

HOUSE BILL NO. 112

INTRODUCED BY J. BRUEGGEMAN

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS CONCERNING DOCUMENTS TO INCLUDE ELECTRONIC MAIL; PROVIDING THAT ELECTRONIC MAIL USED FOR THE TRANSACTION OF OFFICIAL BUSINESS IS A PUBLIC RECORD; INCLUDING THE UNLAWFUL INTERCEPTION OF ELECTRONIC MAIL AS A VIOLATION OF THE LAW ON PRIVACY IN COMMUNICATIONS; AMENDING SECTIONS 2-3-301, 2-6-101, 2-6-102, 2-6-110, 2-6-202, 2-6-301, 2-6-401, AND 45-8-213, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-3-301, MCA, is amended to read:

"2-3-301. Agency using electronic mail to accept public comment electronically -- dissemination of electronic mail address and documents required -- prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall, if the agency is capable of receiving electronic mail from the internet world wide web, provide for the receipt of public comment by the agency by use of that electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate mediums its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
- (b) the telephone directory of state agencies published by the department of administration;
- (c) any notice of agency existence, purpose, and operations published on the internet world wide web, popularly known as a "website", used by the agency;
- (d) the state electronic bulletin board; or
- (e) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(d).

(3) An agency that uses electronic mail and creates or receives electronic documents shall, at the

1 request of another agency or person and subject to 2-6-102, disseminate the electronic documents to that
 2 agency or person by electronic mail in place of surface mail. An agency may not charge a fee for providing
 3 documents by electronic mail in accordance with this subsection.

4 (4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic
 5 mail as either an electronic or a paper copy to the same extent that other comments are retained.

6 ~~(4)(5)~~ As used in this section, "agency" means a department, division, bureau, office, board,
 7 commission, authority, or other agency of the executive branch of state government."
 8

9 **Section 2.** Section 2-6-101, MCA, is amended to read:

10 **"2-6-101. Definitions.** (1) Writings are of two kinds:

11 (a) public; and

12 (b) private.

13 (2) Public writings are:

14 (a) the written acts or records of the acts of the sovereign authority, of official bodies and
 15 tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United
 16 States, of a sister state, or of a foreign country, except records that are constitutionally protected from
 17 disclosure;

18 (b) public records, kept in this state, of private writings, including electronic mail, except as
 19 provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from
 20 disclosure.

21 (3) Public writings are divided into four classes:

22 (a) laws;

23 (b) judicial records;

24 (c) other official documents;

25 (d) public records, kept in this state, of private writings, including electronic mail.

26 (4) All other writings are private."
 27

28 **Section 3.** Section 2-6-102, MCA, is amended to read:

29 **"2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to
 30 inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807,

1 or subsection (3) of this section and as otherwise expressly provided by statute.

2 (2) Every public officer having the custody of a public writing that a citizen has a right to inspect
3 is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy,
4 and the copy is admissible as evidence in like cases and with like effect as the original writing. The
5 certified copy provision of this subsection does not apply to the public record of electronic mail provided
6 in an electronic format.

7 (3) Records and materials that are constitutionally protected from disclosure are not subject to the
8 provisions of this section. Information that is constitutionally protected from disclosure is information in
9 which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including
10 legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

11 (4) A public officer may withhold from public scrutiny information relating to individual privacy or
12 individual or public safety or security of public facilities, including jails, correctional facilities, private
13 correctional facilities, and prisons, if release of the information may jeopardize the safety of facility
14 personnel, the public, or inmates of a facility. Security features that may be protected under this section
15 include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials,
16 alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and
17 locations. A public officer may not withhold from public scrutiny any more information than is required to
18 protect an individual privacy interest or safety or security interest."

19

20 **Section 4.** Section 2-6-110, MCA, is amended to read:

21 **"2-6-110. Electronic information and nonprint records -- public access -- fees.** (1) (a) Except as
22 provided by law, each person is entitled to a copy of public information compiled, created, or otherwise
23 in the custody of public agencies that is in electronic format or other nonprint media, including but not
24 limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions
25 applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business
26 secrets, and copyright are applicable to the electronic or nonprint information.

27 (b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society
28 established pursuant to 22-3-101.

29 (2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to
30 exceed:

1 (a) the agency's actual cost of purchasing the electronic media used for transferring data, if the
2 person requesting the information does not provide the media;

3 (b) expenses incurred by the agency as a result of mainframe processing charges;

4 (c) expenses incurred by the agency for providing online computer access to the person requesting
5 access;

6 (d) other out-of-pocket expenses directly associated with the request for information, including
7 the retrieval or production of electronic mail; and

8 (e) the hourly rate for the current fiscal year for a state employee classified as grade 10, market
9 salary, under 2-18-312 for each hour, or fraction of an hour, after one-half hour of copying service has
10 been provided.

11 (3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge
12 an additional fee as reimbursement for the cost of developing and maintaining the property valuation and
13 assessment system database from which the information is requested. The fee must be charged to
14 persons, federal agencies, state agencies, and other entities requesting the database or any part of the
15 database from any department property valuation and assessment system. The fee may not be charged
16 to the governor's office of budget and program planning, the state tax appeal board, or any legislative
17 agency or committee.

18 (b) The department of revenue may not charge a fee for information provided from any department
19 property valuation and assessment system database to a local taxing jurisdiction for use in taxation and
20 other governmental functions or to an individual taxpayer concerning the taxpayer's property.

21 (c) All fees received by the department of revenue under subsection (2) and this subsection (3)
22 must be deposited in a state special revenue fund as provided in 15-1-521.

23 (4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but
24 includes legislative, judicial, and state military agencies.

25 (5) An agency may not charge more than the amount provided under subsection (2) for providing
26 a copy of an existing nonprint record.

27 (6) An agency shall ensure that a copy of information provided to a requester is of a quality that
28 reflects the condition of the original if requested by the requester.

29 (7) This section does not authorize the release of electronic security codes giving access to private
30 information."

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2 **Section 5.** Section 2-6-202, MCA, is amended to read:

3 **"2-6-202. Definitions.** As used in this part, the following definitions apply:

4 (1) (a) "Public records" includes any paper, correspondence, form, book, photograph, microfilm,
5 magnetic tape, computer storage media, map, drawing, or other document, including all copies ~~thereof~~ of
6 the record, regardless of physical form or characteristics, that has been made or received by a state
7 agency in connection with the transaction of official business and preserved for informational value or as
8 evidence of a transaction and all other records or documents required by law to be filed with or kept by
9 any agency of the state of Montana.

10 (b) The term includes electronic mail sent or received in connection with the transaction of official
11 business.

12 (2) "State records committee" or "committee" means the state records committee provided for
13 in 2-15-1013."

14

15 **Section 6.** Section 2-6-301, MCA, is amended to read:

16 **"2-6-301. Definitions.** As used in this part, the following definitions apply:

17 (1) "Constitutionally designated and elected officials of the executive branch of government"
18 means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public
19 instruction, and auditor.

20 (2) (a) "Official records" means any paper, correspondence, form, book, photograph, microfilm,
21 magnetic tape, computer storage media, map, drawing, or other document, including all copies ~~thereof~~ of
22 the record, regardless of physical form or characteristics, that has been made or received by a
23 constitutionally designated and elected official of the executive branch of government in transacting ~~his~~
24 official duties and preserved for informational value or as evidence of a transaction.

25 (b) The term includes electronic mail sent or received in connection with the transaction of official
26 duties."

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28 **Section 7.** Section 2-6-401, MCA, is amended to read:

29 **"2-6-401. Definitions.** For the purposes of this part, the following definitions apply:

30 (1) "Local government" means:

1 (a) any city, town, county, consolidated city-county, or school district; and

2 (b) any subdivision of an entity named in subsection (1)(a).

3 (2) (a) "Public records" includes any paper, correspondence, form, book, photograph, microfilm,
4 magnetic tape, computer storage media, map, drawing, or other document, including all copies of the
5 record, regardless of physical form or characteristics, that has been made or received by any local
6 government; in connection with the transaction of official business; and preserved for informational value
7 or as evidence of a transaction and all other records or documents required by law to be filed with or kept
8 by any local government in the state of Montana.

9 (b) The term includes electronic mail sent or received in connection with the transaction of official
10 duties.

11 (3) "Records custodian" means any individual responsible for the proper filing, storage, or
12 safekeeping of any public records."

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14 **Section 8.** Section 45-8-213, MCA, is amended to read:

15 **"45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits
16 the offense of violating privacy in communications if the person knowingly or purposely:

17 (a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with
18 a person by telephone or electronic mail and uses obscene, lewd, or profane language, suggests a lewd
19 or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person. The
20 use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is
21 prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.

22 (b) uses a telephone or electronic mail to attempt to extort money or any other thing of value from
23 a person or to disturb by repeated telephone calls or electronic mailings the peace, quiet, or right of privacy
24 of a person at the place where the telephone call or calls or electronic mailings are received;

25 (c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical
26 device that reproduces a human conversation without the knowledge of all parties to the conversation.
27 This subsection (1)(c) does not apply to:

28 (i) elected or appointed public officials or employees when the transcription or recording is done
29 in the performance of official duty; ~~and~~

30 (ii) ~~to~~ persons speaking at public meetings; ~~and~~ ~~to~~

1 (iii) persons given warning of the transcription or recording.

2 (d) by means of any machine, instrument, or contrivance or in any other manner:

3 (i) reads or attempts to read a message or learn the contents of a message while it is being sent
4 over a telegraph line or by electronic mail;

5 (ii) learns or attempts to learn the contents of a message while it is in a telegraph office or is being
6 received at or sent from a telegraph office; or

7 (iii) uses, attempts to use, or communicates to others any information obtained as provided in this
8 subsection (1)(d);

9 (e) discloses the contents of a telegraphic message, electronic mail, or any part of a telegraphic
10 message or electronic mail addressed to another person without the permission of the person, unless
11 directed to do so by the lawful order of a court; or

12 (f) opens or reads or causes to be read any sealed letter or electronic mail not addressed to the
13 person opening the letter or reading the electronic mail without being authorized to do so by either the
14 writer of the letter, the sender of the electronic mail, or the person to whom ~~the~~ the letter or electronic mail
15 is addressed or, without the like authority, publishes any of the contents of the letter or electronic mail
16 knowing the letter or electronic mail to have been unlawfully opened.

17 (2) SUBSECTION (1) DOES NOT APPLY TO AN EMPLOYER OR A REPRESENTATIVE OF AN EMPLOYER WHO OPENS
18 OR READS, CAUSES TO BE OPENED OR READ, OR FURTHER PUBLISHES AN ELECTRONIC MAIL OR OTHER MESSAGE THAT
19 EITHER ORIGINATES AT OR IS RECEIVED BY A COMPUTER OR COMPUTER SYSTEM THAT IS OWNED, LEASED, OR OPERATED
20 BY OR FOR THE EMPLOYER.

21 ~~(2)~~(3) Except as provided in 69-6-104, a person commits the offense of violating privacy in
22 communications if the person purposely intercepts a telephonic voice or data communication. This
23 subsection does not apply to elected or appointed public officials or employees when the interception is
24 done in the performance of official duty or to persons given warning of the interception.

25 ~~(3)~~(4) (a) A person convicted of the offense of violating privacy in communications shall be fined
26 not to exceed \$500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

27 (b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the
28 county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

29 (c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned
30 in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or

1 both."

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3 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2001.

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