



State of Wisconsin
2017 - 2018 LEGISLATURE

LRBb0873/1
MDK:emw/kjf/ahe

**SENATE AMENDMENT 17,
TO ASSEMBLY BILL 64**

September 15, 2017 - Offered by Senators VINEHOUT, BEWLEY, RINGHAND,
CARPENTER, L. TAYLOR, RISSER, HANSEN and LARSON.

1 At the locations indicated, amend the bill, as shown by assembly substitute
2 amendment 1, as follows:

3 **1.** Page 79, line 7: after that line insert:

4 “(a) Broadband expansion grants;

5 general purpose revenue funding GPR C 100,000,000 -0-”.

6 **2.** Page 278, line 2: after that line insert:

7 “**SECTION 198g.** 20.155 (3) (a) of the statutes is created to read:

8 20.155 (3) (a) *Broadband expansion grants; general purpose revenue funding.*

9 As a continuing appropriation, the amounts in the schedule for broadband expansion
10 grants under s. 196.504.”.

11 **3.** Page 723, line 11: after that line insert:

12 “**SECTION 1305c.** 100.70 of the statutes is created to read:

1 **100.70 Privacy and security of information obtained by an Internet**
2 **service provider. (1) DEFINITIONS.** In this section:

3 (a) “Breach of security” means any instance in which a person, without
4 authorization or exceeding authorization, has gained access to, used, or disclosed
5 customer proprietary information.

6 (b) 1. “Broadband Internet access service” means a mass-market retail service
7 by wire or radio that provides the capability to transmit data and receive data from
8 all or substantially all Internet endpoints, including any capabilities that are
9 incidental to and enable the operation of the service, but excluding dial-up Internet
10 access service.

11 2. “Broadband Internet access service” includes any service that the
12 department finds is a functional equivalent of the service specified in subd. 1. or is
13 used to evade the requirements under this section.

14 (c) “Customer” means any of the following:

15 1. A current or former subscriber to broadband Internet access service who
16 resides in this state.

17 2. A person who resides in this state and uses or has used broadband Internet
18 access service that is provided under an agreement between a current or former
19 subscriber who resides in this state and a broadband Internet access service
20 provider.

21 (d) “Customer proprietary information” means any of the following
22 information:

23 1. Individually identifiable information that relates to the quantity, technical
24 configuration, type, destination, location, or amount of use of a broadband Internet

1 access service subscribed to by a customer of a provider of that service, and that is
2 made available to the provider by the customer.

3 2. Any information that is linked or reasonably able to be linked to an
4 individual or a device.

5 3. Content of a customer's communications.

6 (e) "Material change" means any change that a customer, acting reasonably
7 under the circumstances, would consider important to his or her decisions
8 concerning his or her privacy, including any change to information required to be
9 presented in the notice required under sub. (2) (b).

10 (f) "Non-sensitive customer proprietary information" means customer
11 proprietary information that is not sensitive customer proprietary information.

12 (g) "Opt-in approval" means the method for obtaining customer consent in
13 which a provider obtains from the customer affirmative, express consent after the
14 customer is provided appropriate notification of the provider's request for consent.

15 (h) "Opt-out approval" means the method for obtaining customer consent in
16 which a customer is deemed to have consented if the customer has failed to object to
17 a provider's request after the customer is provided with appropriate notification of
18 the provider's request for consent.

19 (i) "Prospective customer" means an applicant for broadband Internet access
20 service who resides in this state.

21 (j) "Sensitive customer proprietary information" means customer proprietary
22 information that is any of the following:

23 1. Financial information.

24 2. Health information.

25 3. Information pertaining to a child.

1 4. A social security number.

2 5. Precise geo-location information.

3 6. Content of communications.

4 7. Web browsing history, smart phone or tablet computer application usage
5 history, and the functional equivalents of either.

6 (k) “Subscriber” means a person who enters into an agreement for the provision
7 of broadband Internet access services with a provider of broadband Internet access
8 services. “Subscriber” does not include a person who resells services.

9 **(2) NOTICE REQUIREMENTS.** (a) *When notice required.* 1. A broadband Internet
10 access service provider shall make a notice available at all times to customers about
11 its policies concerning the privacy of the information that the provider obtains about
12 customers.

13 2. A broadband Internet access service provider shall notify a prospective
14 customer, at the point of sale, prior to a purchase of service, about its policies
15 concerning the privacy of information that the provider obtains about customers.

16 (b) *Contents.* A broadband Internet access service provider shall include all of
17 the following in the notice provided to customers under par. (a):

18 1. A specific description of the types of customer proprietary information that
19 the broadband Internet access service provider collects from providing broadband
20 Internet access service and how it uses that information.

21 2. A specific description of the circumstances under which the broadband
22 Internet access service provider discloses or permits access to each type of customer
23 proprietary information that it collects.

24 3. A specific description of the categories of entities to which the broadband
25 Internet access service provider discloses or permits to access customer proprietary

1 information and the purposes for which that information will be used by each
2 category of entities.

3 4. A specific description of the customer's rights to grant, deny, or withdraw
4 approval concerning the customer's proprietary information, including each of the
5 following:

6 a. A statement that the customer's denial or withdrawal of approval to use,
7 disclose, or permit access to customer proprietary information will not affect the
8 provision of any broadband Internet access services to the customer.

9 b. A statement that any grant, denial, or withdrawal of approval for the use,
10 disclosure, or permission of access to customer proprietary information is valid until
11 the customer affirmatively revokes the grant, denial, or withdrawal.

12 c. A statement that the customer has the right to deny or withdraw approval
13 to use, disclose, or permit access to customer proprietary information at any time.

14 5. Access to a mechanism required under sub. (3) (d) 3.

15 (c) *Material changes to a privacy policy.* A broadband Internet access service
16 provider shall provide a notice, through electronic mail or another means of prompt
17 communication agreed upon by the customer, to a customer of a material change to
18 its policies concerning the privacy of information that the provider obtains about the
19 customer. The notice shall include all of the following:

20 1. A specific description of the changes made to the provider's privacy policies,
21 including any changes to what customer proprietary information the provider
22 collects; how the provider uses, discloses, or permits access to that information; the
23 categories of entities to which it discloses or permits access to customer proprietary
24 information; and which, if any, changes are retroactive.

25 2. The description required under par. (b) 4.

1 3. Access to a mechanism required under sub. (3) (d) 3.

2 (d) *When translation required.* If a broadband Internet access service provider
3 transacts business with a customer in a language other than English, the provider
4 shall translate the contents of the notices required under pars. (b) and (c) into the
5 language through which the provider transacts business with the customer.

6 **(3) CUSTOMER APPROVAL.** (a) *Opt-in approval required.* Except as provided
7 under par. (c), a broadband Internet access service provider may not do any of the
8 following unless the provider obtains opt-in approval from the customer:

9 1. Use, disclose, or permit access to any of the customer's sensitive customer
10 proprietary information.

11 2. Use, disclose, or permit access to any of the customer's proprietary
12 information previously collected by the provider for which the customer has not
13 previously granted approval under this paragraph or par. (b).

14 (b) *Opt-out approval required.* 1. Except as provided under subd. 2. or par. (c),
15 a broadband Internet access service provider may not use, disclose, or permit access
16 to any of a customer's non-sensitive customer proprietary information unless the
17 provider obtains opt-out approval from the customer.

18 2. A broadband Internet access service provider may obtain opt-in approval
19 from a customer to use, disclose, or permit access to any of the customer's
20 non-sensitive customer proprietary information.

21 (c) *Permissible use without customer approval.* A broadband Internet access
22 service provider may use, disclose, or permit access to customer proprietary
23 information without approval from the customer under par. (a) or (b) only for the
24 following purposes:

1 1. To provide the broadband Internet access service from which the information
2 is derived, or in its provision of services necessary to, or used in, the provision of that
3 service.

4 2. To initiate, render, bill, or collect for broadband Internet access service.

5 3. To protect the rights or property of the broadband Internet access service
6 provider, or to protect users of the broadband Internet access service and other
7 providers from fraudulent, abusive, or unlawful use of the service.

8 4. To provide any marketing, referral, or administrative services to a customer
9 for the duration of a real-time interaction if the interaction was initiated by the
10 customer.

11 5. To provide location information or non-sensitive customer proprietary
12 information to any of the following:

13 a. A public safety answering point, as defined in s. 256.35 (1) (gm), emergency
14 medical service provider, emergency dispatch provider, public safety official, fire
15 service official, law enforcement official, or hospital emergency or trauma care
16 facility, in order to respond to the user's request for emergency services.

17 b. The user's legal guardian or a member of the user's immediate family, to
18 inform about the user's location in an emergency situation that involves the risk of
19 death or serious physical harm.

20 c. A provider of information or database management services only for the
21 purpose of assisting in the delivery of emergency services in response to an
22 emergency.

23 6. As otherwise required or authorized by law.

24 (d) *Solicitation and exercise of customer approval.* 1. A broadband Internet
25 access service provider shall request the approval required under par. (a) or (b) at the

1 point of sale to a customer and at the time the provider makes a material change to
2 its policies concerning the privacy of information that the provider obtains about a
3 customer.

4 2. A broadband Internet access service provider shall request customer
5 approval clearly and conspicuously, in language that is readily understandable and
6 not misleading, and each request shall include all of the following:

7 a. A disclosure of the types of customer proprietary information for which the
8 provider is seeking customer approval to use, disclose, or permit access to.

9 b. A disclosure of the purposes for which the customer's proprietary
10 information will be used.

11 c. A disclosure of the categories of entities to which the provider intends to
12 disclose or permit access to the customer proprietary information.

13 d. A means to easily access the notice required under sub. (2) (a) or (c).

14 e. A means to easily access the mechanism required under subd. 3.

15 3. A broadband Internet access service provider shall make available, at no
16 additional cost to the customer, a mechanism for a customer to grant, deny, or
17 withdraw opt-in approval or opt-out approval, or both, at any time.

18 4. A broadband Internet access service provider shall give effect to a customer's
19 grant, denial, or withdrawal of approval promptly, and the grant, denial, or
20 withdrawal of approval shall remain in effect until the customer revokes or limits the
21 grant, denial, or withdrawal of approval.

22 5. If a broadband Internet access service provider transacts business with a
23 customer in a language other than English, the provider shall translate the contents
24 required under subd. 2. and the instructions for using the mechanism required under

1 subd. 3. into the language through which the provider transacts business with the
2 customer.

3 (4) DATA SECURITY. (a) A broadband Internet access service provider shall take
4 reasonable security measures to protect customer proprietary information from
5 unauthorized use, disclosure, or access.

6 (b) In implementing reasonable security measures under par. (a), a broadband
7 Internet access service provider shall appropriately take into account each of the
8 following factors:

- 9 1. The nature and scope of the provider's activities.
- 10 2. The sensitivity of the data it collects.
- 11 3. The size of the provider.
- 12 4. The technical feasibility of implementing the security measures.

13 (5) DATA BREACH NOTIFICATION. (a) *Customer notification.* 1. Except as provided
14 in subd. 4., a broadband Internet access service provider shall, without unreasonable
15 delay, notify a customer about any breach of security involving customer proprietary
16 information pertaining to that customer within 30 days after the provider reasonably
17 determines that a breach of security has occurred unless the provider reasonably
18 determines that no harm to the customer is reasonably likely to occur as a result of
19 the breach of security.

20 2. A broadband Internet access service provider shall notify a customer about
21 a breach of security under subd. 1. by at least one of the following methods:

22 a. A written notification sent to either the customer's electronic mail address
23 or the postal address of record of the customer, or, for former customers, to the last
24 postal address ascertainable after reasonable investigation using commonly
25 available sources.

1 b. Other electronic means of prompt communication agreed upon by the
2 customer for contacting that customer for breach of security notification purposes.

3 3. A broadband Internet access service provider shall provide all of the
4 following information in a notice required under subd. 1.:

5 a. The date, estimated date, or estimated date range of the breach of security.

6 b. A description of the customer proprietary information that was involved in
7 the breach of security or reasonably believed to have been involved in the breach of
8 security.

9 c. Information that the customer may use to contact the provider to inquire
10 about the breach of security and the customer proprietary information that the
11 provider maintains about that customer.

12 d. Information about how to contact the department and any federal agencies
13 relevant to the service provided to the customer.

14 e. If the breach of security creates a risk of financial harm, information about
15 the national credit-reporting agencies and the steps customers can take to guard
16 against identity theft, including any credit monitoring, credit reporting, credit
17 freezes, or other consumer protections that the provider is offering customers
18 affected by the breach of security, including security freezes under s. 100.54.

19 4. Upon the request of a law enforcement agency, a broadband Internet access
20 service provider shall not disclose a breach of security to a customer.

21 (b) *Notification to government agencies.* 1. Except as provided in subd. 3., a
22 broadband Internet access service provider shall notify the department and the
23 department of justice of any breach of security affecting 5,000 or more customers no
24 later than 7 business days after the provider reasonably determines that a breach

1 of security has occurred and at least 3 business days before notifying the affected
2 customers under par. (a) 1.

3 2. Except as provided in subd. 3., a broadband Internet access service provider
4 shall, without unreasonable delay, notify the department of any breach of security
5 affecting fewer than 5,000 customers within 30 days after the provider reasonably
6 determines that a breach of security has occurred.

7 3. A broadband Internet access service provider is not required to notify the
8 department under subd. 1. or 2. if it reasonably determines that no harm to
9 customers is reasonably likely to occur as a result of the breach of security.

10 (c) *Record keeping.* 1. Except as provided in subd. 3., a broadband Internet
11 access service provider shall maintain a record, electronically or in some other
12 manner, of each breach of security and the notifications made to customers under
13 par. (a) 1. regarding that breach. The record shall include all of the following:

14 a. The date that the provider first determines that the breach of security
15 occurred.

16 b. The date that customers were notified.

17 c. A written copy of all customer notifications.

18 2. A broadband Internet access service provider shall retain the record required
19 under subd. 1. for at least 2 years from the date on which the provider first
20 determines that the breach of security occurred.

21 3. A broadband Internet access service provider is not required to maintain a
22 record under subd. 1. if it reasonably determines that no harm to customers is
23 reasonably likely to occur as a result of the breach of security.

24 **(6) INTERNET ACCESS SERVICE OFFERS CONDITIONED ON WAIVER OF PRIVACY.** (a) A
25 broadband Internet access service provider may not refuse to provide broadband

1 Internet access service because a customer or prospective customer does not provide
2 approval required under sub. (3) (a) or (b).

3 (b) A broadband Internet access service provider that offers a financial
4 incentive program, such as lower rates, in exchange for a customer's approval to use,
5 disclose, or permit access to the customer's proprietary information shall do all of the
6 following:

7 1. Provide a notice explaining the terms of the financial incentive program that
8 includes all of the following:

9 a. An explanation that the program requires opt-in approval from the
10 customer to use, disclose, or permit access to the customer's proprietary information.

11 b. Information about what customer proprietary information the provider will
12 collect, how it will be used, and the categories of entities with which it will be shared
13 and for what purposes.

14 c. Information, prominently displayed, about the equivalent service plan that
15 does not necessitate the use, disclosure, or access to customer proprietary
16 information beyond that required or permitted under sub. (3) (c).

17 2. Obtain opt-in approval from the customer for consent to participate in the
18 financial incentive program.

19 3. Provide the notice required under subd. 1. at the time the program is offered
20 to a customer and at the time that a customer elects to participate in the program.

21 4. Make the notice required under subd. 1. easily accessible and available
22 separate from any other privacy notifications, including the notifications required
23 under sub. (2) (a) or (c).

1 5. If the provider transacts business with a customer in a language other than
2 English, translate the contents required under subd. 1. into the language through
3 which the provider transacts business with the customer.

4 6. If the customer grants the opt-in approval required under subd. 2., a
5 broadband Internet access service provider shall make available a mechanism for
6 the customer to withdraw approval for participation in the financial incentive
7 program under this paragraph at any time.

8 **(7) REMEDIES AND PENALTIES.** (a) 1. A person or class of persons adversely
9 affected by a broadband Internet access service provider's violation of this section
10 has a claim for appropriate relief, including damages, injunctive relief, and
11 rescission and may bring an action in circuit court against the broadband Internet
12 access service provider.

13 2. Notwithstanding s. 814.04 (1), a person or class of persons entitled to relief
14 under subd. 1 may recover costs, disbursements, and reasonable attorney fees.

15 (b) 1. Any of the following may bring an action in circuit court in the name of
16 the state to restrain by temporary or permanent injunction any violation of this
17 section:

18 a. The department.

19 b. The department of justice, after consulting with the department.

20 c. Any district attorney, upon informing the department.

21 2. Before entry of final judgment, the court may make any order or judgment
22 necessary to restore to any person any pecuniary loss suffered because of a violation
23 that is the subject of the action under subd. 1., if proof of the violation is submitted
24 to the satisfaction of the court.

1 (c) 1. For any violation of this section, the department of justice, after
2 consulting with the department, or the district attorney for the county where the
3 violation occurs, upon informing the department, may commence an action in the
4 name of the state to recover a forfeiture of not more than \$50,000 for the first
5 violation and not more than \$100,000 for each subsequent violation.

6 2. Each occasion that a broadband Internet access service provider uses,
7 discloses, or permits access to an individual customer's proprietary information in
8 violation of sub. (3) (a) or (b) constitutes a separate violation.”.

9 **4.** Page 859, line 14: delete that line and substitute:

10 “**SECTION 1695b.** 196.504 (1) (a) of the statutes is renumbered 196.504 (1) (ad),
11 and 196.504 (1) (ad) 2., as renumbered, is amended to read:

12 **196.504 (1) (ad) 2.** A telecommunications utility that has not received or
13 applied for A-CAM or phase II support.

14 **SECTION 1695c.** 196.504 (1) (aa) of the statutes is created to read:

15 196.504 (1) (aa) “A-CAM support” means support for the deployment of voice
16 and broadband-capable networks from the federal Connect America Fund that is
17 made to telecommunications utilities regulated as rate-of-return carriers by the
18 federal communications commission and that is based on the federal
19 communications commission's Alternative Connect America Cost Model.

20 **SECTION 1695d.** 196.504 (1) (ab) of the statutes is created to read:

21 196.504 (1) (ab) “Broadband infrastructure” means infrastructure for the
22 provision of broadband service at a minimum download speed of 25 megabits per
23 second and a minimum upload speed of 3 megabits per second.”.

24 **5.** Page 859, line 15: on lines 15 and 16, delete “(ab)” and substitute “(ac)”.

1 **6.** Page 859, line 18: on lines 18 and 19, delete “(ad)” and substitute “(af)”.

2 **7.** Page 859, line 22: after that line insert:

3 “**SECTION 1695p.** 196.504 (1) (ae) of the statutes is renumbered 196.504 (1) (ak).

4 **SECTION 1695r.** 196.504 (1) (ah) of the statutes is created to read:

5 196.504 (1) (ah) “Phase II support” means the federal communications
6 commission’s 2nd phase of support for rural broadband deployment from the federal
7 Connect America Fund that is made to telecommunications utilities regulated as
8 price cap carriers by the federal communications commission.”.

9 **8.** Page 859, line 23: delete the material beginning with that line and ending
10 with page 860, line 5.

11 **9.** Page 860, line 7: delete lines 7 to 11 and substitute:

12 “196.504 (2) (a) To make broadband expansion grants to eligible applicants for
13 the purpose of constructing broadband infrastructure in underserved areas
14 designated under par. (d).

15 (2m) Grants awarded under this section shall be paid from the appropriation
16 appropriations under s. 20.155 (3) (a), (r). In each fiscal year, the total amount of the
17 grants may not exceed \$1,500,000, and (rm). Not less than 85 percent of the grants
18 awarded in a fiscal year shall be for the construction of broadband infrastructure in
19 counties with populations of 65,000 or less.

20 **SECTION 1698m.** 196.504 (2) (am) of the statutes is created to read:

21 196.504 (2) (am) To make broadband expansion grants to organizations
22 specified in sub. (1) (ad) 1., telecommunications utilities, or political subdivisions for
23 project planning related to broadband infrastructure construction in underserved
24 areas designated under par. (d).”.

