

ASSEMBLY, No. 1767

STATE OF NEW JERSEY

218th LEGISLATURE

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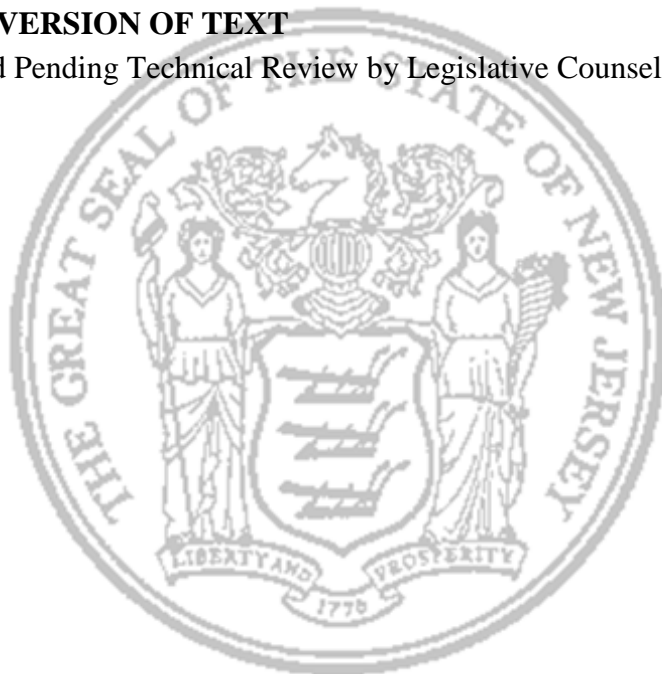
Assemblymen Kennedy, Danielsen and McKeon

SYNOPSIS

Establishes “New Jersey Net Neutrality Act.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/6/2018)

1 AN ACT concerning Internet service providers and supplementing
2 Title 56 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6

7 1. This act shall be known and may be cited as the “New Jersey
8 Net Neutrality Act.”

9

10 2. The Legislature finds and declares that:

11 a. It is the public policy of the State to ensure that all New
12 Jersey customers of Internet service providers have access to an
13 open and neutral Internet.

14 b. The prioritization of lawful Internet network traffic, except
15 for reasonable Internet network management, may impede
16 competition in the Internet marketplace by permitting Internet
17 service providers to exert undue influence and potentially usurp the
18 customer’s privilege to dictate success in the marketplace.

19 c. The prioritization of lawful Internet network traffic, except
20 for reasonable Internet network management, may stifle innovation
21 by providing large and established companies enhanced access to
22 customers and, in turn, degrading the access of small businesses,
23 entrepreneurs, and start-up companies to customers.

24 d. The prioritization of lawful Internet network traffic, except
25 for reasonable Internet network management, may lead to increased
26 costs for customers as content providers are likely to pass along to
27 their customers any increase in operating costs caused by any fee
28 that allows for that prioritization.

29 e. The prioritization of lawful Internet network traffic, except
30 for Internet reasonable network management, may inhibit the free
31 exchange of ideas on the Internet by allowing Internet service
32 providers to give selected content providers enhanced access to the
33 Internet user community.

34

35 3. As used in this act:

36 “Content provider” means any person, business or organization
37 that owns or operates a website or creates, develops, promotes, or
38 owns any content, including, but not limited to video, audio and
39 text, that is available via the Internet.

40 “Director” means the Director of the Division of Consumer
41 Affairs in the Department of Law and Public Safety.

42 “Division” means the Division of Consumer Affairs in the
43 Department of Law and Public Safety.

44 “Internet” means the international computer network of both
45 federal and non-federal interoperable packet switched data
46 networks.

47 “Internet service provider” means any person, business, or
48 organization qualified to do business in this State that provides

1 individuals, corporations, or other entities with the ability to
2 connect to the Internet through equipment that is located in this
3 State.

4 “Reasonable Internet network management” means an Internet
5 network management practice that is appropriate and tailored to
6 achieving a legitimate network management purpose, taking into
7 account the particular network architecture and technology of the
8 Internet access service, or that is for emergency communication,
9 law enforcement, public safety, or national security purposes.

10

11 4. Except where deemed necessary for reasonable Internet
12 network management, an Internet service provider shall provide all
13 customers in this State:

14 a. access to any lawful Internet content of their choice;

15 b. the ability to attach or connect any lawful device to the
16 network on the customer’s end connection, provided that the device
17 does not harm the network;

18 c. the ability to run any lawful application and use any lawful
19 service of their choice; and

20 d. access to an open and neutral Internet, free of any attempt by
21 any Internet service provider to privilege, degrade, prioritize, or
22 block any data transmitted across its network based upon the type,
23 content, source, ownership, or destination of the data.

24

25 5. An Internet service provider shall provide all customers in
26 this State:

27 a. full disclosure, at the time they become customers of that
28 provider, of the Internet service provider’s policies relating to, or
29 any action taken by the Internet service provider having the effect
30 of, the privileging, degrading, prioritizing, or blocking of any
31 Internet traffic.

32 b. prior written notification at least 30 days before the
33 implementation of, or any change in, any of their Internet service
34 provider’s policies or actions after they become customers of that
35 provider that will result in the privileging, degrading, prioritizing,
36 or blocking of any Internet traffic except where necessary for
37 reasonable Internet network management.

38 c. disclosure of all agreements made by the Internet service
39 provider and a content provider that provide the content provider’s
40 Internet traffic with any form of preferential treatment over any
41 other lawful Internet traffic.

42 d. a comprehensive list, within their monthly or other periodic
43 billing statement, of any and all fees charged by the Internet service
44 provider, separately itemized for each fee and, if applicable, for
45 each instance in which that fee is charged, including, but not limited
46 to, all fees charged by the Internet service provider for accessing a
47 particular website, with each occurrence of such access for which

1 the customer has incurred a charge listed separately, together with
2 the time and date of access.

3

4 6. a. There is established in the Division of Consumer Affairs
5 in the Department of Law and Public Safety the “New Jersey
6 Internet Service Provider Registry” for the purpose of making
7 Internet service quality and pricing information readily available to
8 customers within the State.

9 b. The division shall promulgate regulations that require all
10 Internet service providers with New Jersey customers to
11 affirmatively disclose the following information to the division:

12 (1) the material terms of any agreement with any content
13 provider that will result in the privileging or prioritization of a
14 content provider’s Internet traffic. Disclosure of this information
15 shall occur before the Internet service provider takes any action
16 which would result in the privileging or prioritization of the content
17 provider’s Internet traffic;

18 (2) all of the Internet service provider’s policies relating to, or
19 any action taken by the Internet service provider that will result in,
20 the privileging, degrading, prioritizing, or blocking of any Internet
21 traffic. Disclosure of this information shall occur before the Internet
22 service provider takes any actions which would result in the
23 privileging, degrading, prioritizing, or blocking of any Internet
24 traffic, except that the disclosure may occur within seven calendar
25 days after any action is taken if the action is necessary for
26 reasonable Internet network management; and

27 (3) the material terms of all basic agreements entered into with
28 all of its customers for Internet service, including a full accounting
29 of any and all fees charged by the Internet service provider to its
30 customers and any promises or assertions made regarding the
31 connectivity speed of the Internet service.

32 c. The division shall conduct verification tests, on its own or
33 through a third-party, to determine the average connectivity speed
34 experienced by actual users for each Internet service provider
35 within the State.

36 d. The division shall compile the information disclosed by all
37 of the Internet service providers within the State pursuant to this act
38 and from the division’s own verification tests, conducted pursuant
39 to this section, into an “Internet Service Provider Registry.” The
40 director shall organize the registry in a format that is conducive to
41 review and comparison by customers and prospective customers of
42 Internet service. At a minimum, the registry shall include for each
43 Internet service provider:

44 (1) all fees charged by the Internet service provider;

45 (2) the connectivity speed that the Internet service provider
46 promises or claims to provide to its customers;

47 (3) the average connectivity speed found during the division’s
48 verification tests;

1 (4) a full list of any content providers that have entered into an
2 agreement with each Internet service provider for the privileging or
3 prioritizing of the content provider's Internet traffic; and

4 (5) a simple explanation of the Internet service provider's
5 policies relating to privileging, degrading, prioritizing, or blocking
6 of any Internet traffic, and any impact those policies may have on
7 the Internet service provider's customers.

8 e. The division shall make available electronically on its
9 Internet website in English and Spanish the information contained
10 in the registry, and shall provide the information to customers and
11 prospective customers upon request by means of a toll-free
12 telephone service operated by the division.

13 The information available on the Internet website shall:

14 (1) be organized to meet the requirements of subsection d. of
15 this section and be designed so that the customer or prospective
16 customer may download and print the displayed information;

17 (2) include a statement drafted by the director which explains
18 the potential negative impact that non-neutral treatment of Internet
19 traffic can have upon customers of Internet service and, more
20 generally, on the Internet marketplace, competition, innovation and
21 the free exchange of ideas, which shall be prominently displayed at
22 the top of each of the website's pages;

23 (3) include the full text of section 4 of this act and the
24 disclosures required pursuant to section 5 of this act;

25 (4) include Internet web links to other governmental resources
26 that provide information relating to Internet network neutrality, the
27 regulation of the Internet, how a complaint may be filed with the
28 Federal Communications Commission for a violation of any of its
29 open Internet regulations including, but not limited to, regulations
30 under Part 8 of Title 47 of the Code of Federal Regulations, and
31 how a complaint may be filed with the division for a violation of
32 this act; and

33 (5) contain clear language that is designed to assist customers
34 and prospective customers in understanding the content of, and how
35 to access, the information made available on the website.

36 f. The division may contract with a public or private entity for
37 the purpose of developing, administering, and maintaining the
38 registry established pursuant to this section. The contract shall
39 specify the duties and responsibilities of the entity with respect to
40 the development, administration, and maintenance of the registry.
41 The division shall monitor the work of the entity to ensure that the
42 registry is developed, administered, and maintained pursuant to the
43 requirements of this act.

44
45 7. a. An Internet service provider that conducts business in this
46 State and that privileges, degrades, prioritizes, or blocks any
47 Internet traffic, except where necessary for reasonable Internet
48 network management, shall provide to all New Jersey customers,

1 upon entering into an agreement for service and annually thereafter,
2 a document containing the following information:

3 (1) the full text of section 4 of this act and the disclosures
4 required pursuant to section 5 of this act, set forth by the division as
5 the “New Jersey Net Neutrality Act”

6 (2) a statement detailing any of the Internet service provider’s
7 policies that may result in the privileging, degrading, prioritizing, or
8 blocking of any Internet traffic;

9 (3) a statement describing any actions regularly taken by the
10 Internet service provider that result in the privileging, degrading,
11 prioritizing, or blocking of any Internet traffic;

12 (4) a full list of content providers that have entered into an
13 agreement with the Internet service provider for the privileging or
14 prioritizing of its Internet traffic; and

15 (5) the network traffic prioritization notification statement,
16 which shall read as follows, “The Internet service you receive has
17 been prioritized by [name of Internet service provider] and
18 therefore, discriminates against non-prioritized content. It is
19 possible that a particular website or content that you wish to view
20 may load more slowly or fail to properly load on your computer or
21 Internet access device as a result of network prioritization.” The
22 Internet service provider shall insert, in place of the name
23 designated by bracketed text above, the name of the company that is
24 contracted to provide Internet service to the customer receiving the
25 notification.

26 b. An Internet service provider offering services to a New
27 Jersey customer that privileges, degrades, prioritizes, or blocks any
28 Internet traffic, except where necessary for reasonable Internet
29 network management, shall include, in a prominent location and in
30 12-point boldface type, the network traffic prioritization
31 notification statement, as required pursuant to subsection a. of this
32 section, in every bill or statement sent to each customer receiving
33 Internet services within New Jersey.

34

35 8. It shall be an unlawful practice and a violation of P.L.1960,
36 c.39 46 (C.56:8-1 et seq.) to violate any provision of this act.

37

38 9. This act shall take effect on the first day of the third month
39 next following the date of enactment, but the Director of the
40 Division of Consumer Affairs may take such anticipatory
41 administrative action in advance thereof as shall be necessary for
42 the implementation of this act.

43

44 STATEMENT

45

46 The bill entitled the “New Jersey Net Neutrality Act,” establishes
47 a system to ensure that all New Jersey customers of Internet Service
48 Providers (ISPs) are able to receive proper Internet service. The

1 bill addresses concerns over the Federal Communications
2 Commission's (FCC) proposed plan to repeal regulations that
3 ensure equal access to the Internet and prevent ISPs from charging
4 customers higher fees or stopping or slowing down Internet service.

5 Under the bill, ISPs are to provide customers access to any
6 lawful Internet content of their choice, the ability to attach any
7 lawful, non-harmful device to their end connection, the ability to
8 run any lawful application or use any lawful service of their choice,
9 and access to an open, neutral and non-prioritized Internet.

10 The bill provides that ISPs provide customers prior written
11 notification of any change in their policies that will result in the
12 prioritization of Internet traffic, except in circumstances involving
13 reasonable Internet network management. ISPs are required to
14 disclose to their customers prioritization policies generally, and any
15 agreement the ISP has entered into with a content provider for the
16 prioritization of the content provider's Internet traffic. ISPs are also
17 required to permit customers to receive itemized bills, and if an ISP
18 charges for accessing particular websites, the bill shall list the time
19 and date the customer accessed those websites.

20 The bill directs the Division of Consumer Affairs (the division)
21 to establish the "New Jersey Internet Service Provider Registry,"
22 and promulgate regulations requiring all ISPs to affirmatively
23 disclose to the division any prioritization policies, agreements with
24 content providers for prioritization, and the material terms for their
25 agreements with their customers, including all fees to be charged
26 and any promises or assertions regarding connectivity speed. The
27 division is also directed to test each ISP's connectivity speed. This
28 information is to be posted online, in an understandable format, so
29 that customers may compare the costs, prioritization policies,
30 promised or asserted connectivity speeds, and actual connectivity
31 speeds of ISPs within the State.

32 A violation of this bill is an unlawful practice under the
33 consumer fraud act, which is punishable by a monetary penalty of
34 not more than \$10,000 for a first offense and not more than \$20,000
35 for a subsequent offense.