

As Introduced

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Representative Blessing

**Cosponsors: Representatives McGregor, R., Patton, Distel, Mecklenborg,
Daniels, Aslanides, Bubb, Flowers, Schlichter, Uecker, White, Schneider,
Gibbs, Foley, Lundy, Hagan, R., Otterman, Brown, Bolon, Yuko, Driehaus**

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A B I L L

To enact section 1332.36 of the Revised Code to 1
require cable operators to participate in 2
arbitration regarding disputes with providers of 3
competing video programming. 4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1332.36 of the Revised Code be 5
enacted to read as follows: 6

Sec. 1332.36. (A) As used in this section: 7

"Affiliated video programming" means video programming owned 8
in whole or in part by a cable operator. 9

"Basic cable service" and "video programming" have the same 10
meanings as in the "Cable Communications Policy Act of 1984," Pub. 11
L. No. 98-549, 98 Stat. 2780, 2781, 47 U.S.C. 522, as amended by 12
the "Telecommunications Act of 1996," Pub. L. No. 104-104, 110 13
Stat. 56. 14

"Cable operator" means a video service provider granted a 15
video service authorization under sections 1332.21 to 1332.34 of 16
the Revised Code or a person described in division (B)(1)(b) of 17

section 1332.23 of the Revised Code. "Cable operator" includes any 18
affiliate or subsidiary of a cable operator or multichannel video 19
programming distributor. 20

"Provider of competing video programming" means a person 21
engaged in the production, creation, or wholesale distribution of 22
video programming that is not affiliated with a cable operator and 23
that offers video programming that competes in the same 24
programming category as video programming owned by a cable 25
operator. 26

"Extended basic cable service" means a category of cable 27
service provided by a cable operator that is immediately superior 28
in terms of price and the number of available channels to the 29
basic cable service offered by the cable operator. 30

"Programming category" means video programming that 31
predominantly contains one of the following types of information: 32
sports, news and public affairs, entertainment, or any other 33
category provided for in rules adopted by the director of commerce 34
under this section. 35

(B) A cable operator that offers affiliated video programming 36
on its extended basic cable service shall treat in a fair, 37
reasonable, and nondiscriminatory manner the provider of competing 38
video programming that competes in the same programming category 39
with the cable operator's affiliated video programming. 40

(C) If the provider of competing video programming has reason 41
to believe it has not been treated in a fair, reasonable, and 42
nondiscriminatory manner by a cable operator concerning carriage 43
of the provider's competing video programming by the cable 44
operator, it may submit a request for commercial arbitration with 45
the cable operator not later than ninety days after an initial 46
request made by the provider or renewal of an agreement between 47
the cable operator and provider leads to a dispute. 48

(D) If the dispute remains unresolved ten days after 49
submission of the request for arbitration under division (C) of 50
this section, either party may file with the department of 51
commerce a formal demand for arbitration. The formal demand shall 52
be made in a form and manner prescribed by the department in rules 53
adopted under division (G) of this section. The formal demand 54
shall include a final offer. Once a formal demand for arbitration 55
is made, the department shall notify the other party of the demand 56
for arbitration. The responding party shall submit its final offer 57
not later than five days after receipt of notice from the 58
department. 59

(E) The arbitration shall be conducted by a single arbitrator 60
designated by the director of commerce under the expedited 61
procedures for arbitration rules adopted by the director under 62
division (G) of this section. The arbitrator shall examine the 63
final offer and response provided under division (D) of this 64
section and shall make an award in favor of the party whose offer 65
most closely approximates the fair market value of the programming 66
carriage rights at issue. The arbitrator shall use the terms and 67
conditions and form of the contract of the initiating party. 68

To determine fair market value, the arbitrator may consider 70
any relevant evidence and may require the parties to submit, under 71
confidentiality safeguards imposed by the arbitrator, any relevant 72
evidence within their control, including the following: 73

(1) Current or previous contracts between the provider of 74
competing video programming and other cable operators in which the 75
cable operator does or does not have an interest, including offers 76
made during negotiation of such contracts; 77

(2) Current or previous contracts for the carriage of the 78
cable operator's affiliated video programming by the cable 79
operator and other cable operators, including related and 80

integrated carriage or other arrangements for the affiliated video programming; 81
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(3) Price, terms, conditions, and relationships that the provider of competing video programming has regarding carriage with other cable operators; 83
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(4) Evidence of the relative value, including ratings or advertising rates, of the competing video programming compared to the affiliated video programming being carried by the cable operator; 86
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(5) The extent of national carriage of the competing video programming; 90
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(6) Whether the cable operator's affiliated video programming and the competing video programming have, in the past five years, pursued the same programming content from third parties. 92
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The arbitrator may not consider offers made prior to the arbitration made between the cable operator or the provider of competing video programming. 95
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(F) The award made in an arbitration under division (E) of this section shall be made in writing and signed by the arbitrator within ninety days after the initiation of the formal arbitration. A copy of the award shall be delivered to each of the parties. 98
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A copy of the award and any penalty assessment made under this division shall be filed with the court of common pleas designated by the parties, or, if no such designation has been made, in the court of common pleas of any county in which a party in interest resides or may be summoned, or if any party in interest is a corporation, in any county in which such corporation is situated, or has or had its principal office or place of business, or in which such corporation has an office or agent, or in any county in which a summons may be served upon the president, 102
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chairperson or president of the board of directors or trustees, or 112
other chief officer. 113

The court with which the copy of the award and penalty 114
assessment is filed is authorized to enforce the award and 115
assessment in the same manner it would enforce an award under 116
sections 2711.08 to 2711.16 of the Revised Code. 117

If the arbitrator finds that one party's conduct during the 118
course of the arbitration has been unreasonable, the arbitrator 119
may assess all or a portion of the other party's costs and 120
expenses, including attorney's fees, against the offending party. 121

(G) The director shall adopt rules in accordance with Chapter 122
119. of the Revised Code doing all of the following: 123

(1) Establishing the form and manner of a formal demand for 124
arbitration; 125

(2) Establishing rules of arbitration, in particular, the 126
rules for an expedited arbitration process; 127

(3) Establishing any additional programming categories to 128
those provided in division (A) of this section; 129

(4) Any other rules necessary to implement this section. 130