

AMENDED IN ASSEMBLY JUNE 11, 2018

AMENDED IN SENATE MAY 1, 2018

AMENDED IN SENATE APRIL 19, 2018

AMENDED IN SENATE MARCH 13, 2018

SENATE BILL

No. 822

Introduced by Senator Wiener

**(Principal coauthors: Senators Allen, Dodd, Hill, McGuire,
Monning, and Skinner)**

(Principal coauthors: Assembly Members Bloom, Bonta, Chiu,
Friedman, Kalra, and Mullin)

(Coauthor: Senator Leyva)

(Coauthor: Assembly Member Ting)

January 3, 2018

An act to add Chapter 3.5 (commencing with Section 1775) to Title 1.5 of Part 4 of Division 3 of the Civil Code, and to add Article 2 (commencing with Section 3020) to Chapter 3 of Part 1 of Division 2 of the Public Contract Code, relating to communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 822, as amended, Wiener. Communications: broadband Internet access service.

Existing law, the Consumers Legal Remedies Act, makes unlawful certain unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer. Existing law authorizes any consumer who suffers damages as a result of the use or employment by any person of a method, act, or practice declared to be unlawful, as described above, to bring an action

against that person to recover or obtain damages, restitution, an order enjoining the methods, acts, or practice, or any other relief the court deems proper.

This bill would revise the act to prohibit specified actions by an Internet service provider, as defined, that provides broadband Internet access service, as specified. The bill would prohibit an Internet service provider from offering different levels of quality of service to end users as part of broadband Internet access service unless specified conditions are met. ~~The bill would authorize the Attorney General, upon his or her own motion or upon complaint, to investigate and bring an action to enforce those prohibitions and would require that complaints be reviewed by the Attorney General on a case-by-case basis.~~ The bill would ~~additionally~~ make the consumer remedies and procedures of the act applicable to enforce those prohibitions. This bill would prohibit a public entity, as defined, from purchasing, or providing funding for the purchase of, any fixed or mobile broadband Internet access services that violate these prohibitions. The bill would require an Internet service provider that provides fixed or mobile broadband Internet access service purchased or funded by a public entity to publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband Internet access service that is sufficient to enable end users of those purchased or funded services, including a public entity, to fully and accurately ascertain if the service violates these prohibitions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) This bill is adopted pursuant to the police power inherent in
- 4 the State of California to protect and promote the safety, life, public
- 5 health, public convenience, general prosperity, and well-being of
- 6 society, and the welfare of the state's population and economy,
- 7 that are increasingly dependent on an open and neutral Internet.
- 8 (b) Almost every sector of California's economy, democracy,
- 9 and society is dependent on the open and neutral Internet that
- 10 supports vital functions regulated under the police power of the
- 11 state, including, but not limited to, each of the following:

- 1 (1) Police and emergency services.
- 2 (2) Health and safety services and infrastructure.
- 3 (3) Utility services and infrastructure.
- 4 (4) Transportation infrastructure and services, and the expansion
- 5 of zero- and low-emission transportation options.
- 6 (5) Government services, voting, and democratic decisionmaking
- 7 processes.
- 8 (6) Education.
- 9 (7) Business and economic activity.
- 10 (8) Environmental monitoring and protection, and achievement
- 11 of state environmental goals.
- 12 (9) Land use regulation.

13 SEC. 2. Chapter 3.5 (commencing with Section 1775) is added
14 to Title 1.5 of Part 4 of Division 3 of the Civil Code, to read:

15
16 CHAPTER 3.5. INTERNET NEUTRALITY

17
18 1775. For purposes of this chapter, the following definitions
19 apply:

20 (a) “Application-agnostic” means not differentiating on the basis
21 of source, destination, Internet content, application, service, or
22 device, or class of Internet content, application, service, or device.

23 (b) “Application-specific differential pricing” means charging
24 different prices for Internet traffic to customers on the basis of
25 Internet content, application, service, or device, or class of Internet
26 content, application, service, or device, but does not include
27 zero-rating.

28 (c) “Broadband Internet access service” means a mass-market
29 retail service by wire or radio provided to customers in California
30 that provides the capability to transmit data to, and receive data
31 from, all or substantially all Internet endpoints, including any
32 capabilities that are incidental to and enable the operation of the
33 communications service, but excluding dial-up Internet access
34 service. “Broadband Internet access service” also encompasses
35 any service provided to customers in California that provides a
36 functional equivalent of that service or that is used to evade the
37 protections set forth in this chapter.

38 (d) “Class of Internet content, application, service, or device”
39 means Internet content, or a group of Internet applications, services,
40 or devices, sharing a common characteristic, including, but not

1 limited to, sharing the same source or destination, belonging to
2 the same type of content, application, service, or device, using the
3 same application- or transport-layer protocol, or having similar
4 technical characteristics, including, but not limited to, the size,
5 sequencing, or timing of packets, or sensitivity to delay.

6 (e) “Content, applications, or services” means all Internet traffic
7 transmitted to or from end users of a broadband Internet access
8 service, including traffic that may not fit clearly into any of these
9 categories.

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

14 (g) “End user” means any individual or entity that uses a
15 broadband Internet access service.

16 (h) “*Enterprise service offering*” means an offering to larger
17 organizations through customized or individually negotiated
18 arrangements or special access services.

19 ~~(h)~~

20 (i) “Internet service provider” means a business that provides
21 broadband Internet access service to an individual, corporation,
22 government, or other customer in California.

23 ~~(i)~~

24 (j) “ISP traffic exchange” means the exchange of Internet traffic
25 destined for, or originating from, an Internet service provider’s
26 end users between the Internet service provider’s network and
27 another individual or entity, including, but not limited to, an edge
28 provider, content delivery network, or other network operator.

29 ~~(j)~~

30 (k) “Mass market” means a service marketed and sold on a
31 standardized basis to residential customers, small businesses, and
32 other ~~end-use~~ *end-user* customers, including, but not limited to,
33 schools, institutions of higher learning, and libraries. ~~The term~~
34 “*Mass market*” also includes broadband Internet access services
35 purchased with support of the E-rate and Rural Health ~~program~~
36 *Care programs* and similar programs at the federal and state level,
37 regardless of whether they are customized or individually
38 negotiated, as well as any broadband Internet access service offered
39 using networks supported by the Connect America Fund or similar

1 programs at the federal and state level. “*Mass market*” does not
2 include enterprise service offerings.

3 ~~(k)~~

4 (l) “Network management practice” means a practice that has
5 a primarily technical network management justification, but does
6 not include other business practices.

7 ~~(t)~~

8 (m) “Reasonable network management practice” means a
9 network management practice that is primarily used for, and
10 tailored to, achieving a legitimate network management purpose,
11 taking into account the particular network architecture and
12 technology of the broadband Internet access service, and that is as
13 application-agnostic as possible.

14 ~~(m)~~

15 (n) “Third-party paid prioritization” means the management of
16 an Internet service provider’s network to directly or indirectly
17 favor some traffic over other traffic, including through the use of
18 techniques such as traffic shaping, prioritization, resource
19 reservation, or other forms of preferential traffic management,
20 either (1) in exchange for consideration, monetary or otherwise,
21 from a third party, or (2) to benefit an affiliated entity.

22 ~~(n)~~

23 (o) “Zero-rating” means exempting some Internet traffic from
24 a customer’s data limitation.

25 1776. It shall be unlawful for an Internet service provider,
26 insofar as the provider is engaged in providing broadband Internet
27 access service, to engage in any of the following activities:

28 (a) Blocking lawful content, applications, services, or
29 nonharmful devices, subject to reasonable network management
30 practices.

31 (b) Speeding up, slowing down, altering, restricting, interfering
32 with, or otherwise directly or indirectly favoring, disadvantaging,
33 or discriminating between lawful Internet traffic on the basis of
34 source, destination, Internet content, application, or service, or use
35 of a nonharmful device, or of class of Internet content, application,
36 service, or nonharmful device, subject to reasonable network
37 management practices.

38 (c) Requiring consideration from edge providers, monetary or
39 otherwise, in exchange for access to the Internet service provider’s

- 1 end users, including, but not limited to, requiring consideration
2 for either of the following:
- 3 (1) Transmitting Internet traffic to and from the Internet service
4 provider's end users.
 - 5 (2) Refraining from the activities prohibited in subdivisions (a)
6 and (b).
 - 7 (d) Engaging in third-party paid prioritization.
 - 8 (e) Engaging in application-specific differential pricing or
9 zero-rating in exchange for consideration, monetary or otherwise,
10 by third parties.
 - 11 (f) Zero-rating some Internet content, applications, services, or
12 devices in a category of Internet content, applications, services,
13 or devices, but not the entire category.
 - 14 (g) Engaging in application-specific differential pricing.
 - 15 (h) Unreasonably interfering with, or unreasonably
16 disadvantaging, either an end user's ability to select, access, and
17 use broadband Internet access service or lawful Internet content,
18 applications, services, or devices of the end user's choice, or an
19 edge provider's ability to make lawful content, applications,
20 services, or devices available to an end user, subject to reasonable
21 network management practices.
 - 22 (i) Engaging in practices with respect to, related to, or in
23 connection with, ISP traffic exchange that have the purpose or
24 effect of circumventing or undermining the effectiveness of this
25 section.
 - 26 (j) Engaging in deceptive or misleading marketing practices
27 that misrepresent the treatment of Internet traffic, content,
28 applications, services, or devices by the Internet service provider,
29 or that misrepresent the performance characteristics or commercial
30 terms of the broadband Internet access service to its customers.
 - 31 (k) Advertising, offering for sale, or selling broadband Internet
32 access service without prominently disclosing with specificity all
33 aspects of the service advertised, offered for sale, or sold.
 - 34 (l) Failing to publicly disclose accurate information regarding
35 the network management practices, performance, and commercial
36 terms of its broadband Internet access services sufficient for
37 consumers to make informed choices regarding use of those
38 services and for content, application, service, and device providers
39 to develop, market, and maintain Internet offerings.

1 ~~(m) Offering or providing services other than broadband Internet~~
2 ~~access service that are delivered over the same last-mile connection~~
3 ~~as the broadband Internet access service, if those services satisfy~~
4 ~~any of the following conditions:~~

5 ~~(1) They are marketed, provide, or can be used as a functional~~
6 ~~equivalent of broadband Internet access service.~~

7 ~~(2) They have the purpose or effect of circumventing or~~
8 ~~undermining the effectiveness of this section.~~

9 ~~(3) They negatively affect the performance of broadband Internet~~
10 ~~access service.~~

11 *1776.5. It shall be unlawful for an Internet service provider to*
12 *offer or provide services other than broadband Internet access*
13 *service that are delivered over the same last-mile connection as*
14 *the broadband Internet access service, if those services satisfy any*
15 *of the following conditions:*

16 *(a) They are marketed, provide, or can be used as a functional*
17 *equivalent of broadband Internet access service.*

18 *(b) They have the purpose or effect of circumventing or*
19 *undermining the effectiveness of Section 1776.*

20 *(c) They negatively affect the performance of broadband Internet*
21 *access service.*

22 *1777. (a) (1) An Internet service provider may offer different*
23 *levels of quality of service to end users as part of its broadband*
24 *Internet access service, without violating Section 1776, only if all*
25 *of the following conditions exist:*

26 *(A) The different levels of quality of service are equally*
27 *available to all Internet content, applications, services, and devices,*
28 *and all classes of Internet content, applications, services, and*
29 *devices, and the Internet service provider does not discriminate in*
30 *the provision of the different levels of quality of service on the*
31 *basis of Internet content, application, service, or device, or class*
32 *of Internet content, application, service, or device.*

33 *(B) The Internet service provider's end users are able to choose*
34 *whether, when, and for which Internet content, applications,*
35 *services, or devices, or classes of Internet content, applications,*
36 *services, or devices, to use each type of technical treatment.*

37 *(C) The Internet service provider charges only its own*
38 *broadband Internet access service customers for the use of the*
39 *different level of quality of service.*

1 (D) The provision of the different levels of quality of service
2 does not degrade the quality of the basic default service that
3 Internet traffic receives if the customer does not choose another
4 level of quality of service.

5 (b) An Internet service provider may zero-rate Internet traffic
6 in application-agnostic ways, without violating Section ~~1776~~, 1776
7 or 1776.5, provided that no consideration, monetary or otherwise,
8 is provided by any third party in exchange for the provider’s
9 decision to zero-rate or to not zero-rate traffic.

10 1778. Nothing in this chapter supersedes or limits any
11 ~~obligation, authorization, obligation or authorization an Internet~~
12 ~~service provider may have, or limits the ability of an Internet~~
13 ~~service provider provider, to address the needs of emergency~~
14 ~~communications or law enforcement, public safety, or national~~
15 ~~security authorities. authorities, consistent with or as permitted~~
16 ~~by applicable law.~~

17 ~~1779. (a) The Attorney General may bring an action to enforce~~
18 ~~Section 1776 or 1777 pursuant to Chapter 5 (commencing with~~
19 ~~Section 17200) of Part 2, and, where applicable, Article 1~~
20 ~~(commencing with Section 17500) of Chapter 1 of Part 3, of~~
21 ~~Division 7 of the Business and Professions Code.~~

22 ~~(b) The Attorney General, upon his or her own motion or upon~~
23 ~~complaint, may investigate and bring an action to enforce Section~~
24 ~~1776 or 1777.~~

25 ~~(c) The Attorney General shall review complaints on a~~
26 ~~case-by-case basis to determine if the actions of an Internet service~~
27 ~~provider violate Section 1776 or 1777.~~

28 ~~(d) Violation~~

29 ~~1779. Violations of Section 1776 1776, 1776.5, or 1777 shall~~
30 ~~be subject to the remedies and procedures established pursuant to~~
31 ~~Chapter 4 (commencing with Section 1780).~~

32 SEC. 3. Article 2 (commencing with Section 3020) is added
33 to Chapter 3 of Part 1 of Division 2 of the Public Contract Code,
34 to read:

35

36 Article 2. Internet Neutrality

37

38 3020. (a) For purposes of this article, “broadband Internet
39 access service,” “Internet service provider,” “network management

1 practice,” and “reasonable network management practice” have
2 the same meanings as defined in Section 1775 of the Civil Code.

3 (b) For purposes of this article, “public entity” has the meaning
4 as defined in Section 1100.

5 3021. (a) A public entity shall not purchase any fixed or mobile
6 broadband Internet access services from an Internet service
7 provider that is in violation of Section ~~1776~~ 1776, 1776.5, or 1777
8 of the Civil Code.

9 (b) A public entity shall not provide funding for the purchase
10 of any fixed or mobile broadband Internet access services from an
11 Internet service provider that is in violation of Section ~~1776~~ 1776,
12 1776.5, or 1777 of the Civil Code.

13 3022. (a) Every contract between a public entity and an Internet
14 service provider for broadband Internet access service shall require
15 that the service be rendered consistent with the requirements of
16 ~~Section 1776~~ Sections 1776, 1776.5, and 1777 of the Civil Code.

17 (b) If, after execution of a contract for broadband Internet access
18 service, a governmental entity determines that the Internet service
19 provider has violated Section ~~1776~~ 1776, 1776.5, or 1777 of the
20 Civil Code in providing service to the public entity, the public
21 entity may declare the contract void from the time it was entered
22 into and require repayment of any payments made to the Internet
23 service provider pursuant to the contract. The remedies available
24 pursuant to this section are in addition to any remedy available
25 pursuant to Chapter 5 (commencing with Section 17200) of Part
26 2 of Division 7 of the Business and Professions Code.

27 3023. It shall not be a violation of this article for a public entity
28 to purchase or fund fixed or mobile broadband Internet access
29 services in a geographical area where Internet access services are
30 only available from a single broadband Internet access service
31 provider.

32 3024. An Internet service provider that provides fixed or mobile
33 broadband Internet access service purchased or funded by a public
34 entity shall publicly disclose accurate information regarding the
35 network management practices, performance, and commercial
36 terms of its broadband Internet access service that is sufficient to
37 enable end users of those purchased or funded services, including
38 a public entity, to fully and accurately ascertain if the service is
39 conducted in a lawful manner pursuant to ~~Section 1776~~ Sections
40 1776, 1776.5, and 1777 of the Civil Code.

1 SEC. 4. The provisions of this act are severable. If any
2 provision of this act or its application is held invalid, that invalidity
3 shall not affect other provisions or applications that can be given
4 effect without the invalid provision or application.

O