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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4186

02/22/2024 Authored by Freiberg, Pursell, Bahner, Vang, Hemmingsen-Jaeger and others
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to telecommunications; imposing a public, educational, or governmental
1.3 programming fee on certain digital video service providers; providing penalties;
1.4 proposing coding for new law in Minnesota Statutes, chapter 238.

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

1.6 Section 1. [238.095] DIGITAL VIDEO SERVICE PROVIDERS; PEG
1.7 PROGRAMMING FEES.

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

1.10 (b) "Digital entertainment service" means a paid service that: (1) provides audio, video,
1.11 or computer-generated or computer-augmented entertainment; and (2) delivers the
1.12 entertainment to a subscriber without regard to delivery technology.

1.13 (c) "Digital video service provider" means a person that sells, delivers, or provides digital
1.14 entertainment service to a subscriber in Minnesota by sending the media directly through
1.15 an Internet-connected device. Digital video service provider includes a direct broadcast
1.16 satellite service provider, even if the direct broadcast satellite service provider does not use
1.17 Internet-connected devices to deliver the digital entertainment service. Digital video service
1.18 provider does not include: (1) except as provided in subdivision 3, a cable communication
1.19 system; (2) cable service, as defined under United States Code, title 47, section 522(6); or
1.20 (3) any video programming provided (i) by a commercial mobile service provider defined
1.21 under United States Code, title 47, section 332(d); or (ii) solely as part of and via a service
1.22 that enables a user to access content, information, electronic mail, or other services offered
1.23 over the Internet.

2.1 (d) "Direct broadcast satellite service" has the meaning given in Code of Federal
2.2 Regulations, title 25, part 103.

2.3 (e) "Gross revenues" means all revenue received directly or indirectly by a digital video
2.4 service provider that arise from, are attributable to, or in any way are derived from selling,
2.5 delivering, or providing digital entertainment service to a subscriber residing within
2.6 Minnesota or a local unit of government, as applicable, during a single calendar year. Gross
2.7 revenues do not include bad debts, investment income, refunded deposits, or any taxes on
2.8 services furnished by a digital video service provider and imposed directly upon a subscriber
2.9 by a local, state, federal, or other governmental unit.

2.10 (f) "Local unit of government" means a city, county, township, commission, district,
2.11 authority, or other political subdivision or instrumentality of Minnesota. Local unit of
2.12 government includes a joint powers commission and a local public, educational, or
2.13 governmental programming organization.

2.14 (g) "Public, educational, or governmental programming" or "PEG programming" means
2.15 a public access facility, as defined under United States Code, title 47, section 522, that is
2.16 provided in accordance with United States Code, title 47, section 531.

2.17 (h) "Subscriber" means a person who: (1) receives digital entertainment service from a
2.18 digital video service provider; and (2) does not further distribute the digital entertainment
2.19 service in the ordinary course of business.

2.20 **Subd. 2. PEG programming fees authorized.** (a) A local unit of government must
2.21 impose a PEG programming fee on a digital video service provider that sells, delivers, or
2.22 provides digital entertainment service within the local unit of government's jurisdiction.

2.23 (b) A PEG programming fee assessed under this section equals five percent of the digital
2.24 video service provider's gross revenues that directly or indirectly arise from, are attributable
2.25 to, or are in any way derived from digital entertainment services sold, delivered, or provided
2.26 to subscribers that reside within the assessing local unit of government. The assessment
2.27 authorized in this section is for each year or portion of each year that the digital video service
2.28 provider sells, delivers, or provides digital entertainment service to subscribers that reside
2.29 within the local unit of government.

2.30 (c) A digital video service provider must pay the PEG programming fee assessment
2.31 under this section directly to the applicable local unit of government 45 days after the date
2.32 the calendar quarter closes. In addition to the PEG programming fees assessment, the digital
2.33 video service provider must submit a report that documents the information used to calculate
2.34 the quarterly payment.

3.1 (d) A digital video service provider may, but is not required to, itemize the costs
3.2 associated with a PEG programming fee on a subscriber's bill. If a digital video service
3.3 provider itemizes the PEG programming fee on a subscriber's bill, the amount itemized
3.4 must be labeled accurately and reflect the exact amount of the digital video service provider's
3.5 PEG programming fee that is attributable to the particular subscriber.

3.6 (e) For purposes of this section, a subscriber resides within a local unit of government
3.7 if the subscriber's billing address is located within a zip code that the local unit of government
3.8 has jurisdiction over.

3.9 Subd. 3. **Cable communication systems.** A cable communications system that sells,
3.10 delivers, or provides digital entertainment service that are not included in the franchise fees
3.11 that the cable communications system pays under a contract executed with a local unit of
3.12 government pursuant to this chapter must pay the PEG programming fees authorized under
3.13 subdivision 2. A cable communication system subject to this subdivision is required to pay
3.14 PEG programming fees under subdivision 2 only for the digital entertainment service the
3.15 cable communication system sells, delivers, or provides to subscribers in Minnesota that
3.16 are not included in the franchise fees that the cable communication system pays under a
3.17 contract executed with a local unit of government pursuant to this chapter.

3.18 Subd. 4. **PEG programming fees; use; documentation.** (a) PEG programming fees
3.19 collected under this section may be used by the collecting local unit of government for
3.20 capital or operating expenses associated with PEG programming and, at the discretion of
3.21 the local unit of government, may be used to address unique local community needs and
3.22 interests relating to local public, education, and government communications technology.

3.23 (b) A local unit of government must document how PEG programming fees collected
3.24 under this section are used. The documentation must be created and maintained in a manner
3.25 consistent with the standards and guidance issued by the Governmental Accounting Standards
3.26 Board.

3.27 Subd. 5. **Digital video service provider record keeping.** (a) A digital video service
3.28 provider subject to this section must maintain records regarding the sale, delivery, and
3.29 provision of digital entertainment service in Minnesota. At a minimum, the records must
3.30 include: (1) the digital video service provider's gross revenues received that directly or
3.31 indirectly arise from, are attributable to, or in any way are derived from selling, delivering,
3.32 or providing digital entertainment service to subscribers in Minnesota each year; (2) PEG
3.33 programming fees paid to all local units of government in Minnesota each year; and (3) the
3.34 reports submitted to local units of government under subdivision 2, paragraph (c). The

4.1 records must be maintained for the period of time specified under section 541.05, subdivision
4.2 1.

4.3 (b) A digital video service provider subject to this section is subject to an audit of gross
4.4 revenues and PEG programming fees remitted under subdivision 2. An audit under this
4.5 paragraph may be conducted by the local unit of government or the local unit of government's
4.6 agent only to determine any overpayment or underpayment of the digital video service
4.7 provider's payment of PEG programming fees to the local unit of government.

4.8 Subd. 6. **Enforcement; penalties.** (a) Except as provided in paragraph (b), a digital
4.9 video service provider that fails to remit PEG programming fees to a local unit of government
4.10 under subdivision 2 within 30 days of the deadline established under subdivision 2 is assessed
4.11 a monetary penalty in an amount equal to two percent of the gross revenues derived from
4.12 or pertaining to selling, delivering, or providing digital entertainment service to subscribers
4.13 residing in the local unit of government during the reporting period. An additional penalty
4.14 of up to one percent may be assessed for each subsequent 30-day period a digital video
4.15 service provider fails to remit the assessment due, up to a total cumulative monetary penalty
4.16 of five percent under this paragraph. A monetary penalty or late fees assessed under this
4.17 subdivision must be remitted directly to the local unit of government that is owed the PEG
4.18 programming fees under subdivision 2.

4.19 (b) A digital video service provider that fraudulently fails to remit in full the programming
4.20 fees to a local unit of government under subdivision 2 within 30 days of the deadline
4.21 established under subdivision 2 may be assessed a monetary penalty in an amount up to
4.22 100 percent of the gross revenues derived from or pertaining to selling, delivering, or
4.23 providing digital entertainment service to subscribers residing in the local unit of government
4.24 during the reporting period. A monetary penalty assessed under this subdivision must be
4.25 remitted directly to the local unit of government that is owed the PEG programming fees
4.26 under subdivision 2.

4.27 (c) A digital video service provider that fails to make available for audit the records
4.28 required under subdivision 5 within 30 days of the deadline established under subdivision
4.29 4 is assessed a monetary penalty in an amount equal to one percent of the gross revenues
4.30 derived from or pertaining to selling, delivering, or providing digital entertainment service
4.31 to subscribers residing in Minnesota during the reporting period. An additional one percent
4.32 penalty may be assessed for each subsequent 30-day period a digital video service provider
4.33 fails to submit the report, up to a total cumulative monetary penalty of five percent under
4.34 this paragraph. A monetary penalty assessed under this paragraph must be remitted directly

5.1 to the local unit of government that is owed the PEG programming fees under subdivision
5.2 2.

5.3 (d) In addition to the remedies under paragraphs (a) to (c), a local unit of government
5.4 adversely impacted by the action, or failure to act, of a digital video service provider under
5.5 this section may, within seven years of the subject action or inaction, bring an action to
5.6 recover any unpaid assessments and monetary penalties, or enjoin the operations of any
5.7 noncompliant digital video service provider, in a court of competent jurisdiction.

5.8 (e) In addition to the remedies under paragraphs (a) to (d), the attorney general may
5.9 enforce this section under section 8.31. An action taken under this paragraph is in the public
5.10 interest.

5.11 Subd. 7. **Exemption; limitations.** (a) This section does not apply to a digital video
5.12 service provider that earned less than \$250,000 in gross revenues from providing digital
5.13 entertainment service to subscribers in Minnesota during the previous calendar year.

5.14 (b) Nothing in this section affects the authority of the state, a local unit of government,
5.15 or an instrument of the state or local unit of government with respect to the ownership and
5.16 control of public property or public rights-of-way.

5.17 (c) A department or agency of the state or a local unit of government does not have the
5.18 authority to regulate the rates charged by a digital video service provider.

5.19 (d) Nothing in this section exempts a digital video service provider from paying a tax
5.20 or fee, including but not limited to a tax or fee that is or may later be required to be paid by
5.21 or through the digital video service provider with respect to the provision of any
5.22 communications service, that is or may later be imposed by the local unit of government.

5.23 (e) A digital video service provider is not otherwise subject to regulation under this
5.24 chapter solely as a result of being subject to this section.