
SENATE BILL 5112

State of Washington

67th Legislature

2021 Regular Session

By Senator Ericksen

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1 AN ACT Relating to requiring broadband internet access service
2 providers to provide virtual private network service; amending RCW
3 19.385.020; and adding new sections to chapter 19.385 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 19.385
6 RCW to read as follows:

7 Any person providing broadband internet access service shall
8 offer virtual private network service to end users at no extra cost
9 to the end user. An end user is not required to use the broadband
10 internet access service's virtual private network service. This
11 section does not preclude an end user from using a virtual private
12 network service offered by a third party, and a broadband internet
13 access service provider may not prohibit an end user from using a
14 virtual private network service offered by a third party.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 19.385
16 RCW to read as follows:

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

19 (1)(a) "Broadband internet access service" means a mass-market
20 retail service by wire or radio that provides the capability to

1 transmit data to and receive data from all or substantially all
2 internet endpoints, including any capabilities that are incidental to
3 and enable the operation of the communications service, but excluding
4 dial-up internet access service.

5 (b) "Broadband internet access service" also encompasses any
6 service that the federal communications commission finds to be
7 providing a functional equivalent of the service described in (a) of
8 this subsection, or that is used to evade the protections set forth
9 in RCW 19.385.020.

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

12 (3)(a) "Paid prioritization" means the management of a broadband
13 provider's network to directly or indirectly favor some traffic over
14 other traffic, including through the use of techniques such as
15 traffic shaping, prioritization, resource reservation, or other forms
16 of preferential traffic management, either:

17 (i) In exchange for consideration, monetary or otherwise, from a
18 third party; or

19 (ii) To benefit an affiliated entity.

20 (b) "Paid prioritization" does not include the provision of
21 tiered internet access service or offerings to a retail end user.

22 (4) "Reasonable network management" means a practice that has a
23 primarily technical network management justification, but does not
24 include other business practices. A network management practice is
25 reasonable if it is primarily used for and tailored to achieving a
26 legitimate network management purpose, taking into account the
27 particular network architecture and technology of the broadband
28 internet access service.

29 (5) "Tiered internet access service" means offering end users a
30 choice between different packages of service with clearly advertised
31 speeds, prices, terms, and conditions; for example, a 10 megabit
32 service for one price and a 50 megabit service for a different price.

33 (6) "Virtual private network" means an encrypted connection from
34 an end user's device to a network that is designed to protect the
35 security and privacy of the end user while accessing the internet.

36 **Sec. 3.** RCW 19.385.020 and 2018 c 5 s 1 are each amended to read
37 as follows:

38 (1) Any person providing broadband internet access service in
39 Washington state shall publicly disclose accurate information

1 regarding the network management practices, performance
2 characteristics, and commercial terms of its broadband internet
3 access services sufficient to enable consumers to make informed
4 choices regarding the purchase and use of such services and
5 entrepreneurs and other small businesses to develop, market, and
6 maintain internet offerings. The disclosure must be made via a
7 publicly available, easily accessible website.

8 (2) A person engaged in the provision of broadband internet
9 access service in Washington state, insofar as the person is so
10 engaged, may not:

11 (a) Block lawful content, applications, services, or nonharmful
12 devices, subject to reasonable network management;

13 (b) Impair or degrade lawful internet traffic on the basis of
14 internet content, application, or service, or use of a nonharmful
15 device, subject to reasonable network management; or

16 (c) Engage in paid prioritization.

17 (3) Nothing in this chapter:

18 (a) Supersedes any obligation or authorization a provider of
19 broadband internet access service may have to address the needs of
20 emergency communications or law enforcement, public safety, or
21 national security authorities, consistent with or as permitted by
22 applicable law, or limits the provider's ability to do so; or

23 (b) Prohibits reasonable efforts by a provider of broadband
24 internet access service to address copyright infringement or other
25 unlawful activity.

26 ~~((4) The definitions in this subsection apply throughout this~~
27 ~~section unless the context clearly requires otherwise.~~

28 ~~(a)(i) "Broadband internet access service" means a mass-market~~
29 ~~retail service by wire or radio that provides the capability to~~
30 ~~transmit data to and receive data from all or substantially all~~
31 ~~internet endpoints, including any capabilities that are incidental to~~
32 ~~and enable the operation of the communications service, but excluding~~
33 ~~dial-up internet access service.~~

34 ~~(ii) "Broadband internet access service" also encompasses any~~
35 ~~service that the federal communications commission finds to be~~
36 ~~providing a functional equivalent of the service described in (a)(i)~~
37 ~~of this subsection, or that is used to evade the protections set~~
38 ~~forth in this section.~~

39 ~~(b) "Edge provider" means any individual or entity that provides~~
40 ~~any content, application, or service over the internet, and any~~

1 individual or entity that provides a device used for accessing any
2 content, application, or service over the internet.

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

5 (d) (i) "Paid prioritization" means the management of a broadband
6 provider's network to directly or indirectly favor some traffic over
7 other traffic, including through the use of techniques such as
8 traffic shaping, prioritization, resource reservation, or other forms
9 of preferential traffic management, either:

10 (A) In exchange for consideration, monetary or otherwise, from a
11 third party; or

12 (B) To benefit an affiliated entity.

13 (ii) "Paid prioritization" does not include the provision of
14 tiered internet access service or offerings to a retail end user.

15 (e) "Reasonable network management" means a practice that has a
16 primarily technical network management justification, but does not
17 include other business practices. A network management practice is
18 reasonable if it is primarily used for and tailored to achieving a
19 legitimate network management purpose, taking into account the
20 particular network architecture and technology of the broadband
21 internet access service.

22 (f) "Tiered internet access service" means offering end users a
23 choice between different packages of service with clearly advertised
24 speeds, prices, terms, and conditions; for example, a ten megabit
25 service for one price and a fifty megabit service for a different
26 price.))

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