

118TH CONGRESS
1ST SESSION

H. R. 5534

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2023

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

A BILL

To prohibit targeted advertising by advertisers and
advertising facilitators, 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 2023”.

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

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

9 (1) IN GENERAL.—An advertiser or an adver-
10 tising facilitator may not—

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

3 (B) knowingly enable an advertiser (in the
4 case of an advertising facilitator), advertising
5 facilitator (in the case of an advertiser), or
6 third party to target the dissemination of an
7 advertisement, including by providing the adver-
8 tiser, advertising facilitator, or third party
9 with—

10 (i) a list of individuals or connected
11 devices;

12 (ii) contact information of an indi-
13 vidual;

14 (iii) a unique identifier that may be
15 used to identify an individual or a con-
16 nected device; or

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

20 (2) CONTEXTUAL ADVERTISEMENTS.—

21 (A) IN GENERAL.—For purposes of para-
22 graph (1), an advertising facilitator shall not be
23 considered to target the dissemination of an ad-
24 vertisement, or to knowingly enable an adver-
25 tiser or third party to target the dissemination

1 of an advertisement, to an individual (or a con-
2 nected device associated with an individual) if
3 the advertisement—

4 (i) is disseminated based on informa-
5 tion—

6 (I) that the individual is viewing
7 or with which the individual is other-
8 wise engaging; or

9 (II) for which the individual
10 searched; and

11 (ii) is displayed or otherwise dissemi-
12 nated in close proximity to information de-
13 scribed in clause (i).

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

24 (b) EXCEPTION FOR TARGETING BASED ON RECOG-
25 NIZED PLACE.—For purposes of this section, the dissemi-

1 nation of an advertisement shall not be considered to be
2 targeted to an individual, connected device, or group of
3 individuals or connected devices based on a recognized
4 place associated with the individual, connected device, or
5 group of individuals or connected devices.

6 **SEC. 3. ENFORCEMENT.**

7 (a) FEDERAL TRADE COMMISSION.—

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

14 (2) POWERS OF THE COMMISSION.—

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

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

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

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

18 (3) COMMON CARRIERS AND NONPROFIT ORGA-
19 NIZATIONS.—Notwithstanding section 4, 5(a)(2), or
20 6 of the Federal Trade Commission Act (15 U.S.C.
21 44; 45(a)(2); 46) or any jurisdictional limitation of
22 the Commission, the Commission shall also enforce
23 this Act and the regulations promulgated under this
24 Act, in the same manner provided in paragraphs (1)
25 and (2), with respect to—

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

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

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

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

15 (b) ENFORCEMENT BY STATES.—

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

1 (2) RIGHTS OF THE COMMISSION.—

2 (A) NOTICE TO THE COMMISSION.—

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

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

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

20 (B) INTERVENTION BY THE COMMIS-
21 SION.—The Commission may—

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

25 (ii) upon intervening—

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

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

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

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

17 (3) ACTION BY THE COMMISSION.—If the Com-
18 mission institutes a civil action with respect to a vio-
19 lation of this Act or a regulation promulgated under
20 this Act, the attorney general of a State may not,
21 during the pendency of such action, bring a civil ac-
22 tion under paragraph (1) against any defendant
23 named in the complaint of the Commission for the
24 violation with respect to which the Commission insti-
25 tuted such action.

1 (4) ACTIONS BY OTHER STATE OFFICIALS.—

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

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

16 (c) PRIVATE RIGHT OF ACTION.—

17 (1) ENFORCEMENT BY INDIVIDUALS.—

18 (A) IN GENERAL.—Any individual alleging
19 a violation of this Act or a regulation promul-
20 gated under this Act may bring a civil action in
21 any Federal or State court of competent juris-
22 diction.

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

- 1 (i) an amount equal to—
- 2 (I) in the case of a negligent vio-
- 3 lation, not less than \$100 and not
- 4 greater than \$1,000 per violation; or
- 5 (II) in the case of a reckless,
- 6 knowing, willful, or intentional viola-
- 7 tion, not less than \$500 and not
- 8 greater than \$5,000 per violation;
- 9 (ii) reasonable attorney’s fees and liti-
- 10 gation costs; and
- 11 (iii) any other relief, including equi-
- 12 table or declaratory relief, that the court
- 13 determines appropriate.

14 (C) INJURY IN FACT.—A violation of this

15 Act or a regulation promulgated under this Act

16 with respect to the personal information of an

17 individual constitutes a concrete and particular-

18 ized injury in fact to that individual.

19 (2) INVALIDITY OF PRE-DISPUTE ARBITRATION

20 AGREEMENTS AND PRE-DISPUTE JOINT-ACTION

21 WAIVERS.—

22 (A) IN GENERAL.—Notwithstanding any

23 other provision of law, no pre-dispute arbitra-

24 tion agreement or pre-dispute joint-action waiv-

25 er shall be valid or enforceable.

1 (B) APPLICABILITY.—Any determination
2 as to whether or how this paragraph applies to
3 any dispute shall be made by a court, rather
4 than an arbitrator, without regard to whether
5 such agreement purports to delegate such deter-
6 mination to an arbitrator.

7 **SEC. 4. DEFINITIONS.**

8 In this Act:

9 (1) ADVERTISEMENT.—The term “advertise-
10 ment” means information provided by an advertiser
11 to an advertising facilitator that the advertising
12 facilitator, in exchange for monetary consideration
13 or another thing of value, disseminates to an indi-
14 vidual, connected device, or group of individuals or
15 connected devices.

16 (2) ADVERTISER.—

17 (A) IN GENERAL.—The term “advertiser”
18 means a person to the extent such person, di-
19 rectly or indirectly, provides an advertising
20 facilitator with monetary consideration or an-
21 other thing of value for the dissemination of an
22 advertisement to an individual, connected de-
23 vice, or group of individuals or connected de-
24 vices.

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

5 (3) ADVERTISING FACILITATOR.—

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

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

14 (ii) collects or processes personal in-
15 formation with respect to the dissemina-
16 tion of the advertisement.

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

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

1 providing connections for such information through
2 a system or network.

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

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

8 (A) primarily designed for or marketed to
9 consumers;

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

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

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

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

22 (9) DISSEMINATE.—The term “disseminate”
23 means, with respect to an advertisement, to trans-
24 mit, display, or otherwise disseminate the advertise-

1 ment electronically or through communication by
2 wire or radio.

3 (10) DISSEMINATION.—The term “dissemina-
4 tion” means, with respect to an advertisement, the
5 transmission, display, or other dissemination of the
6 advertisement electronically or through communica-
7 tion by wire or radio.

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

10 (A) any Indian country of an Indian Tribe
11 (as such term is defined in section 1151 of title
12 18, United States Code);

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

21 (C) any land that is part or all of a Tribal
22 designated statistical area associated with an
23 Indian Tribe, or is part or all of an Alaska Na-
24 tive village statistical area associated with an
25 Indian Tribe, as defined by the Bureau of the

1 Census for the purposes of the most recent de-
2 cennial census.

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

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

11 (A) data inferred or derived about the indi-
12 vidual or connected device from other collected
13 data, if such data is still linked or reasonably
14 linkable to the individual or connected device;

15 (B) contents of communications;

16 (C) internet browsing history and online
17 activity; and

18 (D) a unique identifier used for the pur-
19 poses of targeting the dissemination of an ad-
20 vertisement.

21 (14) PRE-DISPUTE ARBITRATION AGREE-
22 MENT.—The term “pre-dispute arbitration agree-
23 ment” means any agreement to arbitrate a dispute
24 that has not arisen at the time of making the agree-
25 ment.

1 (15) PRE-DISPUTE JOINT-ACTION WAIVER.—

2 The term “pre-dispute joint-action waiver” means
3 an agreement, whether or not part of a pre-dispute
4 arbitration agreement, that would prohibit, or waive
5 the right of, one of the parties to the agreement to
6 participate in a joint, class, or collective action in a
7 judicial, arbitral, administrative, or other forum,
8 concerning a dispute that has not yet arisen at the
9 time of making the agreement.

10 (16) RECOGNIZED PLACE.—

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

13 (i) A State.

14 (ii) Indian lands.

15 (iii) A county, municipality, city,
16 town, township, village, borough, or similar
17 unit of general government that is incor-
18 porated pursuant to a State law.

19 (iv) A census designated place (as de-
20 fined in the most recent glossary of the
21 Bureau of the Census).

22 (v) A designated market area (as de-
23 fined in section 122(j) of title 17, United
24 States Code).

25 (vi) A congressional district.

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

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

6 (ii) a ZIP Code.

7 (17) STATE.—The term “State” means any
8 State of the United States, the District of Columbia,
9 the Commonwealth of Puerto Rico, the Virgin Is-
10 lands of the United States, Guam, American Samoa,
11 the Commonwealth of the Northern Mariana Is-
12 lands, and any possession of the United States.

13 (18) TARGET.—

14 (A) IN GENERAL.—The term “target”
15 means, with respect to the dissemination of an
16 advertisement, to perform or cause to be per-
17 formed any computational process designed to
18 select an individual, connected device, or group
19 of individuals or connected devices to which to
20 disseminate the advertisement based on per-
21 sonal information pertaining to the individual
22 or connected device or to the individuals or con-
23 nected devices that make up the group.

24 (B) EXCLUSIONS.—The term “target”
25 does not include, with respect to the dissemina-

1 tion of an advertisement, the performance or
2 causing the performance of any computational
3 process undertaken solely for transmitting,
4 routing, providing intermediate storage for, or
5 providing connections for the advertisement
6 through a system or network.

7 (19) THIRD PARTY.—The term “third party”
8 includes, with respect to an advertiser or an adver-
9 tising facilitator, a subsidiary, a corporate affiliate,
10 or other related party of the advertiser or adver-
11 tising facilitator.

○