100TH GENERAL ASSEMBLY
State of Illinois
2017 and 2018
SB2975

Introduced 2/15/2018, by Sen. Daniel Biss

SYNOPSIS AS INTRODUCED:

New Act

Creates the Broadband Procurement and Disclosure Act. Provides that no State broadband purchaser may award any contract to an Internet service provider that includes broadband service unless the contract provides specified terms concerning access to and impairment of Internet services. Requires each Internet service provider to make available on its website a clear and conspicuous statement informing end users of the Internet service provider's network management practices and performance, including commercial terms offered to end users. Provides enforcement and damages provisions. Provides that nothing in the Act supersedes any obligation or authorization or limits the ability of an Internet service provider to address the needs of emergency communications or law enforcement, public safety, or national security authorities consistent with or as permitted by applicable law. Provides legislative findings. Defines terms.

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FISCAL NOTE ACT
MAY APPLY
AN ACT concerning finance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Broadband Procurement and Disclosure Act.

Section 5. Legislative findings. The General Assembly finds that the health, welfare, and prosperity of all Illinois citizens require that Illinois State agencies, public authorities, and municipalities are provided Internet access free from unreasonable discrimination or impairment of lawful network traffic and access to lawful content, applications, and services, in order to communicate with, and conduct business on behalf of, the people of Illinois. Because many Illinois government services and related information are available only via the Internet, throttling or paid prioritization could severely impair or limit the ability of many Illinois citizens, including the most vulnerable, to access such services and information. As a significant purchaser of broadband services, the State of Illinois has a responsibility to ensure the efficient procurement of all broadband services necessary to serve the public interest.

Accordingly, the General Assembly concludes that it is necessary for Illinois State broadband purchasers to contract
with Internet service providers that agree to nondiscriminatory broadband practices, and to ensure that all Internet service providers disclose commercial terms regarding network management practices so that Illinois consumers have the information needed to make informed choices.

Section 10. Definitions. As used in this Act:

"Broadband service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints in Illinois, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. "Broadband service" includes any service in Illinois that provides a functional equivalent of the service described herein or that is used to evade the protections set forth in this Act, and also includes the definition of "broadband service" provided under Section 21-201 of the Public Utilities Act.

"Content, applications, and services" mean all traffic transmitted to or from end users of a broadband service within this State, including traffic that may not fit clearly into any of these categories.

"Commercial terms" mean information about payment for broadband service sufficient for consumers to make informed choices, including: (i) the full monthly service charge for
broadband service (excluding tax); (ii) additional fees, such as one-time fees, recurring fees, and surcharges incurred by end users to initiate, maintain, or discontinue broadband service; and (iii) limitations on broadband service, such as throttling, data caps, allowances, or other restrictions based on content or network traffic.

"Edge provider" means any individual or entity in Illinois that provides any content, application, or service over the Internet, and any individual or entity in this State that provides a device used for accessing any content, application, or service over the Internet.

"End user" includes a residential, business, institutional, or government entity in this State who uses broadband service for its own purposes and who does not resell such services to other entities or incorporate such services into retail Internet-access services. "End user" of a broadband connection does not include Internet service providers.

"Internet service provider" means any business that provides broadband service to an individual, corporation, government entity, or other customer in this State.

"State broadband purchaser" means any State entity, or person acting on behalf of the State, that purchases broadband service, including any of the following: all officers, boards, departments, commissions, agencies, institutions, authorities, universities, and bodies politic and corporate of the State, created by or in accordance with the Constitution or statute,
whether in the executive, legislative, or judicial branch of State government; and administrative units or corporate outgrowths of the State government which are created by or under statute.

Section 15. Broadband service purchasing in State contracts. Notwithstanding any other provision of law to the contrary, no State broadband purchaser may award any contract to an Internet service provider that includes broadband service unless the contract provides:

(1) that the Internet service provider shall not block end users from accessing lawful content, applications, services, or non-harmful devices, subject to reasonable network management;

(2) that the Internet service provider shall not impair or degrade lawful Internet traffic to end users on the basis of content, applications, and services, or use of a non-harmful device, subject to reasonable network management; and

(3) that the Internet service provider, either in exchange for monetary or other consideration from a third party or to benefit an affiliated entity, shall not:

(i) manipulate broadband service to directly or indirectly favor some Internet traffic to end users over other traffic (including through use of techniques such as traffic shaping, prioritization,
resource reservation, or other forms preferential
traffic management); (ii) unreasonably interfere with or unreasonably
disadvantage end users' ability to select, access, and
use broadband service for the lawful Internet content,
applications, services, or devices of their choice; or (iii)
unreasonably interfere with or unreasonably
disadvantage edge providers' ability to make lawful
content, applications, services, or devices available
to end users.

Section 20. Disclosure required. Each Internet service
provider shall make available on its website a clear and
conspicuous statement informing end users of the Internet
service provider's network management practices and
performance, including commercial terms offered to end users.

Section 25. Enforcement; damages. The Attorney General and
appropriate State's Attorney may commence a civil action in the
name of the People of the State of Illinois in any appropriate
circuit court. The State shall receive an amount for reasonable
expenses that the court finds to have been necessarily incurred
by the Attorney General, including reasonable attorneys' fees
and costs. All such expenses, fees, and costs shall be awarded
against the defendant. The court may award amounts from the
proceeds of an action or settlement that it considers
appropriate to any governmental entity or program that has been
adversely affected by a defendant. The Attorney General, if
necessary, shall direct the State Treasurer to make a
disbursement of funds as provided in court orders or settlement
agreements.

Section 30. Security. Nothing in this Act supersedes any
obligation or authorization or limits the ability of an
Internet service provider to address the needs of emergency
communications or law enforcement, public safety, or national
security authorities consistent with or as permitted by
applicable law.