

FIRST REGULAR SESSION

# HOUSE BILL NO. 856

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE DEATON.

0772H.021

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapters 70 and 407, RSMo, by adding thereto two new sections relating to the permissible conduct of certain businesses.

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

Section A. Chapters 70 and 407, RSMo, are amended by adding thereto two new sections, to be known as sections 70.221 and 407.312, to read as follows:

**70.221. 1. Any entity, regardless of how it is currently incorporated, that was initially formed under section 70.220 that exceeds its initial purpose and contracts or provides a service to any individual, entity, municipality, or political subdivision other than those political subdivisions for which it was initially formed shall be treated as a for-profit corporation under chapter 351 and shall be subject to all laws and taxes applicable to a for-profit corporation. Such forms of current incorporation shall include, but not be limited to, for-profit corporations, not-for-profit corporations, limited liability companies, limited partnerships, limited liability partnerships, and cooperative associations.**

**2. Any person who believes an entity is violating subsection 1 of this section may report the alleged violation to the department of revenue.**

**3. The department of revenue shall investigate any report under subsection 2 of this section and may investigate any entity the department suspects is violating subsection 1 of this section. If the department determines an entity is violating subsection 1 of this section, the department shall immediately send notification to the entity. The entity shall have thirty days to bring its activities into compliance with subsection 1 of this section and provide the department with proof thereof. If the department does not receive satisfactory proof the entity is in compliance, the department shall:**

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           **(1) If the entity is registered as a not-for-profit corporation, instruct the secretary**  
19 **of state to revoke the entity's not-for-profit status;**

20           **(2) Subject the entity to taxation as a for-profit corporation; and**

21           **(3) Notify the entity.**

22           **4. The department of revenue may promulgate rules to implement the provisions**  
23 **of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that**  
24 **is created under the authority delegated in this section shall become effective only if it**  
25 **complies with and is subject to all of the provisions of chapter 536 and, if applicable,**  
26 **section 536.028. This section and chapter 536 are nonseverable, and if any of the powers**  
27 **vested with the general assembly pursuant to chapter 536 to review, to delay the effective**  
28 **date, or to disapprove and annul a rule are subsequently held unconstitutional, then the**  
29 **grant of rulemaking authority and any rule proposed or adopted after August 28, 2019,**  
30 **shall be invalid and void.**

31           **5. For the purposes of this section, the term "entity" shall not include any**  
32 **corporation that engages primarily in economic development activities.**

**407.312. 1. Neither the state nor any political subdivision thereof shall offer any**  
2 **good or service for rent or purchase to the public if a private business offers a substantially**  
3 **comparable good or service in the same county or same city not within a county unless:**

4           **(1) A statute specifically authorizes the offering of the good or service;**

5           **(2) Voters of the political subdivision have specifically authorized the offering of**  
6 **the good or service;**

7           **(3) The good is a food or beverage;**

8           **(4) The good is merchandise or the service is the rental of space reasonably related**  
9 **to the state agency or political subdivision of the state;**

10           **(5) The good or service is offered at a school or library and is reasonably related**  
11 **to a purpose of the school or library;**

12           **(6) The service is internet access or excess dark fiber by a municipality; or**

13           **(7) The good or service is reasonably related to an essential government function**  
14 **including, but not limited to, the providing of infrastructure and monopoly utility services.**

15           **2. No state or political subdivision funds shall support the offering of any good or**  
16 **service for rent or purchase to the public unless such offering is allowed under subsection**  
17 **1 of this section. No revenue collected by the state or any political subdivision thereof from**  
18 **the sale or rental of goods or services allowed under subsection 1 of this section shall be:**

19           **(1) Used to fund the offering of any other good or service offered by the state or any**  
20 **political subdivision thereof; or**

21           **(2) Transferred into any other account, including the general revenue of the state**  
22 **or political subdivision, unless such transfer is to dispose of assets upon the termination of**  
23 **the offering of the good or service.**

24           **3. The state and any political subdivision thereof shall be prohibited from**  
25 **possessing a permit or other authorization issued by a federal or state entity that allows the**  
26 **holder to offer a good or service unless such authorization is exclusively limited to a**  
27 **governmental entity or no private business applied for such permit or authorization.**

28           **4. Any good or service offered by the state or a political subdivision thereof shall**  
29 **be done in a nondiscriminatory manner.**

30           **5. This section shall be read and construed in a way that favors a private business**  
31 **that is competing with a government good or service and with the purpose of limiting**  
32 **government competition.**

33           **6. If a private business believes the state or any political subdivision of the state is**  
34 **acting in violation of this section, the private business may file a complaint with the**  
35 **attorney general, who shall have authority to investigate the allegations and take any**  
36 **actions within the attorney general's authority. A private business may also file a lawsuit**  
37 **in a court of competent jurisdiction to enjoin the state or any political subdivision of the**  
38 **state from violating this section.**

39           **7. The state and any political subdivision thereof shall not enter into any**  
40 **agreement, contract, or other arrangement with a company or organization to offer any**  
41 **good or service that the state or political subdivision is prohibited under this section from**  
42 **offering itself.**

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