

1 HOUSE BILL NO. 711

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11
 12 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE "STOP GUILT BY ACCUSATION ACT";
 13 PROVIDING DUTIES FOR MEDIA OUTLETS; IMPOSING PENALTIES FOR NONCOMPLIANCE BY MEDIA
 14 OUTLETS; PROVIDING CERTAIN MEDIA OUTLETS IMMUNITY FROM LIABILITY; PROVIDING
 15 LEGISLATIVE FINDINGS AND PURPOSE; PROVIDING DEFINITIONS; AND PROVIDING AN
 16 APPROPRIATION."

17
 18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19
 20 NEW SECTION. Section 1. Short title. [Sections 1 through 8] may be cited as the "Stop Guilt by
 21 Accusation Act".

22
 23 NEW SECTION. Section 2. Legislative findings. The legislature finds that:

24 (1) the first amendment of the United States constitution asserts that the government shall make no
 25 law abridging the freedom of the press;

26 (2) freedom of the press in the United States is not absolute and is subject to certain restrictions, such
 27 as defamation law;

28 (3) the state has a compelling interest to compel the press to promote the objective truth for the sake

1 of the viability of democracy, for the safety, health, and welfare of our communities, in keeping with the spirit of
2 the due process clause of the 14th amendment, and to stop the press from serving as a slander machine;

3 (4) there has been a growing trend for individuals to abuse process and maliciously prosecute
4 someone they disagree with ideologically by filing spurious cases and controversies in various government
5 venues for ulterior motives, knowing that certain segments of the media that align with their ideology would
6 serve as accomplices by engaging in a form of defamation in-kind by selectively reporting on the fact of the
7 original case but not on the actual outcomes in actions in which a petitioner received less relief than originally
8 sought, which cultivates an unjust prejudicial conviction in the court of public opinion causing the cause to be
9 shunned, avoided, and marginalized and the media outlet guilty of defamation in-kind to the point that it unduly
10 decreases the quality of life for the accused;

11 (5) the pattern of media outlets reporting only on the facts of a case and controversy but not the
12 outcome has incentivized the abuse of our institutions of justice to the point that it threatens to erode the
13 community's trust in the integrity of different governmental institutions while giving license to the unaccountable
14 members of the press to abuse their position with impunity by trampling civil liberties; and

15 (6) the state has a compelling interest to compel the press to promote the truth because, without the
16 truth, there is no freedom, as freedom comes from the truth.

17

18 **NEW SECTION. Section 3. Legislative purpose.** The purpose of [sections 1 through 8] is to:

19 (1) prevent unchecked media outlets from acting as slander machines by engaging in defamation in-
20 kind, abusing the general public, and degrading the integrity of our institutions of justice through selective
21 reporting on cases and controversies that cultivates false narratives to the point that it unduly injures the
22 accused by eroding their civil liberties, causing them to be shunned and avoided by the general public due to a
23 cloud of suspicion of wrongdoing that does not exactly align with the original allegations or the relief provided in
24 a case and controversy lodged before a government body;

25 (2) protect the integrity of the press and encourage good character of the members of the press;

26 (3) deter malicious prosecution and abuse of process in general and deter prosecutors from
27 overcharging defendants or plaintiffs from seeking excessive relief in the original cause complaint;

28 (4) promote a mercy-centric justice system because no human being is perfect; and

1 (5) deter convictions in the court of public opinion that do not necessarily align with convictions by our
2 institutions of justice.

3
4 **NEW SECTION. Section 4. Definitions.** As used in [sections 1 through 8], the following definitions
5 apply:

6 (1) "Abuse of process" means the act of bringing and following through with a civil or criminal action or
7 case and controversy for a purpose known to be different from the purpose for which the action was designed.
8 The term includes proceedings that are brought for ulterior reasons than sought on the surface.

9 (2) "Accused" means a person who is blamed for a wrongdoing before a civil court, ethics
10 commission, criminal court, administrative court, or military tribunal. The term includes a person who has been
11 arrested or formally charged by an indictment, information, or presentment with a crime or ethical violation. The
12 term means the suspect, respondent, or defendant.

13 (3) "Case and controversy" means a civil, criminal, or ethical proceeding before a governmental,
14 state, federal, or administrative court, ethics commission, military tribunal, or legislative body.

15 (4) "Court of public opinion" means the general community consensus or opinion.

16 (5) "Defamation" means a false and unprivileged statement of fact that is harmful to someone's
17 reputation and published with fault as a result of negligence or malice.

18 (6) "Defamation in-kind" means the failure of a media outlet to report on the outcome of a case and
19 controversy after it reported on the initial filings of a case or controversy in which the petitioner ended up
20 receiving less relief than originally sought or could have been obtained, which could reasonably cultivate in a
21 conviction in the court of public opinion by placing the accused in a false light that causes the accused to be
22 avoided, marginalized, and shunned by the general public.

23 (7) "False light" means an untrue or misleading portrayal.

24 (8) "Malicious prosecution" means initiating a criminal prosecution or civil suit or other proceedings
25 against another party with malice and without probable cause.

26 (9) "Media outlet" means a publication or broadcast program that provides news and feature stories to
27 the public through various distribution channels. Media outlets include newspapers, magazines, radio stations,
28 television stations, and certain websites on the internet and are part of the press. A media outlet does not

1 involve a person who does not work in the press as a profession or who does not regularly engage in the
2 business of reporting.

3 (10) "Mug shot" means an official photograph taken after the accused suspect is arrested for an
4 alleged criminal violation. The intended purpose of the mug shot is to allow law enforcement to have a
5 photographic record of the arrested individual. Mug shots are also intended to be used for identification by
6 victims and investigators. A mug shot is generally a two-part photo, one with a side-view photo and one with a
7 front-view photo.

8 (11) "Petitioner" means a person or government body who presents a petition to a government
9 authority in respect of a particular cause. The term includes a plaintiff, claimant, or complainant.

10 (12) "Press" means individuals, such as reporters and photographers, who work for newspapers,
11 magazines, television, websites, and radio outlets.

12

13 **NEW SECTION. Section 5. Media outlet duties.** (1) A media outlet is required to provide equal
14 coverage in comparable time, place, magnitude, prominence, scale, and manner in the same format as the
15 original reporting of a case and controversy if:

16 (a) the media outlet reported on the facts of a case and controversy and the final verdict provided less
17 relief against the accused than originally sought by the petitioner or less than could have been obtained by the
18 petitioner; and

19 (b) the accused or an authorized agent of the accused sends an electronic or written demand notice
20 to an authorized agent of the media outlet within 20 days after the verdict or outcome, demanding that the facts
21 surrounding the final and actual decision or outcome be reported and published as a follow-up to the original
22 reporting.

23 (2) In the written notice provided for under subsection (1)(b), the accused or an authorized agent of
24 the accused must include:

25 (a) the date and source of the first reporting by the media outlet;

26 (b) a short description of the original allegation, the original relief sought by the petitioner or the
27 amount of relief that could have been obtained, and a short description of the final outcome and the relief
28 actually awarded;

1 (c) the location of the venue in which the case and controversy was resolved and the docket number
2 of the case and controversy, if one was assigned; and

3 (d) an acknowledgment that the positions asserted in the notice demand are declared under oath
4 under the penalty of perjury pursuant to 28 U.S.C. 1746.

5 (3) In the notice demand provided for under subsection (1)(b), the accused or an authorized agent of
6 the accused may include:

7 (a) a photograph of the accused with authorization for the media outlet to use at its discretion;

8 (b) internet links to an electronic version or a hard copy of the original coverage published by the
9 media outlet;

10 (c) a demand to take down any unflattering pictures or a mug shot of the accused used in the original
11 publication; and

12 (d) any other facts or pertinent information that could be relevant.

13 (4) If a media outlet reports on the facts of a case and controversy and displays the mug shot of the
14 accused and the accused is acquitted, enters a plea of no contest, or receives an outcome more favorable than
15 originally sought by the petitioner or available to the petitioner:

16 (a) the media outlet shall take down or remove the mug shot from any digital publication if possible;
17 and

18 (b) the media outlet may not display the mug shot in the follow-up publication that reports on the
19 actual outcome of the case and controversy and may display only images it has the authorization to use.

20 (5) If the result of a civil trial is settled under the terms of a private settlement agreement, the accused
21 is not required to provide the terms of the private settlement agreement but may alert the media outlet that the
22 case and controversy was settled.

23
24 **NEW SECTION. Section 6. Media outlet compliance -- penalty.** (1) After receiving the notice
25 demand by the accused pursuant to [section 5(1)(b)], a media outlet that reported on the facts of the case and
26 controversy prior to the resolution of the case and controversy has 10 days to comply with [section 5(1)] by
27 publishing the follow-up story that reports on the actual outcome. The accused has the burden of proof at a civil
28 trial to show that the notice was timely served on the media outlet and met the requirements of [section 5(2)]. If

1 the media outlet fails to comply with the notice demand within 10 days, the accused has 1 year from the date of
2 noncompliance to file suit and may seek the following relief from the media outlet in a court of competent
3 jurisdiction:

- 4 (a) statutory damages of \$10,000 or actual damages;
- 5 (b) attorney fees and costs;
- 6 (c) actual damages; and
- 7 (d) other forms of equitable and injunctive relief.

8 (2) If multiple media outlets fail to comply with the notice demand and are subjected to the jurisdiction
9 of a court of competent jurisdiction, the media outlets may be added as codefendants in a consolidated case to
10 conserve judicial resources.

11 (3) If a media outlet displayed a mug shot of the accused in the original publication in a digital format,
12 the accused may seek injunctive relief to have the media outlet remove the image pursuant to [section 5(4)].

13

14 **NEW SECTION. Section 7. Media outlet -- immunity from liability.** (1) A media outlet is immune
15 from liability under [sections 1 through 8] if the media outlet:

- 16 (a) is known to publish satire or parody or admits that it is a fake news outlet that purposely traffics in
17 fiction peddling for comedic or entertainment purposes;
- 18 (b) reports on the facts of the outcome in comparable time, place, magnitude, prominence, scale, and
19 manner of the original publication prior to receiving a notice demand from the accused pursuant to [section
20 5(1)(b)];
- 21 (c) receives an untimely notice demand from the accused 20 days or more after a verdict is rendered
22 or a case and controversy is resolved; or
- 23 (d) never reported on the case and controversy prior to a verdict or resolution being reached.

24

25 **NEW SECTION. Section 8. Waiver of rights by accused.** An accused has the right to waive the
26 accused's rights under [sections 1 through 8] as part of a negotiated settlement. A court of competent
27 jurisdiction may decline to recognize the accused's waiver of rights under this section if there is any evidence
28 that the waiver was given under coercion.

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2 NEW SECTION. **Section 9. Appropriation.** There is appropriated \$10 from the state general fund to
3 the department of justice for the fiscal year beginning July 1, 2021, for the purposes of enforcing the provisions
4 of [sections 1 through 8].

5

6 NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
7 codified as an integral part of Title 27, chapter 1, part 8, and the provisions of Title 27, chapter 1, part 8, apply
8 to [sections 1 through 8].

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