

FIRST REGULAR SESSION

HOUSE BILL NO. 391

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

0986H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto three new sections relating to internet provider practices.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto three new sections, to be known as sections 407.1145, 407.1146, and 407.1147, to read as follows:

407.1145. As used in sections 407.1145 to 407.1147, the following terms mean:

- (1) "Broadband internet access service", a 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, but not limited to, capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. The term shall also encompass any service that the Federal Communications Commission finds to be providing a functional equivalent of the service described in this subdivision or that is used to evade the protections set forth in this section;**
- (2) "Edge provider", any individual or entity that provides any content, application, or service over the internet and any individual or entity that provides a device used for accessing any content, application, or service over the internet;**
- (3) "End user", any individual or entity that uses a broadband internet access service;**
- (4) "Mobile broadband internet access service", a broadband internet service that serves end users primarily using mobile stations;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **(5) "Paid prioritization", the management of a broadband provider's network to**
18 **directly or indirectly favor some traffic over other traffic including, but not limited to,**
19 **through the use of techniques such as traffic shaping, prioritization, resource reservation,**
20 **or other forms of preferential traffic management and the broadband provider does so**
21 **either:**

22 **(a) In exchange for consideration, monetary or otherwise, from a third party; or**

23 **(b) To benefit an affiliated entity;**

24 **(6) "Reasonable network management", a practice that has a primarily technical**
25 **network management justification but does not include other business practices. A**
26 **network management practice is reasonable if it is primarily used for and tailored to**
27 **achieving a legitimate network management purpose, taking into account the particular**
28 **network architecture and technology of the broadband internet access service.**

407.1146. 1. A provider of broadband internet access service in this state shall
2 **publicly disclose accurate information regarding the network management practices,**
3 **performance, and commercial terms of its broadband internet access services sufficient for**
4 **consumers to make informed choices regarding use of such services and for content,**
5 **application, service, and device providers to develop, market, and maintain internet**
6 **offerings.**

7 **2. A provider of broadband internet access service in this state shall not:**

8 **(1) Block lawful content, applications, services, or nonharmful devices, subject to**
9 **reasonable network management;**

10 **(2) Impair or degrade lawful internet traffic on the basis of internet content,**
11 **application, or service, or use of a nonharmful device, subject to reasonable network**
12 **management;**

13 **(3) Engage in paid prioritization; or**

14 **(4) Unreasonably interfere with or unreasonably disadvantage:**

15 **(a) An end user's ability to select, access, and use broadband internet access service**
16 **or the lawful internet content, applications, services, or devices of the end user's choice;**
17 **or**

18 **(b) An edge provider's ability to make lawful content, applications, services, or**
19 **devices available to end users.**

20 **3. The public service commission may waive the prohibition of paid prioritization**
21 **in subdivision (3) of subsection 2 of this section only if the petitioner demonstrates that the**
22 **practice shall provide some significant public interest benefit and shall not harm the open**
23 **nature of the internet in this state.**

407.1147. 1. The attorney general is authorized to take all necessary action to enforce the provisions of sections 407.1145 to 407.1147. The attorney general may initiate proceedings relating to a knowing violation of sections 407.1145 to 407.1147. Such proceedings may include an injunction, a civil penalty up to a maximum of five thousand dollars for each known violation, not to exceed twenty-five thousand dollars per day, in any court of competent jurisdiction. The attorney general may issue investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of sections 407.1145 to 407.1147.

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates sections 407.1145 to 407.1147 shall be subject to all penalties, remedies, and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law. Any civil penalties recovered under this section shall be credited to the merchandising practices revolving fund established under section 407.140.

3. A court of this state may exercise personal jurisdiction over any nonresident or the nonresident's executor or administrator as to an action or proceeding authorized by this section in the manner otherwise provided by law.

4. A violation of sections 407.1145 to 407.1147 shall not be reasonable in relation to the development and preservation of business and shall be an unfair or deceptive act in trade or commerce and an unfair method of competition.

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