

115TH CONGRESS  
1ST SESSION

# H. R. 2356

To protect broadband users from unfair or deceptive practices relating to privacy or data security, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2017

Mr. MCNERNEY (for himself, Ms. DEGETTE, Mr. ENGEL, Mr. RUSH, Mr. KHANNA, and Mr. TAKANO) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To protect broadband users from unfair or deceptive practices relating to privacy or data security, 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 “Managing Your Data  
5 Against Telecom Abuses Act of 2017” or the “MY DATA  
6 Act of 2017”.

1 **SEC. 2. PROTECTING BROADBAND USERS FROM UNFAIR OR**  
2 **DECEPTIVE ACTS OR PRACTICES RELATING**  
3 **TO PRIVACY OR DATA SECURITY.**

4 (a) DEFINITIONS.—In this section:

5 (1) BROADBAND PROVIDER.—The term  
6 “broadband provider” means a person who provides  
7 a mass-market retail service by wire or radio that  
8 provides the capability to transmit data to and re-  
9 ceive data from all or substantially all Internet  
10 endpoints, including any capabilities that are inci-  
11 dental to and enable the operation of the commu-  
12 nications service, but excluding dial-up Internet ac-  
13 cess service.

14 (2) EDGE PROVIDER.—The term “edge pro-  
15 vider” means any person who—

16 (A) provides any content, application, or  
17 service over the Internet; or

18 (B) provides a device used for accessing  
19 any content, application, or service over the  
20 Internet.

21 (b) PROHIBITION.—

22 (1) IN GENERAL.—It is unlawful for a  
23 broadband provider or edge provider to use an un-  
24 fair or deceptive act or practice relating to privacy  
25 or data security in or affecting commerce.

1           (2) RULE OF CONSTRUCTION.—Paragraph (1)  
2 shall not be construed to imply that it was lawful be-  
3 fore the date of the enactment of this Act for a  
4 broadband provider or an edge provider to use an  
5 unfair or deceptive act or practice relating to privacy  
6 or data security in or affecting commerce.

7           (c) REGULATIONS.—The Federal Trade Commission  
8 may, after consulting with the Federal Communications  
9 Commission, promulgate such regulations under section  
10 553 of title 5, United States Code, as the Federal Trade  
11 Commission considers appropriate to carry out this sec-  
12 tion.

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

15           (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
16 TICES.—A violation of subsection (b)(1) shall be  
17 treated as an unfair or deceptive act or practice in  
18 violation of a regulation prescribed under section  
19 18(a)(1)(B) of the Federal Trade Commission Act  
20 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or decep-  
21 tive acts or practices.

22           (2) POWERS OF COMMISSION.—

23           (A) IN GENERAL.—Except as provided in  
24 subparagraph (C), the Federal Trade Commis-  
25 sion shall enforce this Act in the same manner,

1 by the same means, and with the same jurisdic-  
2 tion, powers, and duties as though all applicable  
3 terms and provisions of the Federal Trade  
4 Commission Act (15 U.S.C. 41 et seq.) were in-  
5 corporated into and made a part of this Act.

6 (B) PRIVILEGES AND IMMUNITIES.—Ex-  
7 cept as provided in subparagraph (C), any per-  
8 son who violates this Act shall be subject to the  
9 penalties and entitled to the privileges and im-  
10 munities provided in the Federal Trade Com-  
11 mission Act (15 U.S.C. 41 et seq.).

12 (C) COMMON CARRIERS AND NONPROFIT  
13 ORGANIZATIONS.—Notwithstanding section 4,  
14 5(a)(2), or 6 of the Federal Trade Commission  
15 Act (15 U.S.C. 44, 45(a)(2), and 46) or any ju-  
16 risdictional limitation of the Federal Trade  
17 Commission, the Commission shall also enforce  
18 this Act, in the same manner provided in sub-  
19 paragraphs (A) and (B) of this paragraph, with  
20 respect to—

21 (i) common carriers subject to the  
22 Communications Act of 1934 (47 U.S.C.  
23 151 et seq.) and Acts amendatory thereof  
24 and supplementary thereto; and

1                   (ii) organizations not organized to  
2                   carry on business for their own profit or  
3                   that of their members.

4           (e) ENFORCEMENT BY STATES.—

5                   (1) IN GENERAL.—In any case in which the at-  
6                   torney general of a State has reason to believe that  
7                   an interest of the residents of the State has been or  
8                   is threatened or adversely affected by the engage-  
9                   ment of any person subject to subsection (b)(1) in  
10                   a practice that violates such subsection, the attorney  
11                   general of the State may, as *parens patriae*, bring  
12                   a civil action on behalf of the residents of the State  
13                   in an appropriate district court of the United States  
14                   to obtain appropriate relief.

15                   (2) RIGHTS OF FEDERAL TRADE COMMIS-  
16                   SION.—

17                   (A) NOTICE TO FEDERAL TRADE COMMIS-  
18                   SION.—

19                   (i) IN GENERAL.—Except as provided  
20                   in clause (iii), the attorney general of a  
21                   State shall notify the Commission in writ-  
22                   ing that the attorney general intends to  
23                   bring a civil action under paragraph (1)  
24                   before initiating the civil action against a  
25                   person subject to subsection (b)(1).

1 (ii) CONTENTS.—The notification re-  
2 quired by clause (i) with respect to a civil  
3 action shall include a copy of the complaint  
4 to be filed to initiate the civil action.

5 (iii) EXCEPTION.—If it is not feasible  
6 for the attorney general of a State to pro-  
7 vide the notification required by clause (i)  
8 before initiating a civil action under para-  
9 graph (1), the attorney general shall notify  
10 the Commission immediately upon insti-  
11 tuting the civil action.

12 (B) INTERVENTION BY FEDERAL TRADE  
13 COMMISSION.—The Commission may—

14 (i) intervene in any civil action  
15 brought by the attorney general of a State  
16 under paragraph (1); and

17 (ii) upon intervening—

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

20 (II) file petitions for appeal of a  
21 decision in the civil action.

22 (3) INVESTIGATORY POWERS.—Nothing in this  
23 subsection may be construed to prevent the attorney  
24 general of a State from exercising the powers con-  
25 ferred on the attorney general by the laws of the

1 State to conduct investigations, to administer oaths  
2 or affirmations, or to compel the attendance of wit-  
3 nesses or the production of documentary or other  
4 evidence.

5 (4) ACTION BY FEDERAL TRADE COMMIS-  
6 SION.—If the Federal Trade Commission institutes  
7 a civil action with respect to a violation of subsection  
8 (b)(1), the attorney general of a State may not, dur-  
9 ing the pendency of such action, bring a civil action  
10 under paragraph (1) of this subsection against any  
11 defendant named in the complaint of the Commis-  
12 sion for the violation with respect to which the Com-  
13 mission instituted such action.

14 (5) VENUE; SERVICE OF PROCESS.—

15 (A) VENUE.—Any action brought under  
16 paragraph (1) may be brought in—

17 (i) the district court of the United  
18 States that meets applicable requirements  
19 relating to venue under section 1391 of  
20 title 28, United States Code; or

21 (ii) another court of competent juris-  
22 diction.

23 (B) SERVICE OF PROCESS.—In an action  
24 brought under paragraph (1), process may be  
25 served in any district in which the defendant—

1 (i) is an inhabitant; or

2 (ii) may be found.

3 (6) ACTIONS BY OTHER STATE OFFICIALS.—

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

12 (B) SAVINGS PROVISION.—Nothing in this  
13 subsection may be construed to prohibit an au-  
14 thorized official of a State from initiating or  
15 continuing any proceeding in a court of the  
16 State for a violation of any civil or criminal law  
17 of the State.

18 (7) AUTHORITY PRESERVED.—Nothing in this  
19 Act shall be construed to limit the authority of the  
20 Federal Trade Commission under any other provi-  
21 sion of law.

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