

HOUSE BILL NO. 630
INTRODUCED BY D. GALLIK

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT FRAUDULENT ELECTRONIC MISREPRESENTATION, "PHISHING", IS THE CRIME OF A THEFT OF IDENTITY; AND AMENDING SECTIONS 30-14-1701 AND 30-14-1702, MCA."

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

NEW SECTION. Section 1. Fraudulent electronic misrepresentation -- penalties -- exemption. (1)

An individual or business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information by purporting to be a third-party individual or a business without the authority or approval of the third-party individual or business is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as "phishing".

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action, as provided in [section 2].

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

NEW SECTION. Section 2. Remedies for fraudulent electronic misrepresentation. (1) A business, including the owner of a website or the owner of a trademark, that is adversely affected by a violation of [section 1(1)] may bring an action to recover the greater of actual damages or \$500,000.

(2) An individual who is adversely affected by a violation of [section 1(1)] may bring an action against an individual or a business that has directly violated [section 1(1)] for the greater of three times actual damages

or \$5,000 for each violation.

Section 3. Section 30-14-1701, MCA, is amended to read:

"30-14-1701. Purpose. The purpose of 30-14-1701 through 30-14-1705 and [sections 1 and 2] is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332."

Section 4. Section 30-14-1702, MCA, is amended to read:

"30-14-1702. Definitions. As used in 30-14-1701 through 30-14-1705 and [sections 1 and 2], unless the context requires otherwise, the following definitions apply:

(1) (a) "Business" means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. The term also includes industries regulated by the public service commission or under Title 30, chapter 10.

(b) The term does not include industries regulated under Title 33.

(2) "Customer" means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(3) "Electronic mail message" means a message sent to a unique destination, commonly expressed as a string of characters, consisting of a unique user name or electronic mailbox and a reference to an internet domain, whether or not displayed, to which an electronic message can be sent or delivered.

~~(3)~~(4) "Individual" means a natural person.

(5) "Internet" has the meaning provided in 2-17-551.

(6) "Internet services provider" has the meaning provided in 2-17-602.

~~(4)~~(7) "Personal information" means an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport number, driver's license or state identification number, insurance policy number, bank account number, credit card number, debit card number, passwords or personal identification numbers required to obtain access to the individual's finances, or any other financial information as provided by rule. A social security number, in and of itself, constitutes personal information.

~~(5)~~(8) (a) "Records" means any material, regardless of the physical form, on which personal information

is recorded.

(b) The term does not include publicly available directories containing personal information that an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(9) "Website" means an electronic location that has a single uniform resource locator or other single location with respect to the internet."

NEW SECTION. Section 5. Fraudulent electronic misrepresentation -- penalties -- exemption. (1) An individual or a business that, by means of a website, an electronic mail message, or otherwise through the internet, solicits, requests, or takes an action to induce another individual or business to provide personal information, as defined in 33-19-321, by purporting to be a licensee or insurance-support organization that conducts business in Montana without the authority or approval of the represented licensee or insurance-support organization that conducts business in Montana is guilty of a theft of identity, as provided in 45-6-332(1). This crime of fraudulent electronic misrepresentation is commonly known as "phishing".

(2) An individual or a business that is adversely affected by a violation of subsection (1) has a private right of action.

(3) The attorney general or a county attorney in a county where the violation under subsection (1) is reported may bring a criminal action against an individual or a business accused of engaging in a pattern and practice of violating subsection (1) and, in addition to bringing a criminal action, may request a court of competent jurisdiction to issue a temporary injunction against the continued use of a website, an electronic mail message, or the internet by the individual or business served with the injunction.

(4) An internet services provider may not be held liable for identifying, removing, or disabling access to an internet website or other online location if the internet services provider believes that the internet website or other online location is being used to engage in a violation of this section.

NEW SECTION. Section 6. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 30, chapter 14, part 17, and the provisions of Title 30, chapter 14, part 17, apply to [sections 1 and 2].

(2) [Section 5] is intended to be codified as an integral part of Title 33, chapter 19, and the provisions of Title 33, chapter 19, apply to [section 5].

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