

1 *House* BILL NO. *426*
 2 INTRODUCED BY *André Plussant*
 3 *Kenneth Holmes, Lester Stolz*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE CONSUMER
 5 REPORTING AGENCIES OPERATING IN MONTANA."
 6

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

8 Section 1. Purpose. It is the purpose of this act to
 9 require that consumer reporting agencies adopt reasonable
 10 procedures for meeting the needs of commerce for consumer
 11 credit, personnel, insurance, and other information in a
 12 manner which is fair and equitable to the consumer, with
 13 regard to the confidentiality, accuracy, relevancy, and
 14 proper utilization of such information in accordance with
 15 the requirements of this act. The act's further purpose is
 16 to guard an individual's right to privacy guaranteed in
 17 Article 11, section 10, of the Montana constitution.

18 Section 2. Definitions and rules of construction. (1)
 19 Definitions and rules of construction set forth in this
 20 section are applicable for the purposes of this act.

21 (2) The term "person" means any individual,
 22 partnership, corporation, trust, estate, cooperative,
 23 association, government or governmental subdivision or
 24 agency, or other entity.

25 (3) The term "consumer" means an individual.

1 (4) (a) The term "consumer report" means any written,
 2 oral or other communication of any information by a consumer
 3 reporting agency bearing on a consumer's credit worthiness,
 4 credit standing, credit capacity, character, general
 5 reputation, personal characteristics or mode of living which
 6 is used or expected to be used or collected in whole or in
 7 part for the purpose of serving as a factor in establishing
 8 the consumer's eligibility for:

- 9 (i) credit or insurance to be used primarily for
- 10 personal, family, or household purposes; or
- 11 (ii) employment purposes; or
- 12 (iii) other purposes authorized under section 4.

13 (b) The term does not include:

- 14 (i) any report containing information solely as to
- 15 transactions or experiences between the consumer and the
- 16 person making the report;
- 17 (ii) any authorization or approval of a specific
- 18 extension of credit directly or indirectly by the issuer of
- 19 a credit card or similar device; or

- 20 (iii) any report in which a person who has been
- 21 requested by a third party to make a specific extension of
- 22 credit directly or indirectly to a consumer conveys his
- 23 decision with respect to such request, if the third party
- 24 advises the consumer of the name and address of the person
- 25 to whom the request was made and such person makes the

HB 426

1 disclosures to the consumer required under section 15.

2 (5) The term "investigative consumer report" means a
3 consumer report or portion thereof in which information on a
4 consumer's character, general reputation, personal
5 characteristics, or mode of living is obtained through
6 personal interviews with neighbors, friends, or associates
7 of the consumer reported on or with others with whom he is
8 acquainted or who may have knowledge concerning any such
9 items of information. However, such information shall not
10 include specific factual information on a consumer's credit
11 record obtained directly from a creditor of the consumer or
12 from a consumer reporting agency when such information was
13 obtained directly from a creditor of the consumer or from
14 the consumer.

15 (6) The term "consumer reporting agency" means any
16 person which, for monetary fees, dues, or on a cooperative
17 nonprofit basis regularly engages in whole or in part in the
18 practice of assembling or evaluating consumer credit
19 information or other information on consumers for the
20 purpose of furnishing consumer reports to third parties.

21 (7) The term "file", when used in connection with
22 information on any consumer, means all of the information on
23 that consumer recorded and retained by a consumer reporting
24 agency regardless of how the information is stored.

25 (8) The term "employment purposes" when used in

1 connection with a consumer report means a report used for
2 the purpose of evaluating a consumer for employment,
3 promotion, reassignment or retention as an employee.

4 (9) The term "medical information" means information
5 or records obtained, with the consent of the individual to
6 whom it relates, from licensed physicians or medical
7 practitioners, hospitals, clinics, or other medical or
8 medically related facilities.

9 Section 3. Credit rating -- property right. A good
10 credit rating is a property right with full constitutional
11 protection.

12 Section 4. Permissible purposes of reports. A
13 consumer reporting agency may furnish a consumer report
14 under the following circumstances and no other:

15 (1) in response to the order of a court having
16 jurisdiction to issue such an order;

17 (2) in accordance with the written instructions of the
18 consumer to whom it relates;

19 (3) to a person which it has reason to believe:

20 (a) intends to use the information in connection with
21 a credit transaction involving the consumer on whom the
22 information is to be furnished and involving the extension
23 of credit to, or review or collection of an account of, the
24 consumer; or

25 (b) intends to use the information for employment

1 purposes; or

2 (c) intends to use the information in connection with
3 the underwriting of insurance involving the consumer; or

4 (d) intends to use the information in connection with
5 a determination of the consumer's eligibility for a license
6 or other benefit granted by a governmental instrumentality
7 required by law to consider an applicant's financial
8 responsibility or status; or

9 (e) otherwise has a legitimate business need for the
10 information in connection with a business transaction
11 involving the consumer.

12 Section 5. Obsolete information. No consumer
13 reporting agency may make any consumer report containing any
14 of the following items of information:

15 (1) bankruptcies which, from date of adjudication of
16 the most recent bankruptcy, antedate the report by more than
17 fourteen (14) years;

18 (2) suits and judgments which, from date of entry,
19 antedate the report by more than seven (7) years or until
20 the governing statute of limitations has expired, whichever
21 is the longer period;

22 (3) paid tax liens which, from date of payment,
23 antedate the report by more than seven (7) years;

24 (4) accounts placed for collection or charged to
25 profit and loss which antedate the report by more than seven

1 (7) years;

2 (5) records of arrest, indictment, or conviction of
3 crime which from date of disposition, release, or parole,
4 antedate the report by more than seven (7) years;

5 (6) any other adverse item of information which
6 antedates the report by more than seven (7) years.

7 Section 6. Disclosure of investigative consumer
8 reports. (1) A person may not procure or cause to be
9 prepared or distribute a consumer report or an investigative
10 consumer report on any consumer unless:

11 (a) it is clearly and accurately disclosed to the
12 consumer that an investigative consumer report including
13 information as to his character, general reputation,
14 personal characteristics, and mode of living, whichever are
15 applicable, may be made, and such disclosure is made in a
16 writing mailed, or otherwise delivered, to the consumer, not
17 later than three (3) days after the date on which the report
18 was first requested, and includes a statement informing the
19 consumer of his right to request the additional disclosures
20 provided for under subsection (2) of this section; or

21 (b) the report is to be used for employment purposes
22 for which the consumer applied.

23 (2) Any person who procures or causes to be prepared a
24 consumer report or an investigative consumer report on any
25 consumer shall, upon written request made by the consumer

HB426

1 within a reasonable period of time after the receipt by him
2 of the disclosure required by subsection (1)(a), shall make
3 a complete and accurate disclosure of the nature, scope, and
4 substance of the investigation requested. This disclosure
5 shall be made in a writing mailed, or otherwise delivered,
6 to the consumer not later than five (5) days after the date
7 on which the request for such disclosure was received from
8 the consumer or such report was first requested, whichever
9 is the later.

10 (3) No person may be held liable for any violation of
11 subsection (1) or (2) of this section if he shows by a
12 preponderance of the evidence that at the time of the
13 violation he maintained reasonable procedures to assure
14 compliance with subsection (1) or (2).

15 Section 7. Compliance procedures. (1) Every consumer
16 reporting agency shall maintain reasonable procedures
17 designed to avoid violations of sections [5 and 6] and to
18 limit the furnishing of consumer reports to the purposes
19 listed under section [4]. These procedures shall require
20 that prospective users of the information identify
21 themselves, certify the purposes for which the information
22 is sought, and certify that the information will be used for
23 no other purpose. Every consumer reporting agency shall
24 make a reasonable effort to verify the identity of a new
25 prospective user and the uses certified by such prospective

1 user prior to furnishing such user a consumer report. No
2 consumer reporting agency may furnish a consumer report to
3 any person if it has reasonable grounds for believing that
4 the consumer report will not be used for a purpose listed in
5 section [4].

6 (2) Whenever a consumer reporting agency prepares a
7 consumer report it shall follow reasonable procedures to
8 assure maximum possible accuracy of the information
9 concerning the individual about whom the report relates, and
10 it shall maintain a record of all persons using the
11 information and the source of each piece of
12 information.

13 (3) When gathering information, a consumer reporting
14 agency shall notify any person who furnishes information
15 that he is liable to suit if the information is false or
16 furnished with malice or willful intent to injure the
17 consumer.

18 Section 8. Adverse information. Whenever a consumer
19 reporting agency prepares an investigative consumer report,
20 no adverse information in the consumer report (other than
21 information which is a matter of public record) may be
22 included in a subsequent consumer report unless such adverse
23 information has been verified in the process of making such
24 subsequent consumer report.

25 Section 9. Disclosures to governmental agencies.

1 Notwithstanding the provisions of section [4], a consumer
 2 reporting agency may furnish identifying information
 3 respecting any consumer, limited to his name, address,
 4 former addresses, places of employment, or former places of
 5 employment, to a governmental agency.

6 Section 10. Disclosures to consumers. (1) Every
 7 consumer reporting agency shall, upon request and proper
 8 identification of any consumer, clearly and accurately
 9 disclose to the consumer:

10 (a) the nature and substance of all information
 11 (except medical information) in its files on the consumer at
 12 the time of the request; and

13 (b) the sources of the information.

14 (2) The requirements of subsection (1) respecting the
 15 disclosure of sources of information and the recipients of
 16 consumer reports furnished prior to the effective date of
 17 the act except to the extent that the matter involved is
 18 contained in the files of the consumer reporting agency on
 19 that date.

20 Section 11. Conditions of disclosure to consumer. (1)
 21 consumer reporting agency shall make the disclosures
 22 required under section [10] during normal business hours and
 23 on reasonable notice.

24 (2) The disclosures required under section [10] shall
 25 be made to the consumer:

1 (a) in person if he appears in person and furnishes
 2 proper identification; or

3 (b) by telephone if he has made a written request,
 4 with proper identification, for telephone disclosure and the
 5 toll charge, if any, for the telephone call is prepaid by or
 6 charged directly to the consumer.

7 (3) Any consumer reporting agency shall provide
 8 trained personnel to explain to the consumer any information
 9 furnished to him pursuant to section [10].

10 (4) The consumer shall be permitted to be accompanied
 11 by one other person of his choosing, who shall furnish
 12 reasonable identification. A consumer reporting agency may
 13 require the consumer to furnish a written statement granting
 14 permission to the consumer reporting agency to discuss the
 15 consumer's file in such person's presence.

16 Section 12. Procedure in case of disputed accuracy.

17 (1) If the completeness or accuracy of any item of
 18 information contained in this file is disputed by a
 19 consumer, and the dispute is directly conveyed to the
 20 consumer reporting agency by the consumer, the consumer
 21 reporting agency shall within a reasonable period of time
 22 reinvestigate and record the current status of that
 23 information unless it has reasonable grounds to believe that
 24 the dispute by the consumer is frivolous or irrelevant. If
 25 after such reinvestigation such information is found to be

1 inaccurate or can no longer be verified, the consumer
 2 reporting agency shall promptly delete the information and
 3 notify all users, of whom the consumer reporting agency has
 4 records, of the information's deletion. The users shall
 5 also delete the information.

6 (2) If the reinvestigation does not resolve the
 7 dispute, the consumer may file a brief statement setting
 8 forth the nature of the dispute.

9 (3) Whenever a statement of a dispute is filed, unless
 10 there is reasonable grounds to believe that it is frivolous
 11 or irrelevant, the consumer reporting agency shall, in any
 12 subsequent consumer report containing the information in
 13 question, clearly note that it is disputed by the consumer
 14 and provide either the consumer's statement or a clear and
 15 accurate codification or summary thereof. The consumer
 16 reporting agency shall notify the consumer of all users, of
 17 whom it has records, who have the disputed information.

18 Section 13. Disclosures free to consumers. A consumer
 19 reporting agency shall make all disclosures pursuant to
 20 section [10] and section [12] without charge to the
 21 consumer.

22 Section 14. Public record information for employment
 23 purposes. A consumer reporting agency which furnishes a
 24 consumer report for employment purposes and which for that
 25 purpose compiles and reports items of information on

1 consumers which are matters of public record and are likely
 2 to have an adverse effect upon a consumer's ability to
 3 obtain employment shall:

4 (1) at the time such public record information is
 5 reported to the user of such consumer report, notify the
 6 consumer of the fact that public record information is being
 7 reported by the consumer reporting agency, together with the
 8 name and address of the person to whom such information is
 9 being reported; or

10 (2) maintain strict procedures designed to insure that
 11 whenever public record information which is likely to have
 12 an adverse effect on a consumer's ability to obtain
 13 employment is reported it is complete and up to date. For
 14 purposes of this paragraph, items of public record relating
 15 to arrests, indictments, convictions, suits, tax liens, and
 16 outstanding judgments shall be considered up to date if the
 17 current public record status of the item at the time of the
 18 report is reported.

19 Section 15. Requirements on users of consumer reports.

20 (1) Whenever credit or insurance for personal, family, or
 21 household purposes, or employment involving a consumer is
 22 denied or the charge for such credit or insurance is
 23 increased either wholly or partly because of information
 24 contained in a consumer report from a consumer reporting
 25 agency, the user of the consumer report shall so advise the

1 consumer against whom such adverse action has been taken and
2 supply the name and address of the consumer reporting agency
3 making the report.

4 (2) Whenever credit for personal, family, or household
5 purposes involving a consumer is denied or the charge for
6 such credit is increased either wholly or partly because of
7 information obtained from a person other than a consumer
8 reporting agency bearing upon the consumer's credit
9 worthiness, credit standing, credit capacity, character,
10 general reputation, personal characteristics, or mode of
11 living, the user of such information shall, within a
12 reasonable period of time, upon the consumer's written
13 request for the reasons for such adverse action received
14 within sixty (60) days after learning of such adverse
15 action, disclose the nature of the information to the
16 consumer. The user of such information shall clearly and
17 accurately disclose to the consumer his right to make such
18 written request at the time such adverse action is
19 communicated to the consumer.

20 (3) No person may be held liable for any violation of
21 this section if he shows by a preponderance of the evidence
22 that at the time of the alleged violation he maintained
23 reasonable procedures to assure compliance with the
24 provisions of subsections (1) and (2).

25 Section 16. Actions available to consumer. (1) A

1 consumer may bring action in the nature of defamation,
2 invasion of privacy, or negligence with respect to the
3 reporting of information against any person who fails to
4 comply with this act.

5 (2) A person who fails to delete information or
6 incorporate into a report a consumer's statement of dispute
7 because he judges the dispute to be frivolous or irrelevant,
8 is liable to suit.

9 (3) A person who furnishes information to a consumer
10 reporting agency which is false, or who furnishes the
11 information with malice or willful intent to injure the
12 concerned consumer is liable to suit.

13 Section 17. Civil liability for willful
14 non-compliance. Any consumer reporting agency or user of
15 information which willfully fails to comply with any
16 requirement imposed under this act with respect to any
17 consumer is liable to that consumer in an amount equal to
18 the sum of:

19 (1) any actual damages sustained by the consumer as a
20 result of the failure;

21 (2) such amounts of punitive damages as the court may
22 allow; and

23 (3) in the case of any successful action to enforce
24 any liability under this section, the costs of the action
25 together with reasonable attorneys' fees as determined by

HB 426

1 the court.

2 Section 18. Civil liability for negligent
3 non-compliance. Any consumer reporting agency or user of
4 information which is negligent in failing to comply with any
5 requirement imposed under this title with respect to any
6 consumer is liable to that consumer in an amount equal to
7 the sum of:

8 (1) any actual damages sustained by the consumer as a
9 result of the failure;

10 (2) in the case of any successful action to enforce
11 any liability under this section, the costs of the action
12 together with reasonable attorneys' fees as determined by
13 the court.

14 Section 19. Jurisdiction -- venue. A consumer may
15 bring suit in any district court in Montana.

16 Section 20. The department of business regulation
17 shall enforce this act and promulgate rules necessary to
18 carry out the intent of this act.

-End-

Approved by Committee
on Business and Industry

HOUSE BILL NO. 426

INTRODUCED BY KIMBLE, DUSSAULT, KEMMIS,

HOLMES, LESTER, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE CONSUMER
REPORTING AGENCIES OPERATING IN MONTANA."

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

Section 1. Purpose. It is the purpose of this act to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this act. The act's further purpose is to guard an individual's right to privacy guaranteed in Article 11, section 10, of the Montana constitution.

Section 2. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this act.

(2) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) The term "consumer" means an individual.

(4) (a) The term "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(i) credit or insurance to be used primarily for personal, family, or household purposes; or

(ii) employment purposes; or

(iii) other purposes authorized under section 4.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person

1 to whom the request was made and such person makes the
2 disclosures to the consumer required under section 15.

3 (5) The term "investigative consumer report" means a
4 consumer report or portion thereof in which information on a
5 consumer's character, general reputation, personal
6 characteristics, or mode of living is obtained through
7 personal interviews with neighbors, friends, or associates
8 of the consumer reported on or with others with whom he is
9 acquainted or who may have knowledge concerning any such
10 items of information. However, such information shall not
11 include specific factual information on a consumer's credit
12 record obtained directly from a creditor of the consumer or
13 from a consumer reporting agency when such information was
14 obtained directly from a creditor of the consumer or from
15 the consumer.

16 (6) The term "consumer reporting agency" means any
17 person which, for monetary fees, dues, or on a cooperative
18 nonprofit basis regularly engages in whole or in part in the
19 practice of assembling or evaluating consumer credit
20 information or other information on consumers for the
21 purpose of furnishing consumer reports to third parties.

22 (7) The term "file", when used in connection with
23 information on any consumer, means all of the information on
24 that consumer recorded and retained by a consumer reporting
25 agency regardless of how the information is stored.

1 (8) The term "employment purposes" when used in
2 connection with a consumer report means a report used for
3 the purpose of evaluating a consumer for employment,
4 promotion, reassignment or retention as an employee.

5 (9) The term "medical information" means information
6 or records obtained, with the consent of the individual to
7 whom it relates, from licensed physicians or medical
8 practitioners, hospitals, clinics, or other medical or
9 medically related facilities.

10 Section 3. Credit rating -- property right. A good
11 credit rating is a property right with full constitutional
12 protection.

13 Section 4. Permissible purposes of reports. A
14 consumer reporting agency may furnish a consumer report
15 under the following circumstances and no other:

16 (1) in response to the order of a court having
17 jurisdiction to issue such an order;

18 (2) in accordance with the written instructions of the
19 consumer to whom it relates;

20 (3) to a person which it has reason to believe:

21 (a) intends to use the information in connection with
22 a credit transaction involving the consumer on whom the
23 information is to be furnished and involving the extension
24 of credit to, or review or collection of an account of, the
25 consumer; or

1 (b) intends to use the information for employment
2 purposes; or

3 (c) intends to use the information in connection with
4 the underwriting of insurance involving the consumer; or

5 (d) intends to use the information in connection with
6 a determination of the consumer's eligibility for a license
7 or other benefit granted by a governmental instrumentality
8 required by law to consider an applicant's financial
9 responsibility or status; or

10 (e) otherwise has a legitimate business need for the
11 information in connection with a business transaction
12 involving the consumer.

13 Section 5. Obsolete information. No consumer
14 reporting agency may make any consumer report containing any
15 of the following items of information:

16 (1) bankruptcies which, from date of adjudication of
17 the most recent bankruptcy, antedate the report by more than
18 fourteen (14) years;

19 (2) suits and judgments which, from date of entry,
20 antedate the report by more than seven (7) years or until
21 the governing statute of limitations has expired, whichever
22 is the longer period;

23 (3) paid tax liens which, from date of payment,
24 antedate the report by more than seven (7) years;

25 (4) accounts placed for collection or charged to

1 profit and loss which antedate the report by more than seven
2 (7) years;

3 (5) records of arrest, indictment, or conviction of
4 crime which from date of disposition, release, or parole,
5 antedate the report by more than seven (7) years;

6 (6) any other adverse item of information which
7 antedates the report by more than seven (7) years.

8 Section 6. Disclosure of investigative consumer
9 reports. (1) A person may not procure or cause to be
10 prepared or distribute a consumer report or an investigative
11 consumer report on any consumer unless:

12 (a) it is clearly and accurately disclosed to the
13 consumer that an investigative consumer report including
14 information as to his character, general reputation,
15 personal characteristics, and mode of living, whichever are
16 applicable, may be made, and such disclosure is made in a
17 writing mailed, or otherwise delivered, to the consumer, not
18 later than three (3) days after the date on which the report
19 was first requested, and includes a statement informing the
20 consumer of his right to request the additional disclosures
21 provided for under subsection (2) of this section; or

22 (b) the report is to be used for employment purposes
23 for which the consumer applied.

24 (2) Any person who procures or causes to be prepared a
25 consumer report or an investigative consumer report on any

1 consumer shall, upon written request made by the consumer
 2 within a reasonable period of time after the receipt by him
 3 of the disclosure required by subsection (1)(a), shall make
 4 a complete and accurate disclosure of the nature, scope, and
 5 substance of the investigation requested. This disclosure
 6 shall be made in a writing mailed, or otherwise delivered,
 7 to the consumer not later than five (5) days after the date
 8 on which the request for such disclosure was received from
 9 the consumer or such report was first requested, whichever
 10 is the later.

11 (3) No person may be held liable for any violation of
 12 subsection (1) or (2) of this section if he shows by a
 13 preponderance of the evidence that at the time of the
 14 violation he maintained reasonable procedures to assure
 15 compliance with subsection (1) or (2).

16 Section 7. Compliance procedures. (1) Every consumer
 17 reporting agency shall maintain reasonable procedures
 18 designed to avoid violations of sections [5 and 6] and to
 19 limit the furnishing of consumer reports to the purposes
 20 listed under section [4]. These procedures shall require
 21 that prospective users of the information identify
 22 themselves, certify the purposes for which the information
 23 is sought, and certify that the information will be used for
 24 no other purpose. Every consumer reporting agency shall
 25 make a reasonable effort to verify the identity of a new

1 prospective user and the uses certified by such prospective
 2 user prior to furnishing such user a consumer report. No
 3 consumer reporting agency may furnish a consumer report to
 4 any person if it has reasonable grounds for believing that
 5 the consumer report will not be used for a purpose listed in
 6 section [4].

7 (2) Whenever a consumer reporting agency prepares a
 8 consumer report it shall follow reasonable procedures to
 9 assure maximum possible accuracy of the information
 10 concerning the individual about whom the report relates, and
 11 it shall maintain a record of all persons using the
 12 information and the source of each piece of information.

13 (3) When gathering information, a consumer reporting
 14 agency shall notify any person who furnishes information
 15 that he is liable to suit if the information is false or
 16 furnished with malice or willful intent to injure the
 17 consumer.

18 Section 8. Adverse information. Whenever a consumer
 19 reporting agency prepares an investigative consumer report,
 20 no adverse information in the consumer report (other than
 21 information which is a matter of public record) may be
 22 included in a subsequent consumer report unless such adverse
 23 information has been verified in the process of making such
 24 subsequent consumer report.

25 Section 9. Disclosures to governmental agencies.

1 Notwithstanding the provisions of section [4], a consumer
 2 reporting agency may furnish identifying information
 3 respecting any consumer, limited to his name, address,
 4 former addresses, places of employment, or former places of
 5 employment, to a governmental agency.

6 Section 10. Disclosures to consumers. (1) Every
 7 consumer reporting agency shall, upon request and proper
 8 identification of any consumer, clearly and accurately
 9 disclose to the consumer:

10 (a) the nature and substance of all information
 11 (except medical information) in its files on the consumer at
 12 the time of the request; and

13 (b) the sources of the information.

14 (2) The requirements of subsection (1) respecting the
 15 disclosure of sources of information and the recipients of
 16 consumer reports furnished prior to the effective date of
 17 the act except to the extent that the matter involved is
 18 contained in the files of the consumer reporting agency on
 19 that date.

20 Section 11. Conditions of disclosure to consumer. (1)
 21 A consumer reporting agency shall make the disclosures
 22 required under section [10] during normal business hours and
 23 on reasonable notice.

24 (2) The disclosures required under section [10] shall
 25 be made to the consumer:

1 (a) in person if he appears in person and furnishes
 2 proper identification; or

3 (b) by telephone if he has made a written request,
 4 with proper identification, for telephone disclosure and the
 5 toll charge, if any, for the telephone call is prepaid by or
 6 charged directly to the consumer.

7 (3) Any consumer reporting agency shall provide
 8 trained personnel to explain to the consumer any information
 9 furnished to him pursuant to section [10].

10 (4) The consumer shall be permitted to be accompanied
 11 by one other person of his choosing, who shall furnish
 12 reasonable identification. A consumer reporting agency may
 13 require the consumer to furnish a written statement granting
 14 permission to the consumer reporting agency to discuss the
 15 consumer's file in such person's presence.

16 Section 12. Procedure in case of disputed accuracy.

17 (1) If the completeness or accuracy of any item of
 18 information contained in this file is disputed by a
 19 consumer, and the dispute is directly conveyed to the
 20 consumer reporting agency by the consumer, the consumer
 21 reporting agency shall within a reasonable period of time
 22 reinvestigate and record the current status of that
 23 information unless it has reasonable grounds to believe that
 24 the dispute by the consumer is frivolous or irrelevant. If
 25 after such reinvestigation such information is found to be

1 inaccurate or can no longer be verified, the consumer
 2 reporting agency shall promptly delete the information and
 3 notify all users, of whom the consumer reporting agency has
 4 records, of the information's deletion. The users shall
 5 also delete the information.

6 (2) If the reinvestigation does not resolve the
 7 dispute, the consumer may file a brief statement setting
 8 forth the nature of the dispute.

9 (3) Whenever a statement of a dispute is filed, unless
 10 there is reasonable grounds to believe that it is frivolous
 11 or irrelevant, the consumer reporting agency shall, in any
 12 subsequent consumer report containing the information in
 13 question, clearly note that it is disputed by the consumer
 14 and provide either the consumer's statement or a clear and
 15 accurate codification or summary thereof. The consumer
 16 reporting agency shall notify the consumer of all users, of
 17 whom it has records, who have the disputed information.

18 Section 13. Disclosures ~~free~~ to consumers. A consumer
 19 reporting agency shall make all disclosures pursuant to
 20 section [10] and section [12] ~~without--charge~~ to the
 21 consumer, WITH APPROPRIATE FEES TO BE ESTABLISHED BY THE
 22 DEPARTMENT OF BUSINESS REGULATION, IN ACCORDANCE WITH THE
 23 ADMINISTRATIVE PROCEDURES ACT.

24 Section 14. Public record information for employment
 25 purposes. A consumer reporting agency which furnishes a

1 consumer report for employment purposes and which for that
 2 purpose compiles and reports items of information on
 3 consumers which are matters of public record and are likely
 4 to have an adverse effect upon a consumer's ability to
 5 obtain employment shall:

6 (1) at the time such public record information is
 7 reported to the user of such consumer report, notify the
 8 consumer of the fact that public record information is being
 9 reported by the consumer reporting agency, together with the
 10 name and address of the person to whom such information is
 11 being reported; or

12 (2) maintain strict procedures designed to insure that
 13 whenever public record information which is likely to have
 14 an adverse effect on a consumer's ability to obtain
 15 employment is reported it is complete and up to date. For
 16 purposes of this paragraph, items of public record relating
 17 to arrests, indictments, convictions, suits, tax liens, and
 18 outstanding judgments shall be considered up to date if the
 19 current public record status of the item at the time of the
 20 report is reported.

21 Section 15. Requirements on users of consumer reports.

22 (1) Whenever credit or insurance for personal, family, or
 23 household purposes, or employment involving a consumer is
 24 denied or the charge for such credit or insurance is
 25 increased either wholly or partly because of information

1 contained in a consumer report from a consumer reporting
 2 agency, the user of the consumer report shall so advise the
 3 consumer against whom such adverse action has been taken and
 4 supply the name and address of the consumer reporting agency
 5 making the report.

6 (2) Whenever credit for personal, family, or household
 7 purposes involving a consumer is denied or the charge for
 8 such credit is increased either wholly or partly because of
 9 information obtained from a person other than a consumer
 10 reporting agency bearing upon the consumer's credit
 11 worthiness, credit standing, credit capacity, character,
 12 general reputation, personal characteristics, or mode of
 13 living, the user of such information shall, within a
 14 reasonable period of time, upon the consumer's written
 15 request for the reasons for such adverse action received
 16 within sixty (60) days after learning of such adverse
 17 action, disclose the nature of the information to the
 18 consumer. The user of such information shall clearly and
 19 accurately disclose to the consumer his right to make such
 20 written request at the time such adverse action is
 21 communicated to the consumer.

22 (3) No person may be held liable for any violation of
 23 this section if he shows by a preponderance of the evidence
 24 that at the time of the alleged violation he maintained
 25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2).

2 Section 16. Actions available to consumer. (1) A
 3 consumer may bring action in the nature of defamation,
 4 invasion of privacy, or negligence with respect to the
 5 reporting of information against any person who fails to
 6 comply with this act.

7 (2) A person who fails to delete information or
 8 incorporate into a report a consumer's statement of dispute
 9 because he judges the dispute to be frivolous or irrelevant,
 10 is liable to suit.

11 (3) A person who furnishes information to a consumer
 12 reporting agency which is false, or who furnishes the
 13 information with malice or willful intent to injure the
 14 concerned consumer is liable to suit.

15 Section 17. Civil liability for willful
 16 non-compliance. Any consumer reporting agency or user of
 17 information which willfully fails to comply with any
 18 requirement imposed under this act with respect to any
 19 consumer is liable to that consumer in an amount equal to
 20 the sum of:

21 (1) any actual damages sustained by the consumer as a
 22 result of the failure;

23 (2) such amounts of punitive damages as the court may
 24 allow; and

25 (3) in the case of any successful action to enforce

1 any liability under this section, the costs of the action
2 together with reasonable attorneys' fees as determined by
3 the court.

4 Section 18. Civil liability for negligent
5 non-compliance. Any consumer reporting agency or user of
6 information which is negligent in failing to comply with any
7 requirement imposed under this title with respect to any
8 consumer is liable to that consumer in an amount equal to
9 the sum of:

10 (1) any actual damages sustained by the consumer as a
11 result of the failure;

12 (2) in the case of any successful action to enforce
13 any liability under this section, the costs of the action
14 together with reasonable attorneys' fees as determined by
15 the court.

16 Section 19. Jurisdiction -- venue. A consumer may
17 bring suit in any district court in Montana.

18 Section 20. The department of business regulation
19 shall enforce this act and promulgate rules necessary to
20 carry out the intent of this act.

21 SECTION 21. VIOLATION. FOR THE PURPOSES OF THIS ACT,
22 A VIOLATION OF THIS LAW WOULD BE IN VIOLATION OF CHAPTER 4,
23 TITLE 85, R.C.M. 1947.

24 SECTION 22. SEVERABILITY CLAUSE. THE PROVISIONS OF
25 THIS ACT ARE SEVERABLE AND IF ANY PART OR PROVISION THEREOF

1 SHALL BE HELD VOID, THE DECISIONS OF THE COURT SO HOLDING
2 SHALL NOT AFFECT OR IMPAIR ANY OF THE REMAINING PART OF
3 PROVISIONS OF THIS ACT.

-End-

HOUSE BILL NO. 426

INTRODUCED BY KIMBLE, DUSSAULT, KEMMIS,
HOLMES, LESTER, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE CONSUMER
REPORTING AGENCIES OPERATING IN MONTANA."

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

Section 1. Purpose. It is the purpose of this act to
require that consumer reporting agencies adopt reasonable
procedures for meeting the needs of commerce for consumer
credit, personnel, insurance, and other information in a
manner which is fair and equitable to the consumer, with
regard to the confidentiality, accuracy, relevancy, and
proper utilization of such information in accordance with
the requirements of this act. The act's further purpose is
to guard an individual's right to privacy guaranteed in
Article II, section 10, of the Montana constitution.

Section 2. Definitions and rules of construction. (1)
Definitions and rules of construction set forth in this
section are applicable for the purposes of this act.

(2) The term "person" means any individual,
partnership, corporation, trust, estate, cooperative,
association, government or governmental subdivision or
agency, or other entity.

(3) The term "consumer" means an individual.

(4) (a) The term "consumer report" means any written,
oral or other communication of any information by a consumer
reporting agency bearing on a consumer's credit worthiness,
credit standing, credit capacity, character, general
reputation, personal characteristics or mode of living which
is used or expected to be used or collected in whole or in
part for the purpose of serving as a factor in establishing
the consumer's eligibility for:

(i) credit or insurance to be used primarily for
personal, family, or household purposes; or

(ii) employment purposes; or

(iii) other purposes authorized under section 4.

(b) The term does not include:

(i) any report containing information solely as to
transactions or experiences between the consumer and the
person making the report;

(ii) any authorization or approval of a specific
extension of credit directly or indirectly by the issuer of
a credit card or similar device; or

(iii) any report in which a person who has been
requested by a third party to make a specific extension of
credit directly or indirectly to a consumer conveys his
decision with respect to such request, if the third party
advises the consumer of the name and address of the person

THIRD READING

SECOND PRINTING

7/24/96

1 to whom the request was made and such person makes the
2 disclosures to the consumer required under section 15.

3 (5) The term "investigative consumer report" means a
4 consumer report or portion thereof in which information on a
5 consumer's character, general reputation, personal
6 characteristics, or mode of living is obtained through
7 personal interviews with neighbors, friends, or associates
8 of the consumer reported on or with others with whom he is
9 acquainted or who may have knowledge concerning any such
10 items of information. However, such information shall not
11 include specific factual information on a consumer's credit
12 record obtained directly from a creditor of the consumer or
13 from a consumer reporting agency when such information was
14 obtained directly from a creditor of the consumer or from
15 the consumer.

16 (6) The term "consumer reporting agency" means any
17 person which, for monetary fees, dues, or on a cooperative
18 nonprofit basis regularly engages in whole or in part in the
19 practice of assembling or evaluating consumer credit
20 information or other information on consumers for the
21 purpose of furnishing consumer reports to third parties.

22 (7) The term "file", when used in connection with
23 information on any consumer, means all of the information on
24 that consumer recorded and retained by a consumer reporting
25 agency regardless of how the information is stored.

1 (8) The term "employment purposes" when used in
2 connection with a consumer report means a report used for
3 the purpose of evaluating a consumer for employment,
4 promotion, reassignment or retention as an employee.

5 (9) The term "medical information" means information
6 or records obtained, with the consent of the individual to
7 whom it relates, from licensed physicians or medical
8 practitioners, hospitals, clinics, or other medical or
9 medically related facilities.

10 Section 3. Credit rating -- property right. A ~~good~~
11 credit rating is a property right with full constitutional
12 protection.

13 Section 4. Permissible purposes of reports. A
14 consumer reporting agency may furnish a consumer report
15 under the following circumstances and no other:

16 (1) in response to the order of a court having
17 jurisdiction to issue such an order;

18 (2) in accordance with the written instructions of the
19 consumer to whom it relates;

20 (3) to a person which it has reason to believe:

21 (a) intends to use the information in connection with
22 a credit transaction involving the consumer on whom the
23 information is to be furnished and involving the extension
24 of credit to, or review or collection of an account of, the
25 consumer; or

1 (b) intends to use the information for employment
2 purposes; or

3 (c) intends to use the information in connection with
4 the underwriting of insurance involving the consumer; or

5 (d) intends to use the information in connection with
6 a determination of the consumer's eligibility for a license
7 or other benefit granted by a governmental instrumentality
8 required by law to consider an applicant's financial
9 responsibility or status; or

10 (e) otherwise has a legitimate business need for the
11 information in connection with a business transaction
12 involving the consumer.

13 Section 5. Obsolete information. No consumer
14 reporting agency may make any consumer report containing any
15 of the following items of information:

16 (1) bankruptcies which, from date of adjudication of
17 the most recent bankruptcy, antedate the report by more than
18 fourteen (14) years;

19 (2) suits and judgments which, from date of entry,
20 antedate the report by more than seven (7) years or until
21 the governing statute of limitations has expired, whichever
22 is the longer period;

23 (3) paid tax liens which, from date of payment,
24 antedate the report by more than seven (7) years;

25 (4) accounts placed for collection or charged to

1 profit and loss which antedate the report by more than seven
2 (7) years;

3 (5) records of arrest, indictment, or conviction of
4 crime which from date of disposition, release, or parole,
5 antedate the report by more than seven (7) years;

6 (6) any other adverse item of information which
7 antedates the report by more than seven (7) years.

8 Section 6. Disclosure of investigative consumer
9 reports. (1) A person may not procure or cause to be
10 prepared or distribute ~~a-consumer-report-or~~ an investigative
11 consumer report on any consumer unless:

12 (a) it is clearly and accurately disclosed to the
13 consumer that an investigative consumer report including
14 information as to his character, general reputation,
15 personal characteristics, and mode of living, whichever are
16 applicable, may be made, and such disclosure is made in a
17 writing mailed, or otherwise delivered, to the consumer, not
18 later than three (3) days after the date on which the report
19 was first requested, and includes a statement informing the
20 consumer of his right to request the additional disclosures
21 provided for under subsection (2) of this section; or

22 (b) the report is to be used for employment purposes
23 for which the consumer applied.

24 (2) Any person who procures or causes to be prepared a
25 ~~consumer-report-or~~ an investigative consumer report on any

1 consumer shall, upon written request made by the consumer
 2 within a reasonable period of time after the receipt by him
 3 of the disclosure required by subsection (1)(a), shall make
 4 a complete and accurate disclosure of the nature, scope, and
 5 substance of the investigation requested. This disclosure
 6 shall be made in a writing mailed, or otherwise delivered,
 7 to the consumer not later than five (5) days after the date
 8 on which the request for such disclosure was received from
 9 the consumer or such report was first requested, whichever
 10 is the latter.

11 (3) No person may be held liable for any violation of
 12 subsection (1) or (2) of this section if he shows by a
 13 preponderance of the evidence that at the time of the
 14 violation he maintained reasonable procedures to assure
 15 compliance with subsection (1) or (2).

16 Section 7. Compliance procedures. (1) Every consumer
 17 reporting agency shall maintain reasonable procedures
 18 designed to avoid violations of sections [5 and 6] and to
 19 limit the furnishing of consumer reports to the purposes
 20 listed under section [4]. These procedures shall require
 21 that prospective users of the information identify
 22 themselves, certify the purposes for which the information
 23 is sought, and certify that the information will be used for
 24 no other purpose. Every consumer reporting agency shall
 25 make a reasonable effort to verify the identity of a new

1 prospective user and the uses certified by such prospective
 2 user prior to furnishing such user a consumer report. No
 3 consumer reporting agency may furnish a consumer report to
 4 any person if it has reasonable grounds for believing that
 5 the consumer report will not be used for a purpose listed in
 6 section [4].

7 (2) Whenever a consumer reporting agency prepares a
 8 consumer report it shall follow reasonable procedures to
 9 assure maximum possible accuracy of the information
 10 concerning the individual about whom the report relates, and
 11 it shall maintain a record of all persons using the
 12 information and the source of each piece of information.

13 (3) When gathering information, a consumer reporting
 14 agency shall notify any person who furnishes information
 15 that he is liable to suit if the information is false or
 16 furnished with malice or willful intent to injure the
 17 consumer.

18 Section 8. Adverse information. Whenever a consumer
 19 reporting agency prepares an investigative consumer report,
 20 no adverse information in the consumer report (other than
 21 information which is a matter of public record) may be
 22 included in a subsequent consumer report unless such adverse
 23 information has been verified in the process of making such
 24 subsequent consumer report.

25 Section 9. Disclosures to governmental agencies.

1 Notwithstanding the provisions of section [4], a consumer
 2 reporting agency may furnish identifying information
 3 respecting any consumer, limited to his name, address,
 4 former addresses, places of employment, or former places of
 5 employment, to a governmental agency.

6 Section 10. Disclosures to consumers. (1) Every
 7 consumer reporting agency shall, upon request and proper
 8 identification of any consumer, clearly and accurately
 9 disclose to the consumer:

10 (a) the nature and substance of all information
 11 (except medical information) in its files on the consumer at
 12 the time of the request; and

13 (b) the sources of the information.

14 (2) The requirements of subsection (1) respecting the
 15 disclosure of sources of information and the recipients of
 16 consumer reports furnished prior to the effective date of
 17 the act DO NOT APPLY TO EXISTING CONSUMER REPORTING AGENCIES
 18 except to the extent that the matter involved is contained
 19 in the files of the consumer reporting agency on that date.

20 Section 11. Conditions of disclosure to consumer. (1)
 21 A consumer reporting agency shall make the disclosures
 22 required under section [10] during normal business hours and
 23 on reasonable notice.

24 (2) The disclosures required under section [10] shall
 25 be made to the consumer:

1 (a) in person if he appears in person and furnishes
 2 proper identification; or

3 (b) by telephone if he has made a written request,
 4 with proper identification, for telephone disclosure and the
 5 toll charge, if any, for the telephone call is prepaid by or
 6 charged directly to the consumer.

7 (3) Any consumer reporting agency shall provide
 8 trained personnel to explain to the consumer any information
 9 furnished to him pursuant to section [10].

10 (4) The consumer shall be permitted to be accompanied
 11 by one other person of his choosing, who shall furnish
 12 reasonable identification. A consumer reporting agency may
 13 require the consumer to furnish a written statement granting
 14 permission to the consumer reporting agency to discuss the
 15 consumer's file in such person's presence.

16 Section 12. Procedure in case of disputed accuracy.

17 (1) If the completeness or accuracy of any item of
 18 information contained in this file is disputed by a
 19 consumer, and the dispute is directly conveyed to the
 20 consumer reporting agency by the consumer, the consumer
 21 reporting agency shall within a reasonable period of time
 22 reinvestigate and record the current status of that
 23 information unless it has reasonable grounds to believe that
 24 the dispute by the consumer is frivolous or irrelevant. If
 25 after such reinvestigation such information is found to be

1 inaccurate or can no longer be verified, the consumer
 2 reporting agency shall promptly delete the information and
 3 notify all users, of whom the consumer reporting agency has
 4 records, of the information's deletion. The users shall
 5 also delete the information.

6 (2) If the reinvestigation does not resolve the
 7 dispute, the consumer may file a brief statement setting
 8 forth the nature of the dispute.

9 (3) Whenever a statement of a dispute is filed, unless
 10 there is reasonable grounds to believe that it is frivolous
 11 or irrelevant, the consumer reporting agency shall, in any
 12 subsequent consumer report containing the information in
 13 question, clearly note that it is disputed by the consumer
 14 and provide either the consumer's statement or a clear and
 15 accurate codification or summary thereof. The consumer
 16 reporting agency shall notify the consumer of all users, of
 17 whom it has records, who have the disputed information.

18 Section 13. Disclosures ~~free~~ to consumers. A consumer
 19 reporting agency shall make all disclosures pursuant to
 20 section [10] and section [12] ~~without--charge~~ to the
 21 consumer, WITH APPROPRIATE FEES TO BE ESTABLISHED BY THE
 22 DEPARTMENT OF BUSINESS REGULATION, IN ACCORDANCE WITH THE
 23 ADMINISTRATIVE PROCEDURE ACT.

24 Section 14. Public record information for employment
 25 purposes. A consumer reporting agency which furnishes a

1 consumer report for employment purposes and which for that
 2 purpose compiles and reports items of information on
 3 consumers which are matters of public record and are likely
 4 to have an adverse effect upon a consumer's ability to
 5 obtain employment shall:

6 (1) at the time such public record information is
 7 reported to the user of such consumer report, notify the
 8 consumer of the fact that public record information is being
 9 reported by the consumer reporting agency, together with the
 10 name and address of the person to whom such information is
 11 being reported; or

12 (2) maintain strict procedures designed to insure that
 13 whenever public record information which is likely to have
 14 an adverse effect on a consumer's ability to obtain
 15 employment is reported it is complete and up to date. For
 16 purposes of this paragraph, items of public record relating
 17 to arrests, indictments, convictions, suits, tax liens, and
 18 outstanding judgments shall be considered up to date if the
 19 current public record status of the item at the time of the
 20 report is reported.

21 Section 15. Requirements on users of consumer reports.

22 (1) Whenever credit or insurance for personal, family, or
 23 household purposes, or employment involving a consumer is
 24 denied or the charge for such credit or insurance is
 25 increased either wholly or partly because of information

1 contained in a consumer report from a consumer reporting
2 agency, the user of the consumer report shall so advise the
3 consumer against whom such adverse action has been taken and
4 supply the name and address of the consumer reporting agency
5 making the report.

6 (2) Whenever credit for personal, family, or household
7 purposes involving a consumer is denied or the charge for
8 such credit is increased either wholly or partly because of
9 information obtained from a person other than a consumer
10 reporting agency bearing upon the consumer's credit
11 worthiness, credit standing, credit capacity, character,
12 general reputation, personal characteristics, or mode of
13 living, the user of such information shall, within a
14 reasonable period of time, upon the consumer's written
15 request for the reasons for such adverse action received
16 within sixty (60) days after learning of such adverse
17 action, disclose the nature of the information to the
18 consumer. The user of such information shall clearly and
19 accurately disclose to the consumer his right to make such
20 written request at the time such adverse action is
21 communicated to the consumer.

22 (3) No person may be held liable for any violation of
23 this section if he shows by a preponderance of the evidence
24 that at the time of the alleged violation he maintained
25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2).

2 Section 16. Actions available to consumer. (1) A
3 consumer may bring action in the nature of defamation,
4 invasion of privacy, or negligence with respect to the
5 reporting of information against any person who fails to
6 comply with this act.

7 (2) A person who fails to delete information or
8 incorporate into a report a consumer's statement of dispute
9 because he judges the dispute to be frivolous or irrelevant,
10 is liable to suit.

11 (3) A person who furnishes information to a consumer
12 reporting agency which is false, or who furnishes the
13 information with malice or willful intent to injure the
14 concerned consumer is liable to suit.

15 Section 17. Civil liability for willful noncompliance.
16 Any consumer reporting agency or user of information which
17 willfully fails to comply with any requirement imposed under
18 this act with respect to any consumer is liable to that
19 consumer in an amount equal to the sum of:

20 (1) any actual damages sustained by the consumer as a
21 result of the failure;

22 (2) such amounts of punitive damages as the court may
23 allow; and

24 (3) in the case of any successful action to enforce
25 any liability under this section, the costs of the action

1 together with reasonable attorneys' fees as determined by
2 the court.

3 Section 18. Civil liability for negligent
4 noncompliance. Any consumer reporting agency or user of
5 information which is negligent in failing to comply with any
6 requirement imposed under this title with respect to any
7 consumer is liable to that consumer in an amount equal to
8 the sum of:

9 (1) any actual damages sustained by the consumer as a
10 result of the failure;

11 (2) in the case of any successful action to enforce
12 any liability under this section, the costs of the action
13 together with reasonable attorneys' fees as determined by
14 the court.

15 Section 19. Jurisdiction -- venue. A consumer may
16 bring suit in any district court in Montana.

17 Section 20. The department of business regulation
18 shall enforce this act and promulgate rules necessary to
19 carry out the intent of this act.

20 SECTION 21. VIOLATION. FOR THE PURPOSES OF THIS ACT,
21 A VIOLATION OF THIS LAW WOULD BE IN VIOLATION OF CHAPTER 4,
22 TITLE 85, R.C.M. 1947.

23 SECTION 22. SEVERABILITY CLAUSE. THE PROVISIONS OF
24 THIS ACT ARE SEVERABLE AND IF ANY PART OR PROVISION THEREOF
25 SHALL BE HELD VOID, THE DECISIONS OF THE COURT SO HOLDING

1 SHALL NOT AFFECT OR IMPAIR ANY OF THE REMAINING PART OF
2 PROVISIONS OF THIS ACT.

-End-

March 15, 1975

SENATE COMMITTEE ON BUSINESS AND INDUSTRY

AMENDMENTS TO HOUSE BILL NO. 426

That House Bill No. 426, third reading, be amended as follows:

1. Amend page 6, section 6, line 10.
Following: "distribute"
Strike: "a consumer report or"
2. Amend page 6, section 6, line 24.
Following: "prepared"
Strike: "a"
3. Amend page 6, section 6, line 25.
Following: line 24
Strike: "consumer report or"

HOUSE BILL NO. 426

INTRODUCED BY KIMBLE, DUSSAULT, KEMMIS,

HOLMES, LESTER, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO REGULATE CONSUMER REPORTING AGENCIES OPERATING IN MONTANA."

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

Section 1. Purpose. It is the purpose of this act to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this act. The act's further purpose is to guard an individual's right to privacy guaranteed in Article 11, section 10, of the Montana constitution.

Section 2. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this act.

(2) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) The term "consumer" means an individual.

(4) (a) The term "consumer report" means any written, oral or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- (i) credit or insurance to be used primarily for personal, family, or household purposes; or
- (ii) employment purposes; or
- (iii) other purposes authorized under section 4.

(b) The term does not include:

- (i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;
- (ii) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person

1 to whom the request was made and such person makes the
2 disclosures to the consumer required under section 15.

3 (5) The term "investigative consumer report" means a
4 consumer report or portion thereof in which information on a
5 consumer's character, general reputation, personal
6 characteristics, or mode of living is obtained through
7 personal interviews with neighbors, friends, or associates
8 of the consumer reported on or with others with whom he is
9 acquainted or who may have knowledge concerning any such
10 items of information. However, such information shall not
11 include specific factual information on a consumer's credit
12 record obtained directly from a creditor of the consumer or
13 from a consumer reporting agency when such information was
14 obtained directly from a creditor of the consumer or from
15 the consumer.

16 (6) The term "consumer reporting agency" means any
17 person which, for monetary fees, dues, or on a cooperative
18 nonprofit basis regularly engages in whole or in part in the
19 practice of assembling or evaluating consumer credit
20 information or other information on consumers for the
21 purpose of furnishing consumer reports to third parties.

22 (7) The term "file", when used in connection with
23 information on any consumer, means all of the information on
24 that consumer recorded and retained by a consumer reporting
25 agency regardless of how the information is stored.

1 (8) The term "employment purposes" when used in
2 connection with a consumer report means a report used for
3 the purpose of evaluating a consumer for employment,
4 promotion, reassignment or retention as an employee.

5 (9) The term "medical information" means information
6 or records obtained, with the consent of the individual to
7 whom it relates, from licensed physicians or medical
8 practitioners, hospitals, clinics, or other medical or
9 medically related facilities.

10 Section 3. Credit rating -- property right. A good
11 credit rating is a property right with full constitutional
12 protection.

13 Section 4. Permissible purposes of reports. A
14 consumer reporting agency may furnish a consumer report
15 under the following circumstances and no other:

16 (1) in response to the order of a court having
17 jurisdiction to issue such an order;

18 (2) in accordance with the written instructions of the
19 consumer to whom it relates;

20 (3) to a person which it has reason to believe:

21 (a) intends to use the information in connection with
22 a credit transaction involving the consumer on whom the
23 information is to be furnished and involving the extension
24 of credit to, or review or collection of an account of, the
25 consumer; or

1 (b) intends to use the information for employment
2 purposes; or

3 (c) intends to use the information in connection with
4 the underwriting of insurance involving the consumer; or

5 (d) intends to use the information in connection with
6 a determination of the consumer's eligibility for a license
7 or other benefit granted by a governmental instrumentality
8 required by law to consider an applicant's financial
9 responsibility or status; or

10 (e) otherwise has a legitimate business need for the
11 information in connection with a business transaction
12 involving the consumer.

13 Section 5. Obsolete information. No consumer
14 reporting agency may make any consumer report containing any
15 of the following items of information:

16 (1) bankruptcies which, from date of adjudication of
17 the most recent bankruptcy, antedate the report by more than
18 fourteen (14) years;

19 (2) suits and judgments which, from date of entry,
20 antedate the report by more than seven (7) years or until
21 the governing statute of limitations has expired, whichever
22 is the longer period;

23 (3) paid tax liens which, from date of payment,
24 antedate the report by more than seven (7) years;

25 (4) accounts placed for collection or charged to

1 profit and loss which antedate the report by more than seven
2 (7) years;

3 (5) records of arrest, indictment, or conviction of
4 crime which from date of disposition, release, or parole,
5 antedate the report by more than seven (7) years;

6 (6) any other adverse item of information which
7 antedates the report by more than seven (7) years.

8 Section 6. Disclosure of investigative consumer
9 reports. (1) A person may not procure or cause to be
10 prepared or distribute ~~a consumer report or~~ an investigative
11 consumer report on any consumer unless:

12 (a) it is clearly and accurately disclosed to the
13 consumer that 'an investigative consumer report including
14 information as to his character, general reputation,
15 personal characteristics, and mode of living, whichever are
16 applicable, may be made, and such disclosure is made in a
17 writing mailed, or otherwise delivered, to the consumer, not
18 later than three (3) days after the date on which the report
19 was first requested, and includes a statement informing the
20 consumer of his right to request the additional disclosures
21 provided for under subsection (2) of this section; or

22 (b) the report is to be used for employment purposes
23 for which the consumer applied.

24 (2) Any person who procures or causes to be prepared a
25 ~~consumer report or~~ an investigative consumer report on any

1 consumer shall, upon written request made by the consumer
 2 within a reasonable period of time after the receipt by him
 3 of the disclosure required by subsection (1)(a), shall make
 4 a complete and accurate disclosure of the nature, scope, and
 5 substance of the investigation requested. This disclosure
 6 shall be made in a writing mailed, or otherwise delivered,
 7 to the consumer not later than five (5) days after the date
 8 on which the request for such disclosure was received from
 9 the consumer or such report was first requested, whichever
 10 is the later.

11 (3) No person may be held liable for any violation of
 12 subsection (1) or (2) of this section if he shows by a
 13 preponderance of the evidence that at the time of the
 14 violation he maintained reasonable procedures to assure
 15 compliance with subsection (1) or (2).

16 Section 7. Compliance procedures. (1) Every consumer
 17 reporting agency shall maintain reasonable procedures
 18 designed to avoid violations of sections [5 and 6] and to
 19 limit the furnishing of consumer reports to the purposes
 20 listed under section [4]. These procedures shall require
 21 that prospective users of the information identify
 22 themselves, certify the purposes for which the information
 23 is sought, and certify that the information will be used for
 24 no other purpose. Every consumer reporting agency shall
 25 make a reasonable effort to verify the identity of a new

1 prospective user and the uses certified by such prospective
 2 user prior to furnishing such user a consumer report. No
 3 consumer reporting agency may furnish a consumer report to
 4 any person if it has reasonable grounds for believing that
 5 the consumer report will not be used for a purpose listed in
 6 section [4].

7 (2) Whenever a consumer reporting agency prepares a
 8 consumer report it shall follow reasonable procedures to
 9 assure maximum possible accuracy of the information
 10 concerning the individual about whom the report relates, and
 11 it shall maintain a record of all persons using the
 12 information and the source of each piece of information.

13 (3) When gathering information, a consumer reporting
 14 agency shall notify any person who furnishes information
 15 that he is liable to suit if the information is false or
 16 furnished with malice or willful intent to injure the
 17 consumer.

18 Section 8. Adverse information. Whenever a consumer
 19 reporting agency prepares an investigative consumer report,
 20 no adverse information in the consumer report (other than
 21 information which is a matter of public record) may be
 22 included in a subsequent consumer report unless such adverse
 23 information has been verified in the process of making such
 24 subsequent consumer report.

25 Section 9. Disclosures to governmental agencies.

1 Notwithstanding the provisions of section [4], a consumer
2 reporting agency may furnish identifying information
3 respecting any consumer, limited to his name, address,
4 former addresses, places of employment, or former places of
5 employment, to a governmental agency.

6 Section 10. Disclosures to consumers. (1) Every
7 consumer reporting agency shall, upon request and proper
8 identification of any consumer, clearly and accurately
9 disclose to the consumer:

10 (a) the nature and substance of all information
11 (except medical information) in its files on the consumer at
12 the time of the request; and

13 (b) the sources of the information.

14 (2) The requirements of subsection (1) respecting the
15 disclosure of sources of information and the recipients of
16 consumer reports furnished prior to the effective date of
17 the act except to the extent that the matter involved is
18 contained in the files of the consumer reporting agency on
19 that date.

20 Section 11. Conditions of disclosure to consumer. (1)
21 A consumer reporting agency shall make the disclosures
22 required under section [10] during normal business hours and
23 on reasonable notice.

24 (2) The disclosures required under section [10] shall
25 be made to the consumer:

1 (a) in person if he appears in person and furnishes
2 proper identification; or

3 (b) by telephone if he has made a written request,
4 with proper identification, for telephone disclosure and the
5 toll charge, if any, for the telephone call is prepaid by or
6 charged directly to the consumer.

7 (3) Any consumer reporting agency shall provide
8 trained personnel to explain to the consumer any information
9 furnished to him pursuant to section [10].

10 (4) The consumer shall be permitted to be accompanied
11 by one other person of his choosing, who shall furnish
12 reasonable identification. A consumer reporting agency may
13 require the consumer to furnish a written statement granting
14 permission to the consumer reporting agency to discuss the
15 consumer's file in such person's presence.

16 Section 12. Procedure in case of disputed accuracy.

17 (1) If the completeness or accuracy of any item of
18 information contained in this file is disputed by a
19 consumer, and the dispute is directly conveyed to the
20 consumer reporting agency by the consumer, the consumer
21 reporting agency shall within a reasonable period of time
22 reinvestigate and record the current status of that
23 information unless it has reasonable grounds to believe that
24 the dispute by the consumer is frivolous or irrelevant. If
25 after such reinvestigation such information is found to be

1 inaccurate or can no longer be verified, the consumer
 2 reporting agency shall promptly delete the information and
 3 notify all users, of whom the consumer reporting agency has
 4 records, of the information's deletion. The users shall
 5 also delete the information.

6 (2) If the reinvestigation does not resolve the
 7 dispute, the consumer may file a brief statement setting
 8 forth the nature of the dispute.

9 (3) Whenever a statement of a dispute is filed, unless
 10 there is reasonable grounds to believe that it is frivolous
 11 or irrelevant, the consumer reporting agency shall, in any
 12 subsequent consumer report containing the information in
 13 question, clearly note that it is disputed by the consumer
 14 and provide either the consumer's statement or a clear and
 15 accurate codification or summary thereof. The consumer
 16 reporting agency shall notify the consumer of all users, of
 17 whom it has records, who have the disputed information.

18 Section 13. Disclosures ~~free~~ to consumers. A consumer
 19 reporting agency shall make all disclosures pursuant to
 20 section [10] and section [12] ~~without--charge~~ to the
 21 consumer, WITH APPROPRIATE FEES TO BE ESTABLISHED BY THE
 22 DEPARTMENT OF BUSINESS REGULATION, IN ACCORDANCE WITH THE
 23 ADMINISTRATIVE PROCEDURE ACT.

24 Section 14. Public record information for employment
 25 purposes. A consumer reporting agency which furnishes a

1 consumer report for employment purposes and which for that
 2 purpose compiles and reports items of information on
 3 consumers which are matters of public record and are likely
 4 to have an adverse effect upon a consumer's ability to
 5 obtain employment shall:

6 (1) at the time such public record information is
 7 reported to the user of such consumer report, notify the
 8 consumer of the fact that public record information is being
 9 reported by the consumer reporting agency, together with the
 10 name and address of the person to whom such information is
 11 being reported; or

12 (2) maintain strict procedures designed to insure that
 13 whenever public record information which is likely to have
 14 an adverse effect on a consumer's ability to obtain
 15 employment is reported it is complete and up to date. For
 16 purposes of this paragraph, items of public record relating
 17 to arrests, indictments, convictions, suits, tax liens, and
 18 outstanding judgments shall be considered up to date if the
 19 current public record status of the item at the time of the
 20 report is reported.

21 Section 15. Requirements on users of consumer reports.

22 (1) Whenever credit or insurance for personal, family, or
 23 household purposes, or employment involving a consumer is
 24 denied or the charge for such credit or insurance is
 25 increased either wholly or partly because of information

1 contained in a consumer report from a consumer reporting
 2 agency, the user of the consumer report shall so advise the
 3 consumer against whom such adverse action has been taken and
 4 supply the name and address of the consumer reporting agency
 5 making the report.

6 (2) Whenever credit for personal, family, or household
 7 purposes involving a consumer is denied or the charge for
 8 such credit is increased either wholly or partly because of
 9 information obtained from a person other than a consumer
 10 reporting agency bearing upon the consumer's credit
 11 worthiness, credit standing, credit capacity, character,
 12 general reputation, personal characteristics, or mode of
 13 living, the user of such information shall, within a
 14 reasonable period of time, upon the consumer's written
 15 request for the reasons for such adverse action received
 16 within sixty (60) days after learning of such adverse
 17 action, disclose the nature of the information to the
 18 consumer. The user of such information shall clearly and
 19 accurately disclose to the consumer his right to make such
 20 written request at the time such adverse action is
 21 communicated to the consumer.

22 (3) No person may be held liable for any violation of
 23 this section if he shows by a preponderance of the evidence
 24 that at the time of the alleged violation he maintained
 25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2).

2 Section 16. Actions available to consumer. (1) A
 3 consumer may bring action in the nature of defamation,
 4 invasion of privacy, or negligence with respect to the
 5 reporting of information against any person who fails to
 6 comply with this act.

7 (2) A person who fails to delete information or
 8 incorporate into a report a consumer's statement of dispute
 9 because he judges the dispute to be frivolous or irrelevant,
 10 is liable to suit.

11 (3) A person who furnishes information to a consumer
 12 reporting agency which is false, or who furnishes the
 13 information with malice or willful intent to injure the
 14 concerned consumer is liable to suit.

15 Section 17. Civil liability for willful
 16 non-compliance. Any consumer reporting agency or user of
 17 information which willfully fails to comply with any
 18 requirement imposed under this act with respect to any
 19 consumer is liable to that consumer in an amount equal to
 20 the sum of:

21 (1) any actual damages sustained by the consumer as a
 22 result of the failure;

23 (2) such amounts of punitive damages as the court may
 24 allow; and

25 (3) in the case of any successful action to enforce

1 any liability under this section, the costs of the action
2 together with reasonable attorneys' fees as determined by
3 the court.

4 Section 18. Civil liability for negligent
5 non-compliance. Any consumer reporting agency or user of
6 information which is negligent in failing to comply with any
7 requirement imposed under this title with respect to any
8 consumer is liable to that consumer in an amount equal to
9 the sum of:

10 (1) any actual damages sustained by the consumer as a
11 result of the failure;

12 (2) in the case of any successful action to enforce
13 any liability under this section, the costs of the action
14 together with reasonable attorneys' fees as determined by
15 the court.

16 Section 19. Jurisdiction -- venue. A consumer may
17 bring suit in any district court in Montana.

18 Section 20. The department of business regulation
19 shall enforce this act and promulgate rules necessary to
20 carry out the intent of this act.

21 SECTION 21. VIOLATION. FOR THE PURPOSES OF THIS ACT,
22 A VIOLATION OF THIS LAW WOULD BE IN VIOLATION OF CHAPTER 4,
23 TITLE 85, R.C.M. 1947.

24 SECTION 22. SEVERABILITY CLAUSE. THE PROVISIONS OF
25 THIS ACT ARE SEVERABLE AND IF ANY PART OR PROVISION THEREOF

1 SHALL BE HELD VOID, THE DECISIONS OF THE COURT SO HOLDING
2 SHALL NOT AFFECT OR IMPAIR ANY OF THE REMAINING PART OF
3 PROVISIONS OF THIS ACT.

-End-