

**Senate Study Bill 3207 - Introduced**

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON COMMERCE BILL BY  
CHAIRPERSON WARNSTADT)

**A BILL FOR**

1 An Act prohibiting price discrimination in the provision of  
2 television services, and providing remedies.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 553A.1 Definitions.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "*Distributor*" means a person who is engaged in the  
5 business of making available to subscribers or other customers,  
6 for a fee, multiple channels of television programming.

7 "*Distributor*" includes any buying group of which a distributor  
8 is a member, or an agent of a distributor.

9 2. "*Price*" means the effective net cost to the distributor,  
10 calculated on a per subscriber or per customer basis, for  
11 permission to transmit the television service in question,  
12 taking into account all compensation, agreements not to  
13 collect, concessions, or other consideration, whether  
14 guaranteed or contingent, directly or indirectly promised to or  
15 received by the distributor or any of its affiliates from or  
16 on behalf of the programmer and also taking into account all  
17 fees and charges imposed upon such distributor or any of its  
18 affiliates for such permission. If the distributor and its  
19 affiliates pay different fees or charges in different systems  
20 or markets for the same television service pursuant to one or  
21 more contemporaneous license agreements, then the price shall  
22 be the subscriber-weighted average price per subscriber or  
23 customer unless use of an average price would be inconsistent  
24 with the purposes of this chapter.

25 3. "*Programmer*" means a person who is engaged in the  
26 licensing or sale of television programming to distributors and  
27 who owns or operates, or is an affiliate or agent of the owner  
28 or operator of, one or more of the following:

29 a. A national broadcast television network.

30 b. Multiple television broadcast stations.

31 c. Two or more nonbroadcast networks, at least one of which  
32 was among the fifty highest rated nonbroadcast networks during  
33 prime-time hours for any four weeks during the immediately  
34 preceding six months.

35 4. "*Television service*" means programming intended for

1 license for transmission by a distributor, regardless of  
2 whether the programming is packaged for viewing on a single  
3 television channel as a discrete network, station, or service,  
4 or is to be transmitted by the distributor on a pay-per-view,  
5 on-demand, or other basis.

6 Sec. 2. NEW SECTION. 553A.2 Prohibited conduct.

7 1. *a.* A programmer shall not discriminate, either directly  
8 or indirectly, in the price it requires to be paid by a  
9 distributor for a license or other permission to transmit one  
10 or more television services in this state as compared to either  
11 of the following:

12 (1) The price paid by any other distributor for a license  
13 or other permission to transmit such television service or  
14 services in this state.

15 (2) The price paid by any other distributor for a license  
16 or other permission to transmit such television service  
17 or services in any other state pursuant to any contract or  
18 agreement entered into on or after July 1, 2010, or any renewal  
19 or extension of any such agreement.

20 *b.* The prohibition in paragraph "*a*" shall not prevent the  
21 programmer from taking into account differences in transmission  
22 technologies and systems or other similar objective differences  
23 between distributors when those differences have an actual  
24 effect on the programmer's direct costs in making television  
25 services available to a distributor.

26 2. When a programmer, either alone or in combination  
27 with one or more of its affiliates, enters into a license,  
28 agreement, or arrangement which allows a distributor to  
29 transmit two or more television services in this state, the  
30 price for each television service must be separately stated  
31 in writing. Illegal price discrimination occurs if a price  
32 differential not otherwise justifiable under this chapter  
33 exists between the price charged to a distributor for any one  
34 or any combination of the television services covered by the  
35 agreement or arrangement and the price charged to another

1 distributor, as described in subsection 1, paragraph "a", for  
2 such services.

3 3. When a programmer, either alone or in combination  
4 with one or more of its affiliates, enters into a license,  
5 agreement, or arrangement with a distributor for transmission  
6 of one or more television services in this state and  
7 contemporaneously enters into a separate transaction or  
8 license, agreement, or arrangement which has the effect of  
9 reducing the net price paid by the distributor below the level  
10 paid by other distributors for permission to transmit the same  
11 television services in this state, a prima facie case of price  
12 discrimination exists.

13 4. A programmer shall not, either directly or indirectly,  
14 through its affiliates or otherwise, give to any distributor  
15 that transmits the programmer's television services in  
16 this state, or to any affiliate of any such distributor, an  
17 advertising or launch support payment, channel positioning  
18 payment or discount, penetration discount or allowance, or  
19 similar compensation in exchange for the distributor's or  
20 affiliate's services, facilities, performance, or achievement  
21 relating to the transmission of the programmer's television  
22 services in this state, unless the programmer makes the same  
23 type or types of compensation available on equal terms to other  
24 distributors who transmit the programmer's television services  
25 in this state.

26 5. A programmer shall not, as a condition to purchasing a  
27 license or other permission to transmit one of the programmer's  
28 television services in this state, either directly or  
29 indirectly, through unjustifiable price differentials or  
30 otherwise, require that a distributor also purchase a license  
31 or other permission to transmit one or more additional  
32 television services of the programmer or its affiliates, or to  
33 dictate the level, package, or tier of distributor services in  
34 which any such television service must be included.

35 6. In an action brought for a violation of this section,

1 the programmer shall bear the burden of proving any of the  
2 following, as applicable:

3     *a.* That the programmer experiences actual differences, as  
4 described in subsection 1, paragraph "b", in its direct costs in  
5 making television services available to distributors.

6     *b.* That the contemporaneous transaction or agreement  
7 otherwise prohibited under subsection 3 was the result of bona  
8 fide, independent negotiation and was not for the purpose of  
9 reducing the net price to be paid by the distributor.

10     *c.* That the programmer makes the types of compensation  
11 described in subsection 4 available on equal terms to all  
12 distributors who transmit its television services in this  
13 state.

14     Sec. 3. NEW SECTION. **553A.3 Disclosure of information.**

15     1. Beginning July 1, 2010, a programmer shall not enforce  
16 against a distributor any duty of confidentiality regarding  
17 the terms and conditions under which the distributor transmits  
18 the programmer's television services in this state, regardless  
19 of whether the duty of confidentiality is express or implied,  
20 oral or written, or absolute or conditional and, if the duty  
21 is written, regardless of whether the duty appears in the same  
22 writing that grants the license or permission for transmission  
23 or instead appears in an unrelated writing. A contract  
24 provision is void if it imposes a duty of confidentiality that  
25 cannot be enforced under this subsection.

26     2. When a distributor seeks a license or other permission to  
27 transmit television service within this state, the programmer  
28 at the request of the distributor shall promptly disclose  
29 to the distributor such information, including information  
30 relating to or in the possession of the programmer's  
31 affiliates, as is necessary for the distributor to determine  
32 whether the terms and conditions being offered by the  
33 programmer to the distributor comply with this chapter.

34     Sec. 4. NEW SECTION. **553A.4 Withholding of programming —**  
35 **prohibition.**

1 A person who licenses or otherwise makes available to  
2 a television station with a transmitter in this state for  
3 broadcast to viewers within this state the satellite or  
4 terrestrial feed of a live sporting event or a program that  
5 is part of the prime-time programming of a national broadcast  
6 network and that is not produced and owned by such station  
7 shall not refuse to make such feed available, to the maximum  
8 extent permitted by applicable federal law, on reasonable terms  
9 to any distributor in this state who does not carry the signal  
10 of such television station or does not have a license or other  
11 right to provide such telecast to its subscribers or other  
12 customers. Any contractual or other prohibition or restriction  
13 inconsistent with this section is void.

14 Sec. 5. NEW SECTION. 553A.5 Civil remedies.

15 1. The state or a person who is injured or threatened with  
16 injury by conduct prohibited by this chapter may bring suit to  
17 prevent or enjoin the prohibited conduct.

18 2. A person who is injured by conduct prohibited by this  
19 chapter may recover actual damages resulting from the conduct,  
20 and upon a finding that the conduct was willful or flagrant,  
21 may recover punitive damages up to three times the amount of  
22 actual damages.

23 3. A person other than the state who obtains a remedy  
24 under this section may recover its costs of bringing suit and  
25 reasonable attorney fees.

26 EXPLANATION

27 This bill prohibits price discrimination in the provision  
28 of television services.

29 The bill provides that a programmer shall not discriminate,  
30 either directly or indirectly, in the price it requires  
31 a distributor to pay for a license or other permission to  
32 transmit one or more television services in Iowa, when that  
33 price is compared to prices applicable to other distributors.  
34 The bill provides, however, that the price established by a  
35 programmer can take into account differences in transmission

1 technologies and systems or other similar objective differences  
2 between distributors when those differences have an actual  
3 effect on the programmer's direct costs in making television  
4 services available.

5 The bill provides that when a programmer enters into a  
6 license, agreement, or arrangement which allows a distributor  
7 to transmit two or more television services in Iowa, the  
8 price for each television service must be separately stated  
9 in writing, and that illegal price discrimination will be  
10 considered to have occurred if a price differential not  
11 otherwise justifiable pursuant to the bill's provisions exists  
12 between the price charged for any one or any combination  
13 of the television services and the price charged to other  
14 distributors. The bill further provides that when a programmer  
15 enters into a license, agreement, or arrangement with a  
16 distributor for transmission of one or more television  
17 services in Iowa and contemporaneously enters into a separate  
18 transaction or license, agreement, or arrangement which has the  
19 effect of reducing the net price paid by the distributor below  
20 the level paid by other distributors for permission to transmit  
21 the same television services in Iowa, a prima facie case of  
22 price discrimination will be considered to exist.

23 The bill prohibits a programmer to give to any distributor  
24 that transmits the programmer's television services in Iowa, or  
25 to any affiliate, specified payments, discounts, allowances, or  
26 compensation in exchange for the distributor's or affiliate's  
27 services, facilities, performance, or achievement relating to  
28 the transmission of the programmer's television services in  
29 Iowa, unless the programmer makes the same type or types of  
30 compensation available on equal terms to other distributors.  
31 The bill also prohibits a programmer, as a condition to  
32 purchasing a license or other permission to transmit one of  
33 the programmer's television services in Iowa from requiring  
34 that a distributor also purchase a license or other permission  
35 to transmit one or more additional television services of the

1 programmer or its affiliates, or to dictate the level, package,  
2 or tier of distributor services in which any television service  
3 must be included.

4 The bill states that in an action brought for a violation  
5 of the bill's provisions, the programmer shall bear the burden  
6 of proving that the programmer experiences actual differences  
7 in its direct costs in making television services available to  
8 distributors; that a contemporaneous transaction or agreement  
9 otherwise prohibited was the result of bona fide, independent  
10 negotiation and was not for the purpose of reducing the net  
11 price to be paid by the distributor; and that the programmer  
12 makes the types of compensation received available on equal  
13 terms to all distributors who transmit its television services  
14 in Iowa.

15 Relating to the disclosure of information, the bill states  
16 that beginning July 1, 2010, a programmer shall not enforce  
17 against a distributor any duty of confidentiality regarding the  
18 terms and conditions under which the distributor transmits the  
19 programmer's television services in Iowa, and that a contract  
20 provision is void if it imposes a duty of confidentiality  
21 that cannot be enforced. Additionally, the bill states that  
22 when a distributor seeks a license or other permission to  
23 transmit television programming in Iowa, the programmer at  
24 the request of the distributor shall promptly disclose to  
25 the distributor information as necessary for the distributor  
26 to determine whether the terms and conditions being offered  
27 by the programmer to the distributor comply with the bill's  
28 provisions.

29 The bill provides that a person who licenses or otherwise  
30 makes available to a television station with a transmitter in  
31 Iowa for broadcast to Iowa viewers the satellite or terrestrial  
32 feed of a live sporting event or a program that is part of the  
33 prime-time programming of a national broadcast network and that  
34 is not produced and owned by the station shall not refuse to  
35 make the feed available, to the maximum extent permitted by



1 applicable federal law, on reasonable terms to any distributor  
2 in Iowa who does not carry the signal of the television station  
3 or does not have a license or other right to provide the  
4 telecast to its subscribers or other customers. The bill  
5 adds that any contractual or other prohibition or restriction  
6 inconsistent with this prohibition shall be considered void.  
7 Regarding penalties, the bill states that the state of Iowa  
8 or a person who is injured or threatened with injury by conduct  
9 prohibited under the bill may bring suit to prevent or enjoin  
10 the prohibited conduct, and that a person who is injured by  
11 prohibited conduct may recover actual damages resulting from  
12 the conduct, and upon a finding that the conduct was willful  
13 or flagrant, punitive damages up to three times the amount of  
14 actual damages. Provision is also made for recovery of court  
15 costs and attorney fees by a person bringing suit other than  
16 the state.