

[DISCUSSION DRAFT]

117TH CONGRESS
1ST SESSION

H. R. _____

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.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 **["_____ Act of 2021"]**.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 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. 5. Applicability.
- Sec. 6. Technology impact assessments.
- Sec. 7. Guidance and technical assistance from Secretary of Education.
- Sec. 8. Implementation and enforcement.
- Sec. 9. Definitions.
- Sec. 10. Update of definitions.
- Sec. 11. Effective date.
- Sec. 12. Authorization of appropriations.

1 **SEC. 2. PROHIBITED USE OF COVERED INFORMATION.**

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

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

11 (2) use covered information, created or gath-
12 ered by the website, online service, online applica-
13 tion, or mobile application of the operator to create
14 a profile about a student unless—

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

17 (B) the collection and retention of account
18 information by an operator that remains under
19 the control of the student, a parent of the stu-
20 dent, the school or local educational agency is

1 not an attempt to create a profile by the oper-
2 ator;

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

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

7 (b) EXCEPTIONS FOR ACQUISITION AND SCHOLAR-
8 SHIP.—The prohibitions in paragraphs (3) and (4) of sub-
9 section (a) do not apply to—

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

15 [(2) national assessment providers for the pur-
16 pose of admission to an institution of higher edu-
17 cation. **【Placeholder for discussion.】**]

18 (c) NOTIFICATION REQUIRED.—In the event of a
19 purchase, merger, or any other type of acquisition of an
20 operator by another entity, the operator or successor enti-
21 ty shall notify each student, parent, and teacher, as appli-
22 cable, of any covered information of that student, parent,
23 or teacher that was acquired.

24 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion prohibits an operator from using covered information

1 for maintaining, developing, supporting, improving, or di-
2 agnosing the website, online service, online application, or
3 mobile application of the operator.

4 **SEC. 3. ALLOWED AND REQUIRED DISCLOSURE OF COV-**
5 **ERED INFORMATION.**

6 Notwithstanding section 2(a)(4) an operator may dis-
7 close covered information under the following cir-
8 cumstances:

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

16 (2) To ensure legal and regulatory compliance.

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

19 (4) To protect—

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

23 (B) the security of the website, online serv-
24 ice, online application, or mobile application.

25 (5) For research purposes—

1 (A) as required by State or Federal law; or

2 (B) as allowed by State or Federal law and

3 under the direction of an elementary school,

4 secondary school, local educational agency, or

5 State educational agency, if no covered informa-

6 tion is used for any purpose in furtherance of

7 advertising or to amass a profile on the student

8 for purposes other than K–12 school purposes.

9 (6) For a request by the Commission.

10 **SEC. 4. PROTECTION OF COVERED INFORMATION.**

11 An operator shall implement and maintain reasonable

12 security procedures and practices designed to protect any

13 covered information from unauthorized access, deletion,

14 use, modification, or disclosure and do the following:

15 (1) Establish, implement, and maintain reason-

16 able security procedures (technical, administrative,

17 and physical) and appropriate to the nature of cov-

18 ered information to protect the confidentiality, secu-

19 rity, and integrity of covered information.

20 (2) Delete the covered information of a student

21 (except for information that is required to be main-

22 tained by Federal or State law) within a reasonable

23 time, not to exceed 45 days, after receiving—

24 (A) a request from an educational agency

25 or institution serving the student; or

1 (B) a request (either directly or through
2 the educational agency or institution) from a
3 parent of the student, except in the case of in-
4 formation that is included in the education
5 records of the student, such as the test scores
6 or grades of the student.

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

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

19 (5) Facilitate access to and correction of cov-
20 ered information, either directly or through an edu-
21 cational agency or institution—

22 (A) in the case of information about a stu-
23 dent, by a parent of the student; or

1 (B) in the case of information about a par-
2 ent or another user of the school service, by the
3 parent or such other user, as the case may be.

4 (6) Implement policies and procedures for re-
5 sponding to data breaches involving unauthorized ac-
6 quisition of or access to personally identifiable infor-
7 mation that occur on a school service, in compliance
8 with any obligations imposed by Federal or State
9 law.

10 (7) Notify the Commission and, as appropriate,
11 students, parents, educational agencies or institu-
12 tions, or officials of such agencies or institutions (in-
13 cluding teachers) of each data breach involving un-
14 authorized acquisition of or access to covered infor-
15 mation.

16 **SEC. 5. APPLICABILITY.**

17 This Act shall not—

18 (1) be construed to affect or otherwise alter the
19 protections and guarantees set forth in section 444
20 of the General Education Provisions Act (20 U.S.C.
21 1232g) (commonly known as the “Family Edu-
22 cational Rights and Privacy Act of 1974”), the Chil-
23 dren’s Online Privacy Protection Act of 1998 (15
24 U.S.C. 6501 et seq.), or any other Federal statute
25 relating to privacy protection;

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

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

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

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

18 (a) IN GENERAL.—Not later than 18 months after
19 the date of the enactment of this Act, the Commission
20 shall publish guidance on standards and practices for a
21 technology impact assessment that addresses the fol-
22 lowing:

23 (1) A description of the website, online service,
24 online application, or mobile application of the cov-
25 ered operator, including the following:

1 (A) Purpose and goals of the website, on-
2 line service, online application, or mobile appli-
3 cation of the covered operator, including the
4 benefits to students, parents, and teachers.

5 (B) Components such as data architec-
6 tures, user interfaces, automated decision sys-
7 tems, and high-risk automated decision sys-
8 tems.

9 (C) Connections and data flows between
10 the components.

11 (2) A description of the data collected (that
12 does not include a level of detail for which an indi-
13 vidual within the data could be identified) and the
14 purpose for the use of the data, including the fol-
15 lowing:

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

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

21 (C) Quantity and frequency of data col-
22 lected.

23 (D) How long data is stored.

24 (3) For a case in which student data is being
25 used for research, a justification that includes—

1 (A) a description of the website, online
2 service, online application, or mobile application
3 components of the covered operator that facili-
4 tate or measure learning and the research jus-
5 tification for those components; and

6 (B) in the case that the data from the
7 website, online service, online application, or
8 mobile application of the covered operator is
9 being used for research, the hypothesis and ex-
10 isting academic literature that supports the jus-
11 tification of the research in the public interest.

12 (4) A risk analysis that considers the following:

13 (A) Potential harm to the cognitive, phys-
14 ical and socio-emotional health, and wellbeing of
15 a student.

16 (B) Discrimination of a student based the
17 actual or perceived race, color, ethnicity, reli-
18 gion, national origin, sex, gender, gender iden-
19 tity, sexual orientation, familial status, biomet-
20 ric information, lawful source of income, or dis-
21 ability of an individual or class of individuals.

22 (C) Lack of accessibility for students with
23 disabilities (as defined in section 3 of the Amer-
24 icans With Disabilities Act of 1990 (42 U.S.C.
25 12102)).

1 (D) Lack of accessibility for students for
2 whom English is a second language.

3 (E) The exploitation risk of a student, in-
4 cluding the risk of commercial or sexual exploi-
5 tation and sexual abuse.

6 (F) Data breaches and adversarial attacks.

7 (5) A description of the risk mitigation proc-
8 esses and procedures used to address the risks de-
9 scribed in paragraph (4), including the following:

10 (A) Consultation with stakeholders, par-
11 ents, students, teachers, and experts on edu-
12 cation, privacy, security, and technology.

13 (B) Data minimization practices.

14 (C) Data science practices to monitor and
15 reduce statistical bias that may lead to dis-
16 criminatory outcomes, which may include re-
17 weighing of training data, counterfactual esti-
18 mators, and statistical tests such as difference
19 of means, disparate impact, and odds ratio.

20 (D) Data security practices.

21 (E) Efforts to protect the autonomy and
22 choice of the end user (student, teacher, or par-
23 ent), including testing for interpretation of
24 automated decision systems in the user inter-
25 face.

1 (F) Human over-ride for high-risk auto-
2 mated decision systems.

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

5 (b) SUBMISSION OF TECHNOLOGY IMPACT ASSESS-
6 MENTS.—

7 [(1) COMPLETION BY AN INDEPENDENT AUDI-
8 TOR.—*[Placeholder for discussion.]*]

9 (2) ANNUAL SUBMISSION.—Not later than Jan-
10 uary 15 of each year, each covered operator shall
11 submit to the Commission and the relevant State At-
12 torney General, District Attorney, and school district
13 administrator the technology impact assessment.

14 (3) USE AGREEMENTS.—The covered operator
15 may ask a recipient of the technology impact assess-
16 ment to sign an agreement that the recipient will
17 not use the contents of the website, online service,
18 online application, or mobile application assessments
19 of the covered operator to produce or inform com-
20 peting service. If the recipient does not sign such
21 agreement, the covered operator does not need to
22 provide the assessment.

23 (c) PUBLIC DISCLOSURE OF TECHNOLOGY IMPACT
24 ASSESSMENTS.—

1 (1) COMMISSION.—Not later than 18 months
2 after the date of the enactment of this Act, the
3 Commission shall publish guidance on standards and
4 practices for a modified version of the technology
5 impact assessment described in subsection (a) that
6 can be made publicly available with a reasonable
7 consideration made for the protection of trade se-
8 crets.

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

14 (d) REPORT.—

15 (1) IN GENERAL.—Not later than 3 years after
16 the date of the enactment of this Act, the Commis-
17 sion shall publish a report containing the results of
18 a study, using the authority of the Commission
19 under section 6(b) of the Federal Trade Commission
20 Act (15 U.S.C. 46(b)), that examines the use of
21 technology in education and benefits, costs, and im-
22 pacts described in this section.

23 (2) UPDATED REPORTS.—Not later than 3
24 years after the date on which the report is published
25 pursuant to paragraph (1), and as necessary there-

1 after, the Commission shall publish an updated
2 version of the report.

3 **SEC. 7. GUIDANCE AND TECHNICAL ASSISTANCE FROM**
4 **SECRETARY OF EDUCATION.**

5 The Secretary of Education shall provide educational
6 agencies or institutions with reasonable guidance and
7 technical assistance with respect to preventing and re-
8 sponding to data breaches involving unauthorized acquisi-
9 tion of or access to covered information that occur on a
10 K–12 school service in compliance with any obligations im-
11 posed by Federal or State law.

12 **SEC. 8. IMPLEMENTATION AND ENFORCEMENT.**

13 (a) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**
14 **SION.—**

15 (1) **UNFAIR OR DECEPTIVE ACTS OR PRAC-**
16 **TICES.—**A violation of this Act or a regulation pro-
17 mulgated under this Act shall be treated as a viola-
18 tion of a regulation under section 18(a)(1)(B) of the
19 Federal Trade Commission Act (15 U.S.C.
20 57a(a)(1)(B)) regarding unfair or deceptive acts or
21 practices.

22 (2) **POWERS OF THE COMMISSION.—**The Com-
23 mission shall enforce this Act and the regulations
24 promulgated under this Act in the same manner, by
25 the same means, and with the same jurisdiction,

1 powers, and duties as though all applicable terms
2 and provisions of the Federal Trade Commission Act
3 (15 U.S.C. 41 et seq.) were incorporated into and
4 made a part of this Act, and any person who violates
5 this Act or a regulation promulgated under this Act
6 shall be subject to the penalties entitled to the privi-
7 leges and immunities provided in the Federal Trade
8 Commission Act.

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

21 (A) enjoin further such violation by such
22 person;

23 (B) enforce compliance with such sub-
24 section;

25 (C) obtain civil penalties; and

1 (D) obtain damages, restitution, or other
2 compensation on behalf of residents of the
3 State.

4 (4) ENFORCEMENT WITH RESPECT TO NON-
5 PROFIT ORGANIZATIONS.—Notwithstanding sections
6 4 and 5(a)(2) of the Federal Trade Commission Act
7 (15 U.S.C. 44; 45(a)(2)), any jurisdictional limita-
8 tion of the Commission with respect to nonprofit or-
9 ganizations shall not apply for purposes of this Act.

10 **[(b) RELATIONSHIP TO STATE LAW.—]**

11 (c) PRIVATE CAUSE OF ACTION.—

12 (1) REMEDIES.—An individual who suffers
13 harm as a result of a violation of this Act may bring
14 an action against the operator in the appropriate
15 district court of the United States for any of the fol-
16 lowing remedies:

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

21 (B) Injunctive or declaratory relief.

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

24 (2) STATUTORY DAMAGES.—In assessing the
25 amount of statutory damages, the court shall con-

1 sider any one or more of the relevant circumstances
2 presented by any of the parties to the case, including
3 the nature and seriousness of the misconduct, the
4 number of violations, the persistence of the mis-
5 conduct, the length of time over which the mis-
6 conduct occurred, the willfulness of the defendant’s
7 misconduct, and the defendant’s assets, liabilities,
8 and net worth.

9 **SEC. 9. DEFINITIONS.**

10 In this Act:

11 (1) **AUTOMATED DECISION SYSTEM.**—The term
12 “automated decision system” means a computational
13 process, including one derived from machine learn-
14 ing, statistics, or other data processing or artificial
15 intelligence techniques, that makes a decision or fa-
16 cilitates human decision making that impacts stu-
17 dents.

18 (2) **BIOMETRIC INFORMATION.**—The term “bio-
19 metric information” means any information based
20 on an the unique, immutable biological attribute or
21 measurement of an individual (including a finger-
22 print, voiceprint, iris or retina scan, facial char-
23 acteristic, or scan of hand or face geometry) that is
24 used to uniquely and durably authenticate the iden-
25 tity of an individual.

1 (3) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (4) COVERED INFORMATION.—The term “cov-
4 ered information” means personally identifiable in-
5 formation or information that is linked or reasonably
6 linkable to personally identifiable information, in any
7 media or format that is—

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

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

17 (C) gathered by an operator through the
18 operation of the website, online service, online
19 application, or mobile application of the oper-
20 ator for a school purpose and is descriptive of
21 a student or otherwise identifies a student, in-
22 cluding the educational record, electronic mail,
23 first and last name, home address, telephone
24 number, electronic mail address, information
25 that allows physical or online contact, discipline

1 record, test result, special education data, juve-
2 nile delinquency record, grade, evaluation,
3 criminal record, medical record, health record,
4 social security number, biometric information,
5 disability, socioeconomic information, food pur-
6 chase, political affiliation, religious information,
7 text message, student identifier, search activity,
8 photograph, voice recording, or geolocation in-
9 formation of the student.

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

13 (6) EDUCATIONAL AGENCY OR INSTITUTION.—
14 The term “educational agency or institution” has
15 the meaning given the term in section 444 of the
16 General Education Provisions Act (20 U.S.C.
17 1232g) (commonly known as the “Family Edu-
18 cational Rights and Privacy Act of 1974”).

19 (7) EDUCATION RECORDS.—The term “edu-
20 cation records” has the meaning given the term in
21 section 444 of the General Education Provisions Act
22 (20 U.S.C. 1232g) (commonly known as the “Fam-
23 ily Educational Rights and Privacy Act of 1974”).

24 (8) ELEMENTARY SCHOOL; LOCAL EDU-
25 CATIONAL AGENCY; PARENT; SECONDARY SCHOOL.—

1 The terms “elementary school”, “local educational
2 agency”, “parent”, and “secondary school” and
3 “State educational agency” have the meanings given
4 such terms in section 8101 of the Elementary and
5 Secondary Education Act of 1965 (20 U.S.C. 7801).

6 (9) HIGH-RISK AUTOMATED DECISION SYS-
7 TEM.—The term “high-risk automated decision sys-
8 tem” means an automated decision system that—

9 (A) poses a significant risk—

10 (i) to the privacy or security of a stu-
11 dent;

12 (ii) of resulting in or contributing to
13 an inaccurate, unfair, biased, or discrimi-
14 natory decision that impacts a student; or

15 (iii) of making a decision or facili-
16 tating human decision making, including
17 attempts to analyze or predict sensitive as-
18 pects of students lives or characteristics or
19 activities that may affect their status as a
20 student, future academic or career endeav-
21 ors, including intelligent tutoring, auto-
22 mated essay scoring, and early warning
23 systems;

24 (B) involves the personal information of a
25 significant number of students regarding race,

1 color, national origin, political opinions, reli-
2 gion, genetic data, biometric information,
3 health, gender, gender identity, sexuality, sexual
4 orientation, disability status, criminal convic-
5 tions, or arrests; or

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

8 **[(10) INSTITUTION OF HIGHER EDUCATION.—**
9 The term “institution of higher education” has the
10 meaning given that term in sections 101 and
11 102(a)(1)(B) of the Higher Education Act of 1965
12 (20 U.S.C. 1001; 1002(a)(1)(B)).**]**

13 **[(11) K–12 SCHOOL PURPOSE.—**The term “K–
14 12 school purpose” means a purpose that is directed
15 by or customarily takes place at the direction of a
16 local educational agency or State educational agency,
17 elementary school, secondary school, or school per-
18 sonnel—**]**

19 **[(A) to aid in the administration of school**
20 **activities, including instruction in the classroom**
21 **or at home, administrative activities, and col-**
22 **laboration between students, school personnel,**
23 **or parents; or]**

24 **[(B) that is for the use and benefit of the**
25 **educational agency or institution.]**

1 (12) NATIONAL ASSESSMENT PROVIDER.—The
2 term “national assessment provider” means a pro-
3 vider of a nationally recognized high school academic
4 assessment or college entrance exam.

5 (13) NONPROFIT ORGANIZATION.—The term
6 “nonprofit organization” means an organization that
7 is described in section 501(c)(3) of the Internal Rev-
8 enue Code of 1968 and exempt from taxation under
9 section 501(a) of such Code.

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

16 (15) TARGETED ADVERTISING.—The term “tar-
17 geted advertising” means the presentation of an ad-
18 vertisement to a student, or the parent of a student,
19 in which the advertisement is selected based on in-
20 formation obtained or inferred from the online be-
21 havior, usage of applications, or student data of that
22 student.

1 **SEC. 10. UPDATE OF DEFINITIONS.**

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

5 **SEC. 11. EFFECTIVE DATE.**

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

8 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

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