

HOUSE BILL NO. 732

INTRODUCED BY ROBERTS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING AND REVISING LAWS TO IMPLEMENT INDIVIDUAL
5 PRIVACY AND TO PREVENT IDENTITY THEFT; REQUIRING A CONSUMER REPORTING AGENCY TO
6 BLOCK OR EXPUNGE INFORMATION ON A REPORT THAT RESULTS FROM A THEFT OF IDENTITY;
7 PROVIDING PRIVACY PROTECTION PROVISIONS FOR CREDIT CARD SOLICITATIONS AND RENEWALS
8 AND TELEPHONE ACCOUNTS; PROVIDING PRIVACY PROTECTION FOR BUSINESS RECORDS BY
9 REQUIRING DESTRUCTION OF RECORDS; REQUIRING BUSINESSES TO REPORT A BREACH OF
10 COMPUTER SECURITY; ~~REQUIRING A BUSINESS THAT HAS AN ESTABLISHED BUSINESS~~
11 ~~RELATIONSHIP WITH A CUSTOMER AND THAT HAS DISCLOSED CERTAIN PERSONAL INFORMATION~~
12 ~~TO THIRD PARTIES TO REPORT THAT INFORMATION TO THE CUSTOMER; PROVIDING REMEDIES AND~~
13 ~~PENALTIES FOR VIOLATIONS; AMENDING SECTION 31-3-115, MCA; AND PROVIDING AN EFFECTIVE~~
14 ~~DATE DATES."~~

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 31-3-115, MCA, is amended to read:

19 **"31-3-115. Adverse information.** (1) Whenever a consumer reporting agency prepares an
20 investigative consumer report, ~~no~~ adverse information in the consumer report, ~~{~~other than information ~~which that~~
21 is a matter of public record~~}~~, may not be included in a subsequent consumer report unless ~~such the~~ adverse
22 information has been verified in the process of making ~~such the~~ subsequent consumer report.

23 ~~(2) A consumer reporting agency must block or expunge information on a report that results from a theft~~
24 ~~of identity as prohibited in 45-6-332~~ SHALL BLOCK THE REPORTING OF ANY INFORMATION IN THE FILE OF A CONSUMER
25 ~~THAT THE CONSUMER IDENTIFIES AS INFORMATION THAT RESULTED FROM AN ALLEGED IDENTITY THEFT, PURSUANT TO 15~~
26 ~~U.S.C. 1681c-2."~~

27
28 **NEW SECTION. Section 2. Identity theft impediments -- credit cards -- definition.** (1) A credit card
29 issuer that mails an offer or solicitation to receive a credit card and, in response, receives a completed
30 application for a credit card that lists an address that is different from the address on the offer or solicitation shall

1 verify the change of address by contacting the person to whom the solicitation or offer was mailed, AS PROVIDED
2 IN [SECTION 3].

3 (2) Notwithstanding any other provision of law, a person to whom an offer or solicitation to receive a
4 credit card is made is not liable for the unauthorized use of a credit card issued in response to that offer or
5 solicitation if the credit card issuer does not verify the change of address pursuant to subsection (1) prior to the
6 issuance of the credit card unless the credit card issuer proves that this person actually incurred the charge on
7 the credit card.

8 (3) When a credit card issuer receives a written or oral request for a change of the cardholder's billing
9 address and then receives a written or oral request for an additional credit card within 10 days after the
10 requested address change, the credit card issuer may not mail the requested additional credit card to the new
11 address or, alternatively, activate the requested additional credit card unless the credit card issuer has verified
12 the change of address.

13 (4) (a) Except as provided in subsections (4)(b) through (4)(d), a person, firm, partnership, association,
14 corporation, or limited liability company that accepts credit cards for the transaction of business may not print
15 more than the last five digits of the credit card account number or the expiration date upon any receipt provided
16 to the cardholder.

17 (b) Subsection (4)(a) applies only to receipts that are electronically printed and does not apply to
18 transactions in which the sole means of recording the person's credit card number is by handwriting or by an
19 imprint or copy of the credit card.

20 (c) Subsection (4)(a) applies beginning January 1, 2008, with respect to any cash register or other
21 machine or device that electronically prints receipts for credit card transactions that is in use before January 1,
22 2005.

23 (d) Subsection (4)(a) applies beginning January 1, 2006, with respect to any cash register or other
24 machine or device that electronically prints receipts for credit card transactions that is first put into use on or after
25 January 1, ~~2006~~ 2005.

26 (5) (a) As used in this section, "credit card" means any card, plate, coupon book, or other single credit
27 device existing for the purpose of being used from time to time upon presentation to obtain money, property,
28 labor, or services on credit.

29 (b) "Credit card" does not mean any of the following:

30 (i) any single credit device used to obtain telephone property, labor, or services in any transaction with

1 an entity under regulation as a public utility;

2 (ii) any device that may be used to obtain credit pursuant to an electronic fund transfer, but only if the
3 credit is obtained under an agreement between a consumer and a financial institution to extend credit when the
4 consumer's asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset
5 account;

6 (iii) any key or card key used at an automated dispensing outlet to obtain or purchase petroleum
7 products that will be used primarily for business rather than personal or family purposes.

8

9 **NEW SECTION. Section 3. Identity theft impediments -- credit card renewal -- telephone**
10 **accounts.** (1) A credit card issuer that receives a change of address request, other than for a correction of a
11 typographical error, from a cardholder who orders a replacement credit card within 60 days before or after that
12 request is received shall send to that cardholder a change of address notification that is addressed to the
13 cardholder at the cardholder's previous address of record. If the replacement credit card is requested prior to
14 the effective date of the change of address, the notification must be sent within 30 days of the change of address
15 request. If the replacement credit card is requested after the effective date of the change of address, the
16 notification must be sent within 30 days of the request for the replacement credit card.

17 (2) Any business entity that provides telephone accounts that receives a change of address request,
18 other than for a correction of a typographical error, from an account holder who orders new service shall send
19 to that account holder a change of address notification that is addressed to the account holder at the account
20 holder's previous address of record. The notification must be sent within 30 days of the request for new service.

21 (3) The notice required pursuant to subsection (1) or (2) may be given by telephone or electronic mail
22 communication if the credit card issuer or business entity that provides telephone accounts reasonably believes
23 that it has the current telephone number or electronic mail address for the account holder or cardholder who has
24 requested a change of address. If the notification is in writing, it may not contain the consumer's account
25 number, social security number, or other personal identifying information but may contain the consumer's name,
26 previous address, and new address of record. For business entities described in subsection (2), the notification
27 may also contain the account holder's telephone number.

28 (4) A credit card issuer or a business entity that provides telephone accounts is not required to send
29 a change of address notification when a change of address request is made in person by a consumer who has
30 presented valid identification or is made by telephone and the requester has provided a unique alphanumeric

1 password.

2 (5) As used in this section, the following definitions apply:

3 (a) "Credit card" has the meaning provided in [section 2].

4 (b) "Telephone account" means an account with a telecommunications carrier, as defined in 69-3-803.

5
6 **NEW SECTION. Section 4. Purpose.** The purpose of [sections 4 through 9 8] is to enhance the
7 protection of individual privacy and to impede identity theft as prohibited by 45-6-332.

8
9 **NEW SECTION. Section 5. Definitions.** As used in [sections 4 through 9 8], unless the context
10 requires otherwise, the following definitions apply:

11 (1) (A) "Business" means a sole proprietorship, partnership, corporation, association, or other group,
12 however organized and whether or not organized to operate at a profit, including a financial institution organized,
13 chartered, or holding a license or authorization certificate under the law of this state, any other state, the United
14 States, or of any other country or the parent or the subsidiary of a financial institution. The term includes an entity
15 that destroys records. THE TERM ALSO INCLUDES INDUSTRIES REGULATED BY THE PUBLIC SERVICE COMMISSION OR
16 UNDER TITLE 30, CHAPTER 10.

17 (B) THE TERM DOES NOT INCLUDE INDUSTRIES REGULATED UNDER TITLE 33.

18 (2) "Customer" means an individual who provides personal information to a business for the purpose
19 of purchasing or leasing a product or obtaining a service from the business.

20 (3) "Individual" means a natural person.

21 (4) "Personal information" means ~~any information that identifies, relates to, describes, or is capable of~~
22 ~~being associated with a particular individual, including but not limited to the individual's name, signature, social~~
23 ~~security number, physical characteristics or description, address, telephone number, passport number, driver's~~
24 ~~license or state identification card number, insurance policy number, education, employment, employment~~
25 ~~history, bank account number, credit card number, debit card number, or any other financial information. AN~~
26 ~~INDIVIDUAL'S NAME, SIGNATURE, ADDRESS, OR TELEPHONE NUMBER, IN COMBINATION WITH ONE OR MORE ADDITIONAL~~
27 ~~PIECES OF INFORMATION ABOUT THE INDIVIDUAL, CONSISTING OF THE INDIVIDUAL'S PASSPORT NUMBER, DRIVER'S LICENSE~~
28 ~~OR STATE IDENTIFICATION NUMBER, INSURANCE POLICY NUMBER, BANK ACCOUNT NUMBER, CREDIT CARD NUMBER, DEBIT~~
29 ~~CARD NUMBER, PASSWORDS OR PERSONAL IDENTIFICATION NUMBERS REQUIRED TO OBTAIN ACCESS TO THE INDIVIDUAL'S~~
30 ~~FINANCES, OR ANY OTHER FINANCIAL INFORMATION AS PROVIDED BY RULE. A SOCIAL SECURITY NUMBER, IN AND OF~~

1 ITSELF, CONSTITUTES PERSONAL INFORMATION.

2 (5) (a) "Records" means any material, regardless of the physical form, on which PERSONAL information
3 is recorded or ~~preserved by any means, including in written or spoken words, graphically depicted, printed, or~~
4 ~~electromagnetically transmitted.~~

5 (b) The term does not include publicly available directories containing PERSONAL information an
6 individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone
7 number.

8

9 NEW SECTION. Section 6. Record destruction. A business shall take all reasonable steps to destroy
10 or arrange for the destruction of a customer's records within its custody or control containing personal
11 information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise
12 modifying the personal information in those records to make it unreadable or undecipherable ~~through any~~
13 ~~means.~~

14

15 NEW SECTION. Section 7. Computer security breach. (1) Any person or business that conducts
16 business in Montana and that owns or licenses computerized data that includes personal information shall
17 disclose any breach of the security of the data system following discovery or notification of the breach to any
18 resident of Montana whose unencrypted personal information was or is reasonably believed to have been
19 acquired by an unauthorized person. The disclosure must be made ~~in the most expedient time possible and~~
20 without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection
21 (3), or CONSISTENT WITH any measures necessary to determine the scope of the breach and restore the
22 reasonable integrity of the data system.

23 (2) Any person or business that maintains computerized data that includes personal information that
24 the person or business does not own shall notify the owner or licensee of the information of any breach of the
25 security of the data system immediately following discovery if the personal information was, or is reasonably
26 believed to have been acquired by an unauthorized person.

27 (3) The notification required by this section may be delayed if a law enforcement agency determines
28 that the notification will impede a criminal investigation AND REQUESTS A DELAY IN NOTIFICATION. The notification
29 required by this section must be made after the law enforcement agency determines that it will not compromise
30 the investigation.

1 (4) For purposes of this section, the following definitions apply:

2 (a) "Breach of the security of the data system" means unauthorized acquisition of computerized data
3 that MATERIALLY compromises the security, confidentiality, or integrity of personal information maintained by the
4 person or business AND CAUSES OR IS REASONABLY BELIEVED TO CAUSE LOSS OR INJURY TO A MONTANA RESIDENT.
5 Good faith acquisition of personal information by an employee or agent of the person or business for the
6 purposes of the person or business is not a breach of the security of the data system, provided that the personal
7 information is not used or subject to further unauthorized disclosure.

8 (b) (i) "Personal information" means an individual's first name or first initial and last name in combination
9 with any one or more of the following data elements, when either the name or the data elements are not
10 encrypted:

11 (A) social security number;

12 (B) driver's license number or state identification card number;

13 (C) account number or credit or debit card number, in combination with any required security code,
14 access code, or password that would permit access to an individual's financial account.

15 (ii) Personal information does not include publicly available information that is lawfully made available
16 to the general public from federal, state, or local government records.

17 (5) (a) For purposes of this section, notice may be provided by one of the following methods:

18 (i) written notice;

19 (ii) electronic notice, if the notice provided is consistent with the provisions regarding electronic records
20 and signatures set forth in 15 U.S.C. 7001; ~~or~~

21 (III) TELEPHONIC NOTICE; OR

22 ~~(iii)~~(IV) substitute notice, if the person or business demonstrates that:

23 (A) the cost of providing notice would exceed \$250,000;

24 (B) the affected class of subject persons to be notified exceeds 500,000; or

25 (C) the person or business does not have sufficient contact information.

26 (b) Substitute notice must consist of ~~all of~~ the following:

27 (i) an electronic mail notice when the person or business has an electronic mail address for the subject
28 persons; AND

29 (ii) conspicuous posting of the notice on the website page of the person or business if the person or
30 business maintains one; ~~and~~ OR

1 (iii) notification to ~~major~~ APPLICABLE LOCAL OR statewide media.

2 (6) Notwithstanding subsection (5), a person or business that maintains its own notification procedures
3 as part of an information security policy for the treatment of personal information and that ~~is otherwise consistent~~
4 ~~with the timing requirements of [sections 4 through 9]~~ DOES NOT UNREASONABLY DELAY NOTICE is considered to
5 be in compliance with the notification requirements of this section if the person or business notifies subject
6 persons in accordance with its policies in the event of a breach of security of the data system.

7 (7) IF A BUSINESS DISCLOSES A SECURITY BREACH TO ANY INDIVIDUAL PURSUANT TO THIS SECTION AND GIVES
8 A NOTICE TO THE INDIVIDUAL THAT SUGGESTS, INDICATES, OR IMPLIES TO THE INDIVIDUAL THAT THE INDIVIDUAL MAY
9 OBTAIN A COPY OF THE FILE ON THE INDIVIDUAL FROM A CONSUMER CREDIT REPORTING AGENCY, THE BUSINESS SHALL
10 COORDINATE WITH THE CONSUMER REPORTING AGENCY AS TO THE TIMING, CONTENT, AND DISTRIBUTION OF THE NOTICE
11 TO THE INDIVIDUAL. THE COORDINATION MAY NOT UNREASONABLY DELAY THE NOTICE TO THE AFFECTED INDIVIDUALS.

12
13 ~~NEW SECTION. Section 8. Business relationship--information disclosure.~~ (1) Except as provided
14 in subsection (4), if a business has an established business relationship with a customer and has within the
15 immediately preceding calendar year disclosed personal information that corresponds to any of the categories
16 of personal information set forth in subsection (5)(a) to third parties and if the business knows or reasonably
17 should know that the third parties used the personal information for the third parties' direct marketing purposes,
18 that business shall, after the receipt of a written or electronic mail request or, if the business chooses to receive
19 requests by toll-free telephone or facsimile numbers, a telephone or facsimile request from the customer, provide
20 all of the following information to the customer free of charge, in writing or by electronic mail:

21 ~~(a) a list of the categories set forth in subsection (5)(a) that correspond to the personal information~~
22 ~~disclosed by the business to third parties for the third parties' direct marketing purposes during the immediately~~
23 ~~preceding calendar year;~~

24 ~~(b) the names and addresses of all of the third parties that received personal information from the~~
25 ~~business for the third parties' direct marketing purposes during the preceding calendar year and, if the nature~~
26 ~~of the third parties' business cannot reasonably be determined from the third parties' name, examples of the~~
27 ~~products or services marketed, if known to the business, sufficient to give the customer a reasonable indication~~
28 ~~of the nature of the third parties' business.~~

29 ~~(2) (a) A business required to comply with this section shall designate a mailing address, electronic mail~~
30 ~~address, or, if the business chooses to receive requests by telephone or facsimile, a toll-free telephone or~~

1 facsimile number, to which customers may deliver requests pursuant to subsection (1). A business required to
2 comply with this section shall, at its election, do at least one of the following:

3 ~~—— (i) notify all agents and managers who directly supervise employees who regularly have contact with
4 customers of the designated addresses or numbers or the means to obtain those addresses or numbers and
5 instruct those employees that customers who inquire about the business's privacy practices or the business's
6 compliance with this section must be informed of the designated addresses or numbers or the means to obtain
7 the addresses or numbers;~~

8 ~~—— (ii) add to the home page of its website a link either to a page titled "Your Privacy Rights" or to add the
9 words "Your Privacy Rights" to the home page's link to the business's privacy policy. If the business elects to
10 add the words "Your Privacy Rights" to the link to the business's privacy policy, the words "Your Privacy Rights"
11 must be in the same style and size as the link to the business's privacy policy. If the business does not display
12 a link to its privacy policy on the home page of its website or does not have a privacy policy, the words "Your
13 Privacy Rights" must be written in larger type than the surrounding text or in contrasting type, font, or color to
14 the surrounding text of the same size or set off from the surrounding text of the same size by symbols or other
15 marks that call attention to the language. The first page of the link must describe a customer's rights pursuant
16 to this section and must provide the designated mailing address, electronic mail address, as required, or toll-free
17 telephone number or facsimile number, as appropriate. If the business elects to add the words "Your Privacy
18 Rights" to the home page's link to the business's privacy policy in a manner that complies with this subsection
19 (2)(a)(ii) and the first page of the link describes a customer's rights pursuant to this section and provides the
20 designated mailing address, electronic mail address, as required, or toll-free telephone or facsimile number, as
21 appropriate, the business need not respond to requests that are not received at one of the designated addresses
22 or numbers.~~

23 ~~—— (iii) make the designated addresses or numbers or means to obtain the designated addresses or
24 numbers readily available upon request of a customer at every place of business in Montana where the business
25 or its agents regularly have contact with customers. The response to a request pursuant to this section received
26 at one of the designated addresses or numbers must be provided within 30 days. Requests received by the
27 business at other than one of the designated addresses or numbers must be provided within a reasonable
28 period, in light of the circumstances related to how the request was received, but not to exceed 150 days from
29 the date received.~~

30 ~~—— (b) A business that is required to comply with this section and 15 U.S.C. 6803 may comply with this~~

1 ~~section by providing the customer the disclosure required by 15 U.S.C. 6803, but only if the disclosure also~~
2 ~~complies with this section:~~

3 ~~———(c) A business that is required to comply with this section is not obligated to provide information~~
4 ~~associated with specific individuals and may provide the information required by this section in standardized~~
5 ~~format:~~

6 ~~———(3) (a) A business that is required to comply with this section is not obligated to do so in response to~~
7 ~~a request from a customer more than once during the course of any calendar year. A business with fewer than~~
8 ~~20 full-time or part-time employees is exempt from the requirements of this section:~~

9 ~~———(b) If a business that is required to comply with this section adopts and discloses to the public, in its~~
10 ~~privacy policy, a policy of not disclosing personal information of customers to third parties for the third parties'~~
11 ~~direct marketing purposes unless the customer first affirmatively agrees to that disclosure or of not disclosing~~
12 ~~the personal information of customers to third parties for the third parties' direct marketing purposes if the~~
13 ~~customer has exercised an option that prevents that information from being disclosed to third parties for those~~
14 ~~purposes, as long as the business maintains and discloses the policies, the business may comply with~~
15 ~~subsection (1) by notifying the customer of the right to prevent disclosure of personal information and providing~~
16 ~~the customer with a cost-free means to exercise that right:~~

17 ~~———(4) The following are among the disclosures not considered to be disclosures of personal information~~
18 ~~by a business for a third parties' direct marketing purposes for purposes of this section:~~

19 ~~———(a) disclosures between a business and a third party pursuant to contracts or arrangements pertaining~~
20 ~~to any of the following:~~

21 ~~———(i) the processing, storage, management, or organization of personal information or the performance~~
22 ~~of services on behalf of the business during which personal information is disclosed if the third party that~~
23 ~~processes, stores, manages, or organizes the personal information does not use the information for a third~~
24 ~~party's direct marketing purposes and does not disclose the information to additional third parties for their direct~~
25 ~~marketing purposes;~~

26 ~~———(ii) marketing products or services to customers with whom the business has an established business~~
27 ~~relationship if, as a part of the marketing, the business does not disclose personal information to third parties~~
28 ~~for the third parties' direct marketing purposes;~~

29 ~~———(iii) maintaining or servicing accounts, including credit accounts and disclosures pertaining to the denial~~
30 ~~of applications for credit or the status of applications for credit and processing bills or insurance claims for~~

1 payment;

2 ~~———(iv) public record information relating to the right, title, or interest in real property or information relating~~
3 ~~to property characteristics, as required in property tax records, obtained from a governmental agency and not~~
4 ~~provided directly by the customer to a business in the course of an established business relationship;~~

5 ~~———(v) jointly offering a product or service pursuant to a written agreement with the third party that receives~~
6 ~~the personal information, provided that all of the following requirements are met:~~

7 ~~———(A) the product or service offered is a product or service of and is provided by at least one of the~~
8 ~~businesses that is a party to the written agreement;~~

9 ~~———(B) the product or service is jointly offered, endorsed, or sponsored by and clearly and conspicuously~~
10 ~~identifies for the customer the businesses that disclose and receive the disclosed personal information;~~

11 ~~———(C) the written agreement provides that the third party that receives the personal information is required~~
12 ~~to maintain the confidentiality of the information and is prohibited from disclosing or using the information other~~
13 ~~than to carry out the joint offering or servicing of a product or service that is the subject of the written agreement;~~

14 ~~———(b) disclosures to or from a consumer reporting agency of a customer's payment history or other~~
15 ~~information pertaining to transactions or experiences between the business and a customer if that information~~
16 ~~is to be reported in or used to generate a consumer report as defined in 15 U.S.C. 1681a(d) and use of that~~
17 ~~information is limited by the federal Fair Credit Reporting Act;~~

18 ~~———(c) disclosures of personal information by a business to a third-party financial institution solely for the~~
19 ~~purpose of the business obtaining payment for a transaction in which the customer paid the business for goods~~
20 ~~or services with a check, credit card, charge card, or debit card, if the customer seeks the information required~~
21 ~~by subsection (1) from the business obtaining payment, whether or not the business obtaining payment knows~~
22 ~~or reasonably should know that the third-party financial institution has used the personal information for its direct~~
23 ~~marketing purposes;~~

24 ~~———(d) disclosures of personal information between a licensed agent and its principal, if the personal~~
25 ~~information disclosed is necessary to complete, effectuate, administer, or enforce transactions between the~~
26 ~~principal and the agent, whether or not the licensed agent or principal also uses the personal information for~~
27 ~~direct marketing purposes, if that personal information is used by each of them solely to market products and~~
28 ~~services directly to customers with whom both have established business relationships as a result of the principal~~
29 ~~and agent relationship;~~

30 ~~———(e) disclosures of personal information between a financial institution and a business that has a private~~

1 label credit card, affinity card, retail installment contract, or cobranded card program with the financial institution,
2 if the personal information disclosed is necessary for the financial institution to maintain or service accounts on
3 behalf of the business with which it has a private label credit card, affinity card, retail installment contract, or
4 cobranded card program or to complete, effectuate, administer, or enforce customer transactions or transactions
5 between the institution and the business, whether or not the institution or the business also uses the personal
6 information for direct marketing purposes, if that personal information is used solely to market products and
7 services directly to customers with whom both the business and the financial institution have established
8 business relationships as a result of the private label credit card, affinity card, retail installment contract, or
9 cobranded card program.

10 ~~_____ (5) (a) The categories of personal information required to be disclosed pursuant to subsection (1)(a) are~~
11 ~~all of the following:~~

12 ~~_____ (i) name and address;~~

13 ~~_____ (ii) electronic mail address;~~

14 ~~_____ (iii) age or date of birth;~~

15 ~~_____ (iv) names of children;~~

16 ~~_____ (v) electronic mail or other addresses of children;~~

17 ~~_____ (vi) number of children;~~

18 ~~_____ (vii) the age or gender of children;~~

19 ~~_____ (viii) height, weight, race, religion, and occupation;~~

20 ~~_____ (ix) telephone number;~~

21 ~~_____ (x) education;~~

22 ~~_____ (xi) political party affiliation;~~

23 ~~_____ (xii) medical condition and drugs, therapies, or medical products or equipment used;~~

24 ~~_____ (xiii) the kind of product the customer purchased, leased, or rented;~~

25 ~~_____ (xiv) real property purchased, leased, or rented;~~

26 ~~_____ (xv) the kind of service provided;~~

27 ~~_____ (xvi) social security number;~~

28 ~~_____ (xvii) bank account number;~~

29 ~~_____ (xviii) credit card number or debit card number;~~

30 ~~_____ (xix) bank or investment account, debit card, or credit card balance;~~

1 ~~—— (xx) payment history; and~~
2 ~~—— (xxi) information pertaining to the customer's creditworthiness, assets, income, or liabilities.~~
3 ~~—— (b) If a list, description, or grouping of customer names or addresses is derived using any of the~~
4 ~~categories in subsection (5)(a) and is disclosed to a third party for direct marketing purposes in a manner that~~
5 ~~permits the third party to identify, determine, or extrapolate any other personal information from which the list~~
6 ~~was derived and that personal information, when it was disclosed, identified, described, or was associated with~~
7 ~~an individual, the categories set forth in subsection (5)(a) that correspond to the personal information used to~~
8 ~~derive the list, description, or grouping must be considered personal information for purposes of this section.~~
9 ~~—— (6) (a) Disclosures of personal information for direct marketing purposes between affiliated third parties~~
10 ~~that share the same brand name are exempt from the requirements of subsection (1)(a) unless the personal~~
11 ~~information disclosed corresponds to one of the following categories, in which case the customer must be~~
12 ~~informed of those categories listed in this subsection (6) that correspond to the categories of personal~~
13 ~~information disclosed for direct marketing purposes and the third-party recipients of personal information~~
14 ~~disclosed for direct marketing purposes pursuant to subsection (1)(b):~~
15 ~~—— (i) number of children;~~
16 ~~—— (ii) the age or gender of children;~~
17 ~~—— (iii) electronic mail or other addresses of children;~~
18 ~~—— (iv) height;~~
19 ~~—— (v) weight;~~
20 ~~—— (vi) race;~~
21 ~~—— (vii) religion;~~
22 ~~—— (viii) telephone number;~~
23 ~~—— (ix) medical condition;~~
24 ~~—— (x) drugs, therapies, or medical products or equipment used; (xi) social security number;~~
25 ~~—— (xii) bank account number;~~
26 ~~—— (xiii) credit card number;~~
27 ~~—— (xiv) debit card number;~~
28 ~~—— (xv) bank or investment account, debit card, or credit card balance.~~
29 ~~—— (b) If a list, description, or grouping of customer names or addresses is derived using any of the~~
30 ~~categories in subsection (6)(a) and is disclosed to a third party or third parties sharing the same brand name for~~

1 ~~direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate the~~
2 ~~personal information from which the list was derived and that personal information, when it was disclosed,~~
3 ~~identified, described, or was associated with an individual, any other personal information that corresponds to~~
4 ~~the categories in subsection (6)(a) used to derive the list, description, or grouping must be considered personal~~
5 ~~information for purposes of this section.~~

6 ~~———(c) If a business discloses personal information for direct marketing purposes to affiliated third parties~~
7 ~~that share the same brand name, the business that discloses personal information for direct marketing purposes~~
8 ~~between affiliated third parties that share the same brand name may comply with the requirements of subsection~~
9 ~~(1)(b) by providing the overall number of affiliated companies that share the same brand name.~~

10 ~~———(7) This section does not apply to a financial institution that is subject to Title 32, chapters 1 through 3.~~

11 ~~———(8) For purposes of this section, the following definitions apply:~~

12 ~~———(a) "Customer" means an individual who is a resident of Montana who provides personal information~~
13 ~~to a business during the creation of or throughout the duration of an established business relationship if the~~
14 ~~business relationship is primarily for personal, family, or household purposes.~~

15 ~~———(b) (i) "Direct marketing purposes" means the use of personal information to solicit or induce a~~
16 ~~purchase, rental, lease, or exchange of products, goods, property, or services directly to individuals by means~~
17 ~~of the mail, telephone, or electronic mail for their personal, family, or household purposes. The sale, rental,~~
18 ~~exchange, or lease of personal information for consideration to businesses is a direct marketing purpose of the~~
19 ~~business that sells, rents, exchanges, or obtains consideration for the personal information.~~

20 ~~———(ii) Direct marketing purposes does not include the use of personal information:~~

21 ~~———(A) by bona fide tax-exempt charitable or religious organizations to solicit charitable contributions;~~

22 ~~———(B) to raise funds from and communicate with individuals regarding politics and government;~~

23 ~~———(C) by a third party when the third party receives personal information solely as a consequence of~~
24 ~~having obtained for consideration permanent ownership of accounts that might contain personal information;~~

25 ~~or~~

26 ~~———(D) by a third party when the third party receives personal information solely as a consequence of a~~
27 ~~single transaction when, as a part of the transaction, personal information had to be disclosed in order to~~
28 ~~effectuate the transaction.~~

29 ~~———(c) "Disclose" means to disclose, release, transfer, disseminate, or otherwise communicate orally, in~~
30 ~~writing, or by electronic or any other means to any third party.~~

1 ~~———(d) "Employees who regularly have contact with customers" means employees whose contact with~~
2 ~~customers is not incidental to their primary employment duties and whose duties do not predominantly involve~~
3 ~~ensuring the safety or health of the businesses customers. The term includes but is not limited to employees~~
4 ~~whose primary employment duties are as cashier, clerk, customer service, sales, or promotion. It does not, by~~
5 ~~way of example, include employees whose primary employment duties consist of food or beverage preparation~~
6 ~~or service, maintenance and repair of the business's facilities or equipment, direct involvement in the operation~~
7 ~~of a motor vehicle, aircraft, watercraft, amusement ride, heavy machinery, or similar equipment, security, or~~
8 ~~participation in a theatrical, literary, musical, artistic, or athletic performance or contest.~~

9 ~~———(e) "Established business relationship" means a relationship formed by a voluntary, two-way~~
10 ~~communication between a business and a customer, with or without an exchange of consideration, for the~~
11 ~~purpose of purchasing, renting, or leasing real or personal property or any interest in property or obtaining a~~
12 ~~product or service from the business if the relationship is ongoing and has not been expressly terminated by the~~
13 ~~business or the customer or, if the relationship is not ongoing but is solely established by the purchase, rental,~~
14 ~~or lease of real or personal property from a business or the purchase of a product or service, no more than 18~~
15 ~~months have elapsed from the date of the purchase, rental, or lease.~~

16 ~~———(f) "Personal information" means any information that, when it was disclosed, identified, described, or~~
17 ~~was able to be associated with an individual and includes all of the following:~~

- 18 ~~———(i) an individual's name and address;~~
- 19 ~~———(ii) electronic mail address;~~
- 20 ~~———(iii) age or date of birth;~~
- 21 ~~———(iv) names of children;~~
- 22 ~~———(v) electronic mail or other addresses of children;~~
- 23 ~~———(vi) number of children;~~
- 24 ~~———(vii) the age or gender of children;~~
- 25 ~~———(viii) height;~~
- 26 ~~———(ix) weight;~~
- 27 ~~———(x) race;~~
- 28 ~~———(xi) religion;~~
- 29 ~~———(xii) occupation;~~
- 30 ~~———(xiii) telephone number;~~

- 1 ~~—— (xiv) education;~~
- 2 ~~—— (xv) political party affiliation;~~
- 3 ~~—— (xvi) medical condition;~~
- 4 ~~—— (xvii) drugs, therapies, or medical products or equipment used;~~
- 5 ~~—— (xviii) the kind of product the customer purchased, leased, or rented;~~
- 6 ~~—— (xix) real property purchased, leased, or rented;~~
- 7 ~~—— (xx) the kind of service provided;~~
- 8 ~~—— (xxi) social security number;~~
- 9 ~~—— (xxii) bank account number;~~
- 10 ~~—— (xxiii) credit card number;~~
- 11 ~~—— (xxiv) debit card number;~~
- 12 ~~—— (xxv) bank or investment account, debit card, or credit card balance;~~
- 13 ~~—— (xxvi) payment history; or~~
- 14 ~~—— (xxvii) information pertaining to creditworthiness, assets, income, or liabilities.~~
- 15 ~~—— (g) "Third party" means one or more of the following:~~
- 16 ~~—— (i) a business that is a separate legal entity from the business that has an established business~~
- 17 ~~relationship with a customer;~~
- 18 ~~—— (ii) a business that has access to a database that is shared among businesses if the business is~~
- 19 ~~authorized to use the database for direct marketing purposes, unless the use of the database is exempt from~~
- 20 ~~being considered a disclosure for direct marketing purposes pursuant to subsection (4);~~
- 21 ~~—— (iii) a business not affiliated by a common ownership or common corporate control with the business~~
- 22 ~~required to comply with subsection (1).~~
- 23
- 24 ~~—— **NEW SECTION. Section 9. Waiver void -- remedy.** (1) Any waiver of a provision of [sections 4~~
- 25 ~~through 9] is contrary to public policy and is void and unenforceable.~~
- 26 ~~—— (2) Any customer injured by a violation of [sections 4 through 9] may institute a civil action to recover~~
- 27 ~~damages.~~
- 28 ~~—— (3) In addition, for a willful, intentional, or reckless violation of [section 8], a customer may recover a civil~~
- 29 ~~penalty not to exceed \$3,000 for each violation. For other violations, the customer may recover a civil penalty~~
- 30 ~~of up to \$500 for each violation of [section 8].~~

1 ~~——— (4) Unless the violation is willful, intentional, or reckless, a business that is alleged to have not provided~~
 2 ~~all the information required by [section 8(1)], to have provided inaccurate information, failed to provide any of~~
 3 ~~the information required by [section 8(1)], or failed to provide information in the time period required by [section~~
 4 ~~8(2)] may assert as a complete defense in any action in law or equity that it provided the information within 90~~
 5 ~~days of the date the business knew that it had failed to provide the information, timely information, all the~~
 6 ~~information, or the accurate information, respectively.~~

7 ~~——— (5) Any business that violates, proposes to violate, or has violated [sections 4 through 9] may be~~
 8 ~~enjoined.~~

9 ~~——— (6) A prevailing plaintiff in any action commenced under [section 8] is entitled to recover reasonable~~
 10 ~~attorney fees and costs.~~

11 ~~——— (7) The rights and remedies available under this section are cumulative to each other and to any other~~
 12 ~~rights and remedies available under law.~~

13
 14 NEW SECTION. SECTION 8. DEPARTMENT TO RESTRAIN UNLAWFUL ACTS -- PENALTY. (1) WHENEVER THE
 15 DEPARTMENT HAS REASON TO BELIEVE THAT A PERSON HAS VIOLATED [SECTIONS 2 THROUGH 8] AND THAT PROCEEDING
 16 WOULD BE IN THE PUBLIC INTEREST, THE DEPARTMENT MAY BRING AN ACTION IN THE NAME OF THE STATE AGAINST THE
 17 PERSON TO RESTRAIN BY TEMPORARY OR PERMANENT INJUNCTION OR TEMPORARY RESTRAINING ORDER THE USE OF THE
 18 UNLAWFUL METHOD, ACT, OR PRACTICE UPON GIVING APPROPRIATE NOTICE TO THAT PERSON, PURSUANT TO
 19 30-14-111(2).

20 (2) THE PROVISIONS OF 30-14-111(3) AND (4) AND 30-14-112 THROUGH 30-14-115 APPLY TO [SECTIONS 2
 21 THROUGH 8].

22 (3) A VIOLATION OF [SECTIONS 2 THROUGH 8] IS A VIOLATION OF 30-14-103, AND THE PENALTIES FOR A
 23 VIOLATION OF [SECTIONS 2 THROUGH 8] ARE AS PROVIDED IN 30-14-142.

24
 25 NEW SECTION. SECTION 9. COMPUTER SECURITY BREACH. (1) ANY LICENSEE OR INSURANCE-SUPPORT
 26 ORGANIZATION THAT CONDUCTS BUSINESS IN MONTANA AND THAT OWNS OR LICENSES COMPUTERIZED DATA THAT
 27 INCLUDES PERSONAL INFORMATION SHALL PROVIDE NOTICE OF ANY BREACH OF THE SECURITY OF THE SYSTEM FOLLOWING
 28 DISCOVERY OR NOTICE OF THE BREACH OF THE SECURITY OF THE SYSTEM TO ANY INDIVIDUAL WHOSE UNENCRYPTED
 29 PERSONAL INFORMATION WAS OR IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED BY AN UNAUTHORIZED PERSON.
 30 THE NOTICE MUST BE MADE WITHOUT UNREASONABLE DELAY, CONSISTENT WITH THE LEGITIMATE NEEDS OF LAW

1 ENFORCEMENT, AS PROVIDED IN SUBSECTION (3), OR CONSISTENT WITH ANY MEASURES NECESSARY TO DETERMINE THE
2 SCOPE OF THE BREACH AND RESTORE THE REASONABLE INTEGRITY OF THE DATA SYSTEM.

3 (2) ANY PERSON TO WHOM PERSONAL INFORMATION IS DISCLOSED IN ORDER FOR THE PERSON TO PERFORM AN
4 INSURANCE FUNCTION PURSUANT TO THIS PART THAT MAINTAINS COMPUTERIZED DATA THAT INCLUDES PERSONAL
5 INFORMATION SHALL NOTIFY THE LICENSEE OR INSURANCE-SUPPORT ORGANIZATION OF ANY BREACH OF THE SECURITY
6 OF THE SYSTEM IN WHICH THE DATA IS MAINTAINED IMMEDIATELY FOLLOWING DISCOVERY OF THE BREACH OF THE
7 SECURITY OF THE SYSTEM IF THE PERSONAL INFORMATION WAS OR IS REASONABLY BELIEVED TO HAVE BEEN ACQUIRED
8 BY AN UNAUTHORIZED PERSON.

9 (3) THE NOTICE REQUIRED BY THIS SECTION MAY BE DELAYED IF A LAW ENFORCEMENT AGENCY DETERMINES
10 THAT THE NOTICE WILL IMPEDE A CRIMINAL INVESTIGATION AND REQUESTS A DELAY OF NOTICE. THE NOTICE REQUIRED
11 BY THIS SECTION MUST BE MADE AFTER THE LAW ENFORCEMENT AGENCY DETERMINES THAT THE NOTICE WILL NOT
12 COMPROMISE THE INVESTIGATION.

13 (4) LICENSEES, INSURANCE-SUPPORT ORGANIZATIONS, AND PERSONS TO WHOM PERSONAL INFORMATION IS
14 DISCLOSED PURSUANT TO THIS PART SHALL DEVELOP AND MAINTAIN AN INFORMATION SECURITY POLICY FOR THE
15 SAFEGUARDING OF PERSONAL INFORMATION AND SECURITY BREACH NOTICE PROCEDURES THAT PROVIDE EXPEDIENT
16 NOTICE TO INDIVIDUALS AS PROVIDED IN SUBSECTION (1).

17 (5) FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

18 (A) "BREACH OF THE SECURITY OF THE SYSTEM" MEANS UNAUTHORIZED ACQUISITION OF COMPUTERIZED DATA
19 THAT COMPROMISES THE SECURITY, CONFIDENTIALITY, OR INTEGRITY OF PERSONAL INFORMATION MAINTAINED BY A
20 LICENSEE, INSURANCE-SUPPORT ORGANIZATION, OR PERSON TO WHOM INFORMATION IS DISCLOSED PURSUANT TO THIS
21 PART. ACQUISITION OF PERSONAL INFORMATION BY A LICENSEE, INSURANCE-SUPPORT ORGANIZATION, OR EMPLOYEE OR
22 AGENT OF A PERSON AS AUTHORIZED PURSUANT TO THIS PART IS NOT A BREACH OF THE SECURITY OF THE SYSTEM.

23 (B) (I) "PERSONAL INFORMATION" MEANS AN INDIVIDUAL'S FIRST NAME OR FIRST INITIAL AND LAST NAME IN
24 COMBINATION WITH ANY ONE OR MORE OF THE FOLLOWING DATA ELEMENTS, WHEN THE NAME AND THE DATA ELEMENTS
25 ARE NOT ENCRYPTED:

26 (A) SOCIAL SECURITY NUMBER;

27 (B) DRIVER'S LICENSE NUMBER OR STATE IDENTIFICATION NUMBER;

28 (C) ACCOUNT NUMBER OR CREDIT OR DEBIT CARD NUMBER, IN COMBINATION WITH ANY REQUIRED SECURITY
29 CODE, ACCESS CODE, OR PASSWORD THAT WOULD PERMIT ACCESS TO AN INDIVIDUAL'S FINANCIAL ACCOUNT.

30 (II) PERSONAL INFORMATION DOES NOT INCLUDE PUBLICLY AVAILABLE INFORMATION THAT IS LAWFULLY MADE

1 AVAILABLE TO THE GENERAL PUBLIC FROM FEDERAL, STATE, OR LOCAL GOVERNMENT RECORDS.

2

3 NEW SECTION. Section 10. Codification instruction. (1) [Sections 2 through 9 8] are intended to
4 be codified as an integral part of Title 30, chapter 14, ~~part 4~~, and the provisions of Title 30, chapter 14, ~~part 4~~,
5 apply to [sections 2 through 9 8].

6 (2) [SECTION 9] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 33, CHAPTER 19, PART 3, AND THE
7 PROVISIONS OF TITLE 33, CHAPTER 19, PART 3, APPLY TO [SECTION 9].

8

9 NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
11 the part remains in effect in all valid applications that are severable from the invalid applications.

12

13 NEW SECTION. Section 12. Effective date. (1) ~~[This act]~~ EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS
14 ACT] is effective ~~July 1, 2005.~~ MARCH 1, 2006.

15 (2) [SECTIONS 1, 10, AND 11 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

16

17

- END -