

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PRIVACY OF HAND-HELD COMMUNICATIONS  
5 DEVICES; REQUIRING CONSENT FOR COLLECTION AND DISCLOSURE OF PERSONAL INFORMATION;  
6 PROVIDING FOR TRANSPARENCY REGARDING COLLECTION AND DISCLOSURE OF PERSONAL USAGE  
7 INFORMATION; PROVIDING FOR A RIGHT TO INSPECT PERSONAL TELECOMMUNICATIONS  
8 INFORMATION THAT IS COLLECTED; AND PROVIDING DEFINITIONS."

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

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

14 (1) "Agency" means a federal, state, or local office, officer, department, division, bureau, board,  
15 commission, or other federal, state, or local agency.

16 (2) "Business" means a sole proprietorship, partnership, corporation, association, or other group,  
17 including nonprofit organizations, and includes a financial institution organized, chartered, or holding a license  
18 or authorization certificate under the law of Montana, any other state, the United States, or any other country and  
19 the parent or the subsidiary of a financial institution. The term includes an entity that disposes of records.

20 (3) "Collection" means the acquisition of personal usage information relating to an end user.

21 (4) "Consent" means the end user acknowledges and agrees to the collection, processing, or disclosure  
22 of the end user's personal usage information, according to the terms described in the notification provided  
23 pursuant to [section 4].

24 (5) "Disclose" means to release, transfer, disseminate, or otherwise communicate all or any part of a  
25 record orally, in writing, or by electronic or other means to any third party.

26 (6) "End user" means the person who utilizes mobile telecommunications service or software installed  
27 on a hand-held communications device. In the case of an entity, the term means the individual who utilizes the  
28 service or software on behalf of the entity.

29 (7) "Entity" includes every business and agency but does not include an individual.

30 (8) "Genuinely necessary" means that it is not possible for an entity to provide a service or product



1 without the personal usage information requested because the personal usage information is an integral part of  
2 the delivered product or method used to provide the service.

3 (9) "Hand-held communications device" includes any device that is capable of providing mobile  
4 telecommunications service and is designed to be carried by the end user, including cell phones, smartphones,  
5 and tablets.

6 (10) "Handset-based location technology" means a method of determining the location of an end user  
7 that requires the use of special location-determining hardware or software in a hand-held communications device.  
8 Handset-based location technology may also employ additional location-determining hardware or software in the  
9 mobile telecommunications carrier's network or another fixed infrastructure.

10 (11) "Handset software provider" means an entity that develops, provides, or resells software that is  
11 installed on a hand-held communications device.

12 (12) "Individual" means a natural person.

13 (13) "Maintain" means to acquire, use, or disclose.

14 (14) "Mobile telecommunications carrier" means a provider of mobile telecommunications service and  
15 includes a telecommunications carrier and a transiting carrier, as defined in 69-3-803, and a handset software  
16 provider. A person providing other products and services in addition to mobile telecommunications service is  
17 considered a mobile telecommunications carrier only to the extent that it is engaged in providing mobile  
18 telecommunications service. The term does not mean an aggregator of telecommunications services as defined  
19 in 47 U.S.C. 226.

20 (15) "Mobile telecommunications service" means commercial mobile radio service, as defined in 47 CFR  
21 20.3.

22 (16) "Network-based location technology" means a method of determining the location of an end user  
23 that employs hardware or software, or both, in the mobile telecommunications carrier's network or another fixed  
24 infrastructure and does not require the use of handset-based location technology.

25 (17) "Person" means an individual, entity, or agency.

26 (18) "Personal usage information" means data gathered from a hand-held communications device or  
27 mobile telecommunications carrier's network that describes an end user's activities, including:

28 (a) location information obtained using network-based location technology or handset-based location  
29 technology;

30 (b) web browsing records and information derived from web browsing records;

- 1 (c) search history information and information derived from search history information;
- 2 (d) application usage information and information obtained from application usage information, including
- 3 but not limited to dates, times, and frequency of application use;
- 4 (e) text message source, destination, date, and time;
- 5 (f) text message content, including text, photographs, video, and audio;
- 6 (g) call source, destination, date, and time;
- 7 (h) call content, including audio and visual data;
- 8 (i) keystrokes;
- 9 (j) audio and visual data collected by the device's microphone or camera;
- 10 (k) photograph and document metadata;
- 11 (l) purchase history and information derived from purchase history;
- 12 (m) end user typing patterns, including timing and characteristics;
- 13 (n) social network information, including identity or characteristics of social connections, number of
- 14 connections, and nature of relationships;
- 15 (o) bandwidth usage records; and
- 16 (p) usernames and passwords.

17 (19) "Processing" means the storage, modification, communication, blocking, and erasure of information.

18 (20) "Record" means any medium, regardless of the physical form, on which personal usage information

19 is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or

20 electromagnetically transmitted. The term does not include publicly available data containing information an

21 individual has voluntarily consented to have publicly disseminated or listed.

22 (21) "Storage" means the entry, recording, or preservation of personal usage information on a storage

23 medium so that it can be processed or used again.

24 (22) "Third party" means any person other than the mobile telecommunications carrier. The term does

25 not include the end user or contractors acting on behalf of the mobile telecommunications carrier.

26

27 **NEW SECTION. Section 2. Application.** The requirements of [sections 1 through 8] apply to all mobile

28 telecommunications carriers that provide services, software, or products to Montana residents, process personal

29 usage information of end users who are Montana residents, or conduct business in the state of Montana.

30

1            **NEW SECTION. Section 3. Consent.** (1) Each mobile telecommunications carrier shall collect, process,  
2 or use only that personal usage information the use of which the end user has consented to in writing or as  
3 required or authorized by the Montana constitution or state law or as mandated by the federal government.

4            (2) A mobile telecommunications carrier may not sell or otherwise disclose personal usage information  
5 to any third parties, including affiliates, without explicit written consent from the end user, except as required or  
6 authorized by the Montana constitution or state law or as mandated by the federal government.

7            (3) In order to obtain consent for collection, (3), processing, use, disclosure, or sale of personal usage  
8 information, a mobile telecommunications carrier shall first notify the end user as provided in [section 4].

9            (4) A mobile telecommunications carrier shall have policies assuming that an end user does not consent  
10 to collection, processing, use, or disclosure of personal usage information unless the end user specifically grants  
11 consent in writing. Consent must be requested separately from a service contract or software license.

12            (5) Consent for collection, processing, use, or disclosure of personal usage information expires 2 years  
13 after the date the end user grants it. After 2 years, the mobile telecommunications carrier shall assume that the  
14 end user revokes consent. The mobile telecommunications carrier may obtain consent from the end user again  
15 as provided in this section.

16            (6) Personal usage information may be used only for the purpose stated and not for any other purpose.

17            (7) A mobile telecommunications carrier is not required to notify the end user or obtain consent for  
18 disclosures of personal usage information to third parties when the disclosure is undertaken under contract, on  
19 behalf of the mobile telecommunications carrier, and in order to accomplish the stated purpose of collection,  
20 processing, and use of personal usage information.

21            (8) (a) A mobile telecommunications carrier may not refrain from conducting commerce with an end user  
22 solely because the end user refuses to consent to the mobile telecommunications carrier's collection, processing,  
23 or use of the end user's personal usage information, except when the personal usage information is genuinely  
24 necessary for the mobile telecommunications carrier to provide the service or product requested, to complete a  
25 financial transaction, or to comply with the law.

26            (b) The mobile telecommunications carrier shall make a reasonable effort to offer the service or product  
27 requested without requiring an end user's personal usage information.

28            (c) For purposes of this section, securing personal usage information to conduct credit checks or other  
29 fraud prevention measures is not considered genuinely necessary for providing the service or product.

30            (d) A mobile telecommunications carrier may not charge a higher fee for a product or service solely

1 because an end user refuses to consent to the mobile telecommunications carrier's collection, processing, or use  
2 of the end user's personal usage information.

3  
4 **NEW SECTION. Section 4. Notice.** (1) An end user must be given notice before the end user's  
5 personal usage information is collected and before a mobile telecommunications carrier discloses the personal  
6 usage information to a third party.

7 (2) (a) Notice that an end user's personal usage information will be collected must be provided by one  
8 of the methods provided in 30-14-1704(5). A notice of collection of personal usage information must contain all  
9 of the following:

- 10 (i) a detailed description of the personal usage information requested;  
11 (ii) the purpose or purposes for which the personal usage information is being collected and used;  
12 (iii) how long the personal usage information will be stored;  
13 (iv) the name of the entity collecting the personal usage information;  
14 (v) the title, business address, and telephone number of the entity official who is responsible for  
15 maintaining the system of records; and  
16 (vi) the authority, if any, authorizing the collection, processing, or use of the personal usage information.

- 17 (b) For each item of personal usage information collected, the notice must contain:  
18 (i) an explanation of whether submission of the personal usage information is mandatory or voluntary;  
19 (ii) the consequences, if any, of not providing the requested personal usage information;  
20 (iii) any known or foreseeable disclosures that may be made of the personal usage information; and  
21 (iv) the end user's right of access to records containing personal usage information that are maintained  
22 by the entity.

23 (3) Notice that an end user's personal usage information will be disclosed must be provided by one of  
24 the methods provided in 30-14-1704(5). A notice of disclosure of personal usage information must contain all of  
25 the following:

- 26 (a) a detailed description of the personal usage information to be disclosed;  
27 (b) the title, business address, and telephone number of the entity official who is responsible for  
28 maintaining records of disclosure;  
29 (c) the end user's right to revoke consent at any time and a description of the process for revoking  
30 consent;

1 (d) the title, business address, and telephone number of the entity official who is responsible for receiving  
2 and processing revocations of consent for disclosure; and

3 (e) the end user's right to access records of disclosure that are maintained by the entity.

4 (4) If written notice is provided pursuant to 30-15-1704(5), the notice must be viewable and legible by  
5 the end user without undue effort on the part of the end user.

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7 **NEW SECTION. Section 5. Security and accountability.** (1) Personal usage information that is  
8 collected must be kept secure from any potential abuses, including but not limited to theft.

9 (2) Each mobile telecommunications carrier shall establish appropriate and reasonable administrative,  
10 technical, and physical safeguards to ensure compliance with the provisions of [sections 1 through 8], to ensure  
11 the security and confidentiality of personal usage information, and to protect against anticipated threats or  
12 hazards to the security or integrity of personal usage information.

13 (3) When there has been a breach or suspected breach of the security of a data system, as defined in  
14 30-14-1704(4)(a), that contains or may contain unencrypted personal usage information, the mobile  
15 telecommunications carrier shall follow the notification requirements of 30-14-1704.

16 (4) When a mobile telecommunications carrier has reason to believe that personal usage information  
17 may have been disclosed to a third party in violation of [sections 1 through 8], the mobile telecommunications  
18 carrier shall notify the end user as required by subsection (3). Notification must be made without unreasonable  
19 delay, consistent with the legitimate needs of law enforcement or with any measures necessary to determine the  
20 scope of accidental disclosure and restore the security of the system of records.

21 (5) Each mobile telecommunications carrier shall keep an accurate accounting of the date, nature, and  
22 purpose of each disclosure of personal usage information for at least 3 years after the disclosure for which the  
23 accounting is made. The accounting must include the name, title, and business address of the third party to whom  
24 the disclosure was made.

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26 **NEW SECTION. Section 6. Access.** (1) Each end user has the right to information regarding personal  
27 usage information that is collected or maintained by a mobile telecommunications carrier about the end user,  
28 including:

29 (a) what personal usage information is collected;

30 (b) how long personal usage information is stored;

1 (c) when personal usage information is disclosed to third parties, including affiliates; and  
2 (d) the identity and contact information of third parties that have had access to personal usage  
3 information.

4 (2) Each end user has the right to inquire and be notified as to whether a mobile telecommunications  
5 carrier maintains a record about the end user or whether such a record is maintained by an entity operating on  
6 behalf of the mobile telecommunications carrier. Mobile telecommunications carriers shall take reasonable steps  
7 to assist end users in making their requests sufficiently specific.

8 (3) An end user's right to information regarding the end user's personal usage information may not be  
9 excluded or restricted by contract.

10 (4) Each mobile telecommunications carrier shall permit an end user to inspect any personal usage  
11 information regarding the end user within 30 days of a request for active records and within 60 days of a request  
12 for records that are geographically dispersed or that are inactive and in storage. Failure to respond within these  
13 time limits is considered a denial.

14 (5) Each mobile telecommunications carrier shall permit an end user to inspect any records of disclosure  
15 of the end user's personal usage information within 30 days of a request for active records and within 60 days  
16 of a request for records that are geographically dispersed or that are inactive and in storage. Failure to respond  
17 within these time limits is considered a denial.

18 (6) The mobile telecommunications carrier shall permit the end user and, upon the end user's request,  
19 another person of the end user's choosing to inspect the personal usage information in the records relating to  
20 the end user and any records of disclosure and to have an exact copy made of all or any portion of the records  
21 within 14 business days of the inspection. The mobile telecommunications carrier may require the end user to  
22 furnish a written statement authorizing disclosure of the end user's record to another person of the end user's  
23 choosing.

24 (7) The mobile telecommunications carrier shall present the information in the record in a form  
25 reasonably comprehensible to the general public.

26 (8) A mobile telecommunications carrier may establish reasonable fees to be charged to an end user  
27 for copying personal usage information. If the mobile telecommunications carrier is an agency, the fees must be  
28 established as provided in 2-6-110.

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30 **NEW SECTION. Section 7. Revocation of consent and erasure.** (1) (a) An end user who has granted

1 consent for the collection or disclosure of personal usage information may revoke consent at any time. An end  
2 user shall revoke consent in writing by notifying the appropriate mobile telecommunications carrier. Each mobile  
3 telecommunications carrier is responsible for forwarding revocation notifications to any entity working on its  
4 behalf. Upon receipt of an end user's revocation of consent, the mobile telecommunications carrier shall:

5 (i) erase the end user's personal usage information from the mobile telecommunications carrier's  
6 systems of records and ensure that it is erased from the systems of all entities working on behalf of the mobile  
7 telecommunications carrier; and

8 (ii) notify the end user in writing when the erasure is complete and verification has been received from  
9 all entities.

10 (b) Erasure must be completed and notification must be sent to the end user within 60 days after the  
11 mobile telecommunications carrier receives the end user's revocation of consent.

12 (2) An end user may not revoke consent for storage and use of personal usage information when the  
13 personal usage information was collected for the purposes of maintaining an auditable record of services  
14 rendered or products sold and the service has been provided or the transaction is complete. An end user may  
15 revoke consent for personal usage information to be used for other purposes only if the other purposes were  
16 granted at the time of collection.

17  
18 **NEW SECTION. Section 8. Violations.** (1) A person who willfully, as defined in 1-1-204, requests or  
19 obtains a record containing personal usage information from an entity under false pretenses using bribery, theft,  
20 or misrepresentation of identity, purpose of use, or entitlement is guilty of a misdemeanor and upon conviction  
21 may be fined not more than \$5,000 or imprisoned for not more than 1 year, or both.

22 (2) An end user may bring a civil action against an entity whenever an entity does any of the following:

23 (a) refuses to comply with an end user's lawful request for information pursuant to [section 6];

24 (b) refuses to comply with an end user's lawful request for revocation of consent and erasure pursuant  
25 to [section 7]; or

26 (c) fails to comply with any other provision of [sections 1 through 8] or any adopted rule when that failure  
27 has an adverse effect on an end user.

28 (3) (a) The following provisions apply to a civil action brought under the provisions of this section:

29 (i) The court may enjoin the entity from withholding the records and order the production to the  
30 complainant of any entity records improperly withheld from the complainant. The court may examine the contents

1 of any entity records in camera to determine whether the records or any portion of the records may be withheld  
2 as being exempt from the end user's right of access. The burden is on the entity to sustain its denial of access  
3 to the end user.

4 (ii) The court may assess against an entity reasonable attorney fees and costs incurred in a civil action  
5 under this section in which the complainant has prevailed. A party may be considered to have prevailed even  
6 though the party does not prevail on all issues or against all parties.

7 (b) An entity that fails to comply with any provision of [sections 1 through 8] may be enjoined by any court  
8 of competent jurisdiction. The court may make any order or judgment necessary to prevent the use by an entity  
9 of practices that violate [sections 1 through 8].

10 (4) Actions for injunction under this section may be prosecuted by the attorney general or a county  
11 attorney upon the attorney general's or county attorney's complaint or the complaint of a member of the general  
12 public or by an end user acting on the end user's own behalf.

13 (5) In a civil action brought under the provisions of subsection (2), the entity is liable to the end user in  
14 an amount equal to the sum of:

15 (a) compensatory and special damages sustained by the end user, including damages for emotional  
16 distress; and

17 (b) the costs of the action together with reasonable attorney fees as determined by the court.

18 (6) An action to enforce the provisions of [sections 1 through 8] may be brought in any court in the county  
19 in which the plaintiff resides or has a principal place of business or where the defendant's records are located  
20 within 2 years from the date on which the cause of action arises. An exception exists when a defendant materially  
21 and willfully misrepresents information required under [sections 1 through 8] to be disclosed to an end user who  
22 is the subject of the information and the information misrepresented is material to the establishment of the  
23 defendant's liability to that end user under [sections 1 through 8]. The action may be brought at any time within  
24 2 years after the plaintiff discovers the misrepresentation.

25 (7) The rights and remedies set forth in [sections 1 through 8] are nonexclusive and are in addition to  
26 those rights and remedies that are available under any other provision of law.

27 (8) A civil action may not lie under this section based upon an allegation that an opinion that is subjective  
28 in nature, as distinguished from a factual assertion, about an end user's qualifications in connection with a  
29 personnel action concerning an end user was not accurate, relevant, timely, or complete.

30 (9) When a remedy other than those provided in this section is provided by law but is not available

1 because of lapse of time, an end user may obtain a correction to a record under [sections 1 through 8], but a  
2 correction may not operate to revive or restore a right or remedy that is barred because of lapse of time.

3  
4 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 8] are intended to be codified  
5 as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through  
6 8].

7 - END -