

115TH CONGRESS
1ST SESSION

S. 964

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

IN THE SENATE OF THE UNITED STATES

APRIL 27, 2017

Mr. BLUMENTHAL (for himself and Mr. UDALL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 “broad-
6 band provider” means a person who provides a
7 mass-market retail service by wire or radio that pro-
8 vides the capability to transmit data to and receive
9 data from all or substantially all Internet endpoints,
10 including any capabilities that are incidental to and
11 enable the operation of the communications service,
12 but excluding dial-up Internet access service.

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

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

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

20 (b) PROHIBITION.—

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

25 (2) RULE OF CONSTRUCTION.—Paragraph (1)
26 shall not be construed to imply that it was lawful be-

1 fore the date of the enactment of this Act for a
2 broadband provider or an edge provider to use an
3 unfair or deceptive act or practice relating to privacy
4 or data security in or affecting commerce.

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

11 (d) ENFORCEMENT BY FEDERAL TRADE COMMIS-
12 SION.—

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

20 (2) POWERS OF COMMISSION.—

21 (A) IN GENERAL.—Except as provided in
22 subparagraph (C), the Federal Trade Commis-
23 sion shall enforce this Act in the same manner,
24 by the same means, and with the same jurisdic-
25 tion, powers, and duties as though all applicable

1 terms and provisions of the Federal Trade
2 Commission Act (15 U.S.C. 41 et seq.) were in-
3 corporated into and made a part of this Act.

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

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

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

23 (ii) organizations not organized to
24 carry on business for their own profit or
25 that of their members.

1 (e) ENFORCEMENT BY STATES.—

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

12 (2) RIGHTS OF FEDERAL TRADE COMMIS-
13 SION.—

14 (A) NOTICE TO FEDERAL TRADE COMMIS-
15 SION.—

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

23 (ii) CONTENTS.—The notification re-
24 quired by clause (i) with respect to a civil

1 action shall include a copy of the complaint
2 to be filed to initiate the civil action.

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

10 (B) INTERVENTION BY FEDERAL TRADE
11 COMMISSION.—The Commission may—

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

15 (ii) upon intervening—

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

18 (II) file petitions for appeal of a
19 decision in the civil action.

20 (3) INVESTIGATORY POWERS.—Nothing in this
21 subsection may be construed to prevent the attorney
22 general of a State from exercising the powers con-
23 ferred on the attorney general by the laws of the
24 State to conduct investigations, to administer oaths
25 or affirmations, or to compel the attendance of wit-

1 nesses or the production of documentary or other
2 evidence.

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

12 (5) VENUE; SERVICE OF PROCESS.—

13 (A) VENUE.—Any action brought under
14 paragraph (1) may be brought in—

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

19 (ii) another court of competent juris-
20 diction.

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

24 (i) is an inhabitant; or

25 (ii) may be found.

1 (6) 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 paragraph (1), subject to the
7 same requirements and limitations that apply
8 under this subsection to civil actions brought by
9 attorneys general.

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

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

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