To prohibit surveillance advertising using student data, to require education technology audits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To prohibit surveillance advertising using student data, to require education technology audits, 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; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the [“_____________ Act of 2021”].

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Prohibited use of covered information.
Sec. 3. Allowed disclosure of covered information.
Sec. 4. Protection of covered information.
SEC. 2. PROHIBITED USE OF COVERED INFORMATION.

(a) IN GENERAL.—An operator may not knowingly—

(1) engage in targeted advertising on any website, online service, online application, or mobile application if the target of the advertising is based on any information, including covered information and persistent unique identifiers, that the operator has acquired through the use of the website, online service, online application, or mobile application of the operator for a K–12 school purpose;

(2) use covered information, created or gathered by the website, online service, online application, or mobile application of the operator to create a profile about a student unless—

(A) the profile is created for a K–12 school purpose; or

(B) the collection and retention of account information by an operator that remains under the control of the student, a parent of the student, the school or local educational agency is
not an attempt to create a profile by the operator;

(3) except as provided in subsection (b), sell the covered information of any student; and

(4) except as provided in subsection (b) and section 3, disclose covered information.

(b) EXCEPTIONS FOR ACQUISITION AND SCHOLARSHIP.—The prohibitions in paragraphs (3) and (4) of subsection (a) do not apply to—

(1) the purchase, merger, or any other type of acquisition of an operator by another entity, if the operator or successor entity complies with this Act regarding previously acquired student information; or

(2) national assessment providers for the purpose of admission to an institution of higher education. [Placeholder for discussion.]

(c) NOTIFICATION REQUIRED.—In the event of a purchase, merger, or any other type of acquisition of an operator by another entity, the operator or successor entity shall notify each student, parent, and teacher, as applicable, of any covered information of that student, parent, or teacher that was acquired.

(d) RULE OF CONSTRUCTION.—Nothing in this section prohibits an operator from using covered information
for maintaining, developing, supporting, improving, or diagnosing the website, online service, online application, or mobile application of the operator.

SEC. 3. ALLOWED AND REQUIRED DISCLOSURE OF COVERED INFORMATION.

Notwithstanding section 2(a)(4) an operator may disclose covered information under the following circumstances:

(1) To further a K–12 school purpose of the website, online service, online application, or mobile application and the recipient of the covered information disclosed under this subsection does not further disclose the information unless the disclosure is to allow or update the operability within the classroom or school of the student.

(2) To ensure legal and regulatory compliance.

(3) To respond to or participate in the judicial process.

(4) To protect—

(A) the safety or integrity of users of the website, online service, online application, or mobile application; or

(B) the security of the website, online service, online application, or mobile application.

(5) For research purposes—
(A) as required by State or Federal law; or
(B) as allowed by State or Federal law and under the direction of an elementary school, secondary school, local educational agency, or State educational agency, if no covered information is used for any purpose in furtherance of advertising or to amass a profile on the student for purposes other than K–12 school purposes.

(6) For a request by the Commission.

SEC. 4. PROTECTION OF COVERED INFORMATION.

An operator shall implement and maintain reasonable security procedures and practices designed to protect any covered information from unauthorized access, deletion, use, modification, or disclosure and do the following:

(1) Establish, implement, and maintain reasonable security procedures (technical, administrative, and physical) and appropriate to the nature of covered information to protect the confidentiality, security, and integrity of covered information.

(2) Delete the covered information of a student (except for information that is required to be maintained by Federal or State law) within a reasonable time, not to exceed 45 days, after receiving—

(A) a request from an educational agency or institution serving the student; or
(B) a request (either directly or through the educational agency or institution) from a parent of the student, except in the case of information that is included in the education records of the student, such as the test scores or grades of the student.

(3) Permanently delete the covered information of a student (except for information that is required to be maintained by Federal or State law) after a set period of time.

(4) Disclose publicly and to each educational agency or institution to which the operator provides a school service, in a contract or privacy policy in a manner that is clear and easy to understand, each type of covered information collected or generated (if any), the purposes for which the covered information is used or disclosed to a third party, and the identity of any such party.

(5) Facilitate access to and correction of covered information, either directly or through an educational agency or institution—

(A) in the case of information about a student, by a parent of the student; or
(B) in the case of information about a parent or another user of the school service, by the parent or such other user, as the case may be.

(6) Implement policies and procedures for responding to data breaches involving unauthorized acquisition of or access to personally identifiable information that occur on a school service, in compliance with any obligations imposed by Federal or State law.

(7) Notify the Commission and, as appropriate, students, parents, educational agencies or institutions, or officials of such agencies or institutions (including teachers) of each data breach involving unauthorized acquisition of or access to covered information.

SEC. 5. APPLICABILITY.

This Act shall not—

(2) be construed to limit the authority of a law enforcement agency to obtain content or information from an operator as authorized by law or pursuant to an order of a court of competent jurisdiction;

(3) limit an educational agency or institution from providing Internet access service for its own use, to other educational agencies or institutions, or to students and their families; and

(4) impede the ability of a student or a parent of a student to download, export, create, or otherwise save or maintain data or documents created by or about the student or noncommercial applications created by the student, except to the extent any such activity would result in disclosure prohibited by this Act of covered information of other students or users of a school service.

**SEC. 6. TECHNOLOGY IMPACT ASSESSMENTS.**

(a) In General.—Not later than 18 months after the date of the enactment of this Act, the Commission shall publish guidance on standards and practices for a technology impact assessment that addresses the following:

(1) A description of the website, online service, online application, or mobile application of the covered operator, including the following:
(A) Purpose and goals of the website, online service, online application, or mobile application of the covered operator, including the benefits to students, parents, and teachers.

(B) Components such as data architectures, user interfaces, automated decision systems, and high-risk automated decision systems.

(C) Connections and data flows between the components.

(2) A description of the data collected (that does not include a level of detail for which an individual within the data could be identified) and the purpose for the use of the data, including the following:

(A) Any purpose for collecting each feature of the data.

(B) Nature of the data (such as covered information, keystrokes, facial expression, and speed to answer questions).

(C) Quantity and frequency of data collected.

(D) How long data is stored.

(3) For a case in which student data is being used for research, a justification that includes—
(A) a description of the website, online service, online application, or mobile application components of the covered operator that facilitate or measure learning and the research justification for those components; and

(B) in the case that the data from the website, online service, online application, or mobile application of the covered operator is being used for research, the hypothesis and existing academic literature that supports the justification of the research in the public interest.

(4) A risk analysis that considers the following:

(A) Potential harm to the cognitive, physical and socio-emotional health, and wellbeing of a student.

(B) Discrimination of a student based the actual or perceived race, color, ethnicity, religion, national origin, sex, gender, gender identity, sexual orientation, familial status, biometric information, lawful source of income, or disability of an individual or class of individuals.

(C) Lack of accessibility for students with disabilities (as defined in section 3 of the Americans With Disabilities Act of 1990 (42 U.S.C. 12102)).
(D) Lack of accessibility for students for whom English is a second language.

(E) The exploitation risk of a student, including the risk of commercial or sexual exploitation and sexual abuse.

(F) Data breaches and adversarial attacks.

(5) A description of the risk mitigation processes and procedures used to address the risks described in paragraph (4), including the following:

(A) Consultation with stakeholders, parents, students, teachers, and experts on education, privacy, security, and technology.

(B) Data minimization practices.

(C) Data science practices to monitor and reduce statistical bias that may lead to discriminatory outcomes, which may include reweighing of training data, counterfactual estimators, and statistical tests such as difference of means, disparate impact, and odds ratio.

(D) Data security practices.

(E) Efforts to protect the autonomy and choice of the end user (student, teacher, or parent), including testing for interpretation of automated decision systems in the user interface.
(F) Human over-ride for high-risk automated decision systems.

(6) Any other information determined to be necessary by the Commission.

(b) Submission of Technology Impact Assessments.——

[(1) Completion by an independent auditor.—[Placeholder for discussion.]]

(2) Annual submission.—Not later than January 15 of each year, each covered operator shall submit to the Commission and the relevant State Attorney General, District Attorney, and school district administrator the technology impact assessment.

(3) Use agreements.—The covered operator may ask a recipient of the technology impact assessment to sign an agreement that the recipient will not use the contents of the website, online service, online application, or mobile application assessments of the covered operator to produce or inform competing service. If the recipient does not sign such agreement, the covered operator does not need to provide the assessment.

(e) Public Disclosure of Technology Impact Assessments.——
(1) COMMISSION.—Not later than 18 months after the date of the enactment of this Act, the Commission shall publish guidance on standards and practices for a modified version of the technology impact assessment described in subsection (a) that can be made publicly available with a reasonable consideration made for the protection of trade secrets.

(2) COVERED OPERATORS.—Not later than January 30 of each year, each covered operator shall make the version of the assessment described in paragraph (1) available on the website of the covered operator.

(d) REPORT.—

(1) IN GENERAL.—Not later than 3 years after the date of the enactment of this Act, the Commission shall publish a report containing the results of a study, using the authority of the Commission under section 6(b) of the Federal Trade Commission Act (15 U.S.C. 46(b)), that examines the use of technology in education and benefits, costs, and impacts described in this section.

(2) UPDATED REPORTS.—Not later than 3 years after the date on which the report is published pursuant to paragraph (1), and as necessary there-
after, the Commission shall publish an updated
version of the report.

SEC. 7. GUIDANCE AND TECHNICAL ASSISTANCE FROM
SECRETARY OF EDUCATION.
The Secretary of Education shall provide educational
agencies or institutions with reasonable guidance and
technical assistance with respect to preventing and re-
sponding to data breaches involving unauthorized acquisi-
tion of or access to covered information that occur on a
K–12 school service in compliance with any obligations im-
posed by Federal or State law.

SEC. 8. IMPLEMENTATION AND ENFORCEMENT.
(a) ENFORCEMENT BY FEDERAL TRADE COMMISS-
ION.—

(1) UNFAIR OR DECEPTIVE ACTS OR PRACT-
ICES.—A violation of this Act or a regulation pro-
mulgated under this Act shall be treated as a viola-
tion of a regulation under section 18(a)(1)(B) of the
57a(a)(1)(B)) regarding unfair or deceptive acts or
practices.

(2) POWERS OF THE COMMISSION.—The Com-
mission 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 any person who violates
this Act or a regulation promulgated under this Act
shall be subject to the penalties entitled to the privi-
leges and immunities provided in the Federal Trade
Commission Act.

(3) ENFORCEMENT BY STATE ATTORNEYS GEN-
ERAL.—If the chief law enforcement officer of a
State, or an official or agency designated by a State,
has reason to believe that any person has violated or
is violating this Act or a regulation promulgated
under this Act, the attorney general, official, or
agency of the State, in addition to any authority it
may have to bring an action in State court under its
consumer protection law, may bring a civil action in
any appropriate United States district court or in
any other court of competent jurisdiction, including
a State court, to—

(A) enjoin further such violation by such
person;

(B) enforce compliance with such sub-
section;

(C) obtain civil penalties; and
(D) obtain damages, restitution, or other compensation on behalf of residents of the State.

(4) Enforcement with respect to non-profit organizations.—Notwithstanding sections 4 and 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 44; 45(a)(2)), any jurisdictional limitation of the Commission with respect to nonprofit organizations shall not apply for purposes of this Act.

(b) Relationship to State Law.—

c) Private Cause of Action.—

(1) Remedies.—An individual who suffers harm as a result of a violation of this Act may bring an action against the operator in the appropriate district court of the United States for any of the following remedies:

(A) To recover damages in an amount not less than $100 and not greater than $750 per individual per incident or actual damages, whichever is greater.

(B) Injunctive or declaratory relief.

(C) Any other relief the court determines to be proper.

(2) Statutory Damages.—In assessing the amount of statutory damages, the court shall con-
consider any one or more of the relevant circumstances presented by any of the parties to the case, including the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant’s misconduct, and the defendant’s assets, liabilities, and net worth.

SEC. 9. DEFINITIONS.

In this Act:

(1) AUTOMATED DECISION SYSTEM.—The term “automated decision system” means a computational process, including one derived from machine learning, statistics, or other data processing or artificial intelligence techniques, that makes a decision or facilitates human decision making that impacts students.

(2) BIOMETRIC INFORMATION.—The term “biometric information” means any information based on an the unique, immutable biological attribute or measurement of an individual (including a fingerprint, voiceprint, iris or retina scan, facial characteristic, or scan of hand or face geometry) that is used to uniquely and durably authenticate the identity of an individual.
COMMISSION.—The term “Commission” means the Federal Trade Commission.

COVERED INFORMATION.—The term “covered information” means personally identifiable information or information that is linked or reasonably linkable to personally identifiable information, in any media or format that is—

(A) created by or provided to an operator by a student or the parent of a student in the course of the use by the student or parent of a website, online service, online application, or mobile application of the operator for a school purpose;

(B) created by or provided to an operator by an employee of a school district or school campus for a school purpose; or

(C) gathered by an operator through the operation of the website, online service, online application, or mobile application of the operator for a school purpose and is descriptive of a student or otherwise identifies a student, including the educational record, electronic mail, first and last name, home address, telephone number, electronic mail address, information that allows physical or online contact, discipline
record, test result, special education data, juvenile delinquency record, grade, evaluation, criminal record, medical record, health record, social security number, biometric information, disability, socioeconomic information, food purchase, political affiliation, religious information, text message, student identifier, search activity, photograph, voice recording, or geolocation information of the student.

(5) COVERED OPERATOR.—The term “covered operator” means an operator with a product that includes a high-risk automated decision system.

(6) EDUCATIONAL AGENCY OR INSTITUTION.—The term “educational agency or institution” has the meaning given the term in section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly known as the “Family Educational Rights and Privacy Act of 1974”).


(8) ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; PARENT; SECONDARY SCHOOL.—
The terms “elementary school”, “local educational agency”, “parent”, and “secondary school” and “State educational agency” have the meanings given such terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(9) **HIGH-RISK AUTOMATED DECISION SYSTEM.**—The term “high-risk automated decision system” means an automated decision system that—

(A) poses a significant risk—

(i) to the privacy or security of a student;

(ii) of resulting in or contributing to an inaccurate, unfair, biased, or discriminatory decision that impacts a student; or

(iii) of making a decision or facilitating human decision making, including attempts to analyze or predict sensitive aspects of students lives or characteristics or activities that may affect their status as a student, future academic or career endeavors, including intelligent tutoring, automated essay scoring, and early warning systems;

(B) involves the personal information of a significant number of students regarding race,
color, national origin, political opinions, religion, genetic data, biometric information, health, gender, gender identity, sexuality, sexual orientation, disability status, criminal convictions, or arrests; or

(C) meets any other criteria determined to be appropriate by the Commission.

[(10) INSTITUTION OF HIGHER EDUCATION.—

The term “institution of higher education” has the meaning given that term in sections 101 and 102(a)(1)(B) of the Higher Education Act of 1965 (20 U.S.C. 1001; 1002(a)(1)(B)).]

[(11) K–12 SCHOOL PURPOSE.—The term “K–12 school purpose” means a purpose that is directed by or customarily takes place at the direction of a local educational agency or State educational agency, elementary school, secondary school, or school personnel—]

[(A) to aid in the administration of school activities, including instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel, or parents; or]

[(B) that is for the use and benefit of the educational agency or institution.]
(12) **NATIONAL ASSESSMENT PROVIDER.**—The term “national assessment provider” means a provider of a nationally recognized high school academic assessment or college entrance exam.

(13) **NONPROFIT ORGANIZATION.**—The term “nonprofit organization” means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1968 and exempt from taxation under section 501(a) of such Code.

(14) **OPERATOR.**—The term “operator” means the operator of a website, online service, online application, or mobile application with knowledge that the site, service, or application is used for K–12 school purposes or was designed and marketed for K–12 school purposes.

(15) **TARGETED ADVERTISING.**—The term “targeted advertising” means the presentation of an advertisement to a student, or the parent of a student, in which the advertisement is selected based on information obtained or inferred from the online behavior, usage of applications, or student data of that student.
SEC. 10. UPDATE OF DEFINITIONS.

The Commission may update the definitions in paragraphs (1), (2), (4), (5), (9), (11), (12), (14), and (15) of section 9 every 3 years as needed.

SEC. 11. EFFECTIVE DATE.

This Act shall take effect on the date that is 18 months after the date of the enactment of this Act.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.