SENATE BILL NO. 453

INTRODUCED BY D. EMRICH, K. BOGNER, S. NOVAK, J. TREBAS

A BILL FOR AN ACT ENTITLED: “AN ACT PROVIDING FOR PERSONAL OWNERSHIP OF ELECTRONIC DATA; PROVIDING THAT A PERSON POSSESSING AN INDIVIDUAL'S ELECTRONIC DATA HOLDS THAT PROPERTY IN TRUST FOR THE PERSON; PROVIDING THAT ELECTRONIC DATA OWNERSHIP IS NONDESCENDIBLE IN INTESTATE SUCCESSION; REQUIRING PERMANENT DELETION OF A DECEASED INDIVIDUAL'S ELECTRONIC DATA UNLESS THE PERSON ELECTED FOR ANOTHER PERSON TO TAKE OWNERSHIP; REQUIRING THAT A PERSON RECEIVE ACTUAL CONSIDERATION FOR THE SALE OF ELECTRONIC DATA; REQUIRING EXPRESS CONSENT OF THE PERSON TO SELL ELECTRONIC DATA TO A THIRD PARTY OR THE FEDERAL GOVERNMENT; RESTRICTING DISCLOSURE OF ELECTRONIC DATA TO THE FEDERAL GOVERNMENT WITH CERTAIN EXCEPTIONS; REQUIRING NOTICE OF DISCLOSURE TO THE FEDERAL GOVERNMENT WITH CERTAIN EXCEPTIONS; LIMITING THE USE OF CONTRACTS OF ADHESION REGARDING ELECTRONIC DATA OWNERSHIP; PROVIDING CAUSES OF ACTION; PROVIDING DEFINITIONS; AND AMENDING SECTION 32-6-105, MCA.”

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Electronic Data Ownership Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Electronic data" means:

(a) electronic communications;

(b) contents of electronic communications;

(c) contents of a communication made through a tone-only paging device;

(d) 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;

(e) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds;

(f) subscriber records;

(g) 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;

(h) personal data, as defined in 30-14-2802;

(i) precise geolocation data, as defined in 30-14-2802;

(j) pseudonymous data, as defined in 30-14-2802; or

(k) sensitive data, as defined in 30-14-2802.

(2) "Entity" means every type of corporate body except governments and includes but is not limited to associations, companies, cooperatives, corporations, close corporations, limited liability corporations, nonprofit corporations, firms, partnerships, estates, and trusts.

(3) "Federal government" means the government created by the federal constitution of 1789, all entities created by or pursuant to the federal constitution, and all persons working for or on behalf of the federal government, including but not limited to:

(a) the congress of the United States and its members, committees, officers, and staff;

(b) the president of the United States, officers of the United States, executive branch departments, administrations, agencies, boards, bureaus, centers, commissions, offices, services, and other administrative units however denominated, all employees of any person or entity listed in this subsection (3)(b), and the armed forces of the United States and its members; and

(c) the supreme court of the United States, federal appellate courts, federal district courts, justices of the federal supreme court, federal judges, federal magistrates, special masters, law clerks, and clerks of court;

(d) quasi-private corporations created by acts of congress; and

(e) (i) employees of any person or entity listed in this subsection (3);

(ii) agents of any person or entity listed in this subsection (3); and

(iii) independent contractors performing work as part of a contract with any person or entity listed in

this subsection (3).

(4) "Individual" means a human being.

(5) "Person" means an individual or an entity.

NEW SECTION. **Section 3. Ownership of electronic data.** (1) Electronic data created by or on behalf of an individual who is a resident of the state is the property of that individual.

(2) A person possessing electronic data owned by an individual holds the property in trust for the individual.

NEW SECTION. **Section 4. Death of owner of electronic data.** (1) Electronic data ownership is nondescendible in intestate succession.

(2) A person possessing electronic data owned by a deceased individual shall permanently delete the electronic data within a reasonable time after the final distribution of assets through testate or intestate succession, unless the deceased individual elected during the individual's lifetime for another person or individual to retain access to and take ownership of the electronic data. Such an election may not be made in a contract of adhesion.

NEW SECTION. **Section 5. Prohibited terms in contracts of adhesion.** (1) A contract of adhesion may not require a resident of the state to forfeit, donate, or accept nominal consideration for electronic data.

(2) A contract of adhesion may not condition the use of a product or service on the forfeiture, donation, or acceptance of nominal consideration for electronic data.

NEW SECTION. **Section 6. Consideration for sale of electronic data.** A seller of electronic data shall provide to the owner of the electronic data:

(1) actual consideration that is reasonably related to the value of the electronic data; and

(2) identifying information of the purchaser of the electronic data.

NEW SECTION. **Section 7. Sale of electronic data to federal government prohibited.** A person

possessing electronic data created by or on behalf of an individual who is a resident of the state may not sell that electronic data to a third party, including the federal government, without the express consent of the individual.

NEW SECTION. **Section 8. Providing electronic data to federal government prohibited -- exception for subpoena.** Except in response to a subpoena or search warrant issued by a duly authorized court or to comply with federal law, a person possessing electronic data created by or on behalf of a resident of the state may not provide that data to the federal government.

NEW SECTION. **Section 9. Notice.** (1) A person providing electronic data to the federal government shall give notice to the individual whose electronic data is provided.

(2) Notice must be given prior to or at the same time as the provision of the data to the federal government, except that the notice may be delayed for a period of not more than 1 year if a warrant or an investigative subpoena includes a court order not to notify any other person of the existence of the warrant or the investigative subpoena. The order may be granted if the court determines that there is reason to believe that notification of the existence of the warrant or the investigative subpoena may result in:

(a) endangering the life or physical safety of an individual;

(b) flight from prosecution;

(c) destruction or tampering with evidence;

(d) intimidation of potential witnesses; or

(e) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

NEW SECTION. **Section 10. Causes of action.** (1) An individual whose electronic data is sold or improperly provided in violation of [sections 1 through 10] has a private cause of action against the person that sold or improperly provided the electronic data. The court may award damages, equitable relief, and reasonable attorney fees.

(2) The attorney general or a county attorney may apply for an injunction or commence a civil action against a person to compel compliance with the terms of [sections 1 through 10] and may seek punitive

damages and reasonable attorney fees.

NEW SECTION. **Section 11. Electronic data privacy.** A person subject to this title is prohibited, as provided in [sections 1 through 10], from:

(1) selling electronic data to the federal government; and

(2) providing electronic data to the federal government, except in response to a subpoena or search warrant issued by a duly authorized court or to comply with federal law.

NEW SECTION. **Section 12. Electronic data privacy.** An entity provided for in this title is prohibited, as provided in [sections 1 through 10], from:

(1) selling electronic data to the federal government; and

(2) providing electronic data to the federal government, except in response to a subpoena or search warrant issued by a duly authorized court or to comply with federal law.

NEW SECTION. **Section 13. Electronic data privacy.** A person subject to this title is prohibited, as provided in [sections 1 through 10], from:

(1) selling electronic data to the federal government; and

(2) providing electronic data to the federal government, except in response to a subpoena or search warrant issued by a duly authorized court or to comply with federal law.

Section 14. Section 32-6-105, MCA, is amended to read:

"**32-6-105. Protection of privacy.** (1) ~~No information~~ Information relating to ~~any~~ a transaction by electronic funds transfer, or application ~~therefor~~ for an electronic funds transfer, between a financial institution and its customer or prospective customer may not be disclosed by the financial institution to any person or government entity or to the federal government as defined in [section 2] without:

(a) the consent of the customer; or

(b) a subpoena issued by a court of record directing the financial institution to disclose ~~such~~ the information to the person or government entity.

(2) Compliance with ~~such~~ the subpoena relieves a financial institution and its employees of liability to a customer or other person for ~~such~~ the disclosure.

(3) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse ~~which~~ that administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction."

NEW SECTION. **Section 15. Codification instruction.** (1) [Sections 1 through 10] are intended to be codified as a new chapter in Title 70, and the provisions of Title 70 apply to [sections 1 through 10].

(2) [Section 11] is intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [section 11].

(3) [Section 12] is intended to be codified as an integral part of Title 35, chapter 30, and the provisions of Title 35, chapter 30, apply to [section 12].

(4) [Section 13] is intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1, apply to [section 13].

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