

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4399

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[Introduced February 1, 2018; Referred
to the Committee on Political Subdivisions then the
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §1-7-1, §1-7-2 and §1-7-3, all relating to net neutrality for state government;
3 providing legislative findings; defining terms; requiring the state to utilize net neutral
4 internet services and associated activities; and providing exceptions thereto.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. NET NEUTRALITY FOR GOVERNMENT OPERATIONS.

§1-7-1. Legislative findings.

1 The Legislature finds that the operation of state government, public schools, universities
2 and political subdivisions of the state requires access to internet resources that are neutral in
3 content to allow dissemination of information to government workers, researchers, students and
4 policymakers that is objective and complete and not manipulated to advance private, political or
5 economic interests; and that it is in the public interest and a necessary condition of a free society
6 that the content of information available to government and academic institutions not be
7 manipulated or controlled by others for private gain. Further, that the internet has become so
8 important to our way of life, to allow compromise through content discrimination risks creating a
9 serious impediment to government functions by preventing full, fair, accurate, and, equal access
10 to information from which balanced, independent research for operation of government, academic
11 research and education can be derived. This basic tenant of government operations is critical to
12 preserve the common welfare, freedom, and security for ourselves and for our state. Therefore,
13 the purpose of this article is to ensure that any internet access services purchased or funded by
14 this state are provided in an unbiased and fair manner, consistent with net neutrality principles.

§1-7-2. Definitions.

1 For the purposes of this article:

2 (1) "Broadband internet access service" means a mass-market retail service by wire or
3 radio that provides the capability to transmit data to and receive data from all or substantially all
4 internet endpoints, including any capabilities that are incidental to and enable the operation of the

5 communications service, but excluding dial-up internet access service;

6 (2) "Content, applications, and services" means all traffic transmitted to or from end users
7 of a broadband internet access service, including traffic that may not fit clearly into any of these
8 categories;

9 (3) "End user" means any person that uses a broadband internet access service;

10 (4) "Fixed broadband internet access service" means a broadband internet access service
11 that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband
12 internet access service includes fixed wireless services (including fixed unlicensed wireless
13 services), and fixed satellite services;

14 (5) "Mobile broadband internet access service" means a broadband internet access
15 service that serves end users primarily using mobile stations;

16 (6) "Paid prioritization" means the management of a broadband internet access service
17 provider's network to directly or indirectly favor some traffic over other traffic, including through
18 use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of
19 preferential traffic management, either in exchange for consideration (monetary or otherwise)
20 from a third person, or to benefit an affiliated person;

21 (7) "Person" means a natural person, corporation, company, limited liability company,
22 partnership or association;

23 (8) "Reasonable network management" means a network management practice that has
24 a primarily technical network management justification, but does not include other business
25 practices. A network management practice is reasonable if it is primarily used for and tailored to
26 achieving a legitimate network management purpose, taking into account the particular network
27 architecture and technology of the broadband internet access service; and

28 (9) "State" means the State of West Virginia, and any political subdivision thereof, and any
29 other public or private person that receives funding from the state that is used to provide internet
30 service.

§1-7-3. Requirements for state government internet services.

1 (a) Transparency- A person providing of fixed or mobile broadband internet access
2 services purchased or funded by the state shall publicly disclose accurate information regarding
3 the network management practices, performance, and commercial terms of its broadband internet
4 access services sufficient for end users of those purchased or funded services, to ascertain if the
5 service is in compliance with this section.

6 (b) Blocking prohibited- A person providing fixed or mobile broadband internet access
7 services purchased or funded by the state or a political subdivision thereof shall not block lawful
8 content, applications, services, or nonharmful devices, subject to reasonable network
9 management.

10 (c) Throttling prohibited- A person engaged in providing fixed or mobile broadband internet
11 access services purchased or funded by the state, shall not impair or degrade lawful internet
12 traffic on the basis of internet content, application, or service, or use of a nonharmful device,
13 subject to reasonable network management.

14 (d) Paid prioritization prohibited- A person providing fixed or mobile broadband internet
15 access services to the state, shall not provide services or otherwise engage in paid prioritization.
16 The state may waive the ban on paid prioritization as to a particular purchased or funded internet
17 access services only if the person providing the service demonstrates that the practice would
18 provide some significant public interest benefit and would not harm the open nature of the
19 provided internet access services.

20 (e) Emergency service providers exemption- Nothing in this section supersedes or alters
21 the obligation of any person providing fixed or mobile broadband internet access service for
22 emergency communications, law enforcement, or other public safety purpose.

NOTE: The purpose of this bill is to require the state and its political subdivisions to utilize net neutral internet services to assure receipt of impartial information; providing legislative findings on necessity for fair government requiring impartial access to internet resources;

providing for prohibited acts by persons providing internet services to the state; and providing exceptions thereto.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.