

1 SENATE BILL NO. 325

2 INTRODUCED BY C. FRIEDEL, D. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE PRIVACY OF MARITAL  
5 COMMUNICATIONS; APPLYING THE SPOUSAL PRIVILEGE TO ELECTRONIC COMMUNICATIONS  
6 BETWEEN SPOUSES; PROHIBITING GOVERNMENTAL BODIES FROM REQUESTING OR REQUIRING  
7 THE DISCLOSURE OF COMMUNICATIONS COVERED BY SPOUSAL PRIVILEGE FROM SERVICES THAT  
8 TRANSMIT ELECTRONIC COMMUNICATIONS; PROHIBITING AN ELECTRONIC COMMUNICATION  
9 SERVICE FROM BEING ADJUDGED IN CONTEMPT IF THE ELECTRONIC COMMUNICATION SERVICE  
10 REFUSES TO DISCLOSE CERTAIN INFORMATION; ~~PROVIDING AN EXCEPTION;~~ AND AMENDING  
11 SECTION 26-1-802, MCA."

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

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15 **Section 1.** Section 26-1-802, MCA, is amended to read:

16 **"26-1-802. Spousal privilege.** ~~(1) Neither~~ A spouse may not, without the consent of the other spouse,  
17 testify during or after the marriage concerning any communication made by one to the other during their  
18 marriage.

19 (2) A judicial, legislative, administrative, or other governmental body may not request or require the  
20 disclosure of an electronic communication made by one spouse to the other during their marriage from a  
21 spouse or an electronic communication service used by the spouse.

22 (3) A spouse or an electronic communication service used by the spouse may not be adjudged in  
23 contempt by a judicial, legislative, administrative, or other body having the power to issue subpoenas for  
24 refusing to disclose or produce electronic communications made by one spouse to the other during their  
25 marriage.

26 (4) ~~(a)~~ The privilege under subsections (1) through (3):

27 ~~(i)~~(A) is restricted to communications made during the existence of the marriage relationship and  
28 does not extend to communications made prior to the marriage or to communications made after the marriage

1 is dissolved; and ~~The privilege~~  
2 ~~(B)~~ does not apply to a civil action or proceeding by one spouse against the other or to a criminal  
3 action or proceeding for a crime committed by one spouse against the other or against a child of either spouse.

4 ~~(b) — The privilege under subsections (2) and (3) does not apply when both spouses are defendants~~  
5 ~~in a civil or criminal action or proceeding arising from the same conduct, the same course of conduct, or~~  
6 ~~conduct constituting parts of a common scheme or plan.~~

7 ~~(5) For the purposes of this section, "electronic communication" and "electronic communication~~  
8 ~~service" have the meanings provided in 46-5-601. THE TERMS DO NOT INCLUDE COMMUNICATIONS TRANSMITTED BY~~  
9 ~~THE STATEWIDE TELECOMMUNICATIONS NETWORK PROVIDED FOR IN 2-17-506."~~

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