

Sixty-seventh
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2333

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 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 hardware primarily intended for specific
14 purposes, including a gaming console, music player, and other special-purpose
15 devices connected to the internet.
- 16 2. This section applies to a digital application distribution platform for which cumulative
17 gross receipts from sales on the digital application distribution platform to residents of
18 this state exceed ten million dollars in the previous or current calendar year which
19 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 the provider's digital application distribution platform~~
25 ~~as the exclusive means of distributing a digital product to a user.~~
- 26 ~~b. Require a developer to use the provider's digital transaction platform or in-~~
27 ~~application payment system as the exclusive means for accepting payment from~~
28 ~~a user to download the developer's software application, or purchase a digital or~~
29 ~~physical product or service created, offered, or provided by the developer through~~
30 ~~a software application.~~

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