

1 SENATE BILL NO. 488

2 INTRODUCED BY M. NOLAND

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO CONSUMER
5 PROTECTION; PROVIDING THAT UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
6 ACTS OR PRACTICES INCLUDE FALSE, MISLEADING, OR OTHERWISE DECEPTIVE CONSUMER
7 REVIEWS OR TESTIMONIALS IN CONTRADICTION OF FEDERAL LAW; REVISING STATUTES OF
8 LIMITATIONS FOR FILING ACTIONS RELATING TO UNFAIR METHODS OF COMPETITION AND UNFAIR
9 OR DECEPTIVE ACTS OR PRACTICES IN THE CONDUCT OF ANY TRADE OR COMMERCE; PROVIDING
10 A STATUTE OF LIMITATIONS FOR THE DEPARTMENT OF JUSTICE TO BRING AN ACTION; CLARIFYING
11 WHAT TIMEFRAME APPLIES TO AN INDIVIDUAL TO BRING AN ACTION; AMENDING SECTIONS 30-14-
12 104, 30-14-111, 30-14-133, AND 30-14-159, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 **Section 1.** Section 30-14-104, MCA, is amended to read:

17 **"30-14-104. Federal interpretation -- rules determining unfair competition and deception.** (1) It is
18 the intent of the legislature that in construing 30-14-103 due consideration and weight ~~shall~~must be given to the
19 interpretations of the federal trade commission and the federal courts relating to section 5(a)(1) of the Federal
20 Trade Commission Act (15 U.S.C., 45(a)(1)), as amended.

21 (2) The department may make rules interpreting the provisions of 30-14-103. ~~Such~~The rules shall
22 may not be inconsistent with the rules, regulations, and decisions of the federal trade commission and the
23 federal courts in interpreting the provisions of section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C.,
24 45(a)(1)), as amended.

25 (3) The provisions of 30-14-103 include but are not limited to an act or practice of providing
26 consumer reviews or testimonials that are false, misleading, or otherwise unfair or deceptive in violation of 16
27 CFR, part 465."

1 **Section 2.** Section 30-14-111, MCA, is amended to read:

2 **"30-14-111. Department to restrain unlawful acts.** (1) Whenever the department has reason to
3 believe that a person is using, has used, or is about to knowingly use any method, act, or practice declared by
4 30-14-103 to be unlawful and that proceeding would be in the public interest, the department may bring an
5 action in the name of the state against the person to restrain by temporary or permanent injunction or
6 temporary restraining order the use of the unlawful method, act, or practice upon giving appropriate notice to
7 that person. The department may bring an action within 5 years on discovery of the method, act, or practice that
8 is declared unlawful by 30-14-103.

9 (2) The notice must state generally the relief sought and be served in accordance with 30-14-115
10 at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent
11 injunction. The notice for a temporary restraining order is governed by 27-19-315.

12 (3) An action under this section may be brought in the district court in the county in which a person
13 resides or has the person's principal place of business or in the district court of Lewis and Clark County if the
14 person is not a resident of this state or does not maintain a place of business in this state.

15 (4) A district court is authorized to issue temporary or permanent injunctions or temporary
16 restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond."

17
18 **Section 3.** Section 30-14-133, MCA, is amended to read:

19 **"30-14-133. Damages -- limitation on residential construction disputes -- notice to public**
20 **agencies -- attorney fees -- prior judgment as evidence.** (1) (a) Except as provided in subsection (1)(b), a
21 consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use or
22 employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an
23 individual action but not a class action under the rules of civil procedure in the district court of the county in
24 which the seller, lessor, or service provider resides or has its principal place of business or is doing business to
25 recover money damages in the amount of any ascertainable loss of money or property or \$500, whichever is
26 greater. An individual claim may be brought in justice's court. A consumer may bring an individual action under
27 this section within the timeframe described in 27-2-211. The court may not award punitive damages but may, in
28 its discretion, award up to three times the money damages in the amount of any ascertainable loss of money or

1 property sustained, if actual damages do not exceed \$100,000, and may provide any other equitable relief that
2 it considers necessary or proper.

3 (b) A consumer may not bring or maintain an action under this section if the consumer is bringing
4 an action subject to 70-19-427 or 70-19-428 against a construction professional.

5 (2) Upon commencement of any action brought under subsection (1), the clerk of court shall mail a
6 copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry
7 of any judgment or decree in the action, shall mail a copy of the judgment or decree to the department and the
8 appropriate county attorney.

9 (3) In any action brought under this section, the court may award the prevailing party reasonable
10 attorney fees incurred in prosecuting or defending the action, except that attorney fees may not be awarded if
11 the consumer recovers actual damages of \$100,000 or more. Attorney fees are limited to no more than \$250 an
12 hour. A person who brings an action on the person's own behalf without an attorney may receive attorney fees
13 at the judge's discretion.

14 (4) Any permanent injunction, judgment, or order of the court made under 30-14-111 is prima facie
15 evidence in an action brought under this section that the respondent used or employed a method, act, or
16 practice declared unlawful by 30-14-103."

17
18 **Section 4.** Section 30-14-159, MCA, is amended to read:

19 **"30-14-159. Publishing and distribution of material harmful to minors -- age verification --**
20 **requirements -- penalties -- exceptions -- reporting -- definitions.** (1) A commercial entity that knowingly
21 and intentionally publishes or distributes material harmful to minors on the internet from a website that contains
22 a substantial portion of the material must be held liable if the entity fails to perform reasonable age verification
23 methods to verify the age of individuals attempting to access the material.

24 (2) A commercial entity or third party that performs the required age verification may not retain any
25 identifying information of the individual after access has been granted to the material.

26 (3) (a) A commercial entity that is found to have violated this section is liable to an individual for
27 damages resulting from a minor accessing the material, including court costs and reasonable attorney fees as
28 ordered by the court.

(b) A commercial entity that is found to have knowingly retained identifying information of the individual after access has been granted to the individual must be liable to the individual for damages resulting from retaining the identifying information, including court costs and reasonable attorney fees as ordered by the court.

(4) This section does not apply to any bona fide news or public interest broadcast, website video, report, or event and may not be construed to affect the rights of any news-gathering organizations.

(5) An internet service provider or its affiliates or subsidiaries, a search engine, or a cloud service provider may not be held to have violated the provisions of this section solely for providing access or connection to or from a website or other information or content on the internet or a facility, system, or network not under that provider's control, including transmission, downloading, intermediate storage, access software, or other forms of access or storage to the extent the provider is not responsible for the creation of the content of the communication that constitutes material harmful to minors.

~~(6) — The department shall provide an annual report of enforcement actions taken under this section. The department shall provide an internet version of the report free of charge to the public and shall charge a fee for paper copies that is commensurate with the cost of printing the report.~~

~~(6) — This section may only be enforced by individuals claiming damages pursuant to subsection (3).~~

(7) For the purposes of this section:

(a) "Commercial entity" includes corporations, limited liability companies, partnerships, limited partnerships, sole proprietorships, or other legally recognized entities.

(b) "Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

(c) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks.

(d) "Material harmful to minors" is defined as all of the following:

(i) any material that the average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

(ii) any of the following material that exploits, is devoted to, or principally consists of descriptions of

- 1 actual, simulated, or animated display or depiction of any of the following, in a manner patently offensive with
2 respect to minors:
- 3 (A) pubic hair, anus, vulva, genitals, or nipple of the female breast;
- 4 (B) touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or
- 5 (C) sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory
6 functions, exhibitions, or any other sexual act; and
- 7 (iii) the material taken as a whole lacks serious literary, artistic, political, or scientific value for
8 minors.
- 9 (e) "Minor" means any person under 18 years of age.
- 10 (f) "News-gathering organization" means any of the following:
- 11 (i) an employee of a newspaper, news publication, or news source, printed or on an online or
12 mobile platform, of current news and public interest, while operating as an employee as provided in this
13 subsection (7)(f)(i), who can provide documentation of employment with the newspaper, news publication, or
14 news source; and
- 15 (ii) an employee of a radio broadcast station, television broadcast station, cable television
16 operator, or wire service, while operating as an employee as provided in this subsection (7)(f)(ii), who can
17 provide documentation of employment.
- 18 (g) "Publish" means to communicate or make information available to another person or entity on a
19 publicly available internet website.
- 20 (h) "Reasonable age verification methods" include verifying that the person seeking to access the
21 material is 18 years of age or older by using any of the following methods:
- 22 (i) providing a digitized identification card; or
- 23 (ii) requiring the person attempting to access the material to comply with a commercial age
24 verification system that verifies in one or more of the following ways:
- 25 (A) government-issued identification; or
- 26 (B) any commercially reasonable method that relies on public or private transactional data to verify
27 the age of the person attempting to access the information is at least 18 years of age or older.
- 28 (i) "Substantial portion" means more than 33 1/3% of total material on a website, which

1 meets the definition of "material harmful to minors" as defined by this section.

2 (j) "Transactional data" means a sequence of information that documents an exchange,
3 agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying
4 a request or event. Transactional data may include but is not limited to records from mortgage, education, and
5 employment entities."

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7 NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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