

Promoting Responsible ISP Values & Improving Subscriber Privacy Act of 2018

Section 1. Findings

This section provides the findings and reasons for adopting the bill, including the lack of competition in the broadband field and the resulting harms to privacy.

Section 2. Definitions

Broadband Internet access service. Wired or wireless internet, excluding dial-up internet as well as any service the state Attorney General believes is equivalent to that service. This excludes slower service not contemplated by this Act, but allows the Attorney General to include other services as they develop or overtake broadband.

ISP. A provider of broadband Internet access service that has any agreement or contract with the state or benefits from such a contract even if it is not a party. This provides a legal basis for the state to regulate the activities of any given service provider, and ensures that service providers do not avoid regulation simply through avoiding contracts with a state when they may otherwise require them.

Customer. Anyone currently or formerly subscribed to or applying to subscribe to services provided by an ISP.

Customer proprietary information. Information an ISP receives from a customer because the ISP is providing broadband internet access service or a related service. It includes the content of customer communications as well as device identifying information and location information.

Local loop. The physical wiring or cabling owned or operated by an ISP that connects a user to the Internet infrastructure.

Unbundle. The duty of an incumbent ISP to provide access to the local loop to an ISP entrant that intends to compete.

Section 3. Unbundling

Current Law: Currently, ISPs are each able to use their own network infrastructure, built between major hubs and individual consumers. There is no provision requiring competition or otherwise enabling competitors to make entry into these high-barrier markets.

PRIV-ISP Act: This section requires each ISP to provide nondiscriminatory access to its local loop infrastructure to any requesting ISP provided that the requesting ISP shows that it intends to use that infrastructure for the provision of broadband Internet access service.

This section requires ISPs to provide such access on an unbundled basis and to allow each network element in a manner that allows the requesting ISP to combine and operate the elements in order to provide broadband Internet access service.

This section requires that access to its network elements be provided on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Section 4. Opt-In Consent

Current Law: Currently, ISPs may collect, aggregate, and sell user information after users are forced to accept a long list of terms and conditions. Many users do not read these, and do not have an accurate picture of how their data is collected and used.

PRIV-ISP Act: This section requires ISPs to solicit customers for affirmative consent in order to collect, use, sell, or disclose in any way a customer's proprietary information, or to make any material retroactive change that would result in allowing previously collected information to be used in a prohibited way. When soliciting consent, ISPs must disclose the types of information collected and used as well as the purposes for which that information will be used.

Each solicitation must clearly indicate that the customer can withhold consent; specify the mechanism by which the customer can provide or withhold consent; and promptly give effect to the customer's decision to grant, deny, or withdraw consent. ISPs must make reasonable efforts to provide solicitation in any language other than English indicated by a customer as the customer's primary language.

The bill does not apply to an ISP's collection or use of information in order to prevent harm to ISP property, provide service or administrative services, provide emergency services to family or law enforcement, or comply with other legal obligations.

Section 5. Prohibited Business Practices

Current Law: Currently, ISPs are permitted to provide tiered options for privacy practices. This has resulted in instances where customers are forced to choose between paying additional money or protecting their privacy.

PRIV-ISP Act: This section prohibits an ISP from withholding or denying service, charging a different price, or offering different services to customers based on a customer's privacy choices.

This prevents ISPs from engaging in a “race to the bottom” whereby they lower prices by extracting valuable customer information.

Section 6. Enforcement

This section empowers the state Attorney General to recover monetary penalties or injunctions for violations of this Act and provides a private right of action for customers whose data is used in violation of this act or who are subjected to a prohibited business practice in Section 5.

The section provides the state Attorney General with authority to promulgate rules interpreting various sections of the statute, such as the Definitions.

Section 7. Severability

This section provides that if any section above is found illegal or unconstitutional, the other sections shall not be affected.