_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE DISCLOSURE OF INFORMATION REGARDING CYBERSECURITY ASSISTANCE AND ASSESSMENTS PROVIDED BY THE DEPARTMENT OF MILITARY AFFAIRS; PROVIDING DEFINITIONS; AMENDING SECTIONS 2-6-1003, 2-17-516, AND 10-1-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 2-6-1003, MCA, is amended to read:

"**2-6-1003. Access to public information -- safety and security exceptions -- additional exceptions.** (1) Except as provided in subsections (2) through ~~(4)~~ (5), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. On the expiration of the restriction, the private records must be made accessible to the public.

(4) Except as provided in 87-1-213, the department of fish, wildlife, and parks, and any party with whom the department has shared the information under a data-sharing agreement pursuant to 87-1-213, may not release wildlife location data or telemetry frequencies of hunted or trapped animals.

(5) Information obtained, developed, generated, or maintained by the department of military affairs

or the national guard, as defined in 10-1-101, in connection with cybersecurity assistance provided pursuant to [section 4] is confidential and exempt from disclosure as provided in [section 4].

~~(5)~~ (6) A public agency may not refuse to disclose public information because the requested public information is part of litigation or may be part of litigation unless the information is protected from disclosure under another applicable law."

Section 2. Section 2-17-516, MCA, is amended to read:

"**2-17-516. Exemptions -- department of justice -- secretary of state -- university system -- state auditor -- office of public instruction -- national guard.** (1) Unless the proposed activities would detrimentally affect the operation of any information technology resource or the state telecommunications network, the office of public instruction, the office of the state auditor, and the secretary of state are exempt from 2-17-512(1)(k) and (1)(l).

(2) Unless the proposed activities would detrimentally affect the operation of any information technology resource or the state telecommunications network, the department of justice and the university system are exempt from:

(a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;

(b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;

(c) the budget approval provisions of 2-17-512(1)(g); and

(d) the provisions of 2-17-512(1)(k) and (1)(l).

(3) The department of justice, the secretary of state, the university system, the office of the state auditor, and the office of public instruction shall notify the department of proposed activities by using the department's approved process, and the department shall determine if any information technology resource or the state telecommunications network would be detrimentally affected by the proposed activity.

(4) (a) For the purposes of this section, a proposed activity affects the operation of any information technology resource or the state telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of any information technology resource or the state telecommunications network or fails to meet the minimum security policies and standards set by the department.

(b) Potential loss of revenue from fees paid by the department of justice, the secretary of state, the university system, the office of the state auditor, or the office of public instruction for not utilizing services offered by the department are not considered a detrimental effect to any information technology resource or the state telecommunications network. If the department of justice, the secretary of state, the university system, the office of the state auditor, or the office of public instruction does not utilize a service program after the department's rate was set for the biennium, the agency shall continue to pay any fees associated with the service or program for the remainder of the biennium.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) When reviewing proposed activities of the department of justice or the office of the state auditor, the department shall consider and make reasonable allowances for the unique safety and security needs and characteristics of the department of justice or the office of the state auditor to communicate and share data with federal, state, and local law enforcement entities.

(8) Section 2-17-512(1)(s) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(9) The national guard, as defined in 10-1-101~~(3)~~(5), is exempt from 2-17-512."

Section 3. Section 10-1-101, MCA, is amended to read:

"**10-1-101. Definitions.** Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means the department of military affairs.

(2) "Cybersecurity assistance" means technical, investigative, assessment, testing, incident response, remediation, advisory, or other services provided by the department to identify, prevent, protect against, detect, respond to, mitigate, or recover from a cybersecurity threat, vulnerability, or incident.

(3) "Entity", when used in connection with cybersecurity assistance, means a state or local government entity, political subdivision, school district, tribal government, nonprofit organization, business, or other public or private organization authorized by law to receive cybersecurity assistance from the department or the national guard.

~~(2)~~ (4) "Militia" means all the military forces of this state, whether organized or active or inactive.

~~(3)~~ (5) "National guard" means the army national guard and the air national guard.

~~(4)~~ (6) "Officer" means a commissioned or warrant officer.

~~(5)~~ (7) "Youth challenge program" means the Montana national guard youth challenge program established pursuant to 10-1-1401."

NEW SECTION. **Section 4. Cybersecurity assessments -- confidentiality prohibitions on disclosure.** (1) Information obtained, developed, generated, or maintained by the department or the national guard in the provision of cybersecurity assistance to an entity is confidential information, as defined in 2-6-1002(1), and is not subject to disclosure under Title 2, chapter 6.

(2) Information protected under subsection (1) includes but is not limited to:

(a) network diagrams, system architecture, hardware and software configurations, security controls, access controls, credentials, vulnerabilities, exploits, and technical specifications;

(b) vulnerability scans, penetration-testing results, cybersecurity findings, risk assessments, reports, recommendations, and remediation information;

(c) information provided to the department or the national guard by an entity receiving cybersecurity assistance; and

(d) other technical information relating to the security of an information system, operational technology system, network, or critical infrastructure that could reasonably be used to facilitate unauthorized access to, disruption of, or compromise of the system, network, or infrastructure.

(3) Information protected under subsection (1) is subject to discovery or compulsory disclosure only when protected from misuse or unnecessary dissemination by order of a district court. The department or the national guard is a necessary party to any proceeding seeking an order under this subsection (3).

(4) The disclosure of information protected under this section to the department or the national

guard for the purposes of obtaining cybersecurity assistance does not waive any privilege, confidentiality protection, trade secret protection, or other protection from disclosure otherwise applicable to the information.

(5) The department or the national guard may disclose information protected under this section:

(a) to the entity that provided the information or received the cybersecurity assistance;

(b) with the written consent of that entity;

(c) to a federal, state, local, or tribal government entity when necessary to prevent, investigate, mitigate, or respond to a cybersecurity incident or threat; or

(d) as otherwise required by federal law.

NEW SECTION. **Section 5. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. **Section 6. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 10, chapter 1, part 1, and the provisions of Title 10, chapter 1, part 1, apply to [section 4].

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

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