

SENATE BILL NO. 322

INTRODUCED BY J. FIELDER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE FOURTH AMENDMENT PROTECTION ACT;  
5 PROHIBITING ACTIONS THAT ASSIST A STATE GOVERNMENT ENTITY OR THE FEDERAL GOVERNMENT  
6 IN THE COLLECTION OF THE PAPERS AND EFFECTS OF A PERSON THAT IS NOT BASED ON SPECIFIC  
7 CONSENT OR A SEARCH WARRANT, EACH PARTICULARLY DESCRIBING THE PERSON, PLACE, OR  
8 THING TO BE SEARCHED OR SEIZED, OR A JUDICIALLY RECOGNIZED EXCEPTION TO THE SEARCH  
9 WARRANT REQUIREMENT; PROVIDING DEFINITIONS; PROVIDING PENALTIES; AND PROVIDING AN  
10 IMMEDIATE EFFECTIVE DATE."

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12 WHEREAS, The Fourth Amendment to the Constitution of the United States provides: "The right of the  
13 people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,  
14 shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and  
15 particularly describing the place to be searched, and the persons or things to be seized"; and

16 WHEREAS, In our society today security in our papers and effects must include all electronic devices  
17 such as computers, tablets, cell phones, or any device containing information for which a person would have a  
18 reasonable expectation of privacy; and

19 WHEREAS, Article III, Section 3, of the Constitution of the State of Montana provides: "Members of the  
20 legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or  
21 affirmation, before they enter upon the duties of their offices: "I do solemnly swear (or affirm) that I will support,  
22 protect and defend the constitution of the United States, and the constitution of the state of Montana, and that  
23 I will discharge the duties of my office with fidelity (so help me God)." No other oath, declaration, or test shall be  
24 required as a qualification for any office or public trust."

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

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28 NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Fourth Amendment  
29 Protection Act".

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1            **NEW SECTION. Section 2. Policy -- definitions.** (1) It is the policy of this state to adhere to the tenets  
2 of the fourth amendment to the constitution of the United States in every way, including by refusing to provide  
3 material support or assistance in any form to any person or entity regarding the collection, monitoring, or  
4 dissemination of personal papers or effects or personal communications that are not based on specific consent  
5 or a search warrant, each particularly describing the person, place, or thing to be searched or seized, or a  
6 judicially recognized exception to the search warrant requirement.

7            (2) As used in [sections 1 through 4] the following definitions apply:

8            (a) "Electronic device" means a device that is capable of transmitting or storing electronic  
9 communications, including metadata.

10           (b) "Papers and effects" means all property, personal communications including printed documents, oral  
11 communications, and any type of electronic communication.

12           (c) "Personal communication" means any transfer of signs, signals, writing, images, sounds, data, or  
13 intelligence of any nature transmitted in whole or in part by a print, voice, wire, radio, electromagnetic,  
14 photoelectronic, or photo-optical system that is not a public document subject to Article II, section 9, of the  
15 Montana constitution.

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17           **NEW SECTION. Section 3. Prohibited acts.** A political subdivision of this state, a government entity,  
18 an employee of a government entity acting in an official capacity, or a corporation providing services on behalf  
19 of this state may not:

20           (1) provide material support or assistance in any form to any political subdivision, government entity, or  
21 federal agency in collecting, monitoring, or disseminating the personal papers or effects of any person that is not  
22 based on specific consent or a search warrant, each particularly describing the person, place, or thing to be  
23 searched or seized, or a judicially recognized exception to the search warrant requirement;

24           (2) utilize any assets, state funds, or funds allocated by the state in whole or in part to engage in any  
25 activity that aids a political subdivision, government entity, federal agency, federal agent, corporation, or person  
26 providing services to a government entity or the federal government in collecting, monitoring, or disseminating  
27 the personal papers or effects of any person that is not based on specific consent or a search warrant, each  
28 particularly describing the person, place, or thing to be searched or seized, or a judicially recognized exception  
29 to the search warrant requirement;

30           (3) provide services to or assist a political subdivision, government entity, federal agency, federal agent,

1 corporation, or person providing services to a political subdivision, government entity, or the federal government  
 2 that is involved in collecting, monitoring, or disseminating the personal papers or effects of any person that is not  
 3 based on specific consent or a search warrant, each particularly describing the person, place, or thing to be  
 4 searched or seized, or a judicially recognized exception to the search warrant requirement;

5 (4) use in a criminal investigation or prosecution any information provided by a political subdivision,  
 6 government entity, federal agency, federal agent, corporation, or person providing services to a government entity  
 7 or the federal government that was obtained through collecting, monitoring, or disseminating the personal papers  
 8 or effects of any person that is not based on specific consent or a search warrant, each particularly describing  
 9 the person, place, or thing to be searched or seized, or a judicially recognized exception to the search warrant  
 10 requirement.

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 12 **NEW SECTION. Section 4. Penalties.** (1) A government entity or political subdivision of this state may  
 13 not adopt or enact a rule, order, ordinance, or policy under which the government entity or political subdivision  
 14 violates [section 3].

15 (2) Any agent or employee of this state or of any government entity or political subdivision of this state  
 16 who purposely or knowingly violates the prohibitions in [section 3] commits the offense of official misconduct as  
 17 provided in 45-7-401. An individual, person, or entity that is adversely affected by a violation of [sections 1 through  
 18 4] has a private right of action.

19 (3) Any corporation or person that provides services to or on behalf of this state and violates the  
 20 prohibitions of [section 3] is ineligible for a period of 5 years to act on behalf of or provide services to this state  
 21 or any government entity or political subdivision of this state.

22 (4) Any agent or employee of this state or of any government entity or political subdivision of this state  
 23 who refuses to follow a directive in the course of their employment that violates [section 3] may not be  
 24 reprimanded, disciplined, fired, or have any negative consequences to their employment.

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 26 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be codified  
 27 as an integral part of Title 46, chapter 5, part 1, and the provisions of Title 46, chapter 5, part 1, apply to [sections  
 28 1 through 4].

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 30 **NEW SECTION. Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable

1 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
2 remains in effect in all valid applications that are severable from the invalid applications.

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4 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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