

1 SENATE BILL NO. 391

2 INTRODUCED BY T. MANZELLA

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PUBLIC SERVICE COMMISSION
5 REGULATION OF ACCESS SOFTWARE PROVIDERS; LIMITING UNREASONABLE CENSORSHIP;
6 PROVIDING DUE PROCESS AND EQUAL PROTECTION; PROVIDING FOR COMPLAINT PROCEDURES;
7 PROVIDING FINES FOR NONCOMPLIANCE; PROVIDING FOR A FILING FEE; PROVIDING RULEMAKING
8 AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTION 69-1-102, MCA; AND PROVIDING AN
9 IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

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

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

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19 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], unless the context clearly
20 indicates otherwise, the following definitions apply:

21 (1) "Access software provider" means a provider of software, subject to 47 U.S.C. 230, including client
22 or server software or enabling tools that do any one or more of the following:

- 23 (a) filter, screen, allow, or disallow content;
24 (b) deplatform, shadow ban, or demonetize content; or
25 (c) pick, choose, analyze, or digest content.

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

1 (3) "Interactive computer service" means an information service, system, or access software provider
 2 that provides or enables computer access by multiple users to a computer server, including a service or system
 3 that provides access to the internet and is subject to 47 U.S.C. 230.

4 (4) "Internet" means the international network of switched data networks.
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6 **NEW SECTION. Section 3. Due process for unreasonable censorship or violation of rights.** (1)

7 A provider or user of an interactive computer service may not be treated as the publisher or speaker of any
 8 information provided by another information content provider.

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

10 (a) an action voluntarily taken in good faith to restrict access to or availability of material that the
 11 provider considers to be obscene, sex trafficking, child pornography, excessively violent, harassing, or
 12 otherwise objectionable, whether or not the material is constitutionally protected; or

13 (b) an action taken to enable or make available to information content providers or others the
 14 technical means to restrict access to material described in [sections 1 through 6].

15 (3) All standards must be applied equally.

16 (4) Alternative points of view that can be supported by evidence must be openly debated.

17 (5) (a) Except as provided in subsection (5)(b), access software providers are protected from liability
 18 for the blocking or screening of offensive material as provided in 47 U.S.C. 230. Access software providers may
 19 create, promulgate, and enforce terms of service at their discretion.

20 (b) Constitutional due process, equal protection, and other mandatory constitutional provisions may
 21 authorize limitations on access software providers' terms of service.
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23 **NEW SECTION. Section 4. Access software provider complaint proceeding -- authority.** (1) The

24 commission shall conduct expedited complaint proceedings involving access software provider user disputes
 25 that include but are not limited to the filtering, screening, deplatforming, shadow banning, demonetizing, or
 26 disallowance of user content.

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

1 by an access software provider.

2 (3) (a) A party petitioning the commission under [sections 2 through 6] shall provide the access
3 software provider a demand letter that includes:

4 (i) a statement that the petitioner seeks, in good faith, to resolve the petitioner's disagreement with the
5 respondent prior to petitioning the commission to initiate an expedited complaint proceeding;

6 (ii) a description of facts, including relevant documentation, of the issues in dispute and the position of
7 each of the parties with respect to those issues; and

8 (iii) the reasonable remedy sought by the petitioner for the restoration of rights.

9 (b) The petitioner has standing before the commission 45 days after delivery of the demand letter,
10 unless the matter is settled prior to the initiation of a complaint proceeding.

11 (4) If a settlement is not reached within 45 days of the demand letter's delivery, a petitioner may then
12 file a complaint and have the dispute adjudicated by the commission. The commission shall grant a final order
13 on the merits of the docket regarding the restoration of the petitioner's services or rights within 30 days of the
14 proceeding.

15 (5) Both parties may appeal the commission's final order to state district court and the case must be
16 processed by jury trial based on a preponderance of the evidence.

17 (6) The commission and the courts may collect initial filing fees from both the plaintiff and the
18 respondent of no more than \$250.

19 (7) The commission and the jury may award costs and fees to either party in an amount not to exceed
20 \$25,000 based on the "reasonableness" of the position of either party.

21 (8) If the defendant wishes to appeal further, the defendant shall pay all reasonable costs and fees
22 incurred by all parties in all subsequent legal actions.

23 (9) Petitioners must have an established address or post office box located in the state for more than
24 45 days at the time of the initial filing with the commission.

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26 **NEW SECTION. Section 5. Access software provider fines for noncompliance.** (1) If within 30
27 days of the orders of the commission or the jury, an access software provider has failed to restore rights without
28 good cause shown, the access software provider shall be subject to fines of not more than 1% of the provider's

1 gross revenue during the period of the breach, as determined by the commission or the jury.

2 (2) Details of fines for noncompliance must be determined as part of the outcome of the proceeding
3 and recorded as part of the commission's final order or the jury's verdict.

4 (3) Reasonable notice of fines for noncompliance must be furnished to the entity not fewer than 5
5 days prior to accrual. Fines must accrue and be accounted for daily during the period of noncompliance.

6 (4) Proceeds of the fines for noncompliance must be split with 60% awarded to the state general fund
7 and 40% awarded to the petitioner.

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9 **NEW SECTION. Section 6. Commission jurisdiction -- rulemaking.** The commission may adopt
10 rules regarding the implementation of [sections 2 through 5].

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

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

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17 **NEW SECTION. Section 9. Termination.** [This act] terminates June 30, 2025.

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