

SENATE BILL NO. 282

INTRODUCED BY D. EMRICH, J. FULLER, G. HUNTER, D. LOGE, E. KERR-CARPENTER, T.

MCGILLVRAY, J. TREBAS, K. BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SEARCH AND SEIZURE LAWS
RELATED TO THE ABILITY OF THE STATE AND LOCAL GOVERNMENT TO OBTAIN AND USE
ELECTRONIC COMMUNICATIONS AND RELATED MATERIAL, ~~INCLUDING SUBSCRIBER RECORDS,~~
AND STORED DATA OF AN ELECTRONIC DEVICE; PROHIBITING GOVERNMENTAL ENTITIES FROM
OBTAINING ELECTRONIC COMMUNICATIONS AND RELATED MATERIAL EXCEPT BY A SEARCH
WARRANT; LIMITING THE ADMISSIBILITY OF STORED DATA OF AN ELECTRONIC DEVICE OBTAINED
IN VIOLATION OF STATUTE; ~~MAKING SUBSCRIBER RECORDS SUBJECT TO SECTION 46-5-602, MCA;~~
CLARIFYING TO WHOM A REQUEST ISSUED BY A GOVERNMENTAL ENTITY MAY BE DISCLOSED;
AMENDING SECTIONS 46-5-112, ~~AND 46-5-602, AND 46-5-606, MCA;~~ AND REPEALING SECTION 46-5-
614, MCA."

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

NEW SECTION. Section 1. Governmental entities may not purchase data. Except as provided in
Title 46, chapter 4, part 3, or Title 46, chapter 5, part 2, pursuant to a search warrant or investigative subpoena
issued by a court ~~on a finding of probable cause~~, a governmental entity may not ~~obtain purchase~~ the following:

- (1) electronic communications;
- (2) contents of electronic communications;
- (3) contents of a communication made through a tone-only paging device;
- (4) contents of a communication from a tracking device, including an electronic or mechanical
device that permits the tracking of the movement of a person or object;
- (5) electronic funds transfer information stored by a financial institution in a communications
system used for the electronic storage and transfer of funds;
- ~~(6) subscriber records;~~

(7)(6) customer proprietary network information as defined in 47 U.S.C. 222(h)(1) as of October 18, 2024, inclusive of subscriber list information as defined in 47 U.S.C. 222(h)(3) as of October 18, 2024;

~~(8) — personal data as defined in 30-14-2802;~~

~~(9)(7)~~ precise geolocation data as defined in 30-14-2802;

~~(10)(8)~~ pseudonymous data as defined in 30-14-2802; or

~~(11)(9)~~ sensitive data as defined in 30-14-2802.

Section 2. Section 46-5-112, MCA, is amended to read:

"46-5-112. Electronic data privacy -- warrant required -- exceptions -- admissibility. (1) Except as provided in subsection (2), a government entity may not obtain the stored data of an electronic device without a search warrant issued by a court upon a finding of probable cause.

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

(a) with the consent of the owner or authorized user of the electronic device;

~~(b) for the electronic communications between a law enforcement officer using an undercover or fictitious identity for law enforcement purposes with the owner or authorized user of the electronic device;~~

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

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

~~(d)(e)~~ if the government entity, in good faith, believes that an emergency involving danger, death, or serious physical injury to a person requires immediate disclosure of communications relating to the emergency;

~~(e)(f)~~ in order to respond to the user's call for emergency services; or

~~(f)(g)~~ for any electronic devices found within the confines of a correctional facility.

~~(3) Any evidence obtained in violation of this section or [section 1] is not admissible in a civil, criminal, or administrative proceeding and may not be used in an affidavit of probable cause in an effort to obtain a search warrant.~~

~~(3) (4)~~ Nothing in 46-5-111 through 46-5-113 may be construed to limit a government entity's ability to use, maintain, or store information on its own electronic devices or to disseminate information stored on its own electronic devices.

(4) (5) Sections 46-5-111 through 46-5-113 do not apply to motor carrier safety or hazardous materials programs implemented by the department of transportation for purposes of complying with federal motor carrier safety regulations."

Section 3. Section 46-5-602, MCA, is amended to read:

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

(2) The electronic communications collected under this section must be deleted after the conclusion of the criminal investigation, postconviction and after all appeals have been exhausted, or in accordance with data retention requirements under the law.

(3) The warrant and investigative subpoena requirements of this section do not apply to the electronic communications of adults or youth currently incarcerated in a correctional facility."

Section 4. ~~Section 46-5-606, MCA, is amended to read:~~

~~**"46-5-606. Rules of construction.** (1) Except as expressly provided, nothing in this part may be construed to limit an electronic communication service or any other party from disclosing information about a request issued by a governmental entity for electronic communication information to the subjects of the governmental entity's request.~~

~~(2) Nothing in 46-5-602 and 46-5-605 may be construed to limit the authority of a governmental entity to use a subpoena authorized under the laws of this state to require an entity that provides electronic communication services to its own officers, directors, employees, or agents for the purpose of carrying out their duties to disclose to the governmental entity the contents of an electronic communication to or from an officer, director, employee, or agent of the entity if the electronic communication is held, stored, or maintained on an electronic communication service owned or operated by the entity.~~

~~(3) Nothing in this part may be construed to limit a governmental entity's ability to use, maintain, or~~

Amendment - 1st Reading-white - Requested by: Daniel Emrich - (S) Judiciary

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Drafter: Maddie Krezowski,

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1 ~~store information on its own electronic communication service or to disseminate information stored on its own~~
2 ~~electronic communication service."~~

3

4 NEW SECTION. **Section 4. Repealer.** The following section of the Montana Code Annotated is
5 repealed:

6 46-5-614. Voluntary disclosure of electronic communications.

7

8 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
9 integral part of Title 46, chapter 5, part 6, and the provisions of Title 46, chapter 5, part 6, apply to [section 1].

10 - END -