

1 Senate BILL NO. 389
2 INTRODUCED BY Dave Brown
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO FURTHER IMPLEMENT
5 ARTICLE II, SECTION 10 OF THE NEW CONSTITUTION DEALING WITH
6 PRIVACY; ESTABLISHING SAFEGUARDS FOR OPERATION OF COMPUTER
7 ACCESSIBLE AUTOMATED PERSONAL DATA SYSTEMS, LIMITING THE USE
8 OF SOCIAL SECURITY NUMBERS OR OTHER STANDARD UNIVERSAL
9 IDENTIFIER; AND PROVIDING PENALTIES FOR VIOLATION."
10

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

12 Section 1. Privacy of the mind and personality.

13 (1) It is the finding of the legislature that every person
14 has a right to a protective zone or a private enclave
15 protecting his mind, his personality, and his inner life
16 which justifies a reasonable expectation that certain
17 private facts and information about himself will not be
18 improperly disclosed or publicized. A person's thoughts,
19 sentiments, emotions, sensations, religious beliefs,
20 philosophical beliefs, and political beliefs clearly fall
21 into this protective zone. In addition, certain other facts
22 either singly or in accumulation, are sufficiently private
23 to justify a person in expecting that they will not be
24 disclosed without his consent. In this connection, the more
25 embarrassing the fact or facts and the more likely they will

1 expose a person to infamy and disgrace, the closer they are
2 to the core of the protective zone or private enclave
3 referred to above.

4 Section 2. Definitions. For the purposes of this act:

5 (1) "Administrative purposes" when used in connection
6 with automated personal data systems means using such a
7 system for the purpose of affecting the subject individuals
8 directly as individuals such as for making determinations
9 relating to their qualifications, character, rights,
10 opportunities, or benefits.

11 (2) "Automated personal data system" means a personal
12 data system that is stored, in whole or in part, in
13 computer-accessible files.

14 (3) "Computer-accessible" means recorded on magnetic
15 tape, magnetic disk, magnetic drum, punched card, or
16 optically scannable paper or film, or other storage devices
17 connected to a computer system, and readily accessible.

18 (4) "Organization" means any profit or nonprofit
19 corporation, partnership, proprietorship, or other
20 organization including the state of Montana, its departments
21 and its local subdivisions and their boards, agencies,
22 commissions and bureaus.

23 (5) "Personal data" means all data that:
24 (a) describes anything about an individual, such as
25 identifying characteristics, measurements, test scores,

1 (b) evidences things done by or to an individual, such as
 2 records of financial transactions, medical treatment, or
 3 other services, and (c) affords a clear basis for inferring
 4 personal characteristics or things done by or to an
 5 individual, such as the mere record of his presence in a
 6 place, attendance at a meeting, or admission to some type of
 7 service institution.

8 (6) "Personal data system" means a collection of
 9 records kept by one or more organizations containing
 10 personal data that can be associated with identifiable
 11 individuals whether kept for administrative or statistical
 12 reporting and research purposes.

13 (7) "Private facts and information" means any facts or
 14 information about a person that such person is justified in
 15 a reasonable expectation they will not be disclosed or used
 16 for some other purpose without his consent.

17 (8) "Public notice" means, for an agency of the state
 18 of Montana such publication that is required for notice of
 19 proposed regulations promulgated by that agency under the
 20 Montana Administrative Procedure Act, and for other
 21 organizations' publication in a newspaper of general
 22 circulation in the area in which the organization operates
 23 or such other notice as may be approved by the department of
 24 business regulation. In any event, copies of such notice
 25 must be readily available from the organization upon

1 request.

2 (9) "Standard universal identifier" means a
 3 systematically assigned label that attempts to distinguish
 4 an individual from all others in a way which makes such
 5 label unique, permanent, ubiquitous, indispensable, brief,
 6 and reliable for all individuals and readily available for
 7 anyone who needs it.

8 (10) "Statistical-reporting or research purposes" when
 9 used in connection with automated personal data systems
 10 means using such a system for the purpose of statistical
 11 reporting or research only and not to affect any individual
 12 directly.

13 Section 3. Safeguard requirements. It is unlawful for
 14 any person or organization to knowingly violate any of the
 15 following safeguard requirements for automated personal data
 16 systems:

17 Safeguard 1: Any organization maintaining a record of
 18 individually identifiable personal data, which it does not
 19 maintain as part of an automated personal data system, shall
 20 make no transfer of such data to another organization,
 21 without the prior informed consent of the individual to whom
 22 the data pertain, if it knows that, as a consequence of the
 23 transfer, such data will become part of an automated
 24 personal data system; except (1) any person may transfer
 25 such data to an automated personal data system for the

1 purpose of assisting in the collection of any debt
2 outstanding and unpaid upon the effective date of this
3 act, (2) law enforcement personnel may transfer data
4 relating to criminal identification, stolen property and
5 missing persons to an automated personal data system
6 maintained and operated by law enforcement personnel and may
7 further transfer information to the national criminal
8 information center system pursuant to the rules governing
9 that system, and (3) information relating to a borrower
10 properly obtained in connection with the transfer or
11 assignment of his loan may be transferred to an automated
12 personal data system without violating this act.

13 Safeguard 2: Any organization maintaining an automated
14 personal data system shall identify one person immediately
15 responsible for the system, and make any other
16 organizational arrangements that are necessary to assure
17 continuing attention to the compliance with these
18 safeguards.

19 Safeguard 3: Any organization maintaining an automated
20 personal data system shall take affirmative action to inform
21 each of its employees having any responsibility or function
22 in the design, development, operation, or maintenance of the
23 system, or the use of any data contained therein, about
24 these safeguards and any rules and procedures promulgated by
25 such organization to assure compliance with them.

1 Safeguard 4: No organization may take any disciplinary
2 or other punitive action against any individual who brings
3 to the attention of appropriate authorities, the press, or
4 any member of the public, evidence of noncompliance with
5 these safeguards. Any organization maintaining automated
6 personal data systems shall provide a system of penalties
7 for any employee who initiates or otherwise contributes to
8 any such disciplinary action.

9 Safeguard 5: Any organization maintaining an automated
10 personal data system shall take reasonable precautions to
11 protect data in the system from any anticipated threats or
12 hazards to the security of the system.

13 Safeguard 6: No transfer of individually identifiable
14 personal data to another system may be made without the
15 informed consent of the subject individual, except (1) a
16 transfer from one system to another within the same
17 organization may be made without such consent if the
18 conditions of the transfer provide substantial assurance
19 that the requirements for security and limitations of access
20 will not be weakened by the transfer, (2) a transfer by or
21 to any organization which is required by federal law to
22 transfer such data to a federal agency or which is required
23 or specifically permitted by federal law to receive such
24 data from a federal agency to the extent the transfer is
25 consistent with such requirement or permission, (3) a

1 transfer to the department of revenue of such data from the
 2 federal internal revenue service in connection with their
 3 function of collecting taxes, (4) a transfer of such data
 4 to another system for the purpose of assisting in the
 5 collection of any money debt outstanding and unpaid upon the
 6 effective date of this act, (5) a transfer of data
 7 relating to criminal identification, stolen property, and
 8 missing persons by law enforcement personnel to another
 9 system operated by law enforcement personnel and a transfer
 10 of information to the national criminal information center
 11 system pursuant to the rules governing that system,
 12 and (6) a transfer of information relating to a borrower
 13 properly obtained in connection with the transfer or
 14 assignment of his loan.

15 Safeguard 7: Any organization maintaining an automated
 16 personal data system for administrative purposes shall
 17 maintain a complete and accurate record of every access to
 18 and use made of any data in the system, including the
 19 identity of all persons and organizations to which access
 20 has been given.

21 Safeguard 8: Any organization maintaining an automated
 22 personal data system for administrative purposes shall
 23 maintain data in the system with such accuracy,
 24 completeness, timeliness, and pertinence as is necessary to
 25 assure accuracy and fairness in any determination relating

1 to an individual's qualifications, character, rights,
 2 opportunities, or benefits that may be made on the basis of
 3 such data.

4 Safeguard 9: Any organization maintaining an automated
 5 personal data system that is used in any way for
 6 administrative purposes shall eliminate data from
 7 computer-accessible files when the data are no longer
 8 timely.

9 Safeguard 10: Any organization maintaining an automated
 10 personal data system that is used for statistical-reporting
 11 and research purposes shall have the capacity to make
 12 sufficient data readily available along with sufficient
 13 information to permit reconstruction of the conditions and
 14 suppositions under which the data were collected necessary
 15 to allow an independent analysis.

16 Safeguard 11: Any organization maintaining an automated
 17 personal data system for administrative purposes that
 18 publicly disseminates statistical reports or research
 19 findings based on personal data drawn from the system, or
 20 from administrative systems of other organizations, shall
 21 make such data publicly available for independent analysis
 22 on reasonable terms, and shall take reasonable precautions
 23 to assure that no data made available for independent
 24 analysis will be used in a way that might reasonably be
 25 expected to prejudice judgments about any individual data

1 subject's character, qualifications, rights, opportunities,
2 or benefits.

3 Safeguard 12: Any organization maintaining an automated
4 personal data system shall give public notice of the
5 existence and character of its system once each year. Any
6 organization maintaining more than one system shall publish
7 such annual notices for all its systems simultaneously. Any
8 organization proposing to establish a new system, or to
9 enlarge an existing system, shall give public notice long
10 enough in advance of the initiation or enlargement of the
11 system to assure individuals who may be affected by its
12 operation a reasonable opportunity to comment. The public
13 notice shall specify:

14 (a) The name of the system;

15 (b) The nature and purpose or purposes of the system;

16 (c) The categories and number of persons on whom data
17 are maintained or are to be maintained;

18 (d) The categories of data maintained or to be
19 maintained, indicating which categories are stored or are to
20 be stored in computer-accessible files;

21 (e) The organization's policies and practices
22 regarding data storage, duration of retention of data, and
23 disposal thereof;

24 (f) The categories of data sources;

25 (g) A description of all types of use made or to be

1 made of data, indicating those involving computer-accessible
2 files, and including all classes of users and the
3 organizational relationships among them;

4 (h) In an automated personal data system used for
5 administrative purposes, the procedures whereby an
6 individual can (i) be informed if he is the subject of data
7 in the system; (ii) gain access to such data; and (iii)
8 contest their accuracy, completeness, pertinence, and the
9 necessity for retaining them;

10 (i) In an automated personal data system used for
11 statistical reporting and research, the procedures whereby
12 an individual, group, or organization can gain access to
13 data used for this purpose for independent analysis;

14 (j) In an automated personal data system used for
15 statistical reporting and research, a statement of the
16 system's provisions for data confidentiality and the legal
17 basis for such provisions;

18 (k) The title, name, and address of the person
19 immediately responsible for the system.

20 Safeguard 13: Any organization maintaining an automated
21 personal data system shall inform an individual asked to
22 supply personal data for the system whether he is legally
23 required, or may refuse, to supply the data requested, and
24 also of any specific consequences for him, which are known
25 to the organization, of providing or not providing such

1 data.

2 Safeguard 14: Any organization maintaining an automated
3 personal data system for administrative purposes shall
4 inform an individual, upon his request, whether he is the
5 subject of data in the system, and, if so, make such data
6 fully available to the individual, upon his request, in a
7 form comprehensible to him, provided, however, that any
8 information about such individual received from a third
9 person before the effective date of this act on the
10 condition that such information would remain confidential
11 need not be disclosed in the absence of a court order
12 requiring such disclosure.

13 Safeguard 15: Any organization maintaining an automated
14 personal data system shall not allow any other use of
15 individually identifiable data that is not within the stated
16 purposes of the system as reasonably understood by the
17 individual, unless informed consent of the individual has
18 been explicitly obtained.

19 Safeguard 16: Any organization maintaining an automated
20 personal data system for administrative purposes shall
21 inform an individual, upon his request, about the uses made
22 of data about him, including the identity of all persons and
23 organizations involved and their relationships with the
24 system.

25 Safeguard 17: An organization shall not make data from

1 an automated personal data system available in response to a
2 demand for data made by means of compulsory legal process,
3 unless it has first notified the individual to whom the data
4 pertains of the demand and has made the data being sought
5 fully available to such individual.

6 Safeguard 18: An organization maintaining an automated
7 personal data system for administrative purposes shall
8 develop and maintain procedures that (i) allow an individual
9 who is the subject of data in the system to contest their
10 accuracy, completeness, pertinence, and the necessity for
11 retaining them; (ii) permit data to be corrected or amended
12 when the individual to whom they pertain so requests; and
13 (iii) assure, when there is disagreement with the individual
14 about whether a correction or amendment should be made, that
15 the individual's claim is noted and included in any
16 subsequent disclosure or dissemination of the disputed data.

17 Any organization may obtain a waiver or exemption of
18 any portion or all of any one or more of these safeguard
19 requirements from the department of business regulation
20 pursuant to the procedures promulgated for this purpose by
21 the department upon a showing of a clearly paramount and
22 strongly justified societal interest in such waiver or
23 exemption. The decision of the department on any such
24 application shall be an adjudicatory decision under the
25 terms of the Montana Administrative Procedure Act. The full

1 text of any such waiver or exemption granted under this
2 subsection shall be published by the department of business
3 regulation in the Montana Administrative Code.

4 Section 4. Prohibited disclosure. (1) It is unlawful
5 for any officer, employee, or agent of an organization
6 maintaining an automated personal data system or any person
7 who has received information from such a system without
8 proper authority or without the informed consent of the
9 subject individual to disclose any personal data received
10 from such a system that can be identifiable with or
11 traceable to specific individuals except (a) disclosures
12 made in the ordinary course of the business or activity
13 contemplated by the system as set forth in their annual
14 public notice, (b) disclosures made with the informed
15 consent of the subject individual, and (c) by order of or
16 response to a subpoena of a district court.

17 (2) Any person in charge of or privy to information
18 contained in any such system used exclusively for
19 statistical reporting or research may not be compelled to
20 disclose any such data in any criminal or civil proceedings
21 in any court of law of this state. Adequate precautions
22 shall be taken to insure that any data released in
23 statistical form by any such system will not reasonably
24 result in the identification of individual data subjects in
25 violation of this provision.

1 Section 5. Disclosure threats unlawful. It is
2 unlawful for any person to require, by means of withholding
3 or threatening to withhold the enjoyment of any right or
4 benefit, the disclosure of an individual's social security
5 number issued by the social security administration of the
6 United States or any other label that is functionally
7 similar to a standard universal identifier; provided,
8 however, this provision shall not apply to (a) employers or
9 their agents in connection with the administration of the
10 federal social security act, or other appropriate payroll
11 function, (b) federal agencies and federal agents acting
12 under lawful federal authority, (c) the department of
13 revenue of the state of Montana when such use is connected
14 with its function of collecting taxes, (d) the department of
15 social and rehabilitation services of the state of Montana
16 when such use is limited to the administration of its
17 welfare and related services and the collection of child
18 support payments, and (e) any person granted specific
19 authority to use such number or label by the Montana
20 legislature, or by the department of business regulation
21 when the legislature is not in session subject to
22 ratification in the next session of the legislature. It is
23 also unlawful for any person to use such a number or label
24 for promotional or commercial purposes.

25 Section 6. Penalty. Any act or omission made unlawful

1 under this act shall be punishable by a fine of not more
2 than one thousand dollars (\$1,000) or imprisonment of not
3 more than one (1) year, or both.

4 Section 7. Civil action. (1) Any person whose
5 privacy has been invaded because of an unlawful act or
6 omission in violation of any of the provisions of this act
7 may file a civil suit in a district court of proper
8 jurisdiction against any person who has committed any such
9 violation including any governmental unit or agency thereof,
10 and upon proper proof shall be entitled:

11 (a) to an injunction or other appropriate order
12 enjoining or restraining any violation of this act or
13 requiring compliance herewith;

14 (b) to an appropriate order requiring the offending
15 person to delete from his file or files any information
16 gathered in violation of this act;

17 (c) to actual damages but not less than liquidated
18 damages computed at the rate of two hundred dollars (\$200)
19 for each violation for each offender. Provided, however, if
20 an action is brought against both an organization and its
21 employees or agents, the injured party shall not be entitled
22 to duplicitous recovery;

23 (d) to punitive or exemplary damages as set forth in
24 section 17-208, R.C.M. 1947;

25 (e) to a reasonable attorney's fee and other

1 litigation costs reasonable incurred.

2 (2) It is not a necessary prerequisite to an action
3 pursuant to this section that the injured party has
4 suffered, or be threatened with, actual damages.

5 Section 8. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 389

2 INTRODUCED BY TOWE, BROWN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO FURTHER IMPLEMENT
5 ARTICLE II, SECTION 10 OF THE NEW CONSTITUTION DEALING WITH
6 PRIVACY; ESTABLISHING SAFEGUARDS FOR OPERATION OF COMPUTER
7 ACCESSIBLE AUTOMATED PERSONAL DATA SYSTEMS, LIMITING THE USE
8 OF SOCIAL SECURITY NUMBERS OR OTHER STANDARD UNIVERSAL
9 IDENTIFIER; AND PROVIDING PENALTIES FOR VIOLATION, AND
10 PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Privacy of the mind and personality.

14 (1) It is the finding of the legislature that every person
15 has a right to a protective zone or a private enclave
16 protecting his mind, his personality, and his inner life
17 which justifies a reasonable expectation that certain
18 private facts and information about himself will not be
19 improperly disclosed or publicized. A person's thoughts,
20 sentiments, emotions, sensations, religious beliefs,
21 philosophical beliefs, and political beliefs clearly fall
22 into this protective zone. In addition, certain other facts
23 either singly or in accumulation, are sufficiently private
24 to justify a person in expecting that they will not be
25 disclosed without his consent. In this connection, the more

1 embarrassing the fact or facts and the more likely they will
2 expose a person to infamy and disgrace, the closer they are
3 to the core of the protective zone or private enclave
4 referred to above.

5 Section 2. Definitions. For the purposes of this act:

6 (1) "Administrative purposes" when used in connection
7 with automated personal data systems means using such a
8 system for the purpose of affecting the subject individuals
9 directly as individuals such as for making determinations
10 relating to their qualifications, character, rights,
11 opportunities, or benefits.

12 (2) "Automated personal data system" means a personal
13 data system that is stored, in whole or in part, in
14 computer-accessible files.

15 (3) "Computer-accessible" means recorded on magnetic
16 tape, magnetic disk, magnetic drum, punched card, or
17 optically scannable paper or film, or other storage devices
18 connected to a computer system, and readily accessible.

19 (4) "Organization" means any profit or nonprofit
20 corporation, partnership, proprietorship, or other
21 organization including the state of Montana, its departments
22 and its local subdivisions and their boards, agencies,
23 commissions and bureaus.

24 (5) "Personal data" means all data that:
25 (a) describes anything about an individual, such as

SECOND READING

1 identifying characteristics, measurements, test scores,
 2 (b) evidences things done by or to an individual, such as
 3 records of financial transactions, medical treatment, or
 4 other services, and (c) affords a clear basis for inferring
 5 personal characteristics or things done by or to an
 6 individual, such as the mere record of his presence in a
 7 place, attendance at a meeting, or admission to some type of
 8 service institution.

9 (6) "Personal data system" means a collection of
 10 records kept by one or more organizations containing
 11 personal data that can be associated with identifiable
 12 individuals whether kept for administrative or statistical
 13 reporting and research purposes.

14 (7) "Private facts and information" means any facts or
 15 information about a person that ~~such~~ A REASONABLE person is
 16 justified in ~~a reasonable~~ AN expectation ~~they~~ THAT SUCH
 17 FACTS OR INFORMATION will not be disclosed or used for some
 18 other purpose without his consent.

19 ~~(8) "Public notice" means, for an agency of the state~~
 20 ~~of Montana such publication that is required for notice of~~
 21 ~~proposed regulations promulgated by that agency under the~~
 22 ~~Montana Administrative Procedure Act, and for other~~
 23 ~~organizations' publication in a newspaper of general~~
 24 ~~circulation in the area in which the organization operates~~
 25 ~~or such other notice as may be approved by the department of~~

1 ~~business regulation. In any event, copies of such notice~~
 2 ~~must be readily available from the organization upon~~
 3 ~~request.~~

4 (9) "Standard universal identifier" means a
 5 systematically assigned label EMPLOYED ON A NATIONAL SCALE
 6 that attempts to distinguish an individual from all others
 7 in a way which makes such label unique, permanent,
 8 ubiquitous, indispensable, brief, and reliable for all
 9 individuals and readily available for anyone who needs it.

10 (10) "Statistical-reporting or research purposes" when
 11 used in connection with automated personal data systems
 12 means using such a system for the purpose of statistical
 13 reporting or research only and not to affect any individual
 14 directly.

15 Section 3. Safeguard requirements. It is unlawful for
 16 any person or organization to knowingly violate any of the
 17 following safeguard requirements for automated personal data
 18 systems:

19 Safeguard 1: Any NO organization maintaining a record
 20 of individually identifiable personal data, ~~which it does~~
 21 ~~not maintain~~ MAINTAINED as part of an automated personal
 22 data system, shall ~~make no~~ transfer of ANY such data to
 23 another organization, without the prior informed consent of
 24 the individual to whom the data pertain, if ~~it~~ THE
 25 ORGANIZATION TRANSFERRING SUCH DATA knows ~~that, as a~~

1 ~~consequence--of--the~~ AT THE TIME OF THE transfer, THAT such
 2 data will become part of an automated personal data system,⁷
 3 ~~except--(1)--any--person--may--transfer--such--data--to--an~~
 4 ~~automated--personal-data-system-for-the-purpose-of-assisting~~
 5 ~~in-the-collection-of-any-debt-outstanding--and--unpaid--upon~~
 6 ~~the---effective--date--of--this--act,--(2)--law--enforcement~~
 7 ~~personnel---may---transfer---data---relating---to---criminal~~
 8 ~~identification,--stolen--property--and--missing--persons--to--an~~
 9 ~~automated--personal-data-system-maintained--and--operated--by~~
 10 ~~law---enforcement---personnel---and---may---further---transfer~~
 11 ~~information--to--the--national--criminal--information--center~~
 12 ~~system---pursuant---to--the--rules--governing--that--system,~~
 13 ~~and--(3)--information--relating--to--a--borrower---properly~~
 14 ~~obtained--in--connection--with--the--transfer--or--assignment--of~~
 15 ~~his--loan--may--be--transferred--to--an--automated--personal--data~~
 16 ~~system--without--violating--this--act.~~ UNLESS THE ORGANIZATION
 17 TO WHICH SUCH DATA IS TRANSFERRED FIRST PROVIDES WRITTEN
 18 ASSURANCE THAT ON OR BEFORE THE DATE OF TRANSFER SAFEGUARDS
 19 WILL EXIST FOR THE SYSTEM AT LEAST EQUIVALENT TO THOSE
 20 SPECIFIED IN THE OTHER SAFEGUARDS IN THIS SECTION. THIS
 21 PROVISION SHALL NOT APPLY IN INSTANCES WHEN AN INDIVIDUAL
 22 REQUESTS THAT DATA ABOUT HIMSELF BE TRANSFERRED TO ANOTHER
 23 SYSTEM OR ORGANIZATION.

24 Safeguard 2: Any organization maintaining an automated
 25 personal data system shall identify one person immediately

1 responsible for the system, and make any other
 2 organizational arrangements that are necessary to assure
 3 continuing attention to the compliance with these
 4 safeguards.

5 Safeguard 3: Any organization maintaining an automated
 6 personal data system shall take affirmative action to inform
 7 each of its employees having any responsibility or function
 8 in the design, development, operation, or maintenance of the
 9 system, or the use of any data contained therein, about
 10 these safeguards and any rules and procedures promulgated by
 11 such organization to assure compliance with them.

12 Safeguard 4: No organization may take any disciplinary
 13 or other punitive action against any individual who brings
 14 to the attention of appropriate authorities, the press, or
 15 any member of the public, evidence of noncompliance with
 16 these safeguards. Any organization maintaining automated
 17 personal data systems shall provide a system of penalties
 18 for any employee who initiates or otherwise contributes to
 19 any such disciplinary action.

20 Safeguard 5: Any organization maintaining an automated
 21 personal data system shall take reasonable precautions to
 22 protect data in the system from any anticipated threats or
 23 hazards to the security of the system, OR FROM ANY RELEASE
 24 TRANSFER, ACCESS OR USE BY AN INDIVIDUAL OTHER THAN AN
 25 INDIVIDUAL SPECIFICALLY AUTHORIZED BY THE PERSON MAINTAINING

1 THE SYSTEM.

2 Safeguard 6: No AN ORGANIZATION MAINTAINING AN
 3 AUTOMATED DATA SYSTEM SHALL MAKE NO transfer of individually
 4 identifiable personal data to another system ~~may be made~~
 5 without the informed consent of the subject individual,
 6 ~~except--(1)--a transfer from one system to another within the~~
 7 ~~same organization may be made without such consent if the~~
 8 ~~conditions of the transfer provide substantial assurance~~
 9 ~~that the requirements for security and limitations of access~~
 10 ~~will not be weakened by the transfer, (2)--a transfer by or~~
 11 ~~to any organization which is required by federal law to~~
 12 ~~transfer such data to a federal agency or which is required~~
 13 ~~or specifically permitted by federal law to receive such~~
 14 ~~data from a federal agency to the extent the transfer is~~
 15 ~~consistent with such requirement or permission, (3)--a~~
 16 ~~transfer to the department of revenue of such data from the~~
 17 ~~federal internal revenue service in connection with their~~
 18 ~~function of collecting taxes, (4)--a transfer of such data~~
 19 ~~to another system for the purpose of assisting in the~~
 20 ~~collection of any money debt outstanding and unpaid upon the~~
 21 ~~effective date of this act, (5)--a transfer of data~~
 22 ~~relating to criminal identification, stolen property, and~~
 23 ~~missing persons by law enforcement personnel to another~~
 24 ~~system operated by law enforcement personnel and a transfer~~
 25 ~~of information to the national criminal information center~~

1 ~~system pursuant to the rules governing that system,~~
 2 ~~and (6)--a transfer of information relating to a borrower~~
 3 ~~properly obtained in connection with the transfer or~~
 4 ~~assignment of his loan; UNLESS THE ORGANIZATION TO WHICH~~
 5 SUCH DATA IS TRANSFERRED FIRST PROVIDES WRITTEN ASSURANCE
 6 THAT ON OR BEFORE THE DATE OF THE TRANSFER SAFEGUARDS WILL
 7 EXIST FOR THE SYSTEM AT LEAST EQUIVALENT TO THOSE SPECIFIED
 8 IN THIS SECTION. THIS PROVISION SHALL NOT APPLY IN
 9 INSTANCES WHERE AN INDIVIDUAL REQUESTS THAT DATA ABOUT
 10 HIMSELF BE TRANSFERRED TO ANOTHER SYSTEM OR ORGANIZATION.

11 Safeguard 7: Any organization maintaining an automated
 12 personal data system for administrative purposes shall
 13 maintain a complete and accurate record of every access to
 14 and use made of any data in the system, including the
 15 identity of all persons and organizations to which access
 16 has been given. THIS REQUIREMENT SHALL NOT APPLY TO ROUTINE
 17 OR ORDINARY SYSTEM HOUSEKEEPING ENTRIES, SUCH AS UPDATING OF
 18 FILES, UNDERTAKEN IN THE COURSE OF NORMAL MAINTENANCE BY
 19 SYSTEM PERSONNEL. SUCH RECORDS SHALL BE MAINTAINED FOR A
 20 PERIOD OF FIVE YEARS FROM EACH ENTRY.

21 Safeguard 8: Any organization maintaining an automated
 22 personal data system for administrative purposes shall
 23 maintain data in the system with such accuracy,
 24 completeness, timeliness, and pertinence as is necessary to
 25 assure accuracy and fairness in any determination relating

1 to an individual's qualifications, character, rights,
2 opportunities, or benefits that may be made on the basis of
3 such data.

4 Safeguard 9: Any organization maintaining an automated
5 personal data system that is used in any way for
6 administrative purposes shall eliminate data from
7 computer-accessible files when the data are no longer ~~timely~~
8 SERVES THE PURPOSE FOR WHICH IT WAS GATHERED BECAUSE OF THE
9 PASSAGE OF TIME.

10 Safeguard 10: Any organization maintaining an automated
11 personal data system that is used for statistical-reporting
12 and research purposes shall have the capacity to make
13 sufficient data readily available along with sufficient
14 information to permit reconstruction of the conditions and
15 suppositions under which the data were collected necessary
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18 personal data system for administrative purposes that
19 publicly disseminates statistical reports or research
20 findings based on personal data drawn from the system, or
21 from administrative systems of other organizations, shall
22 make such data publicly available for independent analysis
23 on reasonable terms, and shall take reasonable precautions
24 to assure that no data made available for independent
25 analysis will be used in a way that might reasonably be

1 expected to prejudice judgments about any individual data
2 subject's character, qualifications, rights, opportunities,
3 or benefits.

4 ~~Safeguard 12: Any organization maintaining an automated~~
5 ~~personal data system shall give public notice of the~~
6 ~~existence and character of its system once each year. Any~~
7 ~~organization maintaining more than one system shall publish~~
8 ~~such annual notices for all its systems simultaneously. Any~~
9 ~~organization proposing to establish a new system, or to~~
10 ~~enlarge an existing system, shall give public notice long~~
11 ~~enough in advance of the initiation or enlargement of the~~
12 ~~system to assure individuals who may be affected by its~~
13 ~~operation a reasonable opportunity to comment. The public~~
14 ~~notice shall specify: ANY ORGANIZATION MAINTAINING AN~~
15 AUTOMATED PERSONAL DATA SYSTEM SHALL GIVE NOTICE OF THE
16 EXISTENCE OF ITS SYSTEM ONCE EACH CALENDAR YEAR, COMMENCING
17 WITH THE CALENDAR YEAR 1976. SUCH NOTICE SHALL BE FILED
18 WITH THE DIRECTOR OF THE DEPARTMENT OF BUSINESS REGULATION
19 AND SHALL BE PERMANENT PUBLIC RECORD. THE DIRECTOR OF THE
20 DEPARTMENT MAY ESTABLISH REGULATIONS PRESCRIBING THE FORM
21 AND CONTENT OF SUCH NOTICE TO IMPLEMENT THIS SECTION, AND
22 MAY CHARGE A FILING FEE NOT TO EXCEED FIVE DOLLARS (\$5) FOR
23 EACH NOTICE FILED TO DEFRAY THE ADMINISTRATIVE COSTS
24 INCURRED PURSUANT TO THIS SECTION. ANY PERSON MAINTAINING
25 MORE THAN ONE SYSTEM SHALL FILE SUCH ANNUAL NOTICES OF EACH

1 OF ITS SYSTEMS SIMULTANEOUSLY, AND SUCH NOTICES MAY BE
 2 COMBINED WHEN APPROPRIATE. ANY PERSON PROPOSING TO
 3 ESTABLISH A NEW SYSTEM, OR TO ALTER THE NATURE AND PURPOSE
 4 OF AN EXISTING SYSTEM, ON OR AFTER THE EFFECTIVE DATE OF
 5 THIS ACT, SHALL FILE A NOTICE WITH THE DIRECTOR NINETY (90)
 6 DAYS PRIOR TO ESTABLISHING OR ALTERING THE NATURE AND
 7 PURPOSE OF A SYSTEM. THE NOTICE SHALL SPECIFY EACH OF THE
 8 FOLLOWING:

- 9 (a) The name of the system;
 10 (b) The nature and purpose or purposes of the system;
 11 (c) The categories and number of persons on whom data
 12 are maintained or are to be maintained;
 13 (d) The categories of data maintained or to be
 14 maintained, indicating which categories are stored or are to
 15 be stored in computer-accessible files;
 16 (e) The organization's policies and practices
 17 regarding data storage, duration of retention of data, and
 18 disposal thereof;
 19 (f) The categories of data sources;
 20 (g) A description of all types of use made or to be
 21 made of data, indicating those involving computer-accessible
 22 files, and including all classes of users and the
 23 organizational relationships among them;
 24 (h) In an automated personal data system used for
 25 administrative purposes, the procedures whereby an

1 individual can (i) be informed if he is the subject of data
 2 in the system; (ii) gain access to such data; and (iii)
 3 contest their accuracy, completeness, pertinence, and the
 4 necessity for retaining them;

5 (i) In an automated personal data system used for
 6 statistical reporting and research, the procedures whereby
 7 an individual, group, or organization can gain access to
 8 data used for this purpose for independent analysis;

9 (j) In an automated personal data system used for
 10 statistical reporting and research, a statement of the
 11 system's provisions for data confidentiality and the legal
 12 basis for such provisions;

13 (k) The title, name, and address of the person
 14 immediately responsible for the system.

15 Safeguard 13: Any organization maintaining an automated
 16 personal data system shall inform an individual asked to
 17 supply personal data for the system: ~~whether he is legally~~
 18 ~~required, or may refuse, to supply the data requested, and~~
 19 ~~also of any specific consequences for him, which are known~~
 20 ~~to the organization, of providing or not providing such~~
 21 ~~data.~~

22 (1) WHETHER HE IS LEGALLY REQUIRED, OR MAY REFUSE, TO
 23 SUPPLY THE DATA REQUESTED;

24 (2) OF ANY CONSEQUENCE ACTUALLY KNOWN TO THE PERSON
 25 ASKING FOR SUCH DATA WHICH MAY ARISE FROM HIS PERMISSION OR

1 REFUSAL TO SUPPLY THE DATA REQUESTED; AND
 2 (3) OF THE USES TO WHICH SUCH DATA WILL BE PUT WHICH
 3 ARE ACTUALLY KNOWN TO THE PERSON WHO IS ASKING FOR SUCH
 4 DATA.

5 Safeguard 14: Any organization maintaining an automated
 6 personal data system for administrative purposes shall
 7 inform an individual, upon his request, AND UPON
 8 SATISFACTORY PROOF OF HIS IDENTITY, whether he is the
 9 subject of data in the system, and, if so, make such data
 10 fully available to the individual, upon his request, in a
 11 form comprehensible to him, provided, however, that any
 12 information about such individual received from a third
 13 person before the effective date of this act on the
 14 condition that such information would remain confidential
 15 need not be disclosed in the absence of a court order
 16 requiring such disclosure.

17 Safeguard 15: Any organization maintaining an automated
 18 personal data system shall ~~not--allow--any--other--use--of~~
 19 ~~individually-identifiable-data-that-is-not-within-the-stated~~
 20 ~~purposes--of--the--system--as--reasonably--understood-by-the~~
 21 ~~individual,--unless--informed--consent--of--the--individual--has~~
 22 ~~been--explicitly--obtained.~~ MAKE NO USE OF INDIVIDUALLY
 23 IDENTIFIABLE PERSONAL DATA THAT IS NOT WITHIN THE PURPOSES
 24 OF THE SYSTEM AS STATED IN THE NOTICE REQUIRED BY SAFEGUARD
 25 12, OR IF INFORMATION HAS BEEN PROVIDED TO AN INDIVIDUAL

1 PURSUANT TO SAFEGUARD 12, WITHIN THE PURPOSES OF THE SYSTEM
 2 AS SO STATED. THIS PROVISION SHALL NOT APPLY IF THE PRIOR
 3 INFORMED CONSENT OF THE INDIVIDUAL HAS BEEN EXPLICITLY
 4 OBTAINED. NO PERSON SHALL BE HELD LIABLE FOR A VIOLATION OF
 5 THIS SAFEGUARD IF HE SHOWS BY A PREPONDERANCE OF THE
 6 EVIDENCE THAT AT THE TIME OF THE ALLEGED VIOLATION HE
 7 MAINTAINED REASONABLE PROCEDURES TO ENSURE COMPLIANCE WITH
 8 IT.

9 Safeguard 16: Any organization maintaining an automated
 10 personal data system for administrative purposes shall
 11 inform an individual, upon his request, AND UPON
 12 SATISFACTORY PROOF OF HIS IDENTITY, about the uses made of
 13 data about him, including the identity of all persons and
 14 organizations involved and their relationships with the
 15 system.

16 Safeguard 17: An organization shall not make data from
 17 an automated personal data system available in response to a
 18 demand for data made by means of compulsory legal process,
 19 unless it has first notified the individual to whom the data
 20 pertains of the demand and has made the data being sought
 21 fully available to such individual.

22 Safeguard 18: An organization maintaining an automated
 23 personal data system for administrative purposes shall
 24 develop and maintain procedures that (i) allow an individual
 25 who is the subject of data in the system to contest their

1 accuracy, completeness, pertinence, and the necessity for
 2 retaining them; (ii) permit data to be corrected or amended
 3 when the individual to whom they pertain so requests; and
 4 (iii) assure, when there is disagreement with the individual
 5 about whether a correction or amendment should be made, that
 6 ~~the individual's claim is noted and included in any~~
 7 ~~subsequent disclosure or dissemination of the disputed data.~~
 8 THE INDIVIDUAL MAY FILE WITH THE PERSON MAINTAINING THE
 9 SYSTEM A BRIEF STATEMENT SETTING FORTH HIS VIEWS ON THE
 10 DISPUTE. THE PERSON MAINTAINING THE SYSTEM MAY LIMIT THE
 11 STATEMENT TO 100 WORDS IF THE STATEMENT IS STORED IN
 12 COMPUTER-ACCESSIBLE FORM, OR TO ONE PAGE IF IT IS STORED
 13 MANUALLY, PROVIDED IN EITHER CASE, THAT THE PERSON PROVIDE
 14 THE INDIVIDUAL WITH ASSISTANCE IN WRITING A CLEAR AND
 15 ACCURATE SUMMARY OF THE DISPUTE. SUCH STATEMENT SHALL BE
 16 INCLUDED IN ANY SUBSEQUENT DISCLOSURE OF DISSEMINATION OF
 17 THE DISPUTED DATA.

18 Any organization may obtain a waiver or exemption of
 19 any portion or all of any one or more of these safeguard
 20 requirements from the department of business regulation
 21 pursuant to the procedures promulgated for this purpose by
 22 the department upon a showing of a clearly paramount and
 23 strongly justified societal interest in such waiver or
 24 exemption. The decision of the department on any such
 25 application shall be an adjudicatory decision under the

1 terms of the Montana Administrative Procedure Act. The full
 2 text of any such waiver or exemption granted under this
 3 subsection shall be published by the department of business
 4 regulation in the Montana Administrative Code.

5 Section 4. Prohibited disclosure. (1) It is unlawful
 6 for any officer, employee, or agent of an organization
 7 maintaining an automated personal data system or any person
 8 who has received information from such a system without
 9 proper authority or without the informed consent of the
 10 subject individual to disclose any personal data received
 11 from such a system that can be identifiable with or
 12 traceable to specific individuals except (a) disclosures
 13 made in the ordinary course of the business or activity
 14 contemplated by the system as set forth in their annual
 15 public notice, (b) disclosures made with the informed
 16 consent of the subject individual, and (c) by order of or
 17 response to a subpoena of a district court.

18 (2) Any person in charge of or privy to information
 19 contained in any such system used exclusively for
 20 statistical reporting or research may not be compelled to
 21 disclose any such data in any criminal or civil proceedings
 22 in any court of law of this state. Adequate precautions
 23 shall be taken to insure that any data released in
 24 statistical form by any such system will not reasonably
 25 result in the identification of individual data subjects in

1 violation of this provision.

2 Section 5. ~~Disclosure-threats-unlawful~~ SOCIAL SECURITY
 3 NUMBER. It is unlawful for any person to require, by means
 4 of withholding or threatening to withhold the enjoyment of
 5 any right or benefit, the disclosure of an individual's
 6 social security number issued by the social security
 7 administration of the United States or any other label that
 8 is functionally similar to a standard universal identifier;
 9 provided, however, this provision shall not apply to (a)
 10 employers or their agents in connection with the
 11 administration of the federal social security act, or other
 12 appropriate payroll function, OR OTHER APPROPRIATE
 13 EMPLOYMENT FUNCTION, (b) federal agencies and federal
 14 agents acting under lawful federal authority, (c) the
 15 department of revenue of the state of Montana when such use
 16 is connected with its function of collecting taxes, (d) the
 17 department of social and rehabilitation services of the
 18 state of Montana when such use is limited to the
 19 administration of its welfare and related services and the
 20 collection of child support payments, and (e) any person
 21 granted specific authority to use such number or label by
 22 the Montana legislature, or by the department of business
 23 regulation when the legislature is not in session subject to
 24 ratification in the next session of the legislature. It is
 25 also unlawful for any person to use such a number or label

1 for promotional or commercial purposes.

2 Section 6. Penalty. Any act or omission made unlawful
 3 under this act shall IF KNOWINGLY COMMITTED OR OMITTED, be
 4 punishable by a fine of not more than ~~one--thousand~~ FIVE
 5 HUNDRED dollars ~~(\$1,000)~~ (\$500) or imprisonment of not more
 6 than ~~one--(1)--year~~ SIX (6) MONTHS, or both.

7 Section 7. Civil action. (1) Any person whose
 8 privacy has been invaded because of an unlawful act or
 9 omission in violation of any of the provisions of this act
 10 may file a civil suit in a district court of proper
 11 jurisdiction against any person who has committed any such
 12 violation including any governmental unit or agency thereof,
 13 and upon proper proof, shall be entitled:

14 (a) to an injunction or other appropriate order
 15 enjoining or restraining any violation of this act or
 16 requiring compliance herewith;

17 (b) to an appropriate order requiring the offending
 18 person to delete from his file or files any information
 19 gathered in violation of this act;

20 (c) to actual damages but not less than liquidated
 21 damages computed at the rate of ~~two~~ ONE hundred dollars
 22 ~~(\$200)~~ (\$100) for each violation for each offender.
 23 Provided, however, if an action is brought against both an
 24 organization and its employees or agents, the injured party
 25 shall not be entitled to duplicitous recovery;

1 (d) to punitive or exemplary damages as set forth in
2 section 17-208, R.C.M. 1947;

3 (e) to a reasonable attorney's fee and other
4 litigation costs reasonable incurred.

5 (2) It is not a necessary prerequisite to an action
6 pursuant to this section that the injured party has
7 suffered, or be threatened with, actual damages.

8 Section 8. Severability. If a part of this act is
9 invalid, all valid parts that are severable from the invalid
10 part remain in effect. If a part of this act is invalid in
11 one or more of its applications, the part remains in effect
12 in all valid applications that are severable from the
13 invalid applications.

14 SECTION 9. THIS ACT SHALL BECOME EFFECTIVE ON JULY, 1,
15 1976.

-End-