

HOUSE BILL REPORT

SHB 2282

As Passed House:
February 9, 2018

Title: An act relating to protecting an open internet in Washington state.

Brief Description: Protecting an open internet in Washington state.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Hansen, Cody, Goodman, Pettigrew, Tarleton, Fey, DeBolt, Bergquist, Springer, Santos, McBride, Smith, Chapman, Slatter, Peterson, Wylie, Fitzgibbon, Morris, Stonier, Lytton, Sawyer, Robinson, Tharinger, Kagi, Pellicciotti, Dolan, Orwall, Valdez, Haler, Kilduff, Senn, Frame, Sells, Kirby, Stanford, Blake, Reeves, Clibborn, Macri, Kloba, Appleton, Stambaugh, Jinkins, Ormsby, Ryu, Hayes, Pollet, Doglio, Ortiz-Self, Riccelli, McDonald and Gregerson).

Brief History:

Committee Activity:

Technology & Economic Development: 1/18/18, 1/25/18 [DPS];
Appropriations: 2/3/18, 2/6/18 [DPS(TED)].

Floor Activity:

Passed House: 2/9/18, 93-5.

Brief Summary of Substitute Bill

- Prohibits Internet providers from engaging in certain types of conduct in the provision of service.
- Requires Internet providers to make certain disclosures related to service.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Morris, Chair; Kloba, Vice Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Doglio, Fey, Harmsworth, Hudgins, McDonald, Nealey, Santos, Slatter, Steele and Wylie.

Minority Report: Do not pass. Signed by 1 member: Representative Manweller.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Without recommendation. Signed by 1 member: Representative Young.

Staff: Lily Smith (786-7175).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Technology & Economic Development be substituted therefor and the substitute bill do pass. Signed by 19 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Bergquist, Cody, Fitzgibbon, Haler, Hansen, Hudgins, Jinkins, Kagi, Lytton, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Chandler, Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Buys, Caldier, Condotta, Graves, Manweller, Schmick, Taylor, Vick, Volz and Wilcox.

Minority Report: Without recommendation. Signed by 2 members: Representatives MacEwen, Assistant Ranking Minority Member; Harris.

Staff: Jordan Clarke (786-7123).

Background:

Federal Communications Commission.

The Federal Communications Commission (FCC) regulates interstate and international communications in commerce, with particular requirements for common carriers. Providers of telecommunications services are considered common carriers.

Prior to 2015, the FCC classified the provision of broadband Internet access services (Internet service) as an information service, which is not subject to common carrier regulation. In a 2015 order, the FCC reclassified Internet service as a telecommunications service and applied specific service conduct rules, which prohibited blocking, throttling, and the use of paid prioritization. The 2015 order included a noninterference conduct standard and updates to a preexisting disclosure rule. The 2015 regulatory action is often referred to as "net neutrality."

In 2018 the FCC issued an order reclassifying Internet service as an information service and reversing the 2015 conduct rules, conduct standards, and updates to the disclosure rule.

Federal Trade Commission.

The Federal Trade Commission (FTC) is tasked with preventing unfair or deceptive acts or practices in or affecting commerce under the Federal Trade Commission Act (FTCA), along with enforcement of specific consumer protection and antitrust laws.

The FTCA does not apply to common carriers when engaged in business as a common carrier. Prior to the 2015 FCC order reclassifying Internet service as a telecommunications

service, the FTC had authority over Internet providers under the FTCA. The 2018 FCC order returns that authority.

Summary of Substitute Bill:

Internet providers in Washington are prohibited, with some exceptions, from:

- blocking content, applications, services, or nonharmful devices;
- impairing or degrading ("throttling") traffic on the basis of content, application, service, or use of nonharmful devices; or
- favoring some traffic over others in exchange for benefit ("paid prioritization").

Internet providers in Washington are required to disclose information about network management practices, performance, and commercial terms.

A violation of the act is enforceable under the Consumer Protection Act, chapter 19.86 RCW, solely by the Attorney General.

The Internet Consumer Access Account is created in the State Treasury.

The act takes effect upon the later of: (1) 90 days after adjournment of the legislative session in which it is passed; or (2) the effective date of the federal order repealing equivalent federal rules.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Technology & Economic Development):

(In support) This bill will ensure that Internet providers cannot control the speed at which consumers use a particular application. A new business may not be able to get off the ground if it cannot compete on the Internet. Industry should be able to agree to the rules of the road. Transparency and information on these business practices is critical. Net neutrality did not exist before 2015, and there are many examples of how the Internet was manipulated with companies leveraging their access to charge others for effective access. This specific bill provides higher protections. Addressing the issue entirely within the state should be considered.

(Opposed) The wireless industry supports an open and free Internet. Industry opposition has been about the reclassification of service. The FCC adopted 1930s-style regulations for Internet providers, and then found that they did public harm and investments declined. Strong consumer protections, such as under the FTC and the Attorney General, are still in place. Before 2015 there were virtually no instances where wireless companies were found to be engaging in these practices. Internet providers have made legally enforceable promises to not throttle or discriminate and to make practices transparent. The Internet is interstate,

the FCC has reiterated that this issue is about interstate commerce, and it broadly preempted state laws. A patchwork of state laws would be untenable, and this area is best dealt with in federal law.

(Other) The vast majority of companies support net neutrality, which is necessary to ensure that the next big start-up can grow. The FTC should determine transparency standards. Applying a standard of conduct is problematic. The other net neutrality bill is preferred because clear definitions are needed.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill keeps net neutrality protections at the state level that existed at the federal level until recently. The Federal Communication Commission's claim that it does not have the authority to regulate Internet conduct, and yet has broad authority to preempt state law, is questionable. A lawsuit on the issue of preemption would be resolved during the discovery phase of litigation.

(Opposed) The industry supports the principles of net neutrality. The concern with the bill is that the federal government needs to enact these rules into federal law.

Persons Testifying (Technology & Economic Development): (In support) Representative Hansen, prime sponsor; and Logan Bowers.

(Opposed) Gerard Keegan, CTIA; and Ron Main, Broadband Communications Association of Washington.

(Other) Michael Schutzler, Washington Technology Industry Association.

Persons Testifying (Appropriations): (In support) Representative Hansen, prime sponsor.

(Opposed) Ron Main, Broadband Communications Association of Washington.

Persons Signed In To Testify But Not Testifying (Technology & Economic Development): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.