

HOUSE BILL NO. 448
INTRODUCED BY HARRIS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ~~OFFENSES RELATING TO ILLEGAL COMMUNICATIONS AND TO THE ILLEGAL USE OF LEGAL COMMUNICATIONS; LIMITING DEFAMATION TO PERSONS; REDUCING PENALTIES FOR DEFAMATION; REMOVING GOOD FAITH AS A JUSTIFICATION FOR A STATEMENT CONSIDERED DEFAMATORY; REMOVING ANNOYANCE OR OFFENSE FROM THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS; REMOVING PROFANE LANGUAGE FROM THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS; REMOVING EXCEPTIONS TO THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS; AND AMENDING SECTIONS 45-8-212 AND SECTION 45-8-213, MCA.~~"

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

~~Section 1.~~ Section 45-8-212, MCA, is amended to read:

~~"45-8-212. Criminal defamation.~~ (1) Defamatory matter is anything that actually exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or substantial injury to the person's or its business or occupation.

~~(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means, including by telephone or by a computer, videorecorder, fax machine, or other electronic device, communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 2 months in the county jail or a fine of not more than \$500 \$250, or both.~~

~~(3) Violation of subsection (2) is justified if:~~

~~(a) the defamatory matter is true or substantially true;~~

~~(b) the communication is absolutely privileged;~~

~~(c) the communication consists of fair any comment made in good faith with respect to persons participating in matters of public concern;~~

~~(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or~~

~~(e) the communication is between persons each having an interest or duty with respect to the subject~~

~~matter of the communication and is made with the purpose to further the interest or duty.~~

~~———— (4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two three other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."~~

Section 1. Section 45-8-213, MCA, is amended to read:

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

(a) with the purpose to terrify, intimidate, threaten, or harass, ~~annoy, or offend~~, communicates with a person by telephone or ~~electronic mail~~ by a computer, videorecorder, fax machine, or other electronic device and uses obscene, or lewd, ~~or profane~~ language; and suggests a lewd or lascivious act; or threatens to inflict injury or physical harm to the person or property of the person. The use of obscene, or lewd, ~~or profane~~ language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, or harass, ~~annoy, or offend~~.

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

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

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

(ii) persons speaking at public meetings; or

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

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

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

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

~~———— (iii) uses, attempts to use, or communicates to others any information obtained as provided in this~~

subsection (1)(d);

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

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

~~—— (2) Subsection (1) does not apply to an employer or a representative of an employer who opens or reads, causes to be opened or read, or further publishes an electronic mail or other message that either originates at or is received by a computer or computer system that is owned, leased, or operated by or for the employer.~~

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

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

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

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

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