

SECOND REGULAR SESSION

SENATE BILL NO. 1038

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR DePASCO.

Read 1st time January 28, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4355S.011

AN ACT

To amend chapter 407, RSMo, by adding thereto six new sections relating to the establishment of the electronic government services act.

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

Section A. Chapter 407, RSMo, is amended by adding thereto six new sections, to be known as sections 407.1135, 407.1137, 407.1139, 407.1141, 407.1143 and 407.1145, to read as follows:

407.1135. The provisions of sections 407.1135 to 407.1145 shall be known and may be cited as the "Electronic Government Services Act".

407.1137. As used in sections 407.1135 to 407.1145, the following terms shall mean:

(1) "Electronic Commerce Services", services that are the same, similar to or overlapping those information technology-based services provided by the private sector to the general public for example, any transaction completed over a computer network such as the buying of goods and services on the Internet;

(2) "Commercial activity", performing services or providing goods which can normally be obtained from private enterprise;

(3) "Direct costs", all costs, whether capital costs, operating costs or otherwise, that would be eliminated if the service or function to which they relate were discontinued;

(4) "Full cost accounting", in accordance with applicable generally accepted accounting principles, accounting for all direct and indirect costs, including capital costs, that are incurred in the ownership, management or operation of an electronic

service;

(5) "Government agency", the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the constitution, statutes, ordinances or any other order or action by any such entity or its officers;

(6) "Indirect costs accounting", all costs, whether capital costs, operating costs or otherwise, that are not direct costs. Indirect costs that support multiple services or functions shall be allocated among those services and functions in proportion to the relative burden each service or function places on the cost category and by any reasonable method consistent with applicable generally accepted accounting principles;

(7) "Private enterprise", an individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit;

(8) "Private sector", two or more competing privately-owned companies.

407.1139. If the private sector provides electronic commerce services to the public, government shall not start or carry on any activity to provide or offer such services, expand similar services at government expense or provision. Nothing in this act prohibits government from providing electronic commerce services to the public in the absence of the private sector provision of such services.

407.1141. A government agency can provide duplicative or competing electronic commerce services provided the head of the agency that proposes to provide duplicative or competing electronic commerce services to the general public shall provide public notice and the opportunity of the public to comment on the agency's proposed services. Such notice shall include:

(1) The agency's proposed findings of fact and conclusions of law describing the reasons why it believes it is necessary and in the public interest to provide duplicative or competing electronic commerce services. The agency must specify:

(a) The initial and total lifecycle costs of the proposed government services, which include, but are not limited to, all technology, infrastructure, services, contracts and direct and indirect personnel costs;

(b) The individual per taxpayer cost of such services on an annualized basis, and the cost of such services per user on an annualized basis;

(c) A description of the agency's reasons for believing that the cost benefits of providing such services require the expenditure of public funds;

(d) Identification of unmet needs in the consumer marketplace which the government service offer would fulfill;

(e) A description of how the proposed government service offers would differ from those provided by the private sector; and

(f) An economic impact analysis demonstrating that the offering of proposed electronic commerce services by government will not be anti-competitive in its effect on the existing industry, and will not adversely impact or distort the private sector marketplace for the same or similar electronic commerce services;

(2) Subsequent to receiving the comments of the public, if the head of the agency wishes to proceed with duplicative or competing services, the head of the agency must sign factual and legal conclusions enumerating all of the factors described in subdivision (1) of this section;

(3) Any provider of electronic commerce services who resides within or does business in the state has standing to judicially challenge the factual and legal sufficiency of the findings in subdivision (2) of this section pursuant to the state's procedures for hearing and resolving complaints filed pursuant to this act;

(4) Any provider of electronic commerce services who resides within or does business in the state has standing to judicially challenge the provision of electronic commerce services by the government agency not made in conformance with this act pursuant to the state's procedures for hearing and resolving complaints filed under this act.

407.1143. Nothing contained in this act may be construed to prohibit a government agency from offering electronic government services to the general public services prior to the enactment of the act.

407.1145. If an agency elects to provide electronic services in a jurisdiction where a private enterprise delivers the same electronic service, the agency shall prepare and publish, on or before December 31 of each year, an annual report on its electronic services. The report shall be substantially in accordance with full cost accounting and shall include disclosure of the amount, source and cost of working capital utilized for its electronic services.