

Fiscal Estimate Narratives

DATCP 2/13/2018

LRB Number	17-5116/1	Introduction Number	AB-0909	Estimate Type	Original
Description requirements and prohibited practices for Internet service providers and granting rule-making authority					

Assumptions Used in Arriving at Fiscal Estimate

This bill prohibits a provider of broadband Internet access service (BIAS) from: blocking lawful content, applications, or services or devices that do not harm the network; throttling lawful Internet traffic on the basis of content, application, or service or use of a device that does not harm the network; engaging in paid prioritization, which is the favoring of some Internet traffic over other traffic in exchange for some form of consideration; unreasonably interfering with or unreasonably disadvantaging 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; engaging in any unjust or unreasonable charge, practice, classification, or regulation; making any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services or subjecting any particular person, class of persons, or locality to any undue or unreasonable preference or advantage or prejudice or disadvantage; and using, disclosing, or permitting access to any individually identifiable customer proprietary network information except in the provision of the BIAS or related service. It also requires a BIAS provider to disclose certain commercial terms and network performance characteristics and make its services and equipment accessible to individuals with disabilities.

This bill requires the Department of Agriculture, Trade and Consumer Protection to create and administer a process to allow parties to file complaints relating to violations of the bill's provisions, and to investigate and respond to end user complaints. The department's Bureau of Consumer Protection has an established process and database for handling consumer complaints that it would expand to handle complaints of this new nature.

The department has not previously regulated Internet neutrality; therefore, it cannot determine how many consumer complaints regarding potential violations it would receive. In 2017, DATCP received 763 telecommunications consumer complaints – an unknown number of which related to misrepresentation of Internet speeds available in various service areas. It is assumed additional complaints regarding actual Internet speed delivery would likely fit into this new category as Internet neutrality violations.

The department anticipates that enactment of this bill would increase our annual complaint workload, and that the current staffing level and resources are not sufficient to handle the additional responsibilities of administration and enforcement of the provisions of this bill. The department expects unique challenges in mediation, investigation, and enforcement since it will need to determine if complaints are caused by deliberate action on the part of BIAS providers or are the result of temporary network congestion or other technical issues. Depending on the number of complaints received and the technical expertise needed to investigate and enforce the provisions in this bill, additional staff with specific knowledge and skill in the industry may also be needed.

After the law's effective date, DATCP's Bureau of Consumer Protection would need to educate providers and end users on the requirements of the bill and their options under the new law. Based on prior experience implementing new laws, the department will conduct investigations based on patterns and trends in consumer complaints and use a progressive enforcement philosophy to gain compliance. Complaints would be investigated and then referred for further enforcement.

If this bill is enacted, the department will undertake rulemaking. It is likely the department would expand the existing ATCP 123, governing Electronic Communications Services, to include any rulemaking required by the newly created Wis. Stat. § 100.80. Rulemaking typically takes 24-30 months to complete and would delay full implementation of the law.

The proposed Wis. Stat. § 100.80 (3) will create certain storage and record retention requirements for the department. The bill does not clearly specify if such storage would be paper or electronic. As with any new consumer protection law, we anticipate there will be an increase in consumer complaints and inquiries.

Long-Range Fiscal Implications

Indeterminate. As mentioned above, the department does not have current experience with Internet neutrality; therefore, it cannot accurately predict how many complaints it will receive from consumers, the number of investigations it will need to initiate based on those complaints, or the number of resulting enforcement actions required.