

PROPOSED AMENDMENTS TO SENATE BILL NO. 2333

Page 1, line 14, after the underscored period insert "The term includes a digital application platform provided or used only for a certain type of device, including a certain grade of computing device, a device made only by a particular manufacturer, or a device running a particular operating system."

Page 1, line 15, after "c." insert "\"Digital transaction platform\" means a system for accepting payments from a user for an application or service received from a digital application distribution platform. The term includes a digital platform being usable for transactions not related to the digital application distribution platform.

d. "Domiciled in this state" means a person that is a resident of this state or is headquartered in this state, conducts business in this state, and the majority of the person's business is to create or maintain an application.

e."

Page 1, line 18, replace "d." with "f. \"Provider\" means a person that owns, operates, implements, or maintains a digital application distribution platform, a digital transaction platform, or an in-application payment system.

g. "Resident of this state" means a person whose last known billing address, other than an armed forces post office or fleet post office address, is located within this state, as shown in the records of a provider of a digital application distribution platform.

h."

Page 1, line 20, remove "special-purpose"

Page 1, line 20, after "hardware" insert "primarily intended for specific purposes"

Page 2, line 1, replace "A proprietor of" with "This section applies to"

Page 2, line 3, after "year" insert "which uses:

a. The platform to provide an application that was created by a person domiciled in this state to a user; or

b. The platform to provide an application to a resident of this state.

3. A provider of a digital application distribution platform"

Page 2, line 4, replace the second "a" with "the provider's"

Page 2, line 4, remove "or digital"

Page 2, line 5, remove "transaction platform"

Page 2, line 5, replace "mode" with "means"

Page 2, line 5, after "product" insert "to a user"

Page 2, line 6, replace "an" with "the provider's digital transaction platform or"

Page 2, line 7, replace "mode of" with "means for"

Page 2, line 7, replace the second "a" with "the developer's"

Page 2, line 7, after "application" insert an underscored comma

Page 2, line 8, after "product" insert "or service created, offered, or provided by the developer"

Page 2, line 9, remove "an alternative application store"

Page 2, line 10, replace "or" with "another digital application distribution platform, digital transaction system, or"

Page 2, line 10, after the underscored period insert:

"d. Refuse to allow a developer to provide the provider's application or digital product to or through the provider's platform or system or refuse to allow a user access to the developer's application or digital product through the provider's platform or system, on account of the developer's use of another platform or system. A violation of this subdivision is considered retaliation under this section."

Page 2, line 11, replace "3." with "4. Conduct in violation of this section is an unlawful practice under section 51-15-02. A person aggrieved by a violation of this section may bring an action to enjoin the violation or for restitution, or both. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This subsection does not limit any other claim a person may have under any other provision of law.

5."

Page 2, line 13, replace "4." with "6."

Page 2, line 13, remove "proprietor of a"

Page 2, remove lines 15 through 17

Renumber accordingly

Introduced by

Senators Davison, Clemens

Representatives Bosch, Howe

1 A BILL for an Act to create and enact a new section to chapter 51-07 of the North Dakota
2 Century Code, relating to in-application payments for software applications and purchases.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 51-07 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Software applications - In-application payment - Prohibitions.**

7 1. As used in this section:

8 a. "Developer" means a creator of a software application made available for
9 download by a user through a digital application distribution platform or other
10 digital distribution platform.

11 b. "Digital application distribution platform" means a digital distribution platform for
12 applications and services provided to a user on general-purpose hardware,
13 including a mobile phone, smartphone, tablet, personal computer, and other
14 general-purpose devices connected to the internet. The term includes a digital
15 application platform provided or used only for a certain type of device, including a
16 certain grade of computing device, a device made only by a particular
17 manufacturer, or a device running a particular operating system.

18 c. "Digital transaction platform" means a system for accepting payments from a user
19 for an application or service received from a digital application distribution
20 platform. The term includes a digital platform being usable for transactions not
21 related to the digital application distribution platform.

22 d. "Domiciled in this state" means a person that is a resident of this state or is
23 headquartered in this state, conducts business in this state, and the majority of
24 the person's business is to create or maintain an application.

- 1 e. "In-application payment system" means an application, service, or user interface
2 used to process a payment from a user to a developer for a software application
3 and digital and physical product distributed through a software application.
- 4 d.f. "Provider" means a person that owns, operates, implements, or maintains a
5 digital application distribution platform, a digital transaction platform, or an
6 in-application payment system.
- 7 g. "Resident of this state" means a person whose last known billing address, other
8 than an armed forces post office or fleet post office address, is located within this
9 state, as shown in the records of a provider of a digital application distribution
10 platform.
- 11 h. "Special-purpose digital application distribution platform" means a digital
12 distribution platform for single or specialized categories of applications, software,
13 and services provided to a user on ~~special-purpose~~ hardware primarily intended
14 for specific purposes, including a gaming console, music player, and other
15 special-purpose devices connected to the internet.
- 16 2. ~~A proprietor of~~ This section applies to a digital application distribution platform for which
17 cumulative gross receipts from sales on the digital application distribution platform to
18 residents of this state exceed ten million dollars in the previous or current calendar
19 year which uses:
- 20 a. The platform to provide an application that was created by a person domiciled in
21 this state to a user; or
- 22 b. The platform to provide an application to a resident of this state.
- 23 3. A provider of a digital application distribution platform may not:
- 24 a. Require a developer to use ~~a~~the provider's digital application distribution platform
25 ~~or digital transaction platform~~ as the exclusive ~~mode~~means of distributing a digital
26 product to a user.
- 27 b. Require a developer to use ~~a~~the provider's digital transaction platform or in-
28 application payment system as the exclusive ~~mode of~~means for accepting
29 payment from a user to download ~~a~~the developer's software application, or
30 purchase a digital or physical product or service created, offered, or provided by
31 the developer through a software application.

- 1 c. ~~Retaliate against a developer for choosing to use an alternative application store~~
2 ~~or another digital application distribution platform, digital transaction system, or in-~~
3 ~~application payment system.~~
- 4 d. Refuse to allow a developer to provide the provider's application or digital product
5 to or through the provider's platform or system or refuse to allow a user access to
6 the developer's application or digital product through the provider's platform or
7 system, on account of the developer's use of another platform or system. A
8 violation of this subdivision is considered retaliation under this section.
- 9 3.4. Conduct in violation of this section is an unlawful practice under section 51-15-02. A
10 person aggrieved by a violation of this section may bring an action to enjoin the
11 violation or for restitution, or both. The court may award the plaintiff costs, expenses,
12 and reasonable attorney's fees. This subsection does not limit any other claim a
13 person may have under any other provision of law.
- 14 5. An agreement that violates this section is unenforceable and is deemed a violation of
15 this section.
- 16 4.6. This section does not apply to a proprietor of a special-purpose digital application
17 distribution platform.
- 18 ~~5. The attorney general shall receive complaints and investigate violations of this section~~
19 ~~and may bring an action in any court of competent jurisdiction to obtain the legal or~~
20 ~~equitable relief on behalf of an individual aggrieved by the violation.~~