

FIRST REGULAR SESSION

# HOUSE BILL NO. 391

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ELLEBRACHT.

0986H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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*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:**

- 2           **(1) "Broadband internet access service", a mass-market retail service by wire or**  
3 **radio that provides the capability to transmit data to and receive data from all or**  
4 **substantially all internet endpoints including, but not limited to, capabilities that are**  
5 **incidental to and enable the operation of the communications service, but excluding dial-up**  
6 **internet access service. The term shall also encompass any service that the Federal**  
7 **Communications Commission finds to be providing a functional equivalent of the service**  
8 **described in this subdivision or that is used to evade the protections set forth in this**  
9 **section;**
- 10           **(2) "Edge provider", any individual or entity that provides any content,**  
11 **application, or service over the internet and any individual or entity that provides a device**  
12 **used for accessing any content, application, or service over the internet;**
- 13           **(3) "End user", any individual or entity that uses a broadband internet access**  
14 **service;**
- 15           **(4) "Mobile broadband internet access service", a broadband internet service that**  
16 **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.**

2           **407.1147. 1. The attorney general is authorized to take all necessary action to**  
3 **enforce the provisions of sections 407.1145 to 407.1147. The attorney general may initiate**  
4 **proceedings relating to a knowing violation of sections 407.1145 to 407.1147. Such**  
5 **proceedings may include an injunction, a civil penalty up to a maximum of five thousand**  
6 **dollars for each known violation, not to exceed twenty-five thousand dollars per day, in any**  
7 **court of competent jurisdiction. The attorney general may issue investigative demands,**  
8 **issue subpoenas, administer oaths, and conduct hearings in the course of investigating a**  
9 **violation of sections 407.1145 to 407.1147.**

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

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

19           **4. A violation of sections 407.1145 to 407.1147 shall not be reasonable in relation**  
20 **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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