

1 Senate BILL NO. 67
 2 INTRODUCED BY Erbe
 3 (Interim Judiciary Committee Bill)

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
 7 COMPUTER-ACCESSIBLE AUTOMATED PERSONAL DATA SYSTEMS;
 8 LIMITING THE USE OF SOCIAL SECURITY NUMBERS OR OTHER
 9 STANDARD UNIVERSAL IDENTIFIER; AND PROVIDING PENALTIES FOR
 10 VIOLATION."

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

12 Section 1. Privacy of the mind and personality. (1) It
 13 is the finding of the legislature that every person has a
 14 right to a protective zone or a private enclave protecting
 15 his mind, his personality, and his inner life which
 16 justifies a reasonable expectation that certain private
 17 facts and information about himself will not be improperly
 18 disclosed or publicized. A person's thoughts, sentiments,
 19 emotions, sensations, religious beliefs, philosophical
 20 beliefs, and political beliefs clearly fall into this
 21 protective zone. In addition, certain other facts, either
 22 singly or in accumulation, are sufficiently private to
 23 justify a person in expecting that they will not be
 24 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 purpose of this act,
 6 the following definitions apply:

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

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

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

20 (4) "Governmental organization" means the state of
 21 Montana, its departments and its local subdivisions and
 22 their boards, agencies, commissions, and bureaus.

23 (5) "Organization" means any profit or nonprofit
 24 corporation, partnership, proprietorship, or other
 25 organization, including the state of Montana, its

1 departments and its local subdivisions and their boards,
2 agencies, commissions, and bureaus.

3 (6) "Personal data" means all data that:

4 (a) describes anything about an individual, such as
5 identifying characteristics, measurements, or test scores;

6 (b) evidences things done by or to an individual, such
7 as records of financial transactions, medical treatment, or
8 other services; and

9 (c) affords a clear basis for inferring personal
10 characteristics or things done by or to an individual, such
11 as the mere record of his presence in a place, attendance at
12 a meeting, or admission to some type of service institution.

13 (7) "Personal data system" means a collection of
14 functionally related records kept by one or more
15 organizations containing personal data that can be
16 associated with identifiable individuals, whether kept for
17 administrative or statistical reporting or research
18 purposes.

19 (8) "Private facts and information" means any facts or
20 information about a person that a reasonable person is
21 justified in expecting will not be disclosed or used for
22 some purpose without his consent.

23 (9) "Standard universal identifier" means a
24 systematically assigned label other than a name employed on
25 a national scale that attempts to distinguish an individual

1 from all others, such label to be unique, permanent,
2 ubiquitous, indispensable, brief, and reliable for all
3 individuals and readily available for anyone who needs it.

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

9 Section 3. Safeguard requirements. It is unlawful for
10 a person or organization to knowingly violate any of the
11 following safeguard requirements for automated personal data
12 systems:

13 (1) No governmental organization in this state
14 maintaining a record of individually identifiable personal
15 data, not maintained as part of an automated personal data
16 system, may transfer any such data to another organization
17 without the prior informed consent of the individual to whom
18 the data pertains if the organization transferring such data
19 knows at the time of the transfer that such data will become
20 part of an automated personal data system, unless the
21 organization to which such data is transferred first
22 provides written assurance that on or before the date of
23 transfer safeguards will exist for the system at least
24 equivalent to those specified in the other safeguards in
25 this section. This provision shall not apply in instances

1 when an individual requests that data about himself be
2 transferred to another system or organization.

3 (2) An organization maintaining an automated personal
4 data system shall identify one person immediately
5 responsible for the system and make any other organizational
6 arrangements that are necessary to assure continuing
7 attention to compliance with the safeguards that apply to
8 it.

9 (3) An organization maintaining an automated personal
10 data system shall take affirmative action to inform each of
11 its employees having any responsibility or function in the
12 design, development, operation, or maintenance of the system
13 or the use of any data contained therein about these
14 safeguards and any rules and procedures promulgated by such
15 organization to assure compliance with them.

16 (4) No organization may take any disciplinary or other
17 punitive action against any individual who brings to the
18 attention of appropriate authorities, the press, or any
19 member of the public evidence of noncompliance with these
20 safeguards. A governmental organization in this state
21 maintaining automated personal data systems shall provide a
22 system of penalties for any employee who initiates or
23 otherwise contributes to such disciplinary action.

24 (5) An organization maintaining an automated personal
25 data system shall take reasonable precautions to protect

1 data in the system from any anticipated threats or hazards
2 to the security of the system or from any release, transfer,
3 access, or use by an individual other than an individual
4 specifically authorized by the person maintaining the
5 system.

6 (6) A governmental organization in this state
7 maintaining an automated personal data system may make no
8 transfer of individually identifiable personal data to
9 another system without the informed consent of the subject
10 individual, unless the organization to which such data is
11 transferred first provides written assurance that on or
12 before the date of the transfer safeguards will exist for
13 the system at least equivalent to those specified in this
14 section. This provision shall not apply in instances where
15 an individual requests that data about himself be
16 transferred to another system or organization.

17 (7) An organization maintaining an automated personal
18 data system for administrative purposes shall maintain a
19 complete and accurate record of every access to and use made
20 of any personal data in the system, including the identity
21 of all persons and organizations to which access has been
22 given. This requirement shall not apply to routine or
23 ordinary system housekeeping entries, such as routine access
24 to payroll records to pay the organization's employees or
25 such as updating of files, undertaken in the course of

1 normal maintenance by system personnel provided that no
 2 access that has a significant effect on privacy, such as
 3 granting personal data to someone the individual to whom the
 4 data relates would not expect to receive it, may be
 5 considered routine or housekeeping for this purpose. Such
 6 records shall be maintained for a period of 5 years from
 7 each entry.

8 (8) An organization maintaining an automated personal
 9 data system for administrative purposes shall maintain data
 10 in the system with such accuracy, completeness, timeliness,
 11 and pertinence as is necessary to assure accuracy and
 12 fairness in any determination relating to an individual's
 13 qualifications, character, rights, opportunities, or
 14 benefits that may be made on the basis of such data.

15 (9) An organization maintaining an automated personal
 16 data system that is used in any way for administrative
 17 purposes shall eliminate data from computer-accessible files
 18 when the data no longer serves the purpose for which it was
 19 gathered because of the passage of time.

20 (10) An organization maintaining an automated personal
 21 data system that is used for statistical-reporting and
 22 research purposes shall have the capacity to make sufficient
 23 data readily available along with sufficient information to
 24 permit reconstruction of the conditions and suppositions
 25 under which the data was collected necessary to allow an

1 independent analysis.

2 (11) An organization maintaining an automated personal
 3 data system for administrative purposes that publicly
 4 disseminates statistical reports or research findings based
 5 on personal data drawn from the system or from
 6 administrative systems of other organizations shall make
 7 such data publicly available for independent analysis on
 8 reasonable terms and shall take reasonable precautions to
 9 assure that no data made available for independent analysis
 10 will be used in a way that might reasonably be expected to
 11 prejudice judgments about any individual data subject's
 12 character, qualifications, rights, opportunities, or
 13 benefits.

14 (12) A governmental organization in this state
 15 maintaining an automated personal data system shall give
 16 notice of the existence of its system once each calendar
 17 year, commencing with the calendar year 1978. The notice
 18 shall be published in the Montana administrative register
 19 and filed with the director of the department of business
 20 regulation and shall be a permanent public record. The
 21 director of the department may establish regulations
 22 prescribing the form and content of such notice to implement
 23 this section. A person maintaining more than one system
 24 shall file the annual notices of each of the systems
 25 simultaneously, and such notices may be combined when

1 appropriate. A person proposing to establish a new system or
 2 to alter the nature and purpose of an existing system shall
 3 file a notice with the director 90 days prior to
 4 establishing or altering the nature and purpose of a system.
 5 The notice shall specify each of the following:

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

- 1 (ii) gain access to such data; and
- 2 (iii) contest its accuracy, completeness, pertinence,
 3 and the necessity for retaining it;
- 4 (i) in relation to an automated personal data system
 5 used for statistical reporting and research, the procedures
 6 whereby an individual, group, or organization can gain
 7 access to data used for this purpose for independent
 8 analysis;
- 9 (j) in relation to an automated personal data system
 10 used for statistical reporting and research, the system's
 11 provisions for data confidentiality and the legal basis for
 12 such provisions;
- 13 (k) the title, name, and address of the person
 14 immediately responsible for the system.
 15 Any other organization may file such notice with the
 16 director of the department of business regulation. Notice
 17 from any organization must be available to any individual to
 18 whom the personal data relates upon request.
- 19 (13) A governmental organization in this state
 20 maintaining an automated personal data system shall inform
 21 an individual asked to supply personal data for the system:
- 22 (a) whether he is legally required or may refuse to
 23 supply the data requested;
- 24 (b) 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 (c) 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 All other organizations shall make such information
6 available upon request.

7 (14) An organization maintaining an automated personal
8 data system for administrative purposes shall inform an
9 individual, upon his request and upon satisfactory proof of
10 his identity, whether he is the subject of data in the
11 system and, if so, make such data fully available to the
12 individual, upon his request, in a form comprehensible to
13 him; provided, however, that any information about such
14 individual received from a third person before the
15 [effective date of this act], on the condition that such
16 information would remain confidential, need not be disclosed
17 in the absence of a court order requiring such disclosure.

18 (15) A governmental organization in this state
19 maintaining an automated personal data system may not make
20 use of individually identifiable personal data that is not
21 within the purposes of the system as stated in the notice
22 required by subsection (12), or if information has been
23 provided to an individual pursuant to subsection (12),
24 within the purposes of the system as so stated. This
25 provision shall not apply if the prior informed consent of

1 the individual has been explicitly obtained. No person may
2 be held liable for a violation of this subsection if he
3 shows by a preponderance of the evidence that at the time of
4 the alleged violation he maintained reasonable procedures to
5 ensure compliance with it.

6 (16) An organization maintaining an automated personal
7 data system for administrative purposes shall inform an
8 individual, upon his request and upon satisfactory proof of
9 his identity, about the uses made of data about him,
10 including the identity of all persons and organizations
11 involved and their relationships with the system.

12 (17) An organization may not make data from an
13 automated personal data system available in response to a
14 demand for data made by means of compulsory legal process
15 unless it has first notified the individual to whom the data
16 pertains of the demand and has made the data being sought
17 fully available to such individual.

18 (18) An organization maintaining an automated personal
19 data system for administrative purposes shall develop and
20 maintain procedures that:

21 (a) allow an individual who is the subject of data in
22 the system to contest its accuracy, completeness,
23 pertinence, and the necessity for retaining it;

24 (b) permit data to be corrected or amended when the
25 individual to whom it pertains so requests; and

1 (c) assure, when there is disagreement with the
 2 individual about whether a correction or amendment should be
 3 made, that the individual may file with the person
 4 maintaining the system a brief statement setting forth his
 5 views on the dispute. The person maintaining the system may
 6 limit the statement to 100 words if the statement is stored
 7 in computer-accessible form or to one page if it is stored
 8 manually, provided in either case that the person provide
 9 the individual with assistance in writing a clear and
 10 accurate summary of the dispute. Such statement shall be
 11 included in any subsequent disclosure or dissemination of
 12 the disputed data.

13 (19) An organization may obtain a waiver or exemption
 14 of any portion or all of any one or more of these safeguard
 15 requirements from the department of business regulation
 16 pursuant to the procedures promulgated for this purpose by
 17 the department, upon a showing of a clearly paramount and
 18 strongly justified societal interest in such waiver or
 19 exemption. The decision of the department on any such
 20 application shall be an adjudicatory decision under the
 21 terms of the Montana Administrative Procedure Act. The full
 22 text of any such waiver or exemption granted under this
 23 subsection shall be published by the department of business
 24 regulation in the Montana Administrative Code. Nothing
 25 contained in this section shall apply to law enforcement

1 officers or agencies.

2 Section 4. Prohibited disclosure. (1) It is unlawful
 3 for an officer, employee, or agent of an organization
 4 maintaining an automated personal data system or a person
 5 who has received information from such a system to disclose
 6 any personal data received from such a system that can be
 7 identifiable with or traceable to specific individuals
 8 without proper authority or without the informed consent of
 9 the subject individual except:

10 (a) disclosures made in the ordinary course of the
 11 business or activity contemplated for the system as set
 12 forth in the organization's public notice;

13 (b) disclosures made with the informed consent of the
 14 subject individual; and

15 (c) by order of or response to a subpoena of a
 16 district court.

17 (2) A 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. Social security number. (1) It is unlawful
 2 for any person to require, by means of withholding or
 3 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 does not apply to:

9 (a) employers or their agents in connection with the
 10 administration of the federal Social Security Act or other
 11 appropriate payroll or employment function;

12 (b) federal agencies and federal agents acting under
 13 lawful federal authority;

14 (c) the department of revenue when such use is
 15 connected with its function of collecting taxes;

16 (d) the department of social and rehabilitation
 17 services when such use is limited to the administration of
 18 its welfare and related services and the collection of child
 19 support payments; and

20 (e) any person granted specific authority to use such
 21 number or label by the legislature or by the department of
 22 business regulation when the legislature is not in session
 23 subject to ratification in the next session of the
 24 legislature.

25 (2) It is also unlawful for any person to use such a

1 number or label for promotional or commercial purposes.

2 Section 6. Penalty. Any act or omission made unlawful
 3 under this act, if knowingly committed or omitted, is
 4 punishable by a fine of not more than \$500 or imprisonment
 5 for not more than 6 months, or both.

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

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

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

19 (c) actual damages but not less than liquidated
 20 damages computed at the rate of \$100 for each knowing
 21 violation for each offender; provided, however, if an action
 22 is brought against both an organization and its employees or
 23 agents, the injured party is not entitled to duplicative
 24 recovery. This provision does not apply to any act or
 25 omission which would not be unlawful if consent were given

1 by a proper person provided the accused person acts under a
2 reasonably formed, although mistaken, impression that such
3 consent was given.

4 (d) punitive or exemplary damages as set forth in
5 17-208;

6 (e) a reasonable attorney's fee and other litigation
7 costs reasonably incurred.

8 (2) It is not necessary prerequisite to an action
9 pursuant to this section that the injured party has suffered
10 or been threatened with actual damages.

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

-End-

FISCAL NOTE

Form BD-15

In compliance with a written request received January 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 67 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 67 proposes to establish safeguards for operation of computer-accessible automated personal data systems, and to limit the use of social security numbers or other standard, universal identifiers.

FISCAL IMPACT:

This legislation will have broad fiscal impact upon both the public and private sectors of Montana. The impact upon state government will vary between agencies depending upon the specific requirements for each unique automated personal data system. As an example, in the Department of Administration alone, the following data processing systems would be affected: Statewide Budget and Accounting System, Public Employee's and Teachers' Retirement Systems, State Employees' Position Control System, State Employees' Deferred Compensation System and the Mortgage Portfolio Accounting and Control System. Other agencies affected to an even greater degree would be: the University System, Department of Institutions, Department of Social and Rehabilitation Services and Department of Revenue.

Thus, this proposed legislation will have considerable cost impact; however, within the time frame available, the ramifications are too great to provide a meaningful cost estimate.

Richard L. Young for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-14-77