

AMENDED IN ASSEMBLY AUGUST 23, 2018
AMENDED IN ASSEMBLY AUGUST 20, 2018
AMENDED IN ASSEMBLY AUGUST 7, 2018
AMENDED IN ASSEMBLY JUNE 25, 2018
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AMENDED IN SENATE MAY 1, 2018
AMENDED IN SENATE APRIL 19, 2018
AMENDED IN SENATE MARCH 13, 2018

SENATE BILL

No. 822

**Introduced by Senators Wiener and De León
(Principal coauthors: Senators Allen, Dodd, Hill, McGuire,
Monning, and Skinner)**

(Principal coauthors: Assembly Members Santiago, Bloom, Bonta,
Chiu, Friedman, Kalra, and Mullin)

(Coauthor: Senator Leyva)

(Coauthors: Assembly Members Cervantes, Limón, McCarty, Nazarian,
Mark Stone, Ting, and Wood)

January 3, 2018

An act to add Title 15 (commencing with Section 3100) to Part 4 of
Division 3 of the Civil Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 822, as amended, Wiener. Communications: broadband Internet
access service.

Existing law imposes certain obligations in the context of particular transactions, and provides mechanisms to enforce those obligations.

This bill would enact the California Internet Consumer Protection and Net Neutrality Act of 2018. This act would prohibit fixed and mobile Internet service providers, as defined, that provide broadband Internet access service, as defined, from engaging in specified actions concerning the treatment of Internet traffic. The act would prohibit, among other things, blocking lawful content, applications, services, or nonharmful devices, impairing or degrading lawful Internet traffic on the basis of Internet content, application, or service, or use of a nonharmful device, and specified practices relating to zero-rating, as defined. It would also prohibit fixed and mobile Internet service providers from offering or providing services other than broadband Internet access service that are delivered over the same last-mile connection as the broadband Internet access service, if those services have the purpose or effect of evading the above-described prohibitions or negatively affect the performance of broadband Internet access service.

~~The bill would make its operation contingent on the enactment of Senate Bill 460 of the 2017–18 Regular Session.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:
- 3 (1) This act is adopted pursuant to the police power inherent in
4 the State of California to protect and promote the safety, life, public
5 health, public convenience, general prosperity, and well-being of
6 society, and the welfare of the state's population and economy,
7 that are increasingly dependent on an open and neutral Internet.
- 8 (2) Almost every sector of California's economy, democracy,
9 and society is dependent on the open and neutral Internet that
10 supports vital functions regulated under the police power of the
11 state, including, but not limited to, each of the following:
- 12 (A) Police and emergency services.
13 (B) Health and safety services and infrastructure.
14 (C) Utility services and infrastructure.
15 (D) Transportation infrastructure and services, and the expansion
16 of zero- and low-emission transportation options.

1 (E) Government services, voting, and democratic
2 decisionmaking processes.

3 (F) Education.

4 (G) Business and economic activity.

5 (H) Environmental monitoring and protection, and achievement
6 of state environmental goals.

7 (I) Land use regulation.

8 (b) This act shall be known, and may be cited, as the California
9 Internet Consumer Protection and Net Neutrality Act of 2018.

10 SEC. 2. Title 15 (commencing with Section 3100) is added to
11 Part 4 of Division 3 of the Civil Code, to read:

12

13 TITLE 15. INTERNET NEUTRALITY

14

15 3100. For purposes of this title, the following definitions apply:

16 (a) “Application-agnostic” means not differentiating on the basis
17 of source, destination, Internet content, application, service, or
18 device, or class of Internet content, application, service, or device.

19 (b) “Broadband Internet access service” means a mass-market
20 retail service by wire or radio provided to customers in California
21 that provides the capability to transmit data to, and receive data
22 from, all or substantially all Internet endpoints, including, but not
23 limited to, any capabilities that are incidental to and enable the
24 operation of the communications service, but excluding dial-up
25 Internet access service. “Broadband Internet access service” also
26 encompasses any service provided to customers in California that
27 provides a functional equivalent of that service or that is used to
28 evade the protections set forth in this title.

29 (c) “Class of Internet content, application, service, or device”
30 means Internet content, or a group of Internet applications, services,
31 or devices, sharing a common characteristic, including, but not
32 limited to, sharing the same source or destination, belonging to
33 the same type of content, application, service, or device, using the
34 same application- or transport-layer protocol, or having similar
35 technical characteristics, including, but not limited to, the size,
36 sequencing, or timing of packets, or sensitivity to delay.

37 (d) “Content, applications, or services” means all Internet traffic
38 transmitted to or from end users of a broadband Internet access
39 service, including, but not limited to, traffic that may not fit clearly
40 into any of these categories.

1 (e) “Edge provider” means any individual or entity that provides
2 any content, application, or service over the Internet, and any
3 individual or entity that provides a device used for accessing any
4 content, application, or service over the Internet.

5 (f) “End user” means any individual or entity that uses a
6 broadband Internet access service.

7 (g) “Enterprise service offering” means an offering to larger
8 organizations through customized or individually negotiated
9 arrangements or special access services.

10 (h) “Fixed broadband Internet access service” means a
11 broadband Internet access service that serves end users primarily
12 at fixed endpoints using stationary equipment. Fixed broadband
13 Internet access service includes, but is not limited to, fixed wireless
14 services including, but not limited to, fixed unlicensed wireless
15 services, and fixed satellite services.

16 (i) “Fixed Internet service provider” means a business that
17 provides fixed broadband Internet access service to an individual,
18 corporation, government, or other customer in California.

19 (j) “Impairing or degrading lawful Internet traffic on the basis
20 of Internet content, application, or service, or use of a nonharmful
21 device” means impairing or degrading any of the following: (1)
22 particular content, applications, or services; (2) particular classes
23 of content, applications, or services; (3) lawful Internet traffic to
24 particular nonharmful devices; or (4) lawful Internet traffic to
25 particular classes of nonharmful devices. The term includes,
26 without limitation, differentiating, positively or negatively, between
27 any of the following: (1) particular content, applications, or
28 services; (2) particular classes of content, applications, or services;
29 (3) lawful Internet traffic to particular nonharmful devices; or (4)
30 lawful Internet traffic to particular classes of nonharmful devices.

31 (k) “Internet service provider” means a business that provides
32 broadband Internet access service to an individual, corporation,
33 government, or other customer in California.

34 (l) “ISP traffic exchange” means the exchange of Internet traffic
35 destined for, or originating from, an Internet service provider’s
36 end users between the Internet service provider’s network and
37 another individual or entity, including, but not limited to, an edge
38 provider, content delivery network, or other network operator.

39 (m) “ISP traffic exchange agreement” means an agreement
40 between an Internet service provider and another individual or

1 entity, including, but not limited to, an edge provider, content
2 delivery network, or other network operator, to exchange Internet
3 traffic destined for, or originating from, an Internet service
4 provider's end users between the Internet service provider's
5 network and the other individual or entity.

6 (n) "Mass market" service means a service marketed and sold
7 on a standardized basis to residential customers, small businesses,
8 and other customers, including, but not limited to, schools,
9 institutions of higher learning, and libraries. "Mass market"
10 services also include broadband Internet access services purchased
11 with support of the E-rate and Rural Health Care programs and
12 similar programs at the federal and state level, regardless of
13 whether they are customized or individually negotiated, as well
14 as any broadband Internet access service offered using networks
15 supported by the Connect America Fund or similar programs at
16 the federal and state level. "Mass market" service does not include
17 enterprise service offerings.

18 (o) "Mobile broadband Internet access service" means a
19 broadband Internet access service that serves end users primarily
20 using mobile stations. Mobile broadband Internet access service
21 includes, but is not limited to, broadband Internet access services
22 that use smartphones or mobile-network-enabled tablets as the
23 primary endpoints for connection to the Internet, as well as mobile
24 satellite broadband services.

25 (p) "Mobile Internet service provider" means a business that
26 provides mobile broadband Internet access service to an individual,
27 corporation, government, or other customer in California.

28 (q) "Mobile station" means a radio communication station
29 capable of being moved and which ordinarily does move.

30 (r) "Paid prioritization" means the management of an Internet
31 service provider's network to directly or indirectly favor some
32 traffic over other traffic, including, but not limited to, through the
33 use of techniques such as traffic shaping, prioritization, resource
34 reservation, or other forms of preferential traffic management,
35 either (1) in exchange for consideration, monetary or otherwise,
36 from a third party, or (2) to benefit an affiliated entity.

37 (s) "Reasonable network management" means a network
38 management practice that is reasonable. A network management
39 practice is a practice that has a primarily technical network
40 management justification, but does not include other business

1 practices. A network management practice is reasonable if it is
2 primarily used for, and tailored to, achieving a legitimate network
3 management purpose, taking into account the particular network
4 architecture and technology of the broadband Internet access
5 service, and is as application-agnostic as possible.

6 (t) “Zero-rating” means exempting some Internet traffic from
7 a customer’s data usage allowance.

8 3101. (a) It shall be unlawful for a fixed Internet service
9 provider, insofar as the provider is engaged in providing fixed
10 broadband Internet access service, to engage in any of the following
11 activities:

12 (1) Blocking lawful content, applications, services, or
13 nonharmful devices, subject to reasonable network management.

14 (2) Impairing or degrading lawful Internet traffic on the basis
15 of Internet content, application, or service, or use of a nonharmful
16 device, subject to reasonable network management.

17 (3) Requiring consideration, monetary or otherwise, from an
18 edge provider, including, but not limited to, in exchange for any
19 of the following:

20 (A) Delivering Internet traffic to, and carrying Internet traffic
21 from, the Internet service provider’s end users.

22 (B) Avoiding having the edge provider’s content, application,
23 service, or nonharmful device blocked from reaching the Internet
24 service provider’s end users.

25 (C) Avoiding having the edge provider’s content, application,
26 service, or nonharmful device impaired or degraded.

27 (4) Engaging in paid prioritization.

28 (5) Engaging in zero-rating in exchange for consideration,
29 monetary or otherwise, from a third party.

30 (6) Zero-rating some Internet content, applications, services, or
31 devices in a category of Internet content, applications, services,
32 or devices, but not the entire category.

33 (7) (A) Unreasonably interfering with, or unreasonably
34 disadvantaging, either an end user’s ability to select, access, and
35 use broadband Internet access service or the lawful Internet content,
36 applications, services, or devices of the end user’s choice, or an
37 edge provider’s ability to make lawful content, applications,
38 services, or devices available to end users. Reasonable network
39 management shall not be a violation of this paragraph.

1 (B) Zero-rating Internet traffic in application-agnostic ways
2 shall not be a violation of subparagraph (A) provided that no
3 consideration, monetary or otherwise, is provided by any third
4 party in exchange for the Internet service provider's decision
5 whether to zero-rate traffic.

6 (8) Failing to publicly disclose accurate information regarding
7 the network management practices, performance, and commercial
8 terms of its broadband Internet access services sufficient for
9 consumers to make informed choices regarding use of those
10 services and for content, application, service, and device providers
11 to develop, market, and maintain Internet offerings.

12 (9) Engaging in practices, including, but not limited to,
13 agreements, with respect to, related to, or in connection with, ISP
14 traffic exchange that have the purpose or effect of evading the
15 prohibitions contained in this section and Section 3102. Nothing
16 in this paragraph shall be construed to prohibit Internet service
17 providers from entering into ISP traffic exchange agreements that
18 do not evade the prohibitions contained in this section and Section
19 3102.

20 (b) It shall be unlawful for a mobile Internet service provider,
21 insofar as the provider is engaged in providing mobile broadband
22 Internet access service, to engage in any of the activities described
23 in paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) of
24 subdivision (a).

25 3102. (a) It shall be unlawful for a fixed Internet service
26 provider to offer or provide services other than broadband Internet
27 access service that are delivered over the same last-mile connection
28 as the broadband Internet access service, if those services satisfy
29 either of the following conditions:

30 (1) They have the purpose or effect of evading the prohibitions
31 in Section 3101.

32 (2) They negatively affect the performance of broadband Internet
33 access service.

34 (b) It shall be unlawful for a mobile Internet service provider
35 to offer or provide services other than broadband Internet access
36 service that are delivered over the same last-mile connection as
37 the broadband Internet access service, if those services satisfy
38 either of the conditions specified in paragraphs (1) and (2) of
39 subdivision (a).

1 (c) Nothing in this section shall be construed to prohibit a fixed
2 or mobile Internet service provider from offering or providing
3 services other than broadband Internet access service that are
4 delivered over the same last-mile connection as the broadband
5 Internet access service and do not violate this section.

6 3103. (a) Nothing in this title supersedes any obligation or
7 authorization a fixed or mobile Internet service provider may have
8 to address the needs of emergency communications or law
9 enforcement, public safety, or national security authorities,
10 consistent with or as permitted by applicable law, or limits the
11 provider's ability to do so.

12 (b) Nothing in this title prohibits reasonable efforts by a fixed
13 or mobile Internet service provider to address copyright
14 infringement or other unlawful activity.

15 3104. Notwithstanding Section 3268 or any other law, any
16 waiver of the provisions of this title is contrary to public policy
17 and shall be unenforceable and void.

18 SEC. 3. The provisions of this act are severable. If any
19 provision of this act or its application is held invalid, that invalidity
20 shall not affect other provisions or applications that can be given
21 effect without the invalid provision or application.

22 ~~SEC. 4. This act shall become operative only if Senate Bill~~
23 ~~460 of the 2017-18 Regular Session is enacted and takes effect~~
24 ~~on or before January 1, 2019.~~