
ENGROSSED SUBSTITUTE HOUSE BILL 2200

State of Washington

65th Legislature

2017 Regular Session

By House Technology & Economic Development (originally sponsored by Representatives Hansen, Taylor, Smith, Buys, Harmsworth, Graves, Maycumber, J. Walsh, Kraft, Haler, Condotta, Nealey, Bergquist, Steele, Van Werven, Stonier, Macri, Farrell, Cody, Slatter, Tarleton, Senn, Kagi, Pollet, Frame, Chapman, Dye, Hudgins, Stanford, Reeves, Dent, Hayes, Ryu, Peterson, Sells, Kloba, Santos, Johnson, Fitzgibbon, Holy, Ormsby, Caldier, Sawyer, Wylie, Hargrove, Kilduff, Blake, Orcutt, Gregerson, Young, Appleton, Shea, Koster, Morris, Tharinger, Irwin, Muri, Schmick, Volz, Goodman, Clibborn, McCaslin, Pellicciotti, Doglio, Jinkins, Dolan, Kirby, Sullivan, Lytton, Kretz, Riccelli, Rodne, McBride, McCabe, and Pettigrew)

READ FIRST TIME 04/17/17.

1 AN ACT Relating to protecting the privacy and security of
2 internet users; adding a new chapter to Title 19 RCW; providing an
3 effective date; and providing a contingent expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Broadband internet access service" or "BIAS" means a mass
9 market retail service by wire or radio that provides the capability
10 to transmit data to and receive data from all or substantially all
11 internet endpoints, including any capabilities that are incidental to
12 and enable the operation of the communications service, but excluding
13 dial-up internet access service. This term also encompasses any
14 service that the federal communications commission finds to be
15 providing a functional equivalent of the service described in this
16 subsection.

17 (2) "Broadband internet access service provider" or "BIAS
18 provider" means a person engaged in the provision of BIAS.

19 (3) "Customer" means: (a) A current or former subscriber to a
20 BIAS; or (b) an applicant for a BIAS.

1 (4) "Customer proprietary information" means any of the following
2 a BIAS provider acquires in connection with its provision of BIAS:

- 3 (a) Content of communication;
- 4 (b) Call detail information;
- 5 (c) Financial information;
- 6 (d) Health information;
- 7 (e) Information pertaining to children;
- 8 (f) Social security numbers;
- 9 (g) Precise geolocation information;

10 (h) Web browsing history, application usage history, and the
11 functional equivalents of either; and

12 (i) Other personally identifiable information, which consists of
13 any information that is linked or reasonably linkable to an
14 individual or device.

15 (5) "Opt-in approval" means affirmative, express customer consent
16 to an activity under section 2 of this act, after the customer is
17 provided appropriate notification.

18 NEW SECTION. **Sec. 2.** (1) Except with the opt-in approval of the
19 customer, a BIAS provider may not:

- 20 (a) Sell or transfer customer proprietary information; or
- 21 (b) Send or display to a customer an advertisement selected to be
22 sent or displayed based on the customer's proprietary information.

23 (2) A BIAS provider must solicit the approval required under
24 subsection (1) of this section at the point of sale. A BIAS provider
25 must obtain new approval for any changes in the actions described in
26 subsection (1) of this section, if those changes are inconsistent
27 with the terms or conditions provided at the time of prior customer
28 approval.

29 (3) A BIAS provider must provide access to a mechanism that is
30 reasonably designed to be readily available and understandable for a
31 customer to grant, deny, or withdraw approval for the BIAS provider
32 to take any of the actions described in subsection (1) of this
33 section. The exact notice and mechanism to obtain opt-in approval or
34 to deny or withdraw that approval is context dependent.

35 (4) For the purposes of this section, "transfer" does not include
36 the use or disclosure of customer proprietary information for the
37 provision of internet access service from which such information is
38 derived or the provision of services necessary to, or used in, the
39 provision of such services.

1 (5) Subsection (1)(a) of this section does not apply to the sale
2 or transfer of customer proprietary information as part of any
3 merger, acquisition, sale of all, or substantially all, company
4 assets, or transition of service to another provider.

5 NEW SECTION. **Sec. 3.** (1) A BIAS provider must not condition, or
6 effectively condition, provision of BIAS on a customer's agreement to
7 waive privacy rights guaranteed by law or rule, including this
8 chapter. A BIAS provider must not terminate service or otherwise
9 refuse to provide BIAS as a direct or indirect consequence of a
10 customer's refusal to waive any such privacy rights.

11 (2) A BIAS provider that offers a financial incentive in exchange
12 for any customer approvals described in section 2(1) of this act must
13 provide the customer with the terms and conditions of the use of the
14 customer proprietary information, including the type of information
15 sought, the purposes of its use, and the categories of entities to
16 which the information may be disclosed.

17 (3) For any customer that has agreed to participate in a
18 financial incentive program as described in subsection (2) of this
19 section, a BIAS provider must provide access to a mechanism for
20 customers to withdraw participation from such a program at any time.

21 NEW SECTION. **Sec. 4.** The utilities and transportation
22 commission is authorized to adopt rules, consistent with the purposes
23 of this chapter, that do either or both of the following:

- 24 (1) Further define the definitions in section 1 of this act; and
25 (2) Prescribe appropriate notice and the form of such a notice to
26 be provided to customers under sections 2 and 3 of this act.

27 NEW SECTION. **Sec. 5.** The legislature finds that the practices
28 covered by this chapter are matters vitally affecting the public
29 interest for the purpose of applying the consumer protection act,
30 chapter 19.86 RCW. Notwithstanding the provisions of RCW 19.86.170, a
31 violation of this chapter, including the violation of any rule
32 adopted by the utilities and transportation commission pursuant to
33 section 4 of this act, is not reasonable in relation to the
34 development and preservation of business and is an unfair or
35 deceptive act in trade or commerce and an unfair method of
36 competition for the purpose of applying the consumer protection act,
37 chapter 19.86 RCW. A violation of this chapter by a public service

1 company providing broadband internet access service may be subject to
2 enforcement by the utilities and transportation commission under
3 Title 80 RCW.

4 NEW SECTION. **Sec. 6.** The consumer privacy and security account
5 is created in the state treasury. All receipts from recoveries by the
6 office of the attorney general for lawsuits related to the consumer
7 protection act under the provisions of this chapter, or otherwise
8 designated to this account, must be deposited into the account.
9 Moneys in the account may be spent only after appropriation.
10 Expenditures from the account may be used only for costs incurred by
11 the office of the attorney general in the administration and
12 enforcement of this chapter.

13 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act expire
14 upon determination by the utilities and transportation commission
15 that the federal government has established BIAS customer protections
16 standards substantially equivalent to the levels of protection
17 provided in this chapter. The utilities and transportation commission
18 must provide notice of the expiration date of sections 1 through 6 of
19 this act to affected parties, the chief clerk of the house of
20 representatives, the secretary of the senate, the office of the code
21 reviser, and others as deemed appropriate by the utilities and
22 transportation commission.

23 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act take
24 effect December 31, 2018.

25 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act
26 constitute a new chapter in Title 19 RCW.

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