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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

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

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

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

(1) "Broadband internet access service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the federal communications commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this section.

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

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

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

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

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

(2) Broadband internet access service providers must disclose:

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

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

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

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

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

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

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

(3) Broadband internet access service providers must:

(a) Maintain the accuracy of disclosures;

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

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

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

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

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

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

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

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

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

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

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

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

(a) Discrimination or blocking of web sites;

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

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

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

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

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

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