

## 1 HOUSE BILL NO. 114

2 INTRODUCED BY M. DUNWELL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING AN EXCEPTION TO THE TWO-PARTY CONSENT  
5 REQUIREMENT FOR RECORDINGS MADE BY A PERSON WHO IS A PARTY TO THE CONVERSATION  
6 UNDER THE REASONABLE SUSPICION THAT ANOTHER PARTY TO THE CONVERSATION IS  
7 COMMITTING, IS ABOUT TO COMMIT, OR HAS COMMITTED A CRIMINAL OFFENSE OR ANY TYPE OF  
8 PHYSICAL OR MENTAL ABUSE AGAINST THE PERSON MAKING THE RECORDING; AND AMENDING  
9 SECTION 45-8-213, MCA."

10

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

12

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

14 **"45-8-213. Privacy in communications.** (1) Except as provided in 69-6-104, a person commits the  
15 offense of violating privacy in communications if the person knowingly or purposely:

16 (a) with the purpose to terrify, intimidate, threaten, harass, or injure, communicates with a person by  
17 electronic communication and threatens to inflict injury or physical harm to the person or property of the person  
18 or makes repeated use of obscene, lewd, or profane language or repeated lewd or lascivious suggestions;

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

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

24 (d) with the purpose to terrify, intimidate, threaten, harass, or injure, publishes or distributes printed or  
25 electronic photographs, pictures, images, or films of an identifiable person without the consent of the person  
26 depicted that show:

27 (i) the visible genitals, anus, buttocks, or female breast if the nipple is exposed; or

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

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

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

4 (ii) persons speaking at public meetings;

5 (iii) persons given warning of the transcription or recording. If one person provides the warning, either  
6 party may record.

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

9 (v) a recording made by a person who is a party to the conversation, under the reasonable suspicion  
10 that another party to the conversation is committing, is about to commit, or has committed a criminal offense or  
11 any type of physical or mental abuse against the person or a member of the person's household and there is  
12 reason to believe that evidence of a criminal offense or abuse may be obtained by the recording.

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

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

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

17 (iii) disclosures made in the course of performing duties related to law enforcement, including  
18 reporting to authorities, criminal or news reporting, legal proceedings, or medical treatment; or

19 (iv) disclosures concerning historic, artistic, scientific, or educational materials.

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

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

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

28 (c) On a third or subsequent conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be

1 imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or  
2 both.

3 (5) Nothing in this section may be construed to impose liability on an interactive computer service for  
4 content provided by another person.

5 (6) As used in this section, the following definitions apply:

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

9 (b) "Interactive computer service" means any information service, system, or access software provider  
10 that provides or enables computer access by multiple users to a computer server, including specifically a  
11 service or system that provides access to the internet and this type of service or system as operated or offered  
12 by a library or educational institution."

13 - END -