

SHB 2200 - H AMD 560

By Representative Manweller

ADOPTED AS AMENDED 04/19/2017

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 company assets, or transition of service
29 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. A violation of this chapter is not reasonable in
18 relation to the development and preservation of business and is an
19 unfair or deceptive act in trade or commerce and an unfair method of
20 competition for the purpose of applying the consumer protection act,
21 chapter 19.86 RCW.

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

31 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act expire
32 upon determination by the utilities and transportation commission
33 that the federal government has established BIAS customer protections
34 standards substantially equivalent to the levels of protection
35 provided in this chapter. The utilities and transportation commission
36 must provide notice of the expiration date of sections 1 through 6 of

1 this act to affected parties, the chief clerk of the house of
2 representatives, the secretary of the senate, the office of the code
3 reviser, and others as deemed appropriate by the utilities and
4 transportation commission.

5 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act take
6 effect December 31, 2018.

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

9 Correct the title.

EFFECT: Removes "biometric identifiers" from the definition of customer proprietary information and modifies the definition of "opt-in approval." Specifies that a BIAS provider must obtain approval for changes in, and provide a mechanism to change approval for, certain activities restricted under the act. Specifies that "transfer" does not include use or disclosure in the provision of internet service. Specifies an exception for the sale or transfer of customer proprietary information in the course of a merger, acquisition, sale of company assets, or transition of service. Creates an expiration date contingent upon the establishment of federal customer protections standards substantially equivalent to those provided in the act. Changes the effective date of substantive provisions to December 31, 2018.

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