

SENATE BILL REPORT

SHB 2282

As Reported by Senate Committee On:
Energy, Environment & Technology, February 22, 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: Passed House: 2/09/18, 93-5.

Committee Activity: Energy, Environment & Technology: 2/20/18, 2/22/18 [DP, w/oRec].

Brief Summary of Bill

- Prohibits Internet service providers from blocking lawful content, applications, services, or nonharmful devices; impairing or degrading lawful internet traffic; or engaging in paid prioritization.
- Makes violation of the act enforceable under the Consumer Protection Act (CPA).

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Majority Report: Do pass.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Hawkins, Hobbs, McCoy, Ranker, Sheldon and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Ericksen, Ranking Member; Brown.

Staff: Jan Odano (786-7486)

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.

Background: Federal Regulation. The Federal Communications Commission (FCC) regulates interstate and international communication in promotion of several purposes, including development and provision of services at reasonable rates and promotion of safety of life and property through communications use. The Federal Trade Commission (FTC) is tasked with preventing unfair or deceptive acts or practices that affect commerce, except with regard to certain industry sectors.

Prior to 2015, the FCC classified the provision of broadband Internet access services as an information service. Information services are not subject to common carrier regulation by the FCC under the Federal Telecommunications Act. The FTC has authority to enforce privacy and data security for information services through its broad enforcement power over unfair or deceptive acts or practices. The FTC does not have jurisdiction over common carriers when engaged in business as a common carrier.

The FCC adopted Open Internet rules in 2010. The rules set requirements for transparency, and prohibited blocking and unreasonable discrimination. Both fixed and mobile broadband providers were required to publicly disclose commercial information about their Internet services. Fixed broadband service providers were prohibited from blocking lawful content, applications, services, or non-harmful devices, subject to management practices and unreasonably discriminating in transmitting lawful network traffic over a consumer's broadband Internet access service. In January 2014, the U.S. Court of Appeals vacated the rules prohibiting blocking and discrimination.

In a 2015 order, the FCC reclassified the provision of broadband Internet access services as a telecommunications service, subjecting it to common carrier regulation under Title II of the Federal Telecommunications Act.

The FCC adopted Protecting and Promoting the Open Internet rules in March 2015. The rules included definitions for broadband Internet access service, which included service by wire or radio with the capability to transmit data to, and receive data from, all or substantially all Internet end-points. Dial-up Internet service was excluded. The rules prohibit:

- blocking of lawful content, applications, services, or non-harmful devices, subject to reasonable network management;
- throttling, or impairing or degrading lawful Internet traffic on the basis of Internet content, application or service, or use of a non-harmful device, subject to reasonable network management; and
- paid prioritization, which favors some Internet traffic over others and includes forms of preferential traffic management in exchange for payment or to benefit an affiliated entity.

In December 2017, the FCC reversed the Open Internet rules to return to the pre-2015 regulatory scheme.

State CPA. Under the CPA, unfair or deceptive acts or practices in trade or commerce are unlawful. The CPA provides that any person injured in the person's business or property through such practices may bring a civil action to recover actual damages sustained and costs of the suit, including reasonable attorney's fees. Triple the amount of damages may also be awarded in the court's discretion, provided the damage award does not exceed \$25,000. The

attorney general may bring an action under the CPA in order to restrain and prevent unfair and deceptive acts and practices.

Summary of Bill: Internet service providers in Washington are prohibited from:

- blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management;
- impairing or degrading lawful Internet traffic based on content, application, or service, or use of a nonharmful device; or
- engaging in paid prioritization.

Internet service providers must disclose accurate information regarding network management practices, performance, and commercial terms to enable its customers to make informed choices.

A violation of the act is enforceable under the Consumer Protection Act solely by the attorney general.

The Internet Consumer Access Account is created.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: The bill is clear and provides a rational policy that is enforced by the Office of the Attorney General. Small businesses, educators, and consumers benefit from net neutrality. The next entrepreneurs, small businesses, small telecommunications, all are pleased with this. Consolidation of power is worrisome in that a handful entities could choose to toll the Internet. This is about freedom, fairness, and the future. A strong, healthy democracy with full civic discourse requires the Internet. The open Internet is crucial to democracy as it give a voice to some about decisions that affect them. It would maintain and amplify these voices. Net neutrality principles are essential to achieving a digital equity goal which means equal, competitive, and reliable Internet. Net neutrality principles are needed to end the digital divide and ensure all Washingtonians have equal access. Without these principles there could be a varied rate for certain sites on the Internet, which could disproportionately affect people with low incomes, as well as charge additional fees to start-ups. Open access to the Internet has allowed independent artists to connect with the public like never before. All people deserve the same access. Without an open Internet, independent artists, producers, and others will be at risk. Consumers could see their online music choices narrow. This bill would prevent the narrowing and provide a level playing field.

CON: Internet service providers have made legally enforceable pledges to not throttle, or require paid prioritization or block the Internet.

Degrading the Internet from what consumers have come to expect would result in an unbearable backlash. We support the net neutrality principles, but we think that Internet services should be handled at the federal level.

Persons Testifying: PRO: Representative Drew Hansen, Prime Sponsor; Jim Loter, Director of Digital Engagement, City of Seattle; Tom Mara, KEXP 90.3.

CON: Ron Main, Broadband Communications Association of Washington.

Persons Signed In To Testify But Not Testifying: No one.