



## 2017 SENATE BILL 740

January 29, 2018 - Introduced by Senators ERPENBACH, LARSON, HANSEN, CARPENTER and VINEHOUT, cosponsored by Representatives ANDERSON, GENRICH, HEBL, CONSIDINE, BERCEAU, ZAMARRIPA, VRUWINK, OHNSTAD, SINICKI, SPREITZER, POPE, BROSTOFF, CROWLEY, BILLINGS and HESSELBEIN. Referred to Committee on Elections and Utilities.

- 1     **AN ACT to amend** 16.75 (1) (a) 1.; and **to create** 16.756 of the statutes; **relating**  
2           **to:** state contracts for broadband Internet access service.

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### *Analysis by the Legislative Reference Bureau*

This bill prohibits the state from contracting for broadband Internet access service (BIAS) unless the state determines that the service provider does not do any of the following:

1. Block lawful content, applications, or services or devices that do not harm the network.
2. Throttle lawful Internet traffic on the basis of content, application, or service or use of a device that does not harm the network.
3. Engage in paid prioritization, which is the favoring of some Internet traffic over other traffic in exchange for some form of consideration.
4. Unreasonably interfere with or unreasonably disadvantage an end user's ability to select, access, and use BIAS or an edge provider's ability to make lawful content, applications, services, and devices available to end users. An edge provider is someone who provides any content, application, or service over the Internet, or a device used for accessing any Internet content, application, or service.
5. Engage in any unjust or unreasonable charge, practice, classification, or regulation.
6. Make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services or subject any particular person, class of persons, or locality to any undue or unreasonable preference or advantage or prejudice or disadvantage.

**SENATE BILL 740**

7. Use, disclose, or permit access to any individually identifiable customer proprietary network information except in the provision of the BIAS or related service.

The bill also prohibits the state from contracting for BIAS unless the state determines that the service provider 1) discloses its commercial terms, which must include information on pricing, other fees, and data caps and allowances; 2) discloses its network performance characteristics, which must include information regarding packet loss; and 3) makes its services and equipment accessible to individuals with disabilities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 16.75 (1) (a) 1. of the statutes is amended to read:

2           16.75 (1) (a) 1. All orders awarded or contracts made by the department for all  
3 materials, supplies, equipment, and contractual services to be provided to any  
4 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3t),  
5 (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754,  
6 16.756, 50.05 (7) (f), 153.05 (2m) (a), 165.987, and 287.15 (7), shall be awarded to the  
7 lowest responsible bidder, taking into consideration life cycle cost estimates under  
8 sub. (1m), when appropriate, the location of the agency, the quantities of the articles  
9 to be supplied, their conformity with the specifications, and the purposes for which  
10 they are required and the date of delivery.

11           **SECTION 2.** 16.756 of the statutes is created to read:

12           **16.756 Broadband Internet access service contracts. (1) DEFINITIONS.**

13           In this section:

14           (a) "Broadband Internet access service" means a mass-market retail service  
15 by wire or radio, including both fixed and mobile service, that provides the capability  
16 to transmit data to and receive data from all or substantially all Internet endpoints,

**SENATE BILL 740**

1 including any capabilities that are incidental to and enable the operation of the  
2 communications service, but excluding dial-up Internet access service. “Broadband  
3 Internet access service” includes any service that the department determines is  
4 providing a functional equivalent of the service described in the previous sentence,  
5 or that is used to evade the provisions of this section.

6 (b) “Content, applications, or services” includes all traffic transmitted to or  
7 from end users of a broadband Internet access service.

8 (c) “Customer proprietary network information” means information that  
9 relates to the quantity, technical configuration, type, destination, location, and  
10 amount of use of broadband Internet access service subscribed to by a customer and  
11 that is made available to the broadband Internet access service provider by the  
12 customer solely by virtue of the provider-customer relationship; and information  
13 contained in the bills pertaining to the broadband Internet access service received  
14 by the customer; except that such term does not include subscriber list information.

15 (d) “Edge provider” means any individual or entity that provides any content,  
16 application, or service over the Internet and any individual or entity that provides  
17 a device used for accessing any content, application, or service over the Internet.

18 (e) “End user” means any individual or entity that uses broadband Internet  
19 access service.

20 (f) “Paid prioritization” means the management of a broadband provider’s  
21 network to directly or indirectly favor some traffic over other traffic, including  
22 through use of techniques such as traffic shaping, prioritization, resource  
23 reservation, or other forms of preferential traffic management, in exchange for  
24 consideration, monetary or otherwise, from a 3rd party or to benefit an affiliated  
25 entity.

**SENATE BILL 740****SECTION 2**

1 (g) “Reasonable network management” means a practice that has a primarily  
2 technical network management justification but that does not include other business  
3 practices, and that is primarily used for and tailored to achieving a legitimate  
4 network management purpose, taking into account the particular network  
5 architecture and technology of the broadband Internet access service.

6 (2) PROHIBITION. (a) The state may not contract for broadband Internet access  
7 service unless the state determines that the service provider does not do any of the  
8 following:

9 1. Block lawful content, applications, or services, or devices that do not harm  
10 the network, except as needed for reasonable network management, or charge a fee  
11 to an edge provider to avoid having the edge provider’s lawful content, service,  
12 application, or nonharmful device blocked.

13 2. Impair, degrade, slow down, or render effectively unusable lawful Internet  
14 traffic on the basis of content, application, or service, or use of a device that does not  
15 harm the network, except as needed for reasonable network management, or charge  
16 a fee to an edge provider to avoid having the edge provider’s lawful content, service,  
17 application, or nonharmful device impaired, degraded, slowed down, or rendered  
18 effectively unusable.

19 3. Engage in paid prioritization. This subdivision does not apply to a petitioner  
20 who requests a waiver from the department if the department determines that the  
21 proposed practice would provide some significant public interest benefit and would  
22 not harm the open nature of the Internet.

23 4. Unreasonably interfere with or unreasonably disadvantage end users’  
24 ability to select, access, and use broadband Internet access service or the lawful  
25 content, applications, services, and devices of their choice and edge providers’ ability

**SENATE BILL 740**

1 to make lawful content, applications, services, and devices available to end users,  
2 except as needed for reasonable network management.

3 5. Engage in any unjust or unreasonable charge, practice, classification, or  
4 regulation, except that this subdivision does not apply to any charge, practice,  
5 classification, or regulation that the department has exempted by rule.

6 6. Make any unjust or unreasonable discrimination in charges, practices,  
7 classifications, regulations, facilities, or services for or in connection with like  
8 communication service, directly or indirectly, by any means or device; make or give  
9 any undue or unreasonable preference or advantage to any particular person, class  
10 of persons, or locality; or subject any particular person, class of persons, or locality  
11 to any undue or unreasonable prejudice or disadvantage.

12 7. Use, disclose, or permit access to individually identifiable customer  
13 proprietary network information except in the provision of the broadband Internet  
14 access service to the customer or in the provision of services necessary to, or used in,  
15 the provision of such service to the customer, including the publishing of directories,  
16 unless such use, disclosure, or access is required by law or is approved in writing by  
17 the customer.

18 (b) The state may not contract for broadband Internet access service unless the  
19 state determines that the service provider does all of the following:

20 1. Discloses, in a timely manner, prominently, in plain language, and in a way  
21 that is accessible to current and prospective end users and edge providers, to the  
22 department, and to 3rd parties who wish to monitor the provider's practices,  
23 accurate information on all of the following, in addition to any other information  
24 required to be disclosed under state or federal law:

**SENATE BILL 740****SECTION 2**

1 a. Commercial terms, including pricing, other fees, and data caps and  
2 allowances.

3 b. Network performance characteristics, including information regarding  
4 packet loss, that is reasonably related to the performance the consumer would likely  
5 experience in the geographic area in which the consumer is purchasing the service,  
6 measured in terms of average performance over a reasonable period of time and  
7 during times of peak usage.

8 2. Makes its services and equipment accessible to individuals with disabilities.

9 **SECTION 3. Initial applicability.**

10 (1) This act first applies to contracts entered into, modified, extended, or  
11 renewed on the effective date of this subsection.

12 (END)