

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

STEVE BULLOCK  
GOVERNOR



MIKE COONEY  
LT. GOVERNOR

March 31, 2017

The Honorable Austin Knudsen  
Speaker of the House  
State Capitol  
Helena, MT 59620

Dear Speaker Knudsen:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill 148 (HB 148), "AN ACT GENERALLY REVISING LAWS RELATED TO ELECTRONIC COMMUNICATIONS; PROVIDING DEFINITIONS; REQUIRING A SEARCH WARRANT FOR DISCLOSURE OF ELECTRONIC COMMUNICATIONS BY A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE; REQUIRING NOTICE BE GIVEN TO A CUSTOMER OF AN ELECTRONIC COMMUNICATION SERVICE IF THE CONTENTS OF AN ELECTRONIC COMMUNICATION ARE GIVEN TO A GOVERNMENTAL ENTITY; ALLOWING DELAYED NOTICE UNDER CERTAIN CIRCUMSTANCES; DISALLOWING CERTAIN EVIDENCE IN CERTAIN PROCEEDINGS; ALLOWING THE ATTORNEY GENERAL TO COMMENCE CIVIL ACTIONS AGAINST GOVERNMENTAL ENTITIES TO COMPEL COMPLIANCE; ALLOWING A PROVIDER OF AN ELECTRONIC COMMUNICATION SERVICE STANDING TO CHALLENGE CERTAIN WARRANTS; AND ALLOWING VOLUNTARY DISCLOSURE OF ELECTRONIC COMMUNICATION INFORMATION."

HB 148 is a good bill that protects Montanans' right to privacy and the right to be free of government searches of electronic information without a proper warrant or investigative subpoena. However, several changes were made to the bill as it made its way through the legislature that may undermine its purpose of protecting our privacy and Fourth Amendment rights. My amendments strengthen the bill.

First, the inclusion of "investigative subpoenas" in the bill may invite a Fourth Amendment legal challenge. Warrants are issued pursuant to a judicial finding of "probable cause" that an offense has been committed. Investigative subpoenas, however, may be issued by a court pursuant to a lesser standard if the information sought is not deemed to be "constitutionally protected." § 46-4-301, (2)-(3). My amendments require that both warrants and investigative subpoenas seeking access to electronic information maintained by a service provider require a finding of "probable cause" that an offense has been committed.

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Second, there is language in the bill that expands the scope of a warrant or investigative subpoena to include electronic data “regardless of where the information is held.” This provision would authorize governmental entities to compel the production of electronic communications information that is stored outside of the United States. Such a scenario may violate the laws of foreign countries and sets an unwelcome precedent of nations unilaterally obtaining information rather than cooperating in law enforcement investigations. My amendments strike this language.

Finally, while “investigative subpoenas” were included in Section 2 of the bill, they were inadvertently omitted from the rest of the bill. I have included references to investigative subpoenas throughout the bill as appropriate, to ensure they are subject to the same requirements as warrants.

I respectfully ask for your support of these amendments.

Sincerely,



STEVE BULLOCK

Governor's Office

Enclosure

cc: Legislative Services Division  
Secretary of State

Amendments to House Bill No. 148  
Reference Copy

Requested by the Governor

For the House Committee of the Whole

Prepared by Todd Everts  
March 30, 2017 (4:12pm)

1. Page 2, line 16.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
2. Page 2, line 19 through 20.  
**Strike:** "UNDER" on line 19  
**Insert:** "upon a finding of probable cause pursuant to"  
**Strike:** "AN" on line 19 through "UNDER" on line 20
3. Page 2, line 26.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
4. Page 2, line 27.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
5. Page 3, line 3.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
6. Page 3, line 4.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
7. Page 3, line 5.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
8. Page 3, line 8.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
9. Page 3, line 9.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"
10. Page 3, line 11.  
**Following:** "warrant"  
**Insert:** "or investigative subpoena"

11. Page 3, line 22.

**Following:** "warrant"

**Insert:** "or investigative subpoena"

12. Page 3, line 28.

**Following:** "warrant"

**Insert:** "or investigative subpoena"

13. Page 4, line 3 through line 4.

**Following:** "ENTITY"

**Strike:** ", REGARDLESS" on line 3 through "HELD" on line 4

**Insert:** "pursuant to a valid warrant or investigative subpoena"

14. Page 4, line 26.

**Following:** "warrant"

**Insert:** "or investigative subpoena"

- END -