

## HOUSE BILL No. 2168

By Committee on Utilities

1-25

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AN ACT concerning broadband internet access transport services; requiring cable operators to provide certain access to such services; providing remedies for violations.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. As used in this act:

(a) "Access" means the ability to make a physical connection to cable operator's facilities at any place where a cable operator exchanges consumer data with any internet service provider, or at any other technically feasible point selected by the requesting internet service provider, so as to enable consumers to exchange data over such facilities with the consumers' chosen internet service provider.

(b) "Affiliate" means a person who, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with another person. For purposes of this definition, "own" means to own:

(1) An equity or other financial interest, or the equivalent thereof, of more than 10%; or

(2) any management interest.

(c) "Broadband" means having a capacity in excess of 200 kilobits per second.

(d) "Broadband internet access transport services" means the broadband transmission of data between a user and the user's internet service provider's point of interconnection with the broadband internet access transport provider's facilities.

(e) "Cable operator" has the meaning provided in 47 U.S.C. 522(5), as in effect on the effective date of this act.

(f) "Cable service" has the meaning provided in 47 U.S.C. 522(7) as in effect on the effective date if this act.

(g) "Franchise" has the meaning provided in 47 U.S.C. 522(9), as in effect on the effective date of this act.

(h) "Franchising authority" has the meaning provided in 47 U.S.C. 522(10), as in effect on the effective date of this act.

(i) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software,

1 which comprise the interconnected worldwide network of networks that  
2 employ the transmission control protocol/internet protocol, or any pred-  
3 ecessor or successor protocols to such protocol, to communicate infor-  
4 mation of all kinds by wire or radio.

5 (j) "Internet service provider" means a person who provides a service  
6 that enables users to access content, information, electronic mail or other  
7 services offered over the internet.

8 Sec. 2. (a) Each cable operator holding a franchise to provide cable  
9 service shall provide any requesting internet service provider access to  
10 the cable operator's broadband internet access transport services, unbun-  
11 dled from the provision of content, on rates, terms and conditions that  
12 are at least as favorable as those on which it provides such access to itself,  
13 to its affiliates or to any other person. Such access shall be provided at  
14 any technically feasible point selected by the requesting internet service  
15 provider. Except as otherwise specifically required by law, such cable  
16 operator shall not restrict the content of information that a consumer may  
17 receive over the internet. These requirements shall apply to each cable  
18 operator and to any other entity to which the cable operator's franchise  
19 may be transferred, assigned or granted or which may otherwise exercise  
20 rights under such cable operator's franchise.

21 (b) If a cable operator providing broadband internet access transport  
22 services is or shall become subject to more extensive or different access  
23 requirements with respect to the provision of broadband internet access  
24 transport services imposed by or agreed upon with any other jurisdiction  
25 in the United States, any requesting internet service provider, at its op-  
26 tion, may require such cable operator to comply with such other require-  
27 ments in lieu of subsection (a). In such event, nothing shall alter the  
28 applicability of sections 3, 4 and 5, and amendments thereto.

29 Sec. 3. Any internet service provider who has been denied access to  
30 a cable operator's broadband internet access transport services in violation  
31 of section 2, and amendments thereto, has a private cause of action to  
32 enforce rights in accordance with those provisions and to seek all other  
33 appropriate relief, including, without limitation, injunctive relief and  
34 monetary damages. In such an action, the prevailing party shall be entitled  
35 to recover its reasonable costs, expenses and attorney fees from the losing  
36 party. The "prevailing party" means the party determined by the court to  
37 have most nearly prevailed as a matter of law, not necessarily the party  
38 in whose favor judgment may be entered.

39 Sec. 4. A violation of section 2, and amendments thereto, shall ren-  
40 der the violator liable for a civil penalty of \$50,000 for each day the  
41 violation continues, not to exceed \$10,000,000. Such civil penalty shall be  
42 recoverable in an individual action brought by the internet service pro-  
43 vider or the attorney general. In an action under this section, the internet

1 service provider or attorney general may recover reasonable expenses and  
2 investigation fees, as determined by the court. Civil penalties sued for  
3 and recovered by the attorney general under this section shall be paid  
4 into the state general fund.

5 Sec. 5. In addition to any other penalty, remedy or enforcement  
6 measures provided for by federal, state or local law, the attorney general  
7 or a franchising authority may bring an action to enforce the requirements  
8 of section 2, and amendments thereto, and to seek all appropriate relief,  
9 including, without limitation, injunctive relief. In addition, at its option,  
10 a franchising authority may require the cable operator and any requesting  
11 internet service provider to submit to mediation or binding arbitration,  
12 or both.

13 Sec. 6. This act shall take effect and be in force from and after its  
14 publication in the statute book.

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