

**Amendment - 2nd Reading/2nd House-tan - Requested by: Katie Zolnikov - (H) Committee of the Whole**

- 2025

69th Legislature 2025

Drafter: Jaret Coles,

SB0297.003.002

SENATE BILL NO. 297

INTRODUCED BY D. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PRIVACY LAWS; PROVIDING DEFINITIONS; REQUIRING NOTIFICATION TO CONSUMERS THAT CERTAIN INFORMATION HAS BEEN COLLECTED; REQUIRING AN OPT-OUT OPTION FOR CONSUMERS; REQUIRING A PRIVACY NOTICE FROM CONTROLLERS; REQUIRING THE ATTORNEY GENERAL TO POST RIGHTS AND RESPONSIBILITIES INFORMATION ONLINE; SPECIFYING CONTROLLER DUTIES; SPECIFYING RESPONSIBILITIES BY ROLE; AMENDING SECTIONS 20-7-1324, 30-14-2802, 30-14-2803, 30-14-2804, 30-14-2808, 30-14-2812, 30-14-2816, AND 30-14-2817, MCA; AND REPEALING SECTION 15, CHAPTER 681, LAWS OF 2023."

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

**Section 1.** Section 20-7-1324, MCA, is amended to read:

**"20-7-1324. Definitions.** As used in 20-7-1323 through 20-7-1326, the following definitions apply:

(1) "Deidentified information" means information that cannot be used to identify an individual pupil.

(2) "K-12 online application" means an internet website, online service, cloud computing service, online application, or mobile application that is used primarily for K-12 school purposes and that was designed and is marketed for K-12 school purposes.

(3) (a) "K-12 school purposes" means activities that customarily take place at the direction of a school, teacher, or school district or aid in the administration of school activities, including but not limited to instruction in the classroom or at home, administrative activities, and collaboration between pupils, school personnel, or parents, or that are for the use and benefit of a school.

(b) The term does not include courses that are provided for the purpose of postsecondary credit or work-based learning courses provided by a work-based learning partner pursuant to 20-7-1510.

(4) "Operator" means the operator of a K-12 online application who knows or reasonably should

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1 harm to consumers relating to the collection, use, or retention of personal data.

2 (7) If a controller processes personal data pursuant to an exemption in this section, the controller  
3 bears the burden of demonstrating that the processing qualifies for the exemption and complies with the  
4 requirements in subsection (6).

5 (8) Processing personal data for the purposes expressly identified in this section may not solely  
6 make a legal entity a controller with respect to the processing."

7

8 **Section 8.** Section 30-14-2817, MCA, is amended to read:

9 **"30-14-2817. Enforcement.** (1) The attorney general has exclusive authority and may use the duties  
10 and powers provided by Title 30, chapter 14, parts 1 and 2, to enforce violations pursuant to this part.

11 (2) The attorney general shall post on the attorney general's website:

12 (a) information relating to:

13 (i) the responsibilities of a controller pursuant to this part;

14 (ii) the responsibilities of a processor pursuant to this part; and

15 (iii) a consumer's rights pursuant to this part; and

16 (b) an online mechanism through which a consumer may submit a complaint regarding consumer  
17 data privacy to the attorney general.

18 (3) (a) If the attorney general has reasonable cause to believe that a person has engaged in or is  
19 engaging in a violation of this part, the attorney general may issue a civil investigative demand pursuant to 30-  
20 14-113.

21 (b) As part of a civil investigative demand, the attorney general may request that a controller  
22 disclose any data protection assessment that is relevant to an investigation conducted by the attorney general.  
23 The attorney general may evaluate the data protection assessment for compliance with the requirements  
24 pursuant to this part.

25 ~~(2)(4) (a) The attorney general shall, prior to initiating any action for a violation of any provision of this~~  
26 ~~part, issue a notice of violation to the controller 30 days prior to bringing the action, identifying the specific~~  
27 ~~provisions of this part that the attorney general alleges have been or are being violated.~~

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~~(b) — If the controller fails to correct the violation within 60 30 days of receipt of the notice of violation, the attorney general may bring an action pursuant to this section.~~

~~(c) — If The attorney general may not bring an action against the controller if within the 60-day 30-day period the controller corrects the noticed violation and provides the attorney general an express written statement that:~~

~~(i) — the alleged violations have been corrected and that no such further violations will occur, no action must be initiated against the controller.;~~

~~(ii) — the controller has notified the consumer that the consumer's privacy violation was addressed, if the consumer's contact information has been made available to the controller; and~~

~~(iii) — the controller has made changes necessary to ensure that no further violations will occur.~~

~~(5)(4) Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.~~

~~(3)(6)(5) Nothing in this part may be construed as providing the basis for or be subject to a private right of action for violations of this part or any other law. (Subsection (2) terminates April 1, 2026—sec. 15, Ch. 681, L. 2023.)"~~

**NEW SECTION. Section 9. Duties of controllers -- duty of care -- rebuttable presumption. (1) (a)**

A controller that offers an online service, product, or feature to a consumer whom the controller actually knows or willfully disregards is a minor shall use reasonable care to avoid a heightened risk of harm to minors caused by the online service, product, or feature.

(b) In an enforcement action brought by the attorney general pursuant to 30-14-2817, there is a rebuttable presumption that a controller used reasonable care as required under this section if the controller complied with this section.

(2) Unless a controller has obtained consent in accordance with subsection (3), a controller that offers an online service, product, or feature to a consumer whom the controller actually knows or willfully disregards is a minor may not:

(a) process a minor's personal data:

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(ii) The disclosure of a data protection assessment pursuant to a request from the attorney general does not constitute a waiver of any attorney-client privilege or work-product protection that might otherwise exist with respect to the assessment and any information in the assessment.

(7) Data protection assessment requirements apply to processing activities created or generated after October 1, 2025, and are not retroactive.

**NEW SECTION. Section 12. Civil penalty injunction.** (1) A violation of this part is a violation of Title 30, chapter 14, parts 1 and 2.

(2) A person who violates the provisions of this part following the 30-day period described in 30-14-2817(3) ~~or who breaches a written statement provided to the attorney general under 30-14-2817(4)(c)~~ is liable for a civil penalty in an amount not to exceed \$7,500 for each violation.

(3) The attorney general may bring an action in the name of this state to:

(a) recover a civil penalty under this section;

(b) restrain or enjoin the person from violating this part; or

(c) recover the civil penalty and seek injunctive relief.

(4) The attorney general may recover reasonable attorney fees and other reasonable expenses incurred in investigating and bring an action under this section.

(5) The attorney general shall deposit a civil penalty collected under this section in a special revenue account to the credit of the department pursuant to 30-14-143.

**NEW SECTION. Section 13. Statute of limitations.** Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.

**NEW SECTION. Section 14. Statute of limitations.** Actions brought by the department to enforce this part are subject to the statute of limitations pursuant to 27-2-231.

**NEW SECTION. Section 15. Repealer.** Section 15, Chapter 681, Laws of 2023, is repealed.