

HB 4155 -3, -4 STAFF MEASURE SUMMARY

House Committee On Rules

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/13

WHAT THE MEASURE DOES:

Prohibits a broadband Internet access service provider from disclosing, selling, or permitting access to personal information of customers of the provider except by the customer's consent starting January 1, 2019. Requires a broadband Internet access service provider to take reasonable measure to protect their customers' personal information. Makes a violation an unlawful trade practice. Establishes the Task Force on Broadband Security.

Requires Task Force to study laws protecting information of broadband Internet customers. Requires the Task Force to report to the interim committee of the Legislative Assembly related to the judiciary no later than December 15, 2018. Declares an emergency, and is effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-3 Replaces measure. Prohibits a public body from contracting with a broadband Internet access service provider if that provider engages in paid prioritization, blocks lawful content, or disadvantages lawful Internet content starting January 1, 2019. Provides exceptions. Declares an emergency and is effective on passage.

-4 Replaces measure. Prohibits a public body from contracting with a broadband Internet access service provider if that provider engages in paid prioritization, blocks lawful content or applications, or disadvantages lawful Internet content starting January 1, 2019. Provides exceptions including if the broadband Internet access service provider ceases engaging in prohibited activities, or if the Public Utility Commission determines so contracting provides significant public interest benefits. Declares an emergency and is effective on passage.

BACKGROUND:

On April 3, 2017 the federal government enacted Senate Joint Resolution 34, invoking the Congressional Review Act (CRA) to repeal Federal Communications Commission (FCC) broadband privacy rules. This repeal eliminated updated privacy rules for broadband providers and established a prohibition that prevents the FCC from reviving identical or “substantially similar” rules in the future. Repealed rules included guidelines for cable and telephone industries to obtain user's consent before selling their personal data such as the websites they visit, the applications they use, and other details that individuals share about themselves when using the Internet. The use of the Congressional Review Act to repeal FCC rules has led to uncertainty about the ability of the FCC to enforce an individual's legal right to communications privacy under Section 222 of the Telecommunications Act of 1996. Federal privacy protection has also been impacted by the Ninth Circuit Court of Appeals' decision in Federal Trade Commission (FTC) v. AT&T Mobility (835 F.3d 993 (2016)) where the court found that the FTC is legally prohibited from exerting authority over common carriers due to their exclusion from the FTC Act. In the absence of FCC rules and in light of uncertainties about the FTC's jurisdiction to regulate the exploitation of consumers' personal data by broadband providers, a regulatory void may exist that leaves consumers unprotected.

House Bill 4155 establishes online privacy protection for customers of broadband Internet access service providers (BIASPs) by prohibiting disclosure, selling or access to customers' personal information without their express consent. Information that may not be disclosed includes a customer's name, address, billing or other financial information and demographic data. In addition, a BIASP cannot disclose information about customers' Internet use, including

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browsing and application use histories, device identifiers associated with the customer, web addresses to or from which information is sent or received, customers' precise locations and the content of customers' Internet communications, including information pertaining to the customer's finances, health or children.

PRELIMINARY