

SENATE BILL NO. 142
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT PUBLICLY HELD INFORMATION MAY BE WITHHELD FROM DISCLOSURE IF THE RELEASE IS PREEMPTED BY FEDERAL LAW, IF THE INFORMATION IS CRITICAL INFRASTRUCTURE INFORMATION, OR IF THE RELEASE WOULD THREATEN PUBLIC SAFETY OR THE SAFETY OF AN ELECTED PUBLIC OFFICER OR A PUBLIC EMPLOYEE WHO HAS ATTEMPTED TO PROTECT THE PRIVACY OF PERSONAL INFORMATION IN THE EMPLOYEE'S INDIVIDUAL CAPACITY; DEFINING "CRITICAL INFRASTRUCTURE INFORMATION" AND "CRITICAL INFRASTRUCTURE SYSTEMS"; AMENDING SECTIONS 2-6-101 AND 2-6-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the Legislature finds that there is a compelling state interest in protecting the safety of the public and individuals; and

WHEREAS, the Legislature finds that society is willing to recognize as reasonable an expectation of privacy related to critical information relating to the personal safety of certain public officers and employees who are of primary importance to the continuity of government.

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

Section 1. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions Public writings -- private writings -- definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) As used in this part, the following definitions apply:

(a) (i) "Critical infrastructure information" means public writings containing information related to the security of critical infrastructure systems, either physical or computer-based, that could be compromised, interfered with, or incapacitated if the information is misused.

(ii) The term includes but is not limited to any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure systems, including security testing, risk evaluation, risk management

planning, or risk audit.

(b) "Critical infrastructure systems" means buildings, systems, including telecommunications centers and computers, power generation plants, dams, bridges, and similar key resources, whether physical or virtual, so vital to the state that the incapacity or destruction of these systems would have a debilitating impact on security, the state's economic security, or public health or safety.

~~(c)~~ (i) ~~Public writings~~ "Public writings" are:

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

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

~~(3)~~(ii) Public writings are divided into four classes:

~~(a)~~(A) laws;

~~(b)~~(B) judicial records;

~~(c)~~(C) other official documents;

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

~~(4)~~(iii) All other writings are private."

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

"2-6-102. Citizens entitled to inspect and copy public writings -- exceptions. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or ~~subsection~~ subsections (3) and (4) of this section and as otherwise expressly provided by statute.

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

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

(4) A public officer may withhold from public scrutiny information relating to individual privacy, or individual or public safety, or security of public facilities, including:

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

(b) critical infrastructure information compiled by the state that, if released to the public, would create a threat to the privacy or physical safety of any person;

(c) publicly held information concerning addresses, travel plans, and security plans that, if released to the public, would compromise the personal security of:

(i) elected public officers and judges; or

(ii) public employees, who have attempted to protect the privacy of personal information in their individual capacity; or

(d) information, the release of which is preempted by federal law.

(5) A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest, individual or public safety, or security in public facilities."

NEW SECTION. Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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