

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 856
100TH GENERAL ASSEMBLY

0772H.03C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

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

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:

2 **70.221. 1. Any entity, regardless of how it is currently incorporated, that was**
3 **initially formed under section 70.220 that exceeds its initial purpose and contracts or**
4 **provides a service to any individual, entity, municipality, or political subdivision other than**
5 **those political subdivisions for which it was initially formed shall register as a for-profit**
6 **corporation under chapter 351 and shall be subject to all laws and taxes applicable to a**
7 **for-profit corporation. Such forms of current incorporation shall include, but not be**
8 **limited to, for-profit corporations, not-for-profit corporations, limited liability companies,**
9 **limited partnerships, limited liability partnerships, and cooperative associations.**

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

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

(1) Subject the entity to taxation as a for-profit corporation;

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.

19 (2) Notify the entity of the change in its tax status; and

20 (3) If the entity is registered with the secretary of state, notify the secretary of the
21 entity's failure to pay taxes owed. If the secretary determines there are grounds for
22 dissolution under section 351.484, the secretary shall commence proceedings under section
23 351.486.

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

33 5. For the purposes of this section, the term "entity" shall not include any
34 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.

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16 However, internet service shall only qualify for subdivision (6) or (7) of this subsection if
17 the municipality owned, operated, or leased a network, either directly or indirectly through
18 an affiliate, and was actively providing internet service to individuals or businesses on
19 January 1, 2019.

20 **2. No state or political subdivision funds shall support the offering of any good or**
21 **service for rent or purchase to the public unless such offering is allowed under subsection**
22 **1 of this section. No revenue collected by the state or any political subdivision thereof from**
23 **the sale or rental of goods or services allowed under subsection 1 of this section shall be:**

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

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

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

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

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

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

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

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