

HOUSE BILL NO. 479

INTRODUCED BY K. SULLIVAN, B. BENNETT, K. BOGNER, P. FLOWERS, C. KNUDSEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING WARRANT REQUIREMENTS FOR THIRD-PARTY ELECTRONIC DATA; PROVIDING NOTIFICATION REQUIREMENTS; AMENDING SECTIONS 46-5-601 AND 46-5-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 46-5-601, MCA, is amended to read:

**"46-5-601. Definitions.** As used in this part, the following definitions apply:

(1) "Contents" means any information concerning the substance, purport, or meaning of a communication.

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

(i) any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted or stored in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system; or

(ii) any aural transfer made or stored in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other similar connection between the point of origin and the point of reception, including but not limited to the use of the wire, cable, or other similar connection in a switching station.

(b) The term does not include:

(i) an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation;

(ii) a communication made through a tone-only paging device;

(iii) a communication from a tracking device, including an electronic or mechanical device that permits the tracking of the movement of a person or object; or

(iv) electronic funds transfer information stored by a financial institution in a communications system

1 used for the electronic storage and transfer of funds.

2 (3) "Electronic communication service" means:

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

4 (b) a service that provides to users computer storage or processing services; or

5 (c) a service that acts as an intermediary in the transmission of electronic communications.

6 (4) "Governmental entity" means a state or local agency, including but not limited to a law  
7 enforcement entity or any other investigative entity, agency, department, division, bureau, board, or  
8 commission, or an individual acting or purporting to act for or on behalf of a state or local agency.

9 (5) (A) "Subscriber record" means a record of or information about an electronic communication  
10 service or remote computing service that reveals the subscriber's or customer's:

11 ~~(a)~~(I) name;

12 ~~(b)~~(II) address;

13 ~~(c)~~(III) local and long-distance telephone connection record, or record of session time and duration;

14 ~~(d)~~(IV) length of service, including start date;

15 ~~(e)~~(V) type of service used;

16 ~~(f)~~(VI) telephone number, instrument number, or other subscriber or customer number or identification,  
17 including a temporarily assigned network address; and

18 ~~(g)~~(VII) means and source of payment for the service.

19 (B) THE TERM DOES NOT INCLUDE CUSTOMER PROPRIETARY NETWORK INFORMATION AS DEFINED IN 47  
20 U.S.C. 222(H)(1)."

21

22 **Section 2.** Section 46-5-602, MCA, is amended to read:

23 **"46-5-602. Search warrant or investigative subpoena required.** (1) A governmental entity may only  
24 require disclosure ~~by a provider of an electronic communication service of the contents~~ of an electronic  
25 communication stored, held, ~~or maintained,~~ or transmitted by an electronic communication service that service  
26 other than a subscriber record pursuant to a search warrant or investigative subpoena issued by a court upon a  
27 finding of probable cause pursuant to Title 46, chapter 5, part 2, or Title 46, chapter 4, part 3.

28 ~~(2) A law enforcement agency may not use, copy, or disclose, for any purpose, electronic~~

1 ~~communications provided by an electronic communication service, that:~~

2 ~~(a) are not the subject of the warrant ; and~~

3 ~~(b) are collected as part of an effort to obtain the electronic communications provided by an electronic~~  
4 ~~communication service that are the subject of the warrant in subsection (2)(a).~~

5 ~~(3) A law enforcement agency may use, copy, or disclose electronic communications that are the~~  
6 ~~subject of the warrant if the law enforcement agency reasonably believes that the electronic communications~~  
7 ~~are necessary to achieve the objective of the warrant.~~

8 ~~(4) The electronic information or data described in subsection(2)(b) must be destroyed in an~~  
9 ~~unrecoverable manner by the law enforcement agency as soon as reasonably possible after the electronic~~  
10 ~~information or data is collected.~~

11 ~~(3)(2) THE ELECTRONIC COMMUNICATIONS COLLECTED UNDER 46-5-602 THIS SECTION MUST BE DELETED~~  
12 ~~AFTER THE CONCLUSION OF THE CRIMINAL INVESTIGATION, POSTCONVICTION AND AFTER ALL APPEALS HAVE BEEN~~  
13 ~~EXHAUSTED, OR IN ACCORDANCE WITH DATA RETENTION REQUIREMENTS UNDER THE LAW.~~

14 ~~(4)(3) THE WARRANT AND INVESTIGATIVE SUBPOENA REQUIREMENTS OF THIS SECTION DO NOT APPLY TO THE~~  
15 ~~ELECTRONIC COMMUNICATIONS OF ADULTS OR YOUTH CURRENTLY INCARCERATED IN A CORRECTIONAL FACILITY."~~

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17 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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