



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; PROVIDING A CIVIL CAUSE OF ACTION FOR VIOLATIONS; AND PROVIDING DEFINITIONS AND EXCEPTIONS.

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

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Authorized user" means a person who has the permission of the owner to possess and operate the electronic device.

(2) "Electronic communication service" means a service that:

(a) provides to users the ability to send or receive electronic communications;

(b) provides to users computer storage or processing services; or

(c) acts as an intermediary in the transmission of electronic communications.

(3) "Electronic device" means a device that enables access to or use of an electronic communication service or remote computing service.

(4) "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.

(5) "Owner" means a person who is the legal owner of the electronic device. If the electronic device is the subject of an agreement for the conditional sale of the electronic device with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the person possessing the device, or in the event the electronic device is subject to a lease, contract, or other legal arrangement vesting the right of possession or control in the person possessing the electronic device, then the owner is the person in whom the right of possession or control is vested.

(6) "Remote computing service" means the provision of computer storage or processing services by

means of an electronic communications system.

(7) "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.

Section 2. Electronic data privacy -- warrant required -- exceptions. (1) 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.

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

(a) with the consent of the owner or authorized 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) if the government entity, in good faith, believes that an emergency involving danger, death, or serious physical injury to a person requires immediate disclosure of communications relating to the emergency;

(e) in order to respond to the user's call for emergency services; or

(f) for any electronic devices found within the confines of an adult or youth correctional facility.

(3) Nothing in [sections 1 through 3] may be construed to limit a government entity's ability to use, maintain, or store information on its own electronic devices or to disseminate information stored on its own electronic devices.

(4) [Sections 1 through 3] do not apply to motor carrier safety or hazardous materials programs implemented by the department of transportation for purposes of complying with federal motor carrier safety regulations.

Section 3. Civil action for violation. 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 3].

Section 4. Codification instruction. [Sections 1 through 3] 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 3].

- END -

I hereby certify that the within bill,
HB 0147, originated in the House.

Speaker of the House

Signed this _____ day
of _____, 2017.

Chief Clerk of the House

President of the Senate

Signed this _____ day
of _____, 2017.

HOUSE BILL NO. 147

INTRODUCED BY D. ZOLNIKOV, B. BENNETT

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