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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Banning Surveillance Advertising Act of 2022”.

SEC. 2. PROHIBITION ON TARGETED ADVERTISING.

(a) Prohibition on Targeting by Advertising Facilitators.—

(1) In general.—An advertising facilitator may not—
(A) target the dissemination of an advertisement; or

(B) knowingly enable an advertiser or a third party to target the dissemination of an advertisement, including by providing the advertiser or third party with—

(i) a list of individuals or connected devices;

(ii) contact information of an individual;

(iii) a unique identifier that may be used to identify an individual or a connected device; or

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

(2) CONTEXTUAL ADVERTISEMENTS.—

(A) IN GENERAL.—For purposes of paragraph (1), an advertising facilitator shall not be considered to target the dissemination of an advertisement, or to knowingly enable an advertiser or third party to target the dissemination of an advertisement, to an individual (or a connected device associated with an individual) if the advertisement—
(i) is disseminated based on information—

(I) that the individual is viewing or with which the individual is otherwise engaging; or

(II) for which the individual searched; and

(ii) is displayed or otherwise disseminated in close proximity to information described in clause (i).

(B) Prohibition on further use of information related to the delivery of contextual advertisements.—Information collected in connection with the dissemination of an advertisement as described in subparagraph (A) may not be used to target the dissemination of additional advertisements or to knowingly enable an advertiser or third party to target the dissemination of additional advertisements.

(3) Information provided by or on behalf of advertiser with attestation of compliance.—Paragraph (1) does not apply to the targeting of the dissemination of an advertisement based on information described in clauses (i)
through (iv) of subparagraph (B) of such paragraph that is provided to an advertising facilitator by an advertiser or by a third party on behalf of an advertiser, if the advertising facilitator is provided a written attestation that the advertiser is not in violation of subsection (b) with respect to such information.

(b) Prohibition on Targeting by Advertisers.—An advertiser may not target, cause an advertising facilitator to target, or knowingly enable a third party to target or cause an advertising facilitator to target, the dissemination of an advertisement (including by providing any information described in clauses (i) through (iv) of subsection (a)(1)(B)) based on personal information—

(1) that the advertiser has purchased or otherwise obtained from another person (other than an individual to whom the personal information pertains); or

(2) that—

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

(B) is known or should reasonably be known by the advertiser to act as a reasonable proxy for identifying an individual as a member of a protected class.
(c) Exception for Targeting Based on Recognized Place.—For purposes of this section, the dissemination of an advertisement shall not be considered to be targeted to an individual, connected device, or group of individuals or connected devices based on a recognized place associated with the individual, connected device, or group of individuals or connected devices.

SEC. 3. ENFORCEMENT.

(a) Federal Trade Commission.—

(1) Unfair or Deceptive Acts or Practices.—A violation of this Act or a regulation promulgated under this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) Powers of the Commission.—

(A) In General.—Except as provided in subparagraph (B) and paragraph (3)—

(i) the Commission shall enforce this Act and the regulations promulgated under this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.)
were incorporated into and made a part of this Act; and

(ii) any person who violates this Act or a regulation promulgated under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(B) EXCLUSIVE LITIGATION AUTHORITY.—Notwithstanding section 16(a) of the Federal Trade Commission Act (15 U.S.C. 56(a)), the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, any action for a violation of this Act or a regulation promulgated under this Act, and any appeal of such action, in its own name by any of its attorneys designated by it for such purpose, without first referring the matter to the Attorney General.

(3) COMMON CARRIERS AND NONPROFIT ORGANIZATIONS.—Notwithstanding section 4, 5(a)(2), or 6 of the Federal Trade Commission Act (15 U.S.C. 44; 45(a)(2); 46) or any jurisdictional limitation of the Commission, the Commission shall also enforce this Act and the regulations promulgated under this
Act, in the same manner provided in paragraphs (1) and (2), with respect to—

(A) common carriers subject to the Communications Act of 1934 (47 U.S.C. 151 et seq.) and all Acts amendatory thereof and supplementary thereto; and

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

(4) Rulemaking Authority.—The Commission may promulgate, under section 553 of title 5, United States Code, any regulations necessary to implement this Act.

(5) Savings Clause.—Nothing in this Act shall be construed to limit the authority of the Commission under any other provision of law.

(b) Enforcement by States.—

(1) In General.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by an act or practice in violation of this Act or a regulation promulgated under this Act, the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate
district court of the United States or an appropriate State court to obtain appropriate relief.

(2) Rights of the commission.—

(A) Notice to the commission.—

(i) In general.—Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action.

(ii) Contents.—The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) Exception.—If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(B) Intervention by the Commission.—The Commission may—
(i) intervene in any civil action
brought by the attorney general of a State
under paragraph (1); and

(ii) upon intervening—

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

(II) be heard on all matters aris-
ing in the civil action; and

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

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

(3) ACTION BY THE COMMISSION.—If the Com-
mission institutes a civil action with respect to a vio-
lolation of this Act or a regulation promulgated under
this Act, the attorney general of a State may not,
during the pendency of such action, bring a civil ac-
tion under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(4) Actions by other state officials.—

(A) In general.—In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so may bring a civil action under such paragraph, subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) Savings provision.—Nothing in this subsection may be construed to prohibit an attorney general or authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(c) Private right of action.—

(1) Enforcement by individuals.—

(A) In general.—Any individual alleging a violation of this Act or a regulation promulgated under this Act may bring a civil action in
any Federal or State court of competent juris-
diction.

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

(i) an amount equal to—

(I) in the case of a negligent viola-
tion, not less than $100 and not
greater than $1,000 per violation; or

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

(ii) reasonable attorney’s fees and liti-
gation costs; and

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

(C) INJURY IN FACT.—A violation of this
Act or a regulation promulgated under this Act
with respect to the personal information of an
individual constitutes a concrete and particular-
ized injury in fact to that individual.
(2) **Invalidity of Pre-Dispute Arbitration Agreements and Pre-Dispute Joint-Action Waivers.**—

(A) **In General.**—Notwithstanding any other provision of law, no pre-dispute arbitration agreement or pre-dispute joint-action waiver shall be valid or enforceable.

(B) **Applicability.**—Any determination as to whether or how this paragraph applies to any dispute shall be made by a court, rather than an arbitrator, without regard to whether such agreement purports to delegate such determination to an arbitrator.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) **Advertisement.**—The term “advertisement” means information provided by an advertiser to an advertising facilitator that the advertising facilitator, in exchange for monetary consideration or another thing of value, disseminates to an individual, connected device, or group of individuals or connected devices.

(2) **Advertiser.**—

(A) **In General.**—The term “advertiser” 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
a commercial activity that is more than de
minimis.

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

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

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

(A) primarily designed for or marketed to
consumers;

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

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

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

(8) DISPUTE.—The term “dispute” means any
claim by an individual that a person has violated
this Act or the regulations promulgated under this Act.

(9) DISSEMINATE.—The term “disseminate” means, with respect to an advertisement, to transmit, display, or otherwise disseminate the advertisement electronically or through communication by wire or radio.

(10) DISSEMINATION.—The term “dissemination” means, with respect to an advertisement, the transmission, display, or other dissemination of the advertisement electronically or through communication by wire or radio.

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

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

(B) any land in Alaska owned, pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), by an Indian Tribe that is a Native village (as such term is defined in section 3 of that Act (43 U.S.C. 1602)) or by a Village Corporation (as such term is defined in section 3 of that Act (43 U.S.C. 1602)) that is associated with an Indian Tribe; and
(C) any land that is part or all of a Tribal designated statistical area associated with an Indian Tribe, or is part or all of an Alaska Native village statistical area associated with an Indian Tribe, as defined by the Bureau of the Census for the purposes of the most recent decennial census.

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

(13) PERSONAL INFORMATION.—The term “personal information” means data linked or reasonably linkable to an individual or connected device, including—

(A) data inferred or derived about the individual or connected device from other collected data, if such data is still linked or reasonably linkable to the individual or connected device;

(B) contents of communications;

(C) internet browsing history and online activity; and

(D) a unique identifier used for the purposes of targeting the dissemination of an advertisement.
(14) **Pre-dispute Arbitration Agreement.**—The term “pre-dispute arbitration agreement” means any agreement to arbitrate a dispute that has not arisen at the time of making the agreement.

(15) **Pre-dispute Joint-Action Waiver.**—The term “pre-dispute joint-action waiver” means an agreement, whether or not part of a pre-dispute arbitration agreement, that would prohibit, or waive the right of, one of the parties to the agreement to participate in a joint, class, or collective action in a judicial, arbitral, administrative, or other forum, concerning a dispute that has not yet arisen at the time of making the agreement.

(16) **Protected Class.**—The term “protected class” means the actual or perceived race, color, ethnicity, national origin, religion, sex (including sexual orientation and gender identity or gender expression), familial status, or disability of an individual or group of individuals.

(17) **Recognized Place.**—

(A) **In General.**—The term “recognized place” means any of the following:

(i) A State.

(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,
the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(19) TARGET.—

(A) IN GENERAL.—The term “target” means, with respect to the dissemination of an advertisement, to perform or cause to be performed any computational process designed to select an individual, connected device, or group of individuals or connected devices to which to disseminate the advertisement based on personal information pertaining to the individual or connected device or to the individuals or connected devices that make up the group.

(B) EXCLUSIONS.—The term “target” does not include, with respect to the dissemination of an advertisement, the performance or causing the performance of any computational process undertaken solely for transmitting, routing, providing intermediate storage for, or providing connections for the advertisement through a system or network.

(20) THIRD PARTY.—The term “third party” includes, with respect to an advertiser or an advertising facilitator, a subsidiary, a corporate affiliate,
or other related party of the advertiser or advertising facilitator.