

HOUSE BILL NO. 445

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A SEARCH WARRANT IS REQUIRED FOR A GOVERNMENT ENTITY TO ACCESS ANY ELECTRONIC DEVICE UNLESS INFORMED CONSENT IS OBTAINED OR A JUDICIALLY RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT EXISTS; REQUIRING NOTICE BUT ALLOWING DELAYED NOTICE IN CERTAIN CIRCUMSTANCES; AND PROVIDING DEFINITIONS."

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

NEW SECTION. Section 1. Definitions. (1) "Electronic device" means a device that enables access to or use of an electronic communication service, remote computing service, or location information service.

(2) "Government entity" means a state or local agency, including but not limited to a law enforcement entity or any other investigative entity, agency, department, division, bureau, board, or commission or an individual acting or purporting to act for or on behalf of a state or local agency.

(3) "Remote computing service" means the provision of computer storage or processing services by means of an electronic communications system.

(4) "Stored data" means data or records that are stored on an electronic device that contains:

(a) information revealing the identity of users of the applicable service, device, or program;

(b) information about a user's use of the applicable service, device, or program;

(c) information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the user;

(d) the content of a wire communication or electronic communication sent to or by the user; or

(e) any data, documents, files, or communications stored by or on behalf of the user with the applicable service provider or on the user's electronic device.

NEW SECTION. Section 2. Electronic data privacy -- warrant required -- exceptions. (1) (a) Except as provided in subsection (2), a government entity may not obtain the stored data of an electronic device without a search warrant issued by a court upon a finding of probable cause.

(b) A government entity may not use, copy, or disclose, for any purpose, the stored data of an electronic device that is not the subject of the warrant collected in an effort to obtain the stored data of the electronic device that is the subject of the warrant in subsection (1)(a).

(c) The data described in subsection (1)(b) must be destroyed in an unrecoverable manner by the government entity no later than 24 hours after the data is collected.

(2) A government entity may obtain the stored data of an electronic device without a search warrant:

(a) with the informed, affirmative consent of the owner or user of the electronic device;

(b) in accordance with judicially recognized exceptions to warrant requirements;

(c) if the owner has voluntarily and publicly disclosed the stored data;

(d) there exists a possible life-threatening situation;

(e) if a government entity has possession of a lost, stolen, or otherwise unidentified device, and the government entity cannot determine ownership of the device without accessing the device, access on the part of the government entity is limited to determining ownership and a method of contacting the owner so that the device can be returned; or

(f) in order to respond to the user's call for emergency services.

NEW SECTION. **Section 3. Notice -- delayed notice.** (1) At or before the time that a government entity receives the stored data from an electronic device that was searched pursuant to [section 2], the government entity shall serve upon or deliver to, by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing the warrant, the user of the electronic device:

(a) a copy of the warrant; and

(b) notice that informs the user of the electronic device:

(i) of the nature of the government inquiry with reasonable specificity;

(ii) that information and electronic data contained on the electronic device named in the process or request was supplied to or requested by the government entity; and

(iii) the date on which the warrant was served on the user.

(2) (a) A government entity that is seeking a warrant under [section 2] may include in the application for the warrant a request for an order delaying the notification required under subsection (1) of this section for a period of not more than 90 days.

(b) A court shall grant a request for delayed notification made under subsection (2)(a) if the court

determines that there is reason to believe that notification of the existence of the warrant may result in:

(i) endangering the life or physical safety of an individual;

(ii) flight from prosecution;

(iii) destruction or tampering with evidence;

(iv) intimidation of potential witnesses; or

(v) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) Upon request by a government entity, a court may grant one or more extensions of the delay of notification granted under this subsection (2) of not more than 90 days each.

(d) Upon expiration of the period of delay under this subsection (2) the government entity shall serve upon, or deliver to by registered or first-class mail, electronic mail, or other means reasonably calculated to be effective, as specified by the court issuing the warrant, the user of the electronic device a notice that:

(i) includes the information referred to in subsection (1);

(ii) informs the user:

(A) that notification of the user was delayed;

(B) the identity of the court authorizing the delay; and

(C) of the provision of subsection (2)(b) under which the delay was authorized.

NEW SECTION. Section 4. Admissibility of proof -- violations. (1) Except as proof of a violation of [sections 1 through 4], evidence obtained in violation of [sections 1 through 4] is not admissible in a civil, criminal, or administrative proceeding and may not be used in any type of affidavit in an effort to obtain a search warrant or court order.

(2) The attorney general may apply for an injunction or commence a civil action against any government entity to compel compliance with the terms of [sections 1 through 4].

NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [sections 1 through 4].

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