

HOUSE BILL NO. 147

INTRODUCED BY D. ZOLNIKOV, B. BENNETT

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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; PROVIDING THAT EVIDENCE OBTAINED IN VIOLATION IS NOT ADMISSIBLE; AND PROVIDING DEFINITIONS AND EXCEPTIONS."

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

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

(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) Except



1 as provided in subsection (2), a government entity may not obtain the stored data of an electronic device without
2 a search warrant issued by a court upon a finding of probable cause.

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

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

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

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

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

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

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

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

16 (4) [SECTIONS 1 THROUGH 3] DO NOT APPLY TO MOTOR CARRIER SAFETY OR HAZARDOUS MATERIALS PROGRAMS
17 IMPLEMENTED BY THE DEPARTMENT OF TRANSPORTATION FOR PURPOSES OF COMPLYING WITH FEDERAL MOTOR CARRIER
18 SAFETY REGULATIONS.

19
20 NEW SECTION. Section 3. Admissibility of proof -- violations. (1) Except as proof of a violation of
21 [sections 1 through 3], evidence obtained in violation of [sections 1 through 3] is not admissible in a civil, criminal,
22 or administrative proceeding and may not be used in any type of affidavit in an effort to obtain a search warrant
23 or court order.

24 (2) The attorney general may apply for an injunction or commence a civil action against any government
25 entity to compel compliance with the terms of [sections 1 through 3].

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27 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be
28 codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply
29 to [sections 1 through 3].

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