

SECOND REGULAR SESSION

HOUSE BILL NO. 1798

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ZERR.

5245H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 144, RSMo, by adding thereto one new section relating to internet access taxation, with an emergency clause.

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

Section A. Chapter 144, RSMo, is amended by adding thereto one new section, to be
2 known as section 144.820, to read as follows:

144.820. 1. As used in this section, the following terms mean:

2 **(1) "Direct costs", costs incurred by a governmental authority solely because of an**
3 **internet service provider's use of the public right-of-way. The term shall not include costs**
4 **that the governmental authority would have incurred if the internet service provider did**
5 **not make such use of the public right-of-way. Direct costs shall be determined in a manner**
6 **consistent with generally accepted accounting principles.**

7 **(2) "Internet", the myriad of computer and telecommunications facilities, including**
8 **equipment and operating software, that comprises the interconnected worldwide network**
9 **of networks that employ the Transmission Control Protocol/Internet Protocol or any**
10 **predecessor or successor protocols to that protocol to communicate information of all kinds**
11 **by wire or radio;**

12 **(3) "Internet access", a service that enables users to connect to the internet to**
13 **access content, information, or other services offered over the internet, without regard to**
14 **whether the service is referred to telecommunications, communications, transmission, or**
15 **similar services and without regard to whether a provider of the service is subject to**
16 **regulation by the Federal Communications Commission as a common carrier under 47**
17 **U.S.C. Section 201 et seq. The term "internet access" shall include:**

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.

18 **(a) The purchase, use, or sale of communications services, including**
19 **telecommunications services as defined under subdivision 14 of subsection 1 of section**
20 **144.010, by a provider of a service described under this subdivision to the extent that such**
21 **communications services are purchased, used, or sold to provide the services described**
22 **under this subdivision or to otherwise enable users to access content, information, or other**
23 **services offered over the internet;**

24 **(b) Services that are incidental to the provision of a service described under this**
25 **subdivision if furnished to users as part of such service including a home page; electronic**
26 **mail and instant messaging, which includes voice-capable and video-capable electronic**
27 **mail and instant messaging; video clips; and personal electronic storage capacity;**

28 **(c) A home page; electronic mail and instant messaging, which includes**
29 **voice-capable and video-capable electronic mail and instant messaging; video clips; and**
30 **personal electronic storage capacity that are provided independently or that are not**
31 **packaged with internet access.**

32

33 **The term "internet access" shall not include voice, audio, or video programming or other**
34 **products and services that use Internet Protocol or any successor protocol, except for such**
35 **services as described as included in the definition under this subsection, and for which**
36 **there is a charge, regardless of whether the charge is stated separately from or aggregated**
37 **with the charge for the other services described under this subdivision;**

38 **(4) "Tax", any charge imposed by the state or a political subdivision of the state for**
39 **the purpose of generating revenues for governmental purposes and that is not a fee**
40 **imposed for a specific privilege, service, or benefit conferred, except as described as**
41 **otherwise under this subdivision, or any obligation imposed on a seller to collect and to**
42 **remit to the state or a political subdivision of the state any gross retail tax, sales tax, or use**
43 **tax imposed on a buyer by such a governmental entity. The term "tax" shall not include**
44 **any franchise fee or similar fee imposed or authorized under sections 67.1830 or 67.2689;**
45 **sections 622 or 653 of the Communications Act of 1934, 47 U.S.C. Section 542 and 47**
46 **U.S.C. Section 573; or any other fee related to obligations or telecommunications carriers**
47 **under the Communications Act of 1934, 47 U.S.C. Section 151 et seq., except to the extent**
48 **that:**

49 **(a) The fee is not imposed for the purpose of recovering direct costs incurred by the**
50 **franchising or other governmental authority from providing the specific privilege, service,**
51 **or benefit conferred to the payer of the fee; or**

52 **(b) The fee is imposed for the use of a public right-of-way based on a percentage**
53 **of the service revenue, and the fee exceeds the incremental direct costs incurred by the**

54 **governmental authority associated with the provision of that right-of-way to the provider**
55 **of internet access service;**

56 **(5) "Tax on internet access or the use of internet access", a tax on internet access**
57 **or any use of internet access, regardless of whether the tax is imposed on a provider of**
58 **internet access or a buyer of internet access and regardless of the terminology used to**
59 **describe the tax. The term shall not include a tax levied upon or measured by net income,**
60 **capital stock, net worth, or property value.**

61 **2. The state, any county, municipal corporation, political subdivision, state**
62 **department, commission, board, or bureau or agency of the state shall not impose, assess,**
63 **collect, or attempt to collect a tax on internet access or the use of internet access.**

Section B. Because immediate action is necessary to ensure the people of this state have
2 internet access, which affects and facilitates nearly all aspects of modern life including business,
3 communication, education, government, and healthcare, section A of this act is deemed
4 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is
5 hereby declared to be an emergency act within the meaning of the constitution, and section A of
6 this act shall be in full force and effect on July 1, 2016.

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