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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. **136**

- 01/17/2019 Authored by Stephenson; Halverson; Mahoney; Xiong, J.; Lillie and others
The bill was read for the first time and referred to the Committee on Commerce
- 02/18/2019 Adoption of Report: Amended and re-referred to the Committee on Government Operations
- 03/11/2019 Adoption of Report: Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act

1.2 relating to broadband service; prohibiting certain activities by Internet service

1.3 providers serving Minnesota customers and those under contract to the state or

1.4 political subdivisions; authorizing monetary fines; proposing coding for new law

1.5 in Minnesota Statutes, chapters 16C; 325F.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. **16C.57] CONTRACTS FOR INTERNET SERVICE; ADHERENCE TO**

1.8 **NET NEUTRALITY.**

1.9 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have

1.10 the meanings given in this subdivision.

1.11 (b) "Broadband Internet access service" means:

1.12 (1) a mass-market retail service by wire or radio that provides the capability, including

1.13 any capability that is incidental to and enables the operation of the communications service,

1.14 to transmit data to and receive data from all or substantially all Internet endpoints;

1.15 (2) any service that provides a functional equivalent of the service described in clause

1.16 (1); or

1.17 (3) any service that is used to evade the protections set forth in this section.

1.18 "Broadband Internet access service" includes service that serves end users at fixed endpoints

1.19 using stationary equipment or end users using mobile stations but does not include dial-up

1.20 Internet access service.

1.21 (c) "Edge provider" means any person or entity that provides (1) any content, application,

1.22 or service over the Internet, or (2) a device used to access any content, application, or service

2.1 over the Internet, but does not include a person or entity providing obscene material, as
2.2 defined by section 617.241.

2.3 (d) "Internet service provider" means a business that provides broadband Internet access
2.4 service to a customer in Minnesota.

2.5 (e) "Paid prioritization" means the management of an Internet service provider's network
2.6 to directly or indirectly favor some traffic over other traffic (1) in exchange for monetary
2.7 or other consideration from a third party, or (2) to benefit an affiliated entity.

2.8 Subd. 2. **Purchasing or funding broadband Internet access services; prohibitions.** A
2.9 state agency or political subdivision is prohibited from entering into a contract or providing
2.10 funding for the purchase of broadband Internet access service after August 1, 2019, that
2.11 does not contain:

2.12 (1) a binding agreement in which the Internet service provider certifies to the
2.13 commissioner of commerce that the Internet service provider will not engage in any of the
2.14 following activities with respect to any of its Minnesota customers:

2.15 (i) block lawful content, applications, services, or nonharmful devices, subject to
2.16 reasonable network management;

2.17 (ii) impair, impede, or degrade lawful Internet traffic on the basis of Internet content,
2.18 application, or service, or use of a nonharmful device, subject to reasonable network
2.19 management;

2.20 (iii) engage in paid prioritization;

2.21 (iv) unreasonably interfere with or unreasonably disadvantage:

2.22 (A) a customer's ability to select, access, and use broadband Internet service or lawful
2.23 Internet content, applications, services, or devices of the customer's choice; or

2.24 (B) an edge provider's ability to provide lawful Internet content, applications, services,
2.25 or devices to a customer, except that an Internet service provider may block content if the
2.26 edge provider charges or intends to charge a fee to the Internet service provider for the
2.27 content; or

2.28 (v) engage in deceptive or misleading marketing practices that misrepresent the treatment
2.29 of Internet traffic or content; and

2.30 (2) provisions requiring the state agency or political subdivision, upon determining the
2.31 Internet service provider has violated the binding agreement under clause (1), to unilaterally
2.32 terminate the contract for broadband Internet access service and require the Internet service

3.1 provider to remunerate the state agency or political subdivision for all revenues earned
 3.2 under the contract during the period when the violation occurred.

3.3 Subd. 3. **Other laws.** Nothing in this section supersedes any obligation or authorization
 3.4 an Internet service provider may have to address the needs of emergency communications
 3.5 or law enforcement, public safety, or national security authorities, consistent with or as
 3.6 permitted by applicable law, or limits the provider's ability to do so.

3.7 Subd. 4. **Exception.** This section does not apply to a state agency or political subdivision
 3.8 that purchases or funds fixed broadband Internet access services in a geographic location
 3.9 where broadband Internet access services are only available from a single Internet service
 3.10 provider.

3.11 Subd. 5. **Enforcement.** A violation of the certification provided under subdivision 2
 3.12 must be enforced by the commissioner of commerce. Any Internet service provider who
 3.13 materially or repeatedly violates this section is subject to a fine of not more than \$1,000 for
 3.14 each violation. A fine authorized by this section may be imposed by the commissioner,
 3.15 through a civil action brought by the commissioner under section 45.027, or by the attorney
 3.16 general under section 8.31 on behalf of the state of Minnesota, and shall be deposited into
 3.17 the state treasury.

3.18 **Sec. 2. [325F.6945] INTERNET SERVICE PROVIDERS; PROHIBITED ACTIONS.**

3.19 Subdivision 1. **Definitions.** The definitions in section 16C.57 apply to this section.

3.20 Subd. 2. **Prohibited actions.** An Internet service provider is prohibited from engaging
 3.21 in any of the following activities with respect to any of its Minnesota customers:

3.22 (1) block lawful content, applications, services, or nonharmful devices, subject to
 3.23 reasonable network management;

3.24 (2) impair, impede, or degrade lawful Internet traffic on the basis of Internet content,
 3.25 application, or service, or use of a nonharmful device, subject to reasonable network
 3.26 management;

3.27 (3) engage in paid prioritization;

3.28 (4) unreasonably interfere with or unreasonably disadvantage:

3.29 (i) a customer's ability to select, access, and use broadband Internet service or lawful
 3.30 Internet content, applications, services, or devices of the customer's choice; or

3.31 (ii) an edge provider's ability to provide lawful Internet content, applications, services,
 3.32 or devices to a customer; or

4.1 (5) engage in deceptive or misleading marketing practices that misrepresent the treatment
4.2 of Internet traffic or content.

4.3 Subd. 3. **Certification required.** Prior to offering service to a customer in Minnesota,
4.4 or prior to August 1, 2019, for Internet service providers already offering services to
4.5 customers in Minnesota, an Internet service provider must file a document with the
4.6 commissioner of commerce certifying that it will not engage in any of the activities prohibited
4.7 under subdivision 2. The filing required by this subdivision must be provided prior to
4.8 offering services for the first time in Minnesota, and at any time after a company or entity
4.9 has changed ownership or merged with another entity, or prior to offering services in the
4.10 state after the company has suspended service for more than 30 days, but is not required to
4.11 make filings on an annual basis.

4.12 Subd. 4. **Other laws.** Nothing in this section supersedes any obligation or authorization
4.13 an Internet service provider may have to address the needs of emergency communications
4.14 or law enforcement, public safety, or national security authorities, consistent with or as
4.15 permitted by applicable law, or limits the provider's ability to do so.

4.16 Subd. 5. **Enforcement.** (a) A violation of subdivision 2 may be enforced by the
4.17 commissioner of commerce under section 45.027 and by the attorney general under section
4.18 8.31. The venue for enforcement proceedings is Ramsey County.

4.19 (b) A violation of the certification provided under subdivision 3 must be enforced under
4.20 section 609.48. The venue for enforcement proceedings is Ramsey County.