

# WEST VIRGINIA LEGISLATURE

## 2018 REGULAR SESSION

Introduced

### Senate Bill 396

FISCAL  
NOTE

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[Introduced January 26, 2018; Referred to the Committee  
on Transportation and Infrastructure; and then to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
2 designated §24-9-1, §24-9-2, §24-9-3, and §24-9-4, all relating to creating the West  
3 Virginia Net Neutrality Act; protecting an open Internet in West Virginia; defining terms;  
4 placing certain requirements and restrictions on broadband Internet access service  
5 providers; requiring certain information be made publicly available by broadband Internet  
6 access service providers; prohibiting certain conduct by broadband Internet access  
7 service providers; authorizing the Public Service Commission to waive certain prohibitions;  
8 declaring violations of the act to be treated as violations of the West Virginia Consumer  
9 Credit and Protection Act; and requiring any funds recovered by the Office of the Attorney  
10 General for violations of the act to be deposited into the Broadband Enhancement Fund.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 9. WEST VIRGINIA NET NEUTRALITY ACT.**

### **§24-9-1. Short title.**

1 This article shall be known as the West Virginia Net Neutrality Act.

### **§24-9-2. Definitions.**

1 For the purposes of this article, unless the context clearly requires otherwise, the following  
2 terms are defined as follows:

3 “Broadband Internet access service” means a mass-market retail service by wire or radio  
4 that provides the capability to transmit data to and receive data from all or substantially all Internet  
5 endpoints, including capabilities that are incidental to and enable the operation of the  
6 communications service, but excluding dial-up Internet access service. The term also  
7 encompasses any service that the federal communications commission finds to be providing a  
8 functional equivalent of such a broadband Internet access service. The term also encompasses  
9 any service that is used to evade the protections set forth in this article.

10 “Edge provider” means any individual or entity that provides any content, application, or  
11 service over the Internet, and any individual or entity that provides a device used for accessing

12 any content, application, or service over the Internet.

13 “End user” means any individual or entity that uses a broadband Internet access service.

14 “Mobile broadband Internet access service” means a broadband Internet service that  
15 serves end users primarily using mobile stations.

16 “Paid prioritization” means the management of a broadband provider’s network to directly  
17 or indirectly favor some traffic over other traffic, including the use of techniques such as traffic  
18 shaping, prioritization, resource reservation, or other forms of preferential traffic management,  
19 either: (1) In exchange for consideration, monetary or otherwise, from a third party; or (2) to benefit  
20 an affiliated entity.

21 “Reasonable network management” means a practice that has a primarily technical  
22 network management justification, but does not include other business practices. A network  
23 management practice is reasonable if it is primarily used for and tailored to achieving a legitimate  
24 network management purpose, taking into account the particular network architecture and  
25 technology of the Broadband Internet Access Service.

**§24-9-3. Broadband Internet access service provider requirements.**

1 (a) A person engaged in the provision of broadband Internet access service in this state  
2 shall publicly disclose accurate information regarding the network management practices,  
3 performance, and commercial terms of its broadband Internet access services sufficient for  
4 consumers to make informed choices regarding use of such services and for content, application,  
5 service, and device providers to develop, market, and maintain internet offerings.

6 (b) A person engaged in the provision of broadband Internet service in this state, insofar  
7 as such a person is so engaged, may not:

8 (1) Block lawful content, applications, services, or nonharmful devices, subject to  
9 reasonable network management;

10 (2) Impair or degrade lawful internet traffic on the basis of internet content, application, or  
11 service, or use of a nonharmful device, subject to reasonable network management;

- 12           (3) Engage in paid prioritization; or  
13           (4) Unreasonably interfere with or unreasonably disadvantage: (A) End users' ability to  
14 select, access, and use broadband Internet access service or the lawful Internet content,  
15 applications, services, or devices of their choice; or (B) edge providers' ability to make lawful  
16 content, applications, services, or devices available to end users.
- 17           (c) The Public Service Commission may waive the prohibition on paid prioritization  
18 contained in this section only if the petitioner demonstrates by clear and convincing evidence that  
19 the practice would provide some significant public interest benefit and would not harm the open  
20 nature of the Internet in this state.

**§24-9-4. Consumer protection.**

- 1           (a) The matters contained in this article are vitally important to the consumers of this state  
2 and the public interest. Therefore, a violation of this article is deemed to be an unfair or deceptive  
3 act or practice in violation of the West Virginia Consumer Credit and Protection Act, contained in  
4 chapter 46A of this code, and may be brought by consumers in a private civil action. The penalties  
5 and remedies contained in the West Virginia Consumer Credit and Protection Act shall apply to  
6 this article as if the entirety of chapter 46A were repeated herein.
- 7           (b) All receipts recovered on behalf of the state by the Office of the Attorney General for  
8 lawsuits related to violations of this article shall be deposited into the Broadband Enhancement  
9 Fund, created in §31G-1-5 of this code.

NOTE: The purpose of this bill is to protect the neutrality of the Internet in West Virginia.

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