

Section-by-Section Summary of the *Banning Surveillance Advertising Act*

Sec. 2. Prohibition on targeted advertising.

Subsection (a) prohibits advertising facilitators from targeting the dissemination of ads and prohibits advertising facilitators from knowingly enabling a third party to target ads. The subsection clarifies that contextual ads are not prohibited, information collected in connection with ad delivery cannot be used for further targeting, and a list of individuals to target provided by an advertiser must be accompanied with a written attestation that the advertiser is not in violation of prohibitions in subsection (b).

Subsection (b) prohibits advertisers from targeting or causing an advertising facilitator or third party to target the dissemination of ads (including by providing a list of individuals, e.g., Custom Audiences) based on personal information the advertiser obtained from a third party (e.g., purchased from a data broker) or that relates to protected class status or proxies thereof.

Subsection (c) exempts targeting to a ‘recognized place.’

Sec. 3. Enforcement.

Subsection (a) authorizes the FTC to enforce violations of the Act (including against common carriers and organizations not organized for profit) and to promulgate regulations under the Administrative Procedure Act to administer the Act.

Subsection (b) authorizes state attorneys general to enforce violations of this Act and allows the FTC to intervene in such causes of action.

Subsection (c) provides for a private right of action with relief of \$100-\$1,000 per negligent violation and \$500-\$5,000 per reckless, knowing, willful, or intentional violation, in addition to attorney’s fees and other relief deemed appropriate by a court. The subsection also nullifies forced arbitration clauses related to violations of this Act.

Sec. 4. Definitions.

Summaries of key terms:

- Advertiser – A person who pays an advertising facilitator to disseminate an ad to an individual, connected device, or group of individuals or connected devices.
- Advertising facilitator – A person who receives payment to disseminate ads and collects or processes personal information.
- Personal information – Data linked or reasonably linkable to an individual or connected device, including inferred and derived data, contents of communications, internet browsing history, and advertising identifiers.
- Protected class - 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.
- Recognized place – Only: a state, Indian land, municipality, census designated place, Nielsen TV market, or congressional district. Excludes zip code.
- Target – To perform or cause to be performed any computational process to select individuals, connected devices, or groups of individuals or connected devices to which to disseminate an advertisement based on personal information.