

SB 5919 - S AMD 577  
By Senator Ranker

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

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

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

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

21 (a) Content of communication;

22 (b) Call detail information;

23 (c) Financial information;

24 (d) Health information;

25 (e) Information pertaining to children;

26 (f) Social security numbers;

27 (g) Precise geolocation information;

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

30 (i) Other personally identifiable information, which consists of  
31 any information that is linked or reasonably linkable to an  
32 individual or device.

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

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

6 (a) Sell or transfer customer proprietary information; or

7 (b) Send or display to a customer an advertisement selected to be  
8 sent or displayed based on the customer's proprietary information.

9 (2) A BIAS provider must solicit the approval required under  
10 subsection (1) of this section at the point of sale. A BIAS provider  
11 must obtain new approval for any changes in the actions described in  
12 subsection (1) of this section, if those changes are inconsistent  
13 with the terms or conditions provided at the time of prior customer  
14 approval.

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

21 (4) For the purposes of this section, "transfer" does not include  
22 the use or disclosure of customer proprietary information for the  
23 provision of internet access service from which such information is  
24 derived or the provision of services necessary to, or used in, the  
25 provision of such services.

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

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

36 (2) A BIAS provider that offers a financial incentive in exchange  
37 for any customer approvals described in section 2(1) of this act must  
38 provide the customer with the terms and conditions of the use of the

1 customer proprietary information, including the type of information  
2 sought, the purposes of its use, and the categories of entities to  
3 which the information may be disclosed.

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

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

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

14 NEW SECTION. **Sec. 5.** The legislature finds that the practices  
15 covered by this chapter are matters vitally affecting the public  
16 interest for the purpose of applying the consumer protection act,  
17 chapter 19.86 RCW. Notwithstanding the provisions of RCW 19.86.170, a  
18 violation of this chapter, including the violation of any rule  
19 adopted by the utilities and transportation commission pursuant to  
20 section 4 of this act, is not reasonable in relation to the  
21 development and preservation of business and is an unfair or  
22 deceptive act in trade or commerce and an unfair method of  
23 competition for the purpose of applying the consumer protection act,  
24 chapter 19.86 RCW. A violation of this chapter by a public service  
25 company providing broadband internet access service may be subject to  
26 enforcement by the utilities and transportation commission under  
27 Title 80 RCW.

28 NEW SECTION. **Sec. 6.** The consumer privacy and security account  
29 is created in the state treasury. All receipts from recoveries by the  
30 office of the attorney general for lawsuits related to the consumer  
31 protection act under the provisions of this chapter, or otherwise  
32 designated to this account, must be deposited into the account.  
33 Moneys in the account may be spent only after appropriation.  
34 Expenditures from the account may be used only for costs incurred by  
35 the office of the attorney general in the administration and  
36 enforcement of this chapter.

1        NEW SECTION.    **Sec. 7.**    Sections 1 through 6 of this act expire  
2 upon determination by the utilities and transportation commission  
3 that the federal government has established BIAS customer protections  
4 standards substantially equivalent to the levels of protection  
5 provided in this chapter. The utilities and transportation commission  
6 must provide notice of the expiration date of sections 1 through 6 of  
7 this act to affected parties, the chief clerk of the house of  
8 representatives, the secretary of the senate, the office of the code  
9 reviser, and others as deemed appropriate by the utilities and  
10 transportation commission.

11        NEW SECTION.    **Sec. 8.**    Sections 1 through 7 of this act take  
12 effect December 31, 2019.

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

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15        On page 1, line 1 of the title, after "privacy;" strike the  
16 remainder of the title and insert "adding a new chapter to Title 19  
17 RCW; providing an effective date; and providing a contingent  
18 expiration date."

EFFECT: Revises definitions for customer proprietary information  
and "opt-in" approval.

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