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SENATE BILL 6446

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State of Washington

65th Legislature

2018 Regular Session

By Senators Carlyle, Hunt, Keiser, and Kuderer

Read first time 01/17/18. Referred to Committee on Energy,  
Environment & Technology.

1 AN ACT Relating to ensuring consumers rights to internet  
2 transparency; adding a new section to chapter 39.26 RCW; and adding a  
3 new chapter to Title 19 RCW.

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" means a mass-market  
9 retail service by wire or radio that provides the capability to  
10 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 the  
16 previous sentence, or that is used to evade the protections set forth  
17 in this section.

18 (2) "Edge provider" means any individual or entity that provides  
19 any content, application, or service over the internet, and any  
20 individual or entity that provides a device used for accessing any  
21 content, application, or service over the internet.

1 (3) "End user" means any individual or entity that uses a  
2 broadband internet access service.

3 (4) "Reasonable network management" means a practice that has a  
4 primarily technical network management justification, but does not  
5 include other business practices. A network management practice is  
6 reasonable if it is primarily used for and tailored to achieve a  
7 legitimate network management purpose, taking into account the  
8 particular network architecture and technology of the broadband  
9 internet access service.

10 NEW SECTION. **Sec. 2.** (1)(a) A person engaged in the provision  
11 of broadband internet access service in Washington state must  
12 publicly disclose accurate information regarding the network  
13 management practices, performance, and commercial terms of its  
14 broadband internet access services sufficient for consumers to make  
15 informed choices regarding use of such services, and for content,  
16 application, service, and device providers to develop, market, and  
17 maintain internet offerings.

18 (b) Broadband internet access service providers must provide  
19 disclosure in a timely manner and in plain language that is  
20 accessible to current, prospective end users and edge providers. The  
21 disclosure must be provided in a format that is agreed upon by the  
22 end user or edge provider.

23 (2) Broadband internet access service providers must disclose:

24 (a) Information relating to network management practices,  
25 performance, and terms of service;

26 (b) Plan limitations that slow or impair lawful internet traffic  
27 on the basis of content, application, or service, or use of a  
28 nonharmful device, subject to reasonable network management;

29 (c) Expected and actual access speed and latency as well as the  
30 network performance based on average performance over a reasonable  
31 time frame and during times of peak usage;

32 (d) Promotional rates, specify the duration of the promotional  
33 period, and include the full monthly service charge to be incurred  
34 when the promotional period ends;

35 (e) Data thresholds or data caps and actions that will be taken  
36 if the threshold or cap is met, including additional fees based on  
37 use or other practices;

38 (f) Pricing, which must be provided prior to the point of  
39 purchase, and include full monthly service charge; and

1 (g) Any additional one time or recurring fees, or surcharges  
2 necessary to initiate, maintain, or discontinue service. Each fee or  
3 surcharge must be separately named, defined, and include amount of  
4 each additional fee, including modem rental fees, installation fees,  
5 service charges, and early termination fees.

6 (3) Broadband internet access service providers must:

7 (a) Maintain the accuracy of disclosures;

8 (b) Update the disclosure when there is a change of commercial  
9 terms, network practices, or performance characteristics that a  
10 reasonable end user or edge provider would consider important to  
11 their decisions on their choice of provider, service, or application;  
12 and

13 (c) Provide updated disclosure notices to end users and edge  
14 providers in a timely manner and in a format agreed to by the end  
15 user or edge provider.

16 NEW SECTION. **Sec. 3.** A broadband internet access provider is in  
17 violation of this act if the provider makes assertions about its  
18 service that contain errors, are inconsistent with the provider's  
19 disclosure statement, or are misleading or deceptive. Misleading or  
20 deceptive acts include:

21 (1) When the speed of service is less than advertised speeds;

22 (2) When billed amounts are greater than advertised rates;

23 (3) When consumers are unable to determine the source of slow or  
24 congested service;

25 (4) When promotional rates that do not specify the duration of  
26 the promotional period and do not include the full monthly service  
27 charge to be incurred when the promotional period ends; and

28 (5) Pricing that does not include the actual monthly cost to the  
29 end user or edge provider.

30 NEW SECTION. **Sec. 4.** The legislature finds that the practices  
31 covered by this chapter are matters vitally affecting the public  
32 interest for the purpose of applying the consumer protection act,  
33 chapter 19.86 RCW. A violation of this chapter is not reasonable in  
34 relation to the development and preservation of business and is an  
35 unfair or 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.

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

11        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 39.26  
12 RCW to read as follows:

13        (1) The department, the office of the chief information officer,  
14 and all other state agencies are prohibited from entering into  
15 contracts with vendors offering broadband internet access services  
16 unless the vendor commits to providing equal connection for all users  
17 to lawful internet content, applications, and services, without:

18        (a) Discrimination or blocking of web sites;

19        (b) Impairment or degradation of internet traffic based on  
20 internet content, application, services, or use of a nonharmful  
21 device; or

22        (c) Allowing or requiring paid prioritization for transmission of  
23 certain content, applications, and service providers over the  
24 internet.

25        (2) Nothing in this section requires the department or any other  
26 state agency to breach or rescind an existing contract as of the  
27 effective date of this section.

28        NEW SECTION.    **Sec. 7.**    Sections 1 through 6 of this act  
29 constitute a new chapter in Title 19 RCW.

30        NEW SECTION.    **Sec. 8.**    If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

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