

HOUSE BILL NO. 147

INTRODUCED BY D. ZOLNIKOV, B. BENNETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A SEARCH WARRANT IS REQUIRED FOR A
5 GOVERNMENT ENTITY TO ACCESS ANY ELECTRONIC DEVICE UNLESS INFORMED CONSENT IS
6 OBTAINED OR A JUDICIALLY RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT EXISTS;
7 ~~PROVIDING THAT EVIDENCE OBTAINED IN VIOLATION IS NOT ADMISSIBLE~~ PROVIDING A CIVIL CAUSE
8 OF ACTION FOR VIOLATIONS; AND PROVIDING DEFINITIONS AND EXCEPTIONS."

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

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12 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 3], the following definitions
13 apply:

14 (1) "AUTHORIZED USER" MEANS A PERSON WHO HAS THE PERMISSION OF THE OWNER TO POSSESS AND OPERATE
15 THE ELECTRONIC DEVICE.

16 (2) "ELECTRONIC COMMUNICATION SERVICE" MEANS A SERVICE THAT:
17 (A) PROVIDES TO USERS THE ABILITY TO SEND OR RECEIVE ELECTRONIC COMMUNICATIONS;
18 (B) PROVIDES TO USERS COMPUTER STORAGE OR PROCESSING SERVICES; OR
19 (C) ACTS AS AN INTERMEDIARY IN THE TRANSMISSION OF ELECTRONIC COMMUNICATIONS.

20 ~~(1)(3)~~ "Electronic device" means a device that enables access to or use of an electronic communication
21 service; OR remote computing service; or location information service.

22 ~~(2)(4)~~ "Government entity" means a state or local agency, including but not limited to a law enforcement
23 entity or any other investigative entity, agency, department, division, bureau, board, or commission or an
24 individual acting or purporting to act for or on behalf of a state or local agency.

25 (5) "OWNER" MEANS A PERSON WHO IS THE LEGAL OWNER OF THE ELECTRONIC DEVICE. IF THE ELECTRONIC
26 DEVICE IS THE SUBJECT OF AN AGREEMENT FOR THE CONDITIONAL SALE OF THE ELECTRONIC DEVICE WITH THE RIGHT OF
27 PURCHASE UPON PERFORMANCE OF THE CONDITIONS STATED IN THE AGREEMENT AND WITH AN IMMEDIATE RIGHT OF
28 POSSESSION VESTED IN THE PERSON POSSESSING THE DEVICE, OR IN THE EVENT THE ELECTRONIC DEVICE IS SUBJECT
29 TO A LEASE, CONTRACT, OR OTHER LEGAL ARRANGEMENT VESTING THE RIGHT OF POSSESSION OR CONTROL IN THE
30 PERSON POSSESSING THE ELECTRONIC DEVICE, THEN THE OWNER IS THE PERSON IN WHOM THE RIGHT OF POSSESSION



1 OR CONTROL IS VESTED.

2 ~~(3)~~(6) "Remote computing service" means the provision of computer storage or processing services by
3 means of an electronic communications system.

4 ~~(4)~~(7) "Stored data" means data or records that are stored on an electronic device that contains:

5 (a) information revealing the identity of users of the applicable service, device, or program;

6 (b) information about a user's use of the applicable service, device, or program;

7 (c) information that identifies the recipient or destination of a wire communication or electronic
8 communication sent to or by the user;

9 (d) the content of a wire communication or electronic communication sent to or by the user; or

10 (e) any data, documents, files, or communications stored by or on behalf of the user with the applicable
11 service provider or on the user's electronic device.

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13 NEW SECTION. Section 2. Electronic data privacy -- warrant required -- exceptions. (1) Except
14 as provided in subsection (2), a government entity may not obtain the stored data of an electronic device without
15 a search warrant issued by a court upon a finding of probable cause.

16 (2) A government entity may obtain the stored data of an electronic device without a search warrant:

17 (a) with the ~~informed, affirmative~~ consent of the owner or AUTHORIZED user of the electronic device;

18 (b) in accordance with judicially recognized exceptions to warrant requirements;

19 (c) if the owner has voluntarily and publicly disclosed the stored data;

20 (d) if ~~there exists a possible life-threatening situation;~~ OR THE GOVERNMENT ENTITY, IN GOOD FAITH,

21 BELIEVES THAT AN EMERGENCY INVOLVING DANGER, DEATH, OR SERIOUS PHYSICAL INJURY TO A PERSON REQUIRES

22 IMMEDIATE DISCLOSURE OF COMMUNICATIONS RELATING TO THE EMERGENCY;

23 ~~(e) if a government entity has possession of a lost, stolen, or otherwise unidentified device and the~~
24 ~~government entity cannot determine ownership of the device without accessing the device, then access on the~~
25 ~~part of the government entity is limited to determining ownership and a method of contacting the owner so that~~
26 ~~the device can be returned; or~~

27 ~~(f)~~(E) in order to respond to the user's call for emergency services; OR

28 (F) FOR ANY ELECTRONIC DEVICES FOUND WITHIN THE CONFINES OF AN ADULT OR YOUTH CORRECTIONAL
29 FACILITY.

30 (3) Nothing in [sections 1 through 3] may be construed to limit a government entity's ability to use,

1 maintain, or store information on its own electronic devices or to disseminate information stored on its own
2 electronic devices.

3 (4) [SECTIONS 1 THROUGH 3] DO NOT APPLY TO MOTOR CARRIER SAFETY OR HAZARDOUS MATERIALS PROGRAMS
4 IMPLEMENTED BY THE DEPARTMENT OF TRANSPORTATION FOR PURPOSES OF COMPLYING WITH FEDERAL MOTOR CARRIER
5 SAFETY REGULATIONS.

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7 NEW SECTION. Section 3. Admissibility of proof -- violations CIVIL ACTION FOR VIOLATION. (1) Except
8 as proof of a violation of [sections 1 through 3], evidence obtained in violation of [sections 1 through 3] is not
9 admissible in a civil, criminal, or administrative proceeding and may not be used in any type of affidavit in an effort
10 to obtain a search warrant or court order.

11 ~~_____~~(2) The attorney general may apply for an injunction or commence a civil action against any government
12 entity to compel compliance with the terms of [sections 1 through 3].

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14 NEW SECTION. Section 4. Codification instruction. [Sections 1 through 3] are intended to be
15 codified as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply
16 to [sections 1 through 3].

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