1   HOUSE BILL NO. 571

2   INTRODUCED BY T. WINTER

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4   A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING MEDICAL PRACTITIONERS OR HEALTH CARE

5   FACILITIES FROM USING THIRD-PARTY PREDICTIVE ANALYSIS FOR DIAGNOSIS OR TREATMENT

6   DECISIONS WITHOUT DISCLOSURE TO A PATIENT AND SUBJECT TO OTHER RESTRICTIONS."

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

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10   NEW SECTION. **Section 1. Legislative intent.** It is the intent of the legislature to protect patients from

11   third-party information provided to a medical practitioner, as defined in 37-2-101, or to a health care facility, as

12   defined in 50-5-101, that may bias or influence medical care decisions without a patient's knowledge. The

13   legislature has a basic expectation that the data that individuals provide to public websites and applications will

14   not be used to harm them or influence the decisions made by their medical practitioner without their knowledge.

15   Health care privacy law of the late 1990s restricts how medical practitioners share patient information, but does

16   not regulate how third parties gather or sell information gleaned from public sources and sold to medical

17   practitioners and health care facilities is used for predictive analysis.

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19   NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3], the following terms apply:

20   (1) "Data broker" means a commercial entity that collects, assembles, or maintains personal information

21   concerning an individual who is not a customer or an employee of that entity, an individual's family or friends who

22   are not customers or employees of that entity, or an individual's residence for the purpose of selling the

23   information or providing third-party access to the information for health care decisions.

24   (2) "Predictive analysis" means information developed by a data broker that relies on predictive formulas

25   or algorithms that are dependent on personal information gleaned from websites or computer applications, from

26   information gathered by other parties about patients, friends or family, residence, or buying habits.

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28   NEW SECTION. **Section 3. Use of predictive analysis -- disclosure -- documentation.** (1) Medical

29   practitioners, as defined in 37-2-101, may not rely on predictive analysis based on third-party information

30   developed by a data broker to determine a diagnosis or treatment without:

1   (a) full disclosure to the patient that third-party information that includes predictive analysis was obtained

2   by any means; and

3   (b) consideration of actual documented patient health care information.

4   (2) A medical practitioner must provide documentation on the source of the predictive analysis and the

5   reasoning used if predictive analysis information was used in a health care decision. The documentation must

6   address any information that may contradict the medical practitioner's training or instincts or may appear to

7   introduce bias based on the personal information that cannot be independently verified from a patient's medical

8   record.

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10   NEW SECTION. **Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified

11   as an integral part of Title 37, chapter 2, part 3, and the provisions of Title 37, chapter 2, part 3, apply to [sections

12   1 through 3].

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