITH ATTESTATION OF COMPLI-
23 ANCE.—Paragraph (1) does not apply to the tar-
24 geting of the dissemination of an advertisement
25 based on information described in clauses (i)

1 through (iv) of subparagraph (B) of such paragraph
2 that is provided to an advertising facilitator by an
3 advertiser or by a third party on behalf of an adver-
4 tiser, if the advertising facilitator is provided a writ-
5 ten attestation that the advertiser is not in violation
6 of subsection (b) with respect to such information.

7 (b) PROHIBITION ON TARGETING BY ADVER-
8 TISERS.—An advertiser may not target, cause an adver-
9 tising facilitator to target, or knowingly enable a third
10 party to target or cause an advertising facilitator to tar-
11 get, the dissemination of an advertisement (including by
12 providing any information described in clauses (i) through
13 (iv) of subsection (a)(1)(B)) based on personal informa-
14 tion—

15 (1) that the advertiser has purchased or other-
16 wise obtained from another person (other than an
17 individual to whom the personal information per-
18 tains); or

19 (2) that—

20 (A) identifies an individual as a member of
21 a protected class; or

22 (B) is known or should reasonably be
23 known by the advertiser to act as a reasonable
24 proxy for identifying an individual as a member
25 of a protected class.

1 (c) EXCEPTION FOR TARGETING BASED ON RECOG-
2 NIZED PLACE.—For purposes of this section, the dissemi-
3 nation of an advertisement shall not be considered to be
4 targeted to an individual, connected device, or group of
5 individuals or connected devices based on a recognized
6 place associated with the individual, connected device, or
7 group of individuals or connected devices.

8 **SEC. 3. ENFORCEMENT.**

9 (a) FEDERAL TRADE COMMISSION.—

10 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
11 TICES.—A violation of this Act or a regulation pro-
12 mulgated under this Act shall be treated as a viola-
13 tion of a rule defining an unfair or deceptive act or
14 practice under section 18(a)(1)(B) of the Federal
15 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

16 (2) POWERS OF THE COMMISSION.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B) and paragraph (3)—

19 (i) the Commission shall enforce this
20 Act and the regulations promulgated under
21 this Act in the same manner, by the same
22 means, and with the same jurisdiction,
23 powers, and duties as though all applicable
24 terms and provisions of the Federal Trade
25 Commission Act (15 U.S.C. 41 et seq.)

1 were incorporated into and made a part of
2 this Act; and

3 (ii) any person who violates this Act
4 or a regulation promulgated under this Act
5 shall be subject to the penalties and enti-
6 tled to the privileges and immunities pro-
7 vided in the Federal Trade Commission
8 Act.

9 (B) EXCLUSIVE LITIGATION AUTHORITY.—

10 Notwithstanding section 16(a) of the Federal
11 Trade Commission Act (15 U.S.C. 56(a)), the
12 Commission shall have exclusive authority to
13 commence or defend, and supervise the litiga-
14 tion of, any action for a violation of this Act or
15 a regulation promulgated under this Act, and
16 any appeal of such action, in its own name by
17 any of its attorneys designated by it for such
18 purpose, without first referring the matter to
19 the Attorney General.

20 (3) COMMON CARRIERS AND NONPROFIT ORGA-
21 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or
22 6 of the Federal Trade Commission Act (15 U.S.C.
23 44; 45(a)(2); 46) or any jurisdictional limitation of
24 the Commission, the Commission shall also enforce
25 this Act and the regulations promulgated under this

1 Act, in the same manner provided in paragraphs (1)
2 and (2), with respect to—

3 (A) common carriers subject to the Com-
4 munications Act of 1934 (47 U.S.C. 151 et
5 seq.) and all Acts amendatory thereof and sup-
6 plementary thereto; and

7 (B) organizations not organized to carry
8 on business for their own profit or that of their
9 members.

10 (4) RULEMAKING AUTHORITY.—The Commis-
11 sion may promulgate, under section 553 of title 5,
12 United States Code, any regulations necessary to
13 implement this Act.

14 (5) SAVINGS CLAUSE.—Nothing in this Act
15 shall be construed to limit the authority of the Com-
16 mission under any other provision of law.

17 (b) ENFORCEMENT BY STATES.—

18 (1) IN GENERAL.—In any case in which the at-
19 torney general of a State has reason to believe that
20 an interest of the residents of the State has been or
21 is threatened or adversely affected by an act or prac-
22 tice in violation of this Act or a regulation promul-
23 gated under this Act, the attorney general of the
24 State may, as *parens patriae*, bring a civil action on
25 behalf of the residents of the State in an appropriate

1 district court of the United States or an appropriate
2 State court to obtain appropriate relief.

3 (2) RIGHTS OF THE COMMISSION.—

4 (A) NOTICE TO THE COMMISSION.—

5 (i) IN GENERAL.—Except as provided
6 in clause (iii), the attorney general of a
7 State shall notify the Commission in writ-
8 ing that the attorney general intends to
9 bring a civil action under paragraph (1)
10 before initiating the civil action.

11 (ii) CONTENTS.—The notification re-
12 quired by clause (i) with respect to a civil
13 action shall include a copy of the complaint
14 to be filed to initiate the civil action.

15 (iii) EXCEPTION.—If it is not feasible
16 for the attorney general of a State to pro-
17 vide the notification required by clause (i)
18 before initiating a civil action under para-
19 graph (1), the attorney general shall notify
20 the Commission immediately upon insti-
21 tuting the civil action.

22 (B) INTERVENTION BY THE COMMIS-
23 SION.—The Commission may—

1 (i) intervene in any civil action
2 brought by the attorney general of a State
3 under paragraph (1); and

4 (ii) upon intervening—

5 (I) remove the civil action to the
6 appropriate district court of the
7 United States, if the action was not
8 originally brought in such court;

9 (II) be heard on all matters arising in the civil action; and

10 (III) file petitions for appeal of a
11 decision in the civil action.

12 (C) INVESTIGATORY POWERS.—Nothing in
13 this subsection may be construed to prevent the
14 attorney general of a State from exercising the
15 powers conferred on the attorney general by the
16 laws of the State to conduct investigations, to
17 administer oaths or affirmations, or to compel
18 the attendance of witnesses or the production of
19 documentary or other evidence.

20 (3) ACTION BY THE COMMISSION.—If the Com-
21 mission institutes a civil action with respect to a vio-
22 lation of this Act or a regulation promulgated under
23 this Act, the attorney general of a State may not,
24 during the pendency of such action, bring a civil ac-
25

1 tion under paragraph (1) against any defendant
2 named in the complaint of the Commission for the
3 violation with respect to which the Commission insti-
4 tuted such action.

5 (4) ACTIONS BY OTHER STATE OFFICIALS.—

6 (A) IN GENERAL.—In addition to civil ac-
7 tions brought by attorneys general under para-
8 graph (1), any other officer of a State who is
9 authorized by the State to do so may bring a
10 civil action under such paragraph, subject to
11 the same requirements and limitations that
12 apply under this subsection to civil actions
13 brought by attorneys general.

14 (B) SAVINGS PROVISION.—Nothing in this
15 subsection may be construed to prohibit an at-
16 torney general or authorized official of a State
17 from initiating or continuing any proceeding in
18 a court of the State for a violation of any civil
19 or criminal law of the State.

20 (c) PRIVATE RIGHT OF ACTION.—

21 (1) ENFORCEMENT BY INDIVIDUALS.—

22 (A) IN GENERAL.—Any individual alleging
23 a violation of this Act or a regulation promul-
24 gated under this Act may bring a civil action in

1 any Federal or State court of competent juris-
2 diction.

3 (B) RELIEF.—In a civil action brought
4 under subparagraph (A) in which the plaintiff
5 prevails, the court may award—

6 (i) an amount equal to—

7 (I) in the case of a negligent vio-
8 lation, not less than \$100 and not
9 greater than \$1,000 per violation; or

10 (II) in the case of a reckless,
11 knowing, willful, or intentional viola-
12 tion, not less than \$500 and not
13 greater than \$5,000 per violation;

14 (ii) reasonable attorney's fees and liti-
15 gation costs; and

16 (iii) any other relief, including equi-
17 table or declaratory relief, that the court
18 determines appropriate.

19 (C) INJURY IN FACT.—A violation of this
20 Act or a regulation promulgated under this Act
21 with respect to the personal information of an
22 individual constitutes a concrete and particular-
23 ized injury in fact to that individual.

1 (2) INVALIDITY OF PRE-DISPUTE ARBITRATION
2 AGREEMENTS AND PRE-DISPUTE JOINT-ACTION
3 WAIVERS.—

4 (A) IN GENERAL.—Notwithstanding any
5 other provision of law, no pre-dispute arbitra-
6 tion agreement or pre-dispute joint-action waiv-
7 er shall be valid or enforceable.

8 (B) APPLICABILITY.—Any determination
9 as to whether or how this paragraph applies to
10 any dispute shall be made by a court, rather
11 than an arbitrator, without regard to whether
12 such agreement purports to delegate such deter-
13 mination to an arbitrator.

14 **SEC. 4. DEFINITIONS.**

15 In this Act:

16 (1) ADVERTISEMENT.—The term “advertise-
17 ment” means information provided by an advertiser
18 to an advertising facilitator that the advertising
19 facilitator, in exchange for monetary consideration
20 or another thing of value, disseminates to an indi-
21 vidual, connected device, or group of individuals or
22 connected devices.

23 (2) ADVERTISER.—

24 (A) IN GENERAL.—The term “advertiser”
25 means a person to the extent such person, di-

rectly or indirectly, provides an advertising facilitator with monetary consideration or another thing of value for the dissemination of an advertisement to an individual, connected device, or group of individuals or connected devices.

(B) EXCLUSION.—The term “advertiser” does not include a natural person, except to the extent such person is engaged in a commercial activity that is more than de minimis.

(3) ADVERTISING FACILITATOR.—

(A) IN GENERAL.—The term “advertising facilitator” means a person to the extent such person—

(i) receives monetary consideration or another thing of value to disseminate an advertisement to an individual, connected device, or group of individuals or connected devices; and

(ii) collects or processes personal information with respect to the dissemination of the advertisement.

(B) EXCLUSION.—The term “advertising facilitator” does not include a natural person, except to the extent such person is engaged in

1 a commercial activity that is more than de
2 minimis.

3 (4) COLLECT.—The term “collect” means, with
4 respect to personal information, to obtain such infor-
5 mation in any manner, except when solely transmit-
6 ting, routing, providing intermediate storage for, or
7 providing connections for such information through
8 a system or network.

9 (5) COMMISSION.—The term “Commission”
10 means the Federal Trade Commission.

11 (6) CONNECTED DEVICE.—The term “con-
12 nected device” means any electronic equipment that
13 is—

14 (A) primarily designed for or marketed to
15 consumers;

16 (B) capable of connecting to the internet
17 or another communication network; and

18 (C) capable of sending, receiving, or proc-
19 essing personal information.

20 (7) CONTENTS.—The term “contents”, when
21 used with respect to any communication, has the
22 meaning given such term in section 2510 of title 18,
23 United States Code.

24 (8) DISPUTE.—The term “dispute” means any
25 claim by an individual that a person has violated

1 this Act or the regulations promulgated under this
2 Act.

3 (9) DISSEMINATE.—The term “disseminate”
4 means, with respect to an advertisement, to trans-
5 mit, display, or otherwise disseminate the advertise-
6 ment electronically or through communication by
7 wire or radio.

8 (10) DISSEMINATION.—The term “dissemina-
9 tion” means, with respect to an advertisement, the
10 transmission, display, or other dissemination of the
11 advertisement electronically or through communica-
12 tion by wire or radio.

13 (11) INDIAN LANDS.—The term “Indian lands”
14 includes—

15 (A) any Indian country of an Indian Tribe
16 (as such term is defined in section 1151 of title
17 18, United States Code);

18 (B) any land in Alaska owned, pursuant to
19 the Alaska Native Claims Settlement Act (43
20 U.S.C. 1601 et seq.), by an Indian Tribe that
21 is a Native village (as such term is defined in
22 section 3 of that Act (43 U.S.C. 1602)) or by
23 a Village Corporation (as such term is defined
24 in section 3 of that Act (43 U.S.C. 1602)) that
25 is associated with an Indian Tribe; and

1 (C) any land that is part or all of a Tribal
2 designated statistical area associated with an
3 Indian Tribe, or is part or all of an Alaska Na-
4 tive village statistical area associated with an
5 Indian Tribe, as defined by the Bureau of the
6 Census for the purposes of the most recent de-
7 cennial census.

8 (12) INDIAN TRIBE.—The term “Indian Tribe”
9 has the meaning given the term “Indian tribe” in
10 section 4 of the Indian Self-Determination and Edu-
11 cation Assistance Act (25 U.S.C. 5304).

12 (13) PERSONAL INFORMATION.—The term
13 “personal information” means data linked or reason-
14 ably linkable to an individual or connected device, in-
15 cluding—

16 (A) data inferred or derived about the indi-
17 vidual or connected device from other collected
18 data, if such data is still linked or reasonably
19 linkable to the individual or connected device;

20 (B) contents of communications;

21 (C) internet browsing history and online
22 activity; and

23 (D) a unique identifier used for the pur-
24 poses of targeting the dissemination of an ad-
25 vertisement.

1 (14) PRE-DISPUTE ARBITRATION AGREE-
2 MENT.—The term “pre-dispute arbitration agree-
3 ment” means any agreement to arbitrate a dispute
4 that has not arisen at the time of making the agree-
5 ment.

6 (15) PRE-DISPUTE JOINT-ACTION WAIVER.—
7 The term “pre-dispute joint-action waiver” means
8 an agreement, whether or not part of a pre-dispute
9 arbitration agreement, that would prohibit, or waive
10 the right of, one of the parties to the agreement to
11 participate in a joint, class, or collective action in a
12 judicial, arbitral, administrative, or other forum,
13 concerning a dispute that has not yet arisen at the
14 time of making the agreement.

15 (16) PROTECTED CLASS.—The term “protected
16 class” means the actual or perceived race, color, eth-
17 nicity, national origin, religion, sex (including sexual
18 orientation and gender identity or gender expres-
19 sion), familial status, or disability of an individual or
20 group of individuals.

21 (17) RECOGNIZED PLACE.—

22 (A) IN GENERAL.—The term “recognized
23 place” means any of the following:

24 (i) A State.

25 (ii) Indian lands.

(iii) A county, municipality, city, town, township, village, borough, or similar unit of general government that is—

(I) incorporated pursuant to a State law; or

(II) an incorporated place (as defined in the most recent glossary of the Bureau of the Census).

(iv) A census designated place (as defined in the most recent glossary of the Bureau of the Census).

(v) A designated market area (as defined in section 122(j) of title 17, United States Code).

(vi) A congressional district.

(B) EXCLUSIONS.—The term “recognized place” does not include—

(i) a subdivision of any item listed in subparagraph (A) that is not itself listed in such subparagraph; or

(ii) a ZIP Code.

(18) STATE.—The term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa,

1 the Commonwealth of the Northern Mariana Is-
2 lands, and any possession of the United States.

3 (19) TARGET.—

4 (A) IN GENERAL.—The term “target”
5 means, with respect to the dissemination of an
6 advertisement, to perform or cause to be per-
7 formed any computational process designed to
8 select an individual, connected device, or group
9 of individuals or connected devices to which to
10 disseminate the advertisement based on per-
11 sonal information pertaining to the individual
12 or connected device or to the individuals or con-
13 nected devices that make up the group.

14 (B) EXCLUSIONS.—The term “target”
15 does not include, with respect to the dissemina-
16 tion of an advertisement, the performance or
17 causing the performance of any computational
18 process undertaken solely for transmitting,
19 routing, providing intermediate storage for, or
20 providing connections for the advertisement
21 through a system or network.

22 (20) THIRD PARTY.—The term “third party”
23 includes, with respect to an advertiser or an adver-
24 tising facilitator, a subsidiary, a corporate affiliate,

- 1 or other related party of the advertiser or adver-
- 2 tising facilitator.

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