Amendment to HB 305

Amend the title of the bill by replacing it with the following:

AN ACT clarifying lessee liability for month-to-month leases and relative to the privacy of broadband Internet access service customer personal information.

Amend the bill by inserting after section 1 the following and renumbering the original section 2 to read as 3:

2 New Chapter; Privacy of Broadband Internet Access Service Customer Personal Information.

Amend RSA by inserting after chapter 358-S the following new chapter:

CHAPTER 358-T

PRIVACY OF BROADBAND INTERNET ACCESS SERVICE CUSTOMER PERSONAL INFORMATION

358-T:1 In this chapter:

I. “Broadband Internet access service” or “BIAS” means mass-market retail service by wire or radio 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 paragraph.

II. “Broadband Internet access service provider” or “BIAS provider” means person or entity engaged in the provision of BIAS.

III. "Customer" means:

(a) A current or former subscriber to the broadband Internet access service.

(b) An applicant for a broadband Internet access service.

IV. "Customer personal information" means:

(a) Information about an individual customer, including:

(1) Name.

(2) Financial or billing information.
(3) Social security number.
(4) Billing address.
(5) Demographic data.

(b) Information about an individual customer’s use of the service, including:
(1) Web browsing history.
(2) Application usage history.
(3) Origin and destination Internet Protocol (IP) addresses of all traffic.
(4) Precise geolocation information.
(5) Financial information.
(6) Health information.
(7) Information pertaining to children.
(8) Content of communications.
(9) Device identifier, such as media access control (MAC) address, international mobile equipment identity (IMEI), or IP address.

358-T:2 Privacy of Customer Personal Information. A BIAS provider shall not use, disclose, sell, or permit access to customer personal information, except as set forth in RSA 358-T:3 and RSA 358-T:4.

358-T:3 Customer Consent Exceptions.
I. A BIAS provider shall comply with RSA 358-T:2 unless the customer first gives the provider express, affirmative consent, which may be revoked at any time.

II. A BIAS provider shall not:
(a) Refuse to serve a customer who does not provide consent under paragraph I; or
(b) Charge a customer a penalty or offer a customer a discount based on the customer’s decision to provide or not provide consent under paragraph I.

III. BIAS providers may by default use, disclose, sell, or permit access to information they collect that is not defined as “customer personal information” and is not otherwise excepted under RSA 358-T:4. BIAS customers shall have the option to revoke consent for a BIAS provider to use, disclose, sell, or permit access to information under this paragraph.

358-T:4 Other Exceptions. Notwithstanding the limitations set forth in RSA 358-T:2 and RSA 358-T:3, a BIAS provider may collect, create, retain, use, disclose, sell, and/or permit access to customer personal information, without customer approval:
I. For the purpose of providing the service from which such information is derived, or services necessary to the provision of such service.

II. To advertise or market the BIAS provider’s communications-related services to the customer.

III. To comply with a lawful subpoena, administrative order, or court order.

IV. To initiate, render, bill for, and collect for Internet service.
V. To protect the rights or property of the carrier, or to protect users of those services and
other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services.

VI. To provide location information concerning the customer:

(a) To a public safety answering point, emergency medical service provider or
emergency dispatch provider, public safety, fire or law enforcement official, or hospital emergency
or trauma care facility, in order to respond to the user’s call for emergency services;

(b) To inform the user’s legal guardian or members of the user’s immediate family of the
user’s location in an emergency situation that involves the risk of death or serious physical harm; or

(c) To providers of information or database management services solely for purposes of
assisting in the delivery of emergency services in response to an emergency.

VII. To use, disclose, sell, or permit access to an aggregate dataset, from which individual
customer identities and characteristics have been removed, with an agreement from all downstream
recipients and users that no attempt will be made to link an individual customer to the aggregate
dataset.

358-T:5 Security of Customer Personal Information.

I. A BIAS provider shall take reasonable measures to protect customer personal
information from unauthorized use, disclosure, or access.

II. BIAS providers, in implementing security measures required by this section, shall take
into account each of the following factors:

(a) The nature and scope of the provider’s activities.

(b) The sensitivity of the data it collects.

(c) The size of the BIAS provider.

(d) The technical feasibility of the measures.

III. A BIAS provider may employ any lawful security measures that allow it to comply with
the requirement set forth in this section.

358-T:6 Notice Required. A BIAS provider shall provide a clear, conspicuous, and non-
deceptive notice at the point of sale and on its website of the requirements of RSA 358-T:2 through
358-T:5 to each of its customers. The notice shall be a document separate from any other document,
such as a privacy statement, and any commentary on a customer’s rights and/or options shall be
impartial.

358-T:7 Applicability. The requirements of this chapter shall apply to BIAS providers
operating within New Hampshire when providing BIAS to their customers that are residents of and
physically located in New Hampshire.

358-T:8 Remedies. Any violation of the provisions of this chapter is an unfair or deceptive act
or practice within the meaning of RSA 358-A:2. Any right, remedy, or power set forth in RSA 358-A
may be used to enforce the provisions of this chapter.
AMENDED ANALYSIS

This bill:

I. Clarifies lessee liability for rent when the notice of termination does not coincide with the rent due date in a tenancy at will.

II. Prohibits, with limited exceptions, a broadband Internet access service provider from disclosing or selling a customer's personal information.