



MODEL STATE LEGISLATION

Privacy of broadband internet access service customer personal information

1. PRIVACY OF CUSTOMER PERSONAL INFORMATION. A BIAS Provider shall not use, disclose, sell, or permit access to Customer Personal Information, except as set forth below.
2. CUSTOMER CONSENT.
 - a. A BIAS Provider may use, disclose, sell, or permit access to Customer Personal Information if the BIAS Provider obtains prior Opt-In Consent from the Customer, who may revoke that consent at any time.
 - b. A BIAS Provider shall employ a mechanism for Customers to grant, deny, or withdraw consent that is easy to use, clear, conspicuous, comprehensible, not misleading, persistently available through all methods the BIAS Provider gives Customers for account management, in the language primarily used to conduct business with the Customer, and made available to the Customer for no additional cost.
 - c. A Customer's grant, denial, or withdrawal of consent shall be given effect promptly and remain in effect until the Customer revokes or limits the grant, denial, or withdrawal of consent.
 - d. A BIAS Provider shall not
 - i. refuse to serve a Customer who does not provide consent under this section; or
 - ii. charge a Customer a higher price or offer a Customer a discount or another benefit based on the Customer's decision to provide or not provide consent.
3. EXCEPTIONS.
 - a. A BIAS Provider may use, disclose, sell, or permit access to Customer Personal Information without Customer approval in the following circumstances:
 - i. For the purpose of providing BIAS from which such information is derived or for purposes necessary for the provision of such service;
 - ii. To comply with legal process or other laws, court orders, or administrative orders;
 - iii. To initiate, render, bill for, and collect payment for BIAS;
 - iv. To protect the rights or property of the BIAS Provider or to protect BIAS Customers and other BIAS Providers from fraudulent, abusive, or unlawful use of or subscription to the BIAS Provider's BIAS network;
 - v. To provide location information concerning the Customer

1. to a public safety answering point, emergency medical service provider or emergency dispatch provider, public safety, fire service, or law enforcement official, or hospital emergency or trauma care facility, in order to respond to the Customer's request for emergency services;
 2. to inform the Customer's legal guardian, members of the Customer's family, or to a person reasonably believed by the BIAS Provider to be a close personal friend of the Customer, of the Customer's location in an emergency situation that involves the risk of death or serious injury; or
 3. to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.
- b. Unless otherwise prohibited by state law, a BIAS Provider may use, disclose, sell, or permit access to Customer Personal Information to advertise or market the BIAS Provider's communications-related services to the Customer, provided that the Customer may opt out of that use, disclosure, sale, or access at any time and the BIAS Provider provides notice to the Customer of the right to opt out in accordance with the requirements set forth in Section 6.
4. AGGREGATE CUSTOMER PERSONAL INFORMATION DATASETS. Nothing in this law restricts BIAS Providers from
 - a. generating an Aggregate Customer Personal Information Dataset using Customer Personal Information; or
 - b. using, disclosing, selling, or permitting access to an Aggregate Customer Personal Information Dataset it generated.
5. SECURITY OF CUSTOMER PERSONAL INFORMATION. A BIAS Provider shall implement and maintain reasonable measures to protect Customer Personal Information from unauthorized use, disclosure, sale, access, destruction, or modification.
 - a. Whether security measures are reasonable shall be informed by the following factors:
 - i. The nature and scope of the BIAS Provider's activities;
 - ii. The sensitivity of the data it collects;
 - iii. The size of the BIAS Provider; and
 - iv. The technical feasibility of the measures.
 - b. A BIAS Provider may employ any lawful security measures to comply with the requirement set forth in this section.
 - c. A BIAS Provider shall not retain Customer Personal Information for longer than reasonably necessary to accomplish the purposes for which the information was collected, unless otherwise required by section (3) or unless the data is part of an Aggregate Customer Personal Information Dataset.
6. NOTICE. A BIAS Provider shall provide a clear, prominent, comprehensible, and not misleading notice of the requirements of subsections (1)-(5) to each of its Customers in the language primarily used to conduct business with the Customer at the point of sale

and when seeking Opt-In Consent, and it shall make the notice subsequently and persistently available through all methods the BIAS Provider gives Customers for account management.

- a. The notice required by this section shall also specify and describe, or link to a resource that specifies and describes,
 - i. the types of Customer Personal Information collected, how that information is used by the BIAS Provider, and how long the BIAS Provider retains the data;
 - ii. the circumstances under which the BIAS Provider discloses, sells, or permits access to the information that it collects;
 - iii. the categories of entities to which the BIAS Provider discloses, sells, or permits access to Customer Personal Information, and the purposes for which each category of entity will use the information; and
 - iv. the Customer's right to consent with regard to the use of, disclosure of, sale of, or access to their Customer Personal Information, and how that right may be exercised.
- b. A BIAS Provider shall provide advance notice of Material Changes to how it uses, discloses, sells, or permits access to Customer Personal Information or the notice required under this section and a reminder that a Customer may grant, deny, or withdraw consent at any time in manner that accords with the requirements of this section.
- c. A BIAS Provider shall disclose the Customer Personal Information of the Customer, upon affirmative written request by the Customer, to any person designated by the Customer.

7. DEFINITIONS.

- a. Aggregate Customer Personal Information Dataset:
 - i. Collective data that relates to a group or category of Customers, from which individual Customer identities and characteristics have been removed, and that is not linked or reasonably linkable to any individual person, household, or device.
- b. Broadband Internet Access Service or BIAS:
 - i. A mass-market retail service by wire or radio [States should ensure terminology used here is consistent with prior laws in that state that apply to broadband networks] that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Federal Communications Commission finds to be providing a functional equivalent of the service described in this subsection.
- c. Broadband Internet Access Service Provider or BIAS Provider:
 - i. A person or entity engaged in the provision of BIAS, but only insofar as the person or entity is providing BIAS.
- d. Customer:
 - i. A current or former subscriber to BIAS; and

- ii. An applicant for BIAS.
- e. Customer Personal Information:
 - i. Information collected by a BIAS provider from or about a Customer that is made available to the BIAS Provider by a Customer solely by virtue of the BIAS Provider–Customer relationship, including the following:
 1. name and billing information;
 2. government-issued identifiers, such as Social Security and driver’s license numbers;
 3. other contact information, such as physical address, email address, or phone number;
 4. demographic information, such as date of birth, age, race, ethnicity, nationality, religion, political beliefs, gender, or sexual orientation;
 5. financial information, health information, or information pertaining to children;
 6. geolocation information sufficient to identify street name and name of a city or town;
 7. information that relates to the quantity, technical configuration, type, destination, location, and amount of use of the BIAS, including web browsing history, application usage history, timing of use, quantity of use, and origin and destination Internet Protocol (IP) addresses of all traffic;
 8. content of communications, which includes any part of the substance, purport, or meaning of a communication or any other part of a communication that is highly suggestive of the substance, purpose, or meaning of a communication, and includes application payload;
 9. device identifiers, such as Media Access Control (MAC) address, International Mobile Equipment Identity (IMEI) number, and IP address; and
 10. information concerning a Customer that is collected or made available and is maintained in a way that the information is linked or reasonably linkable to a customer or device.
 - ii. Information related to Customers that has merely had Customer identities and characteristics removed.
- f. “Material Change” means any change that a Customer, acting reasonably under the circumstances, would consider important to the customer’s decisions regarding the customer’s privacy.
- g. “Opt-In Consent” means affirmative, express Customer approval for the requested use, disclosure, sale, or access to the Customer Personal Information after the Customer is provided appropriate notification of its practices under section 6.

8. ENFORCEMENT. [States should decide what type of enforcement to include, such as private right of action, attorney general enforcement, etc.]
9. WAIVER. Any waiver by a Customer of the provisions of this law shall be deemed contrary to public policy and shall be void and unenforceable.
10. APPLICABILITY. The requirements of this law shall apply to BIAS Providers operating within [STATE] when providing BIAS to their Customers that are residents of and physically located in [STATE].
11. SEVERABILITY. The provisions of this law are severable. If any provision of this law or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application. It is the intent of the Legislature that this law would have been adopted regardless of whether an invalid provision had not been included or an invalid application had not been made.
12. AUTHORITY. [STATE] adopts [this law] pursuant to all inherent state authority under the Tenth Amendment of the United States Constitution and all relevant authority granted and preserved to the states by Title 47 of the United States Code. [If states have other authority such as general consumer protection law, add relevant statutes here.]