

## LEGAL REVIEW NOTE

**Bill No.:** SB 391

**LC#:** LC 2855, To Legal Review Copy, as of  
March 22, 2021

**Short Title:** An act providing for public service  
commission regulation of access software providers

**Attorney Reviewer:** Todd Everts  
Jameson Walker

**Date:** March 22, 2021

### CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

*As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.*

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

#### **Legal Reviewer Comments:**

SB 391, as drafted, may raise potential federal constitutional issues related to the Supremacy Clause under the United States Constitution, Article VI, clause 2, which provides that the United States Constitution, federal laws passed pursuant to the United States Constitution, and treaties made under the United States Constitution's authority constitute "the supreme Law of the Land." Under the Supremacy Clause, if a conflict between state law and federal law exists,

federal law prevails. *California v. ARC America Corp.*, 490 U.S. 93 (1989), and *Jones v. Rath Packing*, 430 U.S. 519 (1977).

SB 391, as drafted, generally provides authority to the Public Service Commission to regulate access software providers. The draft provides definitions for "access software provider," "information content provider," "interactive computer service," and "internet." The definitions reference 47 U.S.C. 230, part of the Communications Decency Act of 1996 (section 230). Specifically, section 3(3) and (4) of SB 391 generally require an access software provider to apply all restriction standards equally and to allow alternative points of view that can be supported by evidence to be openly debated. Furthermore, section 4 of SB 391 provides that "[a] person who believes their rights have been unjustly infringed upon by an access software provider may file a complaint [with the Public Service Commission] seeking the restoration of services or rights provided by an access software provider." Finally, section 5 of the bill provides penalties.

Section 230(c)(2) of the federal Communications Decency Act provides what is commonly known as the "Good Samaritan" protections. Generally, this subsection protects operators of interactive computer services from civil liability in the removal or moderation of third-party material. The subsection provides that the interactive computer services may remove this material, even if constitutionally protected speech, as long as it is done in good faith. Section 230(c)(2) provides in full:

**(c) Protection for "Good Samaritan" blocking and screening of offensive material**

**(1) Treatment of publisher or speaker**

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

**(2) Civil liability**

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

Finally, section 230 provides a provision relating to state law. The section generally provides that the act does not prevent states from enforcing any law that is consistent with section 230. However, section 230 also provides that no "cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

As applied, SB 391 could be viewed as potentially being inconsistent with the "Good Samaritan" clause because nothing in section 230 requires an access software provider to apply all restriction standards equally. Furthermore, nothing in section 230 requires access providers to allow alternative points of view that can be supported by evidence to be openly debated. Since

these provisions appear to be inconsistent with section 230, SB 391, as drafted, may raise potential constitutional conformity issues with respect to the Supremacy Clause.

**Requester Comments:** See below.

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Commission regulation of Access Software Providers

**Attorney Reviewer:** Todd Everts, Jameson Walker

**Date:** March 23, 2021

#### **CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS**

*Telling the truth to the Legislature is required.*

#### **Legal Reviewer Comments:**

The State of Montana needs permission in Federal Statute to pass laws that follow the Constitution, or Montana might get sued by Big Tech.

You can put whatever else you want here but this all you are saying. ML

#### **Requester Comments:**

¶1 The Legislative Lawyers are cautioning the Legislators that **Montana might get sued by Big Tech because we have not been given permission in Federal Statute to pass laws that follow the Constitution.** We quickly responded with a rock solid rebuttal and requested the Legal Note be rescinded. The response was “Oh no. This is real legal advice.” It is now obvious that sound legal arguments do not matter. So that changes our response as follows.

¶2 **Fake Legal Advice:** We all know there is Fake News. How can Fake Legal Advice be impossible? Did you hear about the **scandal in St Louis Missouri** where corrupt Attorneys and Psychologists manipulated evidence to place children with the abusive parent so the protective parent would spend the Family fortune trying to protect their children? **No, you did not hear about this because it is being heavily censored.** It is imperative to cover up corruption in the legal profession so Legislators and the people can be deluded into thinking all lawyers are to be trusted and they are worth \$400 per hour. But it gets better.

¶3 The scandal broke because somebody on the inside of one of these law firms was passing information to investigative reporters. So all the Lawyers and Psychologists got together on a Zoom call to discuss how they were going to chip in, to hire a private investigator to find out who was leaking their secrets. They were also fretting over how to defend a lawsuit for fraud because if one of them were to be sued and exposed in discovery, they would all be exposed and their lucrative businesses would be ruined. **Somebody was recording the zoom call on their cell phone and the zoom call recording was leaked.** You can watch the whole thing on the internet. But it gets better.

¶4 One of the lawyers prominent in the Zoom call, sweeping corruption under the rug, was an **ethics attorney for the Missouri State Bar.** So, go ahead and file a Bar Complaint and see if the Bar is protecting the people from corrupt attorneys.

¶5 The fact is most busy Legislators defer complex legal issues to their trusted attorneys and this is how we lose our rights; one Bill at a time. **But SB391 is a crossroads Bill.** This is freedom of speech and a BIG dent in censorship. With free speech, we can identify our problems, discuss solutions and eventually solve problems. With censorship, the problems fester forever and only get worse. Without free speech, Democracy and Liberty are finished. We hope the crooks don't mind if we make a fuss before they turn us all, into their slaves. I have been in their Family Court, what else can they do to me that is bad?

¶6 **Legal Liability:** Your lawyers have you scared of the Big Tech Boogey Man. I can assure you this is nothing compared to the People when they find out they are being sold out in their own State Capitols. We are being deluged with inquiries. When are we free to advise and support the next lawsuit? There are very significant legal actions in Missouri and 3 other States with about a dozen wanting to be next. Most Legislators are part time and term limited so **Fake Legal Advice** is easy to pass off as legitimate. Most important votes are close so you only need to fool a few well meaning, confused souls.

¶7 You can't follow the Constitution without permission? A Jury can see through that Fake Legal Advice in 20 seconds. After that, it becomes how big is the number? New litigation is being pressed against the Attorneys **and** the State Bar because they are all in on it together. It is easy to prove by preponderance. Look at their enforcement numbers.

¶8 Suits are typically based on 42-USC§1983 "Civil action for violation of Rights". Rights violated are varied. Some are 18-USC§1346 "Deprivation of the Right to Honest Services", the Hobbs Act, or 18 USC Chapter 96 RICO. The Missouri suit involves Racketeering.

¶9 I prefer to participate in implementing positive change which is what we must achieve anyway, not tearing People to pieces in the adversarial system. Would you like real Legal advice? Vote for Liberty and Freedom. You can only have that with **freedom of speech**, so vote for SB391. We need permission to follow the Constitution? How stupid do these Lawyers think we are?

## **Jurisdiction of State Law when Interstate Commerce violates Fundamental Rights**

**Bill No.:** SB391

**LC#:** LC 2855

**Short Title:** Authority of Montana to protect the Rights of the Citizens of Montana, if a Private Business operating across State Lines, violates the Rights in Montana.

**Attorney Reviewer:** Martin Lynch, et al.

**Date:** March 29, 2021

### **CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS**

*The Interstate Commerce Clause of the Constitution is Article 1 Section 8 Clause 3 and reads as follows:* The Congress shall have Power to ... regulate Commerce with foreign Nations, and among the several States.

Anyone may read the US Code, Section 230 to establish truth:

<https://www.law.cornell.edu/uscode/text/47/230>

*In Section 230, The Congress has provided direction, stating as follows:*

#### **(3)STATE LAW**

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

#### **Legal Reviewer Comments:**

We cannot identify Case Precedent or Case Law that renders Laws passed by the House and the Senate and signed by the President as illustrated above, that prohibit the States from doing what the States are explicitly allowed to do in Federal Law, in conformance with the Constitution.

Some lawyers argue that the Interstate Commerce clause is a problem for SB391. Upon investigation we can find nothing contrary to the Commerce Clause in SB391 because the Congress made specific stipulations about State Law in Section 230 and Montana has meticulously conformed all provisions of SB391 to the Federal Law - Section 230.

Previous Legal Notes by competent lawyers have correctly pointed out that provisions that specify “political speech” are not consistent with Section 230. Competent Legal analysis lead us to conclude that these observations were correct, and adjustments were made to SB391 accordingly. **We agree that the Congress has authority to regulate interstate commerce** and if we read what Congress included in Section 230, it seems rational and clear to conclude that SB391 is in conformance with the direction provided by the US Congress in Section 230.

We continue to invite constructive criticism that has merit and legal foundation.

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