

HOUSE BILL NO. 453  
INTRODUCED BY B. WISEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE CITIZEN DATA PROTECTION ACT TO PROVIDE PRIVACY PROTECTION FOR ELECTRONIC DATA AND INFORMATION; DEFINING TERMS; PROVIDING CONFIDENTIALITY REQUIREMENTS FOR PROVIDERS OF INTERNET SERVICE; AND REQUIRING ENFORCEMENT BY THE DEPARTMENT OF JUSTICE."

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

**NEW SECTION. Section 1. Short title -- purpose.** (1) [Sections 1 through 6] may be cited as the "Citizen Data Protection Act".

(2) The legislature finds that the right of privacy provided under Article II, section 10, of the Montana constitution must keep pace with the rapid changes in technology.

(3) The legislature also finds that:

(a) the 10th amendment to the U.S. constitution provides that powers not delegated to the federal government by the U.S. constitution are reserved to the states or to the people; and

(b) more restrictive rights of privacy may be reserved to the state under the Montana constitution than are provided in federal law.

**NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 6], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Access" means to intercept or retrieve data from, communicate with, store data in, or otherwise make use of any resources of a computer, system, or network.

(2) "Computer" has the meaning provided in 45-2-101.

(3) "Data" means the representation in any form of information, knowledge, facts, concepts, or instructions that are being prepared, have been formally prepared and are intended to be processed, are being processed, or have been processed in a computer, system, or network.

(4) (a) "Information service" means a service that is designed to or has the capability to generate, process, store, retrieve, convey, emit, transmit, receive, relay, record, or reproduce any data, information, image, software program, signal, or sound by means of any component, device, equipment, system, or network, including

but not limited to:

- (i) a computer, computer system, computer network, modem, or scanner;
  - (ii) a telephone, cellular phone, satellite phone, pager, personal communications device, or facsimile machine;
  - (iii) any type of transmitter or receiver; or
  - (iv) any other component, device, equipment, system, or network that uses analog, digital, electronic, electromagnetic, magnetic, or optical technology.
- (b) The term does not include a television company using a community antenna system.
- (5) "Internet" has the meaning provided in 2-17-551.
- (6) "Network" means a set of related, remotely connected devices and facilities, including more than one system, with the capability to transmit data among any of the devices and facilities. The term includes but is not limited to a local, regional, or global computer network.
- (7) "Person" means an individual, association, company, firm, partnership, corporation, or limited liability company.
- (8) (a) "Provider of internet service" means a person who provides users with authenticated access to or presence on the internet by means of a switched or dedicated communications channel upon which the provider provides transit routing of internet protocol packets for and on behalf of the user.
- (b) Unless otherwise stated, the term does not include the offering, on a common carrier basis, of telecommunications as defined by 47 U.S.C. 153.
- (9) "Response costs" means any reasonable costs that arise in response to and as a proximate result of a crime described in [sections 1 through 6]. The term includes but is not limited to any reasonable costs to:
- (a) investigate the facts surrounding the crime;
  - (b) ascertain or calculate any past or future loss, injury, or other damage;
  - (c) remedy, mitigate, or prevent any past or future loss, injury, or other damage;
  - (d) test, examine, restore, or verify the integrity of or the normal operation or use of any internet or network site, electronic mail address, computer, system, network, component, device, equipment, data, information, image, software program, signal, or sound.
- (10) "Software program" means an ordered set of data representing coded instructions or statements that can be executed by a computer and cause the computer to perform one or more tasks.
- (11) "Subscriber" means a person who establishes an account with a provider of internet service, whether or not on a fee basis.

(12) "System" means a set of related equipment, whether or not connected, that is used with or for a computer.

(13) "User" means an individual who uses the services offered by the provider of an internet service.

**NEW SECTION. Section 3. Disclosure to government agencies.** The disclosure to a governmental agency of any data, information, image, software program, signal, or sound contained in any computer, system, or network or access to a computer, system, network, telecommunications device, telecommunications service, or information service is allowed upon:

(1) presentation of:

(a) a subpoena under 46-4-301;

(b) a search warrant or other order issued by a court of competent jurisdiction to the governmental agency and obtained using the procedures described in 46-5-220 through 46-5-228 or by demonstrating that the merits of public disclosure clearly exceed the demand for individual privacy; or

(c) appropriate authority provided by the federal rules of criminal procedure or the stored wire and electronic communications and transactional records access provisions of 18 U.S.C. 2701, et seq.; or

(2) compliance with the terms and conditions that may be required under 5 U.S.C. 552a, 12 U.S.C. 1953, et seq., 12 U.S.C. 3412, et seq., 15 U.S.C. 1681, et seq., 18 U.S.C. 2510, et seq., 20 U.S.C. 1232g, 42 U.S.C. 3796h, 47 U.S.C. 551, et seq., 50 U.S.C. 401, et seq., 50 U.S.C. 1801, et seq.

**NEW SECTION. Section 4. Provider of internet service -- information requirements -- notice -- unintentional disclosure -- penalties.** (1) (a) A provider of internet service shall keep confidential all information concerning a user unless the subscriber gives permission, in writing or by electronic mail, to the provider of internet service to disclose the information.

(b) An electronic mail message from a subscriber giving permission to disclose information relating to any user of that subscriber's account:

(i) may not be generated by the provider of internet service;

(ii) may not be required as a term of service by the provider of internet service; and

(iii) must provide a specific, clear statement from the subscriber acknowledging that the provider of internet service may disclose the user's information.

(2) A provider of internet service shall provide notice of the requirements of subsection (1) to each of its subscribers.

(3) Except as provided in [section 3] or as otherwise provided by federal or state law, a provider of internet service may not disclose to unauthorized third parties for sale, marketing, or any other purpose information regarding a user's interactions with the provider of internet service, including but not limited to:

- (a) uniform resource locators accessed or retrieved by a user, including websites;
- (b) all electronic mail sent and received by a user;
- (c) all files downloaded or uploaded by a user; and
- (d) all data accessed by or provided by a user or subscriber.

(4) A provider of internet service may review user data described in subsection (3) as required by federal law but may not disclose the data to unauthorized third parties for sale, marketing, or any purpose not required by federal law.

(5) A provider of internet service may not be held liable for a third party's illegal acquisition of data under this section unless the provider of internet service did not take reasonable steps to maintain the security and privacy of the data.

(6) A provider of internet service who is convicted of knowingly violating any provision of this section is guilty of a misdemeanor and shall be punished as provided in 46-18-212.

(7) For the purposes of this section, "provider of internet service" is a person who provides to a subscriber or a user, with or without a fee, access to the internet or the electronic mail address of the subscriber or user and may include a telecommunications provider.

**NEW SECTION. Section 5. Victim's right of civil action.** (1) Any victim of a crime described in [sections 1 through 6] may bring a civil action to recover:

- (a) damages for any response costs, loss, or injury suffered as a result of the crime;
- (b) punitive damages; and
- (c) costs and reasonable attorney fees incurred in bringing the civil action.

(2) A victim of a crime described in [sections 1 through 6] may bring a civil action pursuant to this section whether or not the person who committed the crime is or has been charged with or convicted or acquitted of the crime or any other offense arising out of the facts surrounding the crime.

(3) The provisions of this section do not abrogate or limit the right of a victim of a crime described in [sections 1 through 6] to bring a civil action under any other statute.

**NEW SECTION. Section 6. Enforcement -- department of justice duties.** (1) The department of

justice or an appropriate county attorney may seek an injunction in any court of competent jurisdiction to prevent the continuance of any act or practice that violates any provision of [sections 1 through 6].

(2) An injunction may be issued without proof of actual damage sustained by any person and does not preclude criminal prosecution and punishment as provided in [sections 1 through 6].

**NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 6].

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