

1 HOUSE BILL NO. 573

2 INTRODUCED BY B. TSCHIDA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PUBLIC SERVICE COMMISSION
5 REGULATION OF ACCESS SOFTWARE PROVIDERS; PROHIBITING CENSORSHIP; PROVIDING FOR
6 COMPLAINTS PROCEDURES; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY;
7 PROVIDING DEFINITIONS; AMENDING SECTION 69-1-102, MCA; AND PROVIDING AN IMMEDIATE
8 EFFECTIVE DATE."

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10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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12 **Section 1.** Section 69-1-102, MCA, is amended to read:

13 **"69-1-102. Creation of public service commission.** A public service commission is hereby created,
14 whose duty it is to supervise and regulate the operations of public utilities, common carriers, railroads, access
15 software providers, and other regulated industries listed in this title. Such supervision and regulation shall be in
16 conformity with this title."

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18 NEW SECTION. **Section 2. Definitions.** As used in [sections 2 through 6], unless the context clearly
19 indicates otherwise, the following definitions apply:

20 (1) "Access software provider" means a provider of software, including client or server software, or
21 enabling tools that do any one or more of the following:

22 (a) filter, screen, allow, or disallow content; or

23 (b) pick, choose, analyze, or digest content.

24 (2) "Information content provider" means any person or entity that is responsible, in whole or in part,
25 for the creation or development of information provided through the internet or any other interactive computer
26 service and is subject to 47 U.S.C. 230.

27 (3) "Interactive computer service" means any information service, system, or access software provider
28 that provides or enables computer access by multiple users to a computer server, including a service or system

1 that provides access to the internet and is subject to 47 U.S.C. 230.

2 (4) "Internet" means the international network of switched data networks.

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4 **NEW SECTION. Section 3. Prohibition of unreasonable censorship.** (1) A provider or user of an
5 interactive computer service may not be treated as the publisher or speaker of any information provided by
6 another information content provider.

7 (2) Access software providers may not be held liable for:

8 (a) any action voluntarily taken in good faith to restrict access to or availability of material that the
9 provider considers to be obscene, excessively violent, harassing, or otherwise objectionable, whether or not
10 such material is constitutionally protected; or

11 (b) any action taken to enable or make available to information content providers or others the
12 technical means to restrict access to material described in this act.

13 (3) Access software providers may not censor the content of information content providers unless the
14 content is deemed deceptive, pretextual, or inconsistent with a provider's terms of service. Access software
15 providers may not censor based on the political nature of content.

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17 **NEW SECTION. Section 4. Access software provider complaint proceeding -- authority.** (1) The
18 commission shall conduct expedited complaint proceedings involving access software provider user disputes
19 that include but are not limited to the filtering, screening, or disallowance of user content.

20 (2) A person who believes their rights have been unjustly infringed upon by an access software
21 provider may file a complaint under [sections 2 through 6] seeking the restoration of services provided by an
22 access software provider.

23 (3) (a) A party petitioning the commission under [sections 2 through 6] shall file with the commission
24 and the access software provider in question a demand letter that includes:

25 (i) a statement that the petitioner has attempted in good faith to resolve the petitioner's disagreement
26 with the respondent prior to petitioning the commission to initiate an expedited complaint proceeding; and

27 (ii) a description of facts, including relevant documentation, of the issues in dispute and the position of
28 each of the parties with respect to those issues.

1 (b) The petitioner has standing before the commission 45 days after delivery of the demand letter.

2 (4) If a settlement is not reached within 45 days of the demand letter's delivery, a petitioner may then
3 file a complaint and have the dispute adjudicated by the commission. The commission shall grant a final order
4 on the merits of the docket within 30 days of the proceeding.

5 (5) Both parties may appeal the commission's final order to state district court and request the case
6 be processed by jury trial.

7 (6) Petitioners must have an established address or post office box located in the state of Montana for
8 more than 45 days at the time of the filing.

9 (7) The commission has the discretion to award costs and fees to either party in an amount not to
10 exceed \$35,000.

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12 **NEW SECTION. Section 5. Access software provider penalties.** (1) If an access software provider
13 fails to implement the orders of the commission to restore rights, without good cause, the access software
14 provider is subject to fines of up 1% of the provider's gross revenue during the period in question, or for 24
15 months, whichever is less, as determined by the commission.

16 (2) Proceeds of the fine must be split evenly between the petitioner and the state general fund.

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18 **NEW SECTION. Section 6. Commission jurisdiction -- rulemaking.** The commission may adopt
19 rules regarding the implementation of [sections 2 through 6].

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21 **NEW SECTION. Section 7. Codification instruction.** [Sections 2 through 6] are intended to be
22 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 2 through 6].

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24 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

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