

HOUSE BILL NO. 192

INTRODUCED BY M. RYAN, K. DUDIK, W. CURDY, D. FERN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO PRIVACY IN COMMUNICATIONS;  
PROVIDING THAT THE PUBLICATION OR DISTRIBUTION OF SEXUAL IMAGES WITHOUT THE CONSENT  
OF THE PERSON DEPICTED IS A FELONY; AND AMENDING SECTION 45-8-213, MCA."

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

**Section 1.** Section 45-8-213, MCA, is amended to read:

**"45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, ~~annoy, or offend~~, OR INJURE, communicates with a person by electronic communication and uses obscene, lewd, or profane language, suggests a lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of the person; ~~The use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend.~~

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation; or

(d) WITH THE PURPOSE TO TERRIFY, INTIMIDATE, THREATEN, HARASS, OR INJURE, publishes or distributes printed or electronic photographs, pictures, images, or films OF AN IDENTIFIABLE PERSON without the consent of the person depicted that show:

(i) the visible genitals, anus, OR female breast IF THE NIPPLE IS EXPOSED, or other intimate parts of the person depicted; or

(ii) the person depicted engaged in a real or simulated sexual act. This subsection

(2) (a) Subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done

1 in the performance of official duty;

2 (ii) persons speaking at public meetings;

3 (iii) persons given warning of the transcription or recording, ~~and if. If~~ one person provides the warning,  
4 either party may record; ~~or.~~

5 (iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if  
6 the recording is of a health care emergency telephone communication made to the facility or agency.

7 (b) Subsection (1)(d) does not apply to:

8 (i) images involving the voluntary exposure of a person's genitals or intimate parts in public or  
9 commercial settings; or

10 (ii) (A) disclosures made in the public interest, including but not limited to the reporting of unlawful  
11 conduct; or

12 (B) disclosures made in the course of performing duties related to law enforcement, INCLUDING  
13 REPORTING TO AUTHORITIES, criminal or news reporting, legal proceedings, or medical treatment; OR

14 (C) DISCLOSURES CONCERNING HISTORIC, ARTISTIC, SCIENTIFIC, OR EDUCATIONAL MATERIALS.

15 ~~(2)(3)~~ Except as provided in 69-6-104, a person commits the offense of violating privacy in  
16 communications if the person purposely intercepts an electronic communication. This subsection does not apply  
17 to elected or appointed public officials or to public employees when the interception is done in the performance  
18 of official duty or to persons given warning of the interception.

19 ~~(3)(4)~~ (a) ~~A~~ ~~Except as provided in subsection (4)(c), a~~ A person convicted of the offense of violating  
20 privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for  
21 a term not to exceed 6 months, or both.

22 (b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail  
23 for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

24 (c) On a third or subsequent conviction of subsection (1)(a) or (1)(b) ~~or on a first or subsequent~~  
25 ~~conviction of subsection (1)(d)~~, a person shall be imprisoned in the state prison for a term not to exceed 5 years  
26 or be fined an amount not to exceed \$10,000, or both.

27 (5) NOTHING IN THIS SECTION MAY BE CONSTRUED TO IMPOSE LIABILITY ON AN INTERACTIVE COMPUTER SERVICE  
28 FOR CONTENT PROVIDED BY ANOTHER PERSON.

29 ~~(4)(5)(6)~~ AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

30 (A) "Electronic communication" means any transfer between persons of signs, signals, writing, images,

1 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,  
2 photoelectronic, or photo-optical system.

3 (B) "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE, SYSTEM, OR ACCESS SOFTWARE  
4 PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING  
5 SPECIFICALLY A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET AND THIS TYPE OF SYSTEM OF SERVICE  
6 AS OPERATED OR OFFERED BY A LIBRARY OR EDUCATIONAL INSTITUTION."

7 - END -