115TH CONGRESS 1ST SESSION

H. R. _____

To require providers of broadband internet access service and edge services to clearly and conspicuously notify users of the privacy policies of such providers, to give users opt-in or opt-out approval rights with respect to the use of, disclosure of, and access to user information collected by such providers based on the level of sensitivity of such information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

To require providers of broadband internet access service and edge services to clearly and conspicuously notify users of the privacy policies of such providers, to give users opt-in or opt-out approval rights with respect to the use of, disclosure of, and access to user information collected by such providers based on the level of sensitivity of such information, 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,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Balancing the Rights of Web Surfers Equally and Responsibly Act of 2017” or the “BROWSER Act of 2017”.

SEC. 2. NOTICE OF PRIVACY POLICIES.

(a) IN GENERAL.—A provider of a covered service shall provide the users of the service with notice of the privacy policies of the provider with respect to the service.

Such notice shall be clear and conspicuous.

(b) AVAILABILITY TO PROSPECTIVE USERS.—The notice required by subsection (a) shall be made available to prospective users—

(1) at the point of sale of, subscription to, or establishment of an account for the covered service, prior to such sale, subscription, or establishment, whether such point of sale, subscription, or establishment is in person, online, over the telephone, or through another means; or

(2) if there is no such sale, subscription, or establishment, before the user uses the service.

(c) PERSISTENT AVAILABILITY.—The notice required by subsection (a) shall be made persistently available.

(d) MATERIAL CHANGES.—A provider of a covered service shall provide users with advance notice of any material change to the privacy policies of the provider.
notice required by this subsection shall be clear and con-
spicuous.

SEC. 3. USER OPT-IN OR OPT-OUT APPROVAL RIGHTS
BASED ON SENSITIVITY OF INFORMATION.

(a) Opt-in Approval Required for Sensitive
User Information.—Except as provided in subsection
(c), a provider of a covered service shall obtain opt-in ap-
proval from a user to use, disclose, or permit access to
the sensitive user information of the user.

(b) Opt-out Approval Required for Non-sen-
sitive User Information.—Except as provided in sub-
section (c)—

(1) a provider of a covered service shall obtain
opt-out approval from a user to use, disclose, or per-
mit access to any of the non-sensitive user informa-
tion of the user; or

(2) if the provider so chooses, the provider may
comply with the requirement of paragraph (1) by ob-
taining opt-in approval from the user to use, dis-
close, or permit access to any such non-sensitive
user information.

(c) Limitations and Exceptions.—A provider of
a covered service may use, disclose, or permit access to
user information without user approval for the following
purposes:
(1) In providing the covered service from which such information is derived, or in providing services necessary to, or used in, the provision of such service.

(2) To initiate, render, bill, and collect for the covered service.

(3) To protect the rights or property of the provider, or to protect users of the covered service and other service providers from fraudulent, abusive, or unlawful use of the service.

(4) To provide location information or non-sensitive user information—

   (A) to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the request of the user for emergency services;

   (B) to inform the legal guardian of the user, or members of the immediate family of the user, of the location of the user in an emergency situation that involves the risk of death or serious physical harm; or
(C) to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(5) As otherwise required or authorized by law.

(d) MECHANISM FOR EXERCISING USER APPROVAL.—

(1) IN GENERAL.—A provider of a covered service shall make available a simple, easy-to-use mechanism for users to grant, deny, or withdraw opt-in approval or opt-out approval at any time.

(2) FORM AND MANNER.—The mechanism required by paragraph (1) shall be—

(A) clear and conspicuous; and

(B) made available—

(i) at no additional cost to the user; and

(ii) in a language other than English, if the provider transacts business with the user in such other language.

(3) EFFECT.—The grant, denial, or withdrawal of opt-in approval or opt-out approval by a user shall—

(A) be given effect promptly; and
(B) remain in effect until the user revokes
or limits such grant, denial, or withdrawal of
approval.

SEC. 4. SERVICE OFFERS CONDITIONED ON WAIVERS OF
PRIVACY RIGHTS.

A provider of a covered service may not—

(1) condition, or effectively condition, provision
of such service on agreement by a user to waive pri-

vacy rights guaranteed by law or regulation, includ-
ing this Act; or

(2) terminate such service or otherwise refuse
to provide such service as a direct or indirect con-
sequence of the refusal of a user to waive any such
privacy rights.

SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) GENERAL APPLICATION.—The requirements of
this Act apply, according to their terms, to—

(1) those persons, partnerships, and corpora-
tions over which the Commission has authority pur-
suant to section 5(a)(2) of the Federal Trade Com-
mission Act (15 U.S.C. 45(a)(2)); and

(2) providers of broadband internet access serv-

ice, notwithstanding the exception in such section for
common carriers subject to the Communications Act
of 1934 (47 U.S.C. 151 et seq.).
(b) Unfair or Deceptive Acts or Practices.—
A violation of this Act shall be treated as an unfair or
deceptive act or practice in or affecting commerce for pur-
poses of section 5(a)(2) of the Federal Trade Commission
Act (15 U.S.C. 45(a)(2)).

(c) Powers of Commission.—Except as provided in
subsection (a)(2) of this section—

(1) the Commission shall enforce 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 incor-
porated into and made a part of this Act; and

(2) any person who violates this Act shall be
subject to the penalties and entitled to the privileges
and immunities provided in the Federal Trade Com-
mission Act.

SEC. 6. Definitions.

In this Act:

(1) Broadband Internet Access Service.—

(A) In General.—The term “broadband
internet access service” means a mass-market
retail service by wire or radio that provides the
capability to transmit data to and receive data
from all or substantially all internet endpoints,
including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.

(B) Functional equivalent; evasion.—Such term also includes any service that—

(i) the Commission finds to be providing a functional equivalent of the service described in subparagraph (A); or

(ii) is used to evade the protections set forth in this Act.

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

(3) Covered service.—The term “covered service” means—

(A) broadband internet access service; or

(B) an edge service.

(4) Edge service.—The term “edge service”—

(A) means a service provided over the internet—

(i) for which the provider requires the user to subscribe or establish an account in order to use the service;
(ii) that the user purchases from the provider of the service without a subscription or account;

(iii) by which a program searches for and identifies items in a database that correspond to keywords or characters specified by the user, used especially for finding particular sites on the World Wide Web; or

(iv) by which the user divulges sensitive user information; and

(B) includes a service described in subparagraph (A) that is provided through a software program, including a mobile application.

(5) Emergency Services.—The term “emergency services” has the meaning given such term in section 222 of the Communications Act of 1934 (47 U.S.C. 222).

(6) Material.—The term “material” means, with respect to a change in a privacy policy of a provider of a covered service, any change in such policy that a user of the service, acting reasonably under the circumstances, would consider important to the decisions of the user regarding the privacy of the user, including any change to information required to be included in a privacy notice under section 2.
(7) MOBILE APPLICATION.—The term “mobile application” means a software program that runs on the operating system of a mobile device.

(8) NON-SENSITIVE USER INFORMATION.—The term “non-sensitive user information” means any user information that is not sensitive user information.

(9) OPT-IN APPROVAL.—The term “opt-in approval” means a method for obtaining from a user of a covered service consent to use, disclose, or permit access to sensitive user information under which the provider of the service obtains express consent allowing the requested usage, disclosure, or access to the sensitive user information.

(10) OPT-OUT APPROVAL.—The term “opt-out approval” means a method for obtaining from a user of a covered service consent to use, disclose, or permit access to non-sensitive user information under which the user is deemed to have consented to the use, disclosure, or access to the non-sensitive user information if the user has failed to object to such use, disclosure, or access.

(11) PUBLIC SAFETY ANSWERING POINT.—The term “public safety answering point” has the mean-
ing given such term in section 222 of the Communications Act of 1934 (47 U.S.C. 222).

(12) SENSITIVE USER INFORMATION.—The term “sensitive user information” includes any of the following:

(A) Financial information.

(B) Health information.

(C) Information pertaining to children under the age of 13.

(D) Social Security number.

(E) Precise geo-location information.

(F) Content of communications.

(G) Web browsing history, history of usage of a software program (including a mobile application), and the functional equivalents of either.

(13) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Commonwealth of the Northern Mariana Islands, any other territory or possession of the United States, and each federally recognized Indian Tribe.

(14) USER.—The term “user” means, with respect to a covered service, a person who—
(A) is a current or former—

(i) subscriber to such service; or

(ii) holder of an account for such service;

(B) purchases such service without a subscription or account;

(C) is an applicant for such service; or

(D) in the case of a service described in clause (iii) or (iv) of paragraph (4)(A), uses the service.

(15) USER INFORMATION.—The term “user information” means any information that—

(A) a provider of a covered service acquires in connection with the provision of such service;

and

(B) is linked or reasonably linkable to an individual.

SEC. 7. RELATIONSHIP TO OTHER LAW.

(a) PREEMPTION OF STATE LAW.—No State or political subdivision of a State shall, with respect to a provider of a covered service subject to this Act, adopt, maintain, enforce, or impose or continue in effect any law, rule, regulation, duty, requirement, standard, or other provision having the force and effect of law relating to or with respect to the privacy of user information.
(b) Other Federal Law.—

(1) In general.—Except as provided in paragraph (2), nothing in this Act shall be construed to supercede any other Federal statute or regulation relating to information privacy.

(2) Communications Act of 1934.—Insofar as any provision of the Communications Act of 1934 (47 U.S.C. 151 et seq.) or any regulations promulgated under such Act apply to any person, partnership, or corporation subject to this Act with respect to privacy policies, terms of service, and practices covered by this Act, such provision of the Communications Act of 1934 or such regulations shall have no force or effect, unless such regulations pertain to emergency services.