

JAN 18 2019

A BILL FOR AN ACT

RELATING TO ONLINE PLATFORMS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that it is essential to
2 ensure that people can access online platforms freely and fairly
3 without discrimination and without retail bias. Online
4 platforms, including eBay, Amazon Marketplace, Airbnb, and Uber,
5 connect sellers and service providers to consumers in an online
6 marketplace. Many tech companies have vertically integrated
7 their businesses, including their online platforms, which can
8 result in the online platform giving preferential treatment to
9 its own products through searches or traffic management.

10 The purpose of this Act is to ensure that online platforms
11 operating in the State provide fair access to the platform by:

- 12 (1) Requiring online platforms to provide
13 nondiscriminatory access to the platform; and
14 (2) Prohibiting preferential treatment of the platform's
15 own vertically integrated business lines.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 ONLINE PLATFORM ACCESS

6 § -1 Definitions. As used in this chapter, unless the
7 context otherwise requires:

8 "Edge provider" means any individual or entity that
9 provides any content, application, product, or service over the
10 online platform.

11 "End user" means any individual or entity that uses an
12 online platform.

13 "Online platform" means an online marketplace that places
14 one party in touch with another, such as buyers and sellers.
15 The online platform may be entirely self-contained, or it may
16 allow third-party applications to connect via the platform's
17 programming interface.

18 "Platform provider" means any individual or entity that
19 provides access to any online platform offering goods and
20 services within the State.



1 "Preferential treatment" means the management of an online
2 platform to directly or indirectly favor some products or
3 services over others, including through the use of techniques
4 such as discriminatory search processes, traffic shaping,
5 prioritization, resource reservation, or other forms of
6 preferential traffic management, either:

- 7 (1) In exchange for consideration, monetary or otherwise,
8 from a third party; or
9 (2) To benefit an affiliated entity.

10 "Reasonable platform management" means a practice that has
11 a primarily technical platform management justification, but
12 does not include other business practices. A platform
13 management practice is reasonable if it is primarily used for
14 and tailored to achieving a legitimate platform management
15 purpose, taking into account the particular platform
16 architecture and technology.

17 **§ -2 Online platform access; disclosure; protections.**

18 (a) A platform provider shall publicly disclose accurate
19 information regarding the platform management practices,
20 performance, and commercial terms of its online platform
21 sufficient for consumers to make informed choices regarding use



1 of such services and for content, application, product, service,
2 and device providers to develop, market, and maintain platform
3 offerings.

4 (b) A platform provider shall provide nondiscriminatory
5 access to the online platform and shall not:

6 (1) Block lawful content, applications, products,
7 services, or nonharmful devices, subject to reasonable
8 platform management;

9 (2) Impair or degrade lawful online platform traffic on
10 the basis of content, application, product, or
11 service, or use of a nonharmful device, subject to
12 reasonable platform management;

13 (3) Engage in preferential treatment; or

14 (4) Unreasonably interfere with or unreasonably
15 disadvantage:

16 (A) End users' ability to select, access, and use the
17 online platform or the lawful internet content,
18 applications, products, services, or devices of
19 their choice; or



1 (B) Edge providers' ability to make lawful content,
2 applications, products, services, or devices
3 available to end users;
4 provided that the prohibition on preferential treatment pursuant
5 to paragraph (3) of this subsection may be permitted if a
6 petitioner demonstrates that the practice would provide some
7 significant public interest benefit and would not harm the open
8 nature of the platform in the State."

9 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO. 721

Report Title:

Online Platform Access; Protections; Platform Neutrality

Description:

Requires a provider of an online platform offering goods and services in the State to provide nondiscriminatory access to the platform and be transparent with platform management practices, performance, and commercial terms of its platform. Prohibits preferential treatment of the platform's own vertically integrated business lines.

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