

HOUSE BILL NO. 228

INTRODUCED BY F. MANDEVILLE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PRIVACY IN COMMUNICATIONS; CLARIFYING THE INTENT OF THE STATUTE AND REMOVING THE PRIMA FACIE CLAUSE; 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, or harass,~~annoy, or offend,~~ 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 or makes repeated use of obscene, lewd, or profane language or repeated lewd or lascivious suggestions;~~ 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. This subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) persons speaking at public meetings;

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

(iv) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if



1 the recording is of a health care emergency telephone communication made to the facility or agency.

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

6 (3) (a) A person convicted of the offense of violating privacy in communications shall be fined an amount
7 not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

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

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

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

14 (5) AS USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

15 ~~(4)(A)~~ "Electronic communication" means any transfer between persons of signs, signals, writing, images,
16 sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic,
17 photoelectronic, or photo-optical system.

18 (B) "INTERACTIVE COMPUTER SERVICE" MEANS ANY INFORMATION SERVICE, SYSTEM, OR ACCESS SOFTWARE
19 PROVIDER THAT PROVIDES OR ENABLES COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER SERVER, INCLUDING
20 SPECIFICALLY A SERVICE OR SYSTEM THAT PROVIDES ACCESS TO THE INTERNET AND THESE SYSTEMS OPERATED OR
21 SERVICES OFFERED BY A LIBRARY OR EDUCATIONAL INSTITUTION."

22 - END -