

SENATE BILL REPORT

SB 6446

As of January 17, 2018

Title: An act relating to ensuring consumers rights to internet transparency.

Brief Description: Ensuring consumers rights to internet transparency.

Sponsors: Senators Carlyle, Hunt, Keiser and Kuderer.

Brief History:

Committee Activity: Energy, Environment & Technology: 1/18/18.

Brief Summary of Bill

- Requires providers of broadband Internet access services to publicly disclose information regarding the network management practices, performance, and commercial terms of its broadband internet services.
- Makes a violation of the disclosure requirements, a violation of the Consumer Protection Act (CPA).
- Prohibits state agencies from entering into new contracts with Internet service providers who do not commit to providing equal connection to all users to lawful Internet content, applications, and services.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Staff: Jan Odano (786-7486)

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 in or affecting 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. The provision of information services is not subject to common carrier regulation by the FCC under the Federal Telecommunications Act. The FTC has authority to

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.

enforce privacy and data security for information services through its broad enforcement power over unfair or deceptive acts or practices. The Federal Trade Commission Act restricts the FTC from exercising 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 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.

The FCC reversed its previously adopted Open Internet rules to return to the pre-2015 regulatory scheme in December 2017.

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: A broadband Internet service provider must, in a timely manner and in plain language, publicly disclose information regarding the network management practices, performance, and commercial terms of its broadband Internet access services. The disclosure must be 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. The format of the notice must be agreed upon by the end user and edge provider.

Broadband Internet access service providers must disclose:

- information relating to network management practices, performance, and terms of service;
- plan limitations that slow or impair lawful Internet traffic;
- expected and actual access speed and latency as well as the network performance;
- promotional rates and the duration of the promotional period, and the full monthly service charge when the promotion ends;
- data thresholds or data caps and actions that will be taken if the threshold or cap is met;
- pricing, which must be provided prior to the point of purchase; and
- additional one time or recurring fees.

Broadband Internet access service providers must maintain the accuracy of disclosures. The disclosure must be updated when there is a change in service terms, network practices or performance that a reasonable end user or edge provider would consider important to their choice of provider, service or application. Updated disclosure must be provided in a timely manner and in a format agreed upon by the end user or edge provider.

A violation of these requirements is a violation of the CPA. A violation includes when a broadband Internet access service provider makes statements about service that are erroneous, inconsistent with public disclosure provided to end users and edge providers, and misleading or deceptive.

The Department of Enterprise Services, Office of the Chief Information Officer, and all other state agencies may not enter into contracts for broadband Internet service unless the vendor commits to providing equal connection to all users for lawful Internet content, applications, and services. The Internet service may not: discriminate or block websites; impair or degrade Internet traffic; or allow paid prioritization for certain content, application, or service providers.

No agency is required to breach or rescind a contract existing as of the effective date of the act.

Appropriation: None.

Fiscal Note: Requested on January 15, 2018.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.