

SENATE BILL NO. 388

INTRODUCED BY J. TREBAS, L. SCHUBERT, D. ZOLNIKOV, K. ZOLNIKOV, K. BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE OFFENSE OF VIOLATING PRIVACY IN COMMUNICATIONS BY PROVIDING AN EXCEPTION FOR A PERSON WHO RECORDS A CONVERSATION WITH AN ELECTED OR APPOINTED PUBLIC OFFICIAL OR A PUBLIC EMPLOYEE PERFORMING AN OFFICIAL DUTY OF THE OFFICIAL'S OR EMPLOYEE'S POSITION; AND AMENDING SECTION 45-8-213, MCA."

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

Section 1. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, or injure, communicates with a person by electronic communication and threatens to inflict injury or physical harm to the person or property of the person or makes repeated use of obscene, lewd, or profane language or repeated lewd or lascivious suggestions;

(b) uses an electronic communication to attempt to extort money or any other thing of value from a person or to disturb by repeated communications the peace, quiet, or right of privacy of a person at the place where the communications are received;

(c) records or causes to be recorded a conversation by use of a hidden electronic or mechanical device that reproduces a human conversation without the knowledge of all parties to the conversation; or

(d) with the purpose to terrify, intimidate, threaten, harass, or injure, publishes or distributes printed or electronic photographs, pictures, images, or films of an identifiable person without the consent of the person depicted that show:

(i) the visible genitals, anus, buttocks, or female breast if the nipple is exposed; or

(ii) the person depicted engaged in a real or simulated sexual act.

(2) (a) Subsection (1)(c) does not apply to:

(i) elected or appointed public officials or to public employees when the transcription or recording is done in the performance of official duty;

(ii) a person who records a conversation with an elected or appointed public official or a public employee when the public official or public employee is performing an official duty;

~~(ii)~~(iii) persons speaking at public meetings;

~~(iii)~~(iv) persons given warning of the transcription or recording. If one person provides the warning, either party may record.

~~(iv)~~(v) a health care facility, as defined in 50-5-101, or a government agency that deals with health care if the recording is of a health care emergency telephone communication made to the facility or agency.

(b) Subsection (1)(d) does not apply to:

(i) images involving the voluntary exposure of a person's genitals or intimate parts in public or commercial settings;

(ii) disclosures made in the public interest, including but not limited to the reporting of unlawful conduct;

(iii) disclosures made in the course of performing duties related to law enforcement, including reporting to authorities, criminal or news reporting, legal proceedings, or medical treatment; or

(iv) disclosures concerning historic, artistic, scientific, or educational materials.

(3) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts an electronic communication. This subsection does not apply to elected or appointed public officials or to public employees when the interception is done in the performance of official duty or to persons given warning of the interception.

(4) (a) A person convicted of the offense of violating privacy in communications shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed \$1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a), (1)(b), or (1)(d), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$10,000, or

1 both.

2 (5) Nothing in this section may be construed to impose liability on an interactive computer service
3 for content provided by another person.

4 (6) As used in this section, the following definitions apply:

5 (a) "Electronic communication" means any transfer between persons of signs, signals, writing,
6 images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio,
7 electromagnetic, photoelectronic, or photo-optical system.

8 (b) "Interactive computer service" means any information service, system, or access software
9 provider that provides or enables computer access by multiple users to a computer server, including specifically
10 a service or system that provides access to the internet and this type of service or system as operated or
11 offered by a library or educational institution."

12 - END -