
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; and providing
3 an effective 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) Personally identifiable information, which consists of any
4 information that is linked or reasonably linkable to an individual or
5 device;

6 (b) Content of communication;

7 (c) Financial information;

8 (d) Health information;

9 (e) Information pertaining to children;

10 (f) Social security numbers;

11 (g) Precise geolocation information;

12 (h) Call detail information;

13 (i) Web browsing history, application usage history, and the
14 functional equivalents of either; and

15 (j) Biometric identifiers, which consists of data generated by
16 automatic measurements of an individual's biological characteristics,
17 such as a fingerprint, voiceprint, eye retinas, irises, or other
18 unique biological patterns or characteristics that is used to
19 identify a specific individual. Biometric identifier does not include
20 a physical or digital photograph, video or audio recording or data
21 generated therefrom, or information collected, used, or stored for
22 health care treatment, payment, or operations under the federal
23 health insurance portability and accountability act of 1996.

24 (5) "Opt-in approval" means a method for obtaining customer
25 consent to use, disclose, or permit access to the customer's
26 proprietary information. This approval method requires that the BIAS
27 provider obtain from the customer affirmative, express consent
28 allowing the sale of the customer proprietary information after the
29 customer is provided appropriate notification of the BIAS provider's
30 request consistent with the requirements set forth in this chapter.

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

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

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

36 (2) A BIAS provider must solicit the approval required under
37 subsection (1) of this section at the point of sale. A BIAS provider
38 must obtain new approval for any changes in the sale or transfer of a
39 customer's proprietary information if those changes are inconsistent

1 with the terms or conditions provided at the time of prior customer
2 approval.

3 (3) A BIAS provider must provide access to a mechanism that is
4 reasonably designed to be readily available and understandable for a
5 customer to grant, deny, or withdraw approval for the BIAS provider
6 to sell their customer proprietary information. The exact notice and
7 mechanism to obtain opt-in approval or to deny or withdraw that
8 approval is context dependent.

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

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

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

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

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

31 NEW SECTION. **Sec. 5.** The legislature finds that the practices
32 covered by this chapter are matters vitally affecting the public
33 interest for the purpose of applying the consumer protection act,
34 chapter 19.86 RCW. A violation of this chapter is not reasonable in
35 relation to the development and preservation of business and is an
36 unfair or deceptive act in trade or commerce and an unfair method of

1 competition for the purpose of applying the consumer protection act,
2 chapter 19.86 RCW.

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

12 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act take
13 effect July 1, 2018.

14 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act
15 constitute a new chapter in Title 19 RCW.

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