

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

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

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

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

~~(2) A consumer reporting agency must block or expunge information on a report that results from a theft of identity as prohibited in 45-6-332."~~

NEW SECTION. Section ~~2~~1. Identity theft impediments -- credit cards -- definition. (1) A credit card issuer that mails an offer or solicitation to receive a credit card and, in response, receives a completed application for a credit card that lists an address that is different from the address on the offer or solicitation shall verify the change of address by contacting the person to whom the solicitation or offer was mailed.

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

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

~~(4) (a) Except as provided in subsections (4)(b) through (4)(d), a person, firm, partnership, association, corporation, or limited liability company that accepts credit cards for the transaction of business may not print more than the last five digits of the credit card account number or the~~

~~expiration date upon any receipt provided to the cardholder.~~

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

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

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

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

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

(i) any single credit device used to obtain telephone property, labor, or services in any transaction with an entity under regulation as a public utility;

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

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

NEW SECTION. Section ~~3~~ 2. Identity theft impediments -- credit card renewal -- telephone accounts. (1) A credit card issuer that receives a change of address request, other than for a correction of a typographical error, from a cardholder who orders a replacement credit card within 60 days before or after that request is received shall send to that cardholder a change of address notification that is addressed to the cardholder at the cardholder's previous address of record. If the replacement credit card is requested prior to the effective date of the change of address, the notification must be sent within 30 days of the change of address request. If the replacement credit card is requested after the effective date of the change of address, the notification must be sent within 30 days of the request for the replacement credit card.

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

(3) The notice required pursuant to subsection (1) or (2) may be given by telephone or electronic

mail communication if the credit card issuer or business entity that provides telephone accounts reasonably believes that it has the current telephone number or electronic mail address for the account holder or cardholder who has requested a change of address. If the notification is in writing, it may not contain the consumer's account number, social security number, or other personal identifying information but may contain the consumer's name, previous address, and new address of record. For business entities described in subsection (2), the notification may also contain the account holder's telephone number.

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

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

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

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

NEW SECTION. Section 4 ~~3~~. Purpose. The purpose of [sections 4 through 9] is to enhance the protection of individual privacy and to impede identity theft as prohibited by 45-6-332.

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

(1) "Business" means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country or the parent or the subsidiary of a financial institution. The term includes an entity that destroys records. This term is meant to include those industries regulated by the public service commission and state auditor.

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

(3) "Individual" means a natural person.

(4) "Personal information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including but not limited to the individual's name, signature, ~~social security number, physical characteristics or description,~~ address ~~or,~~ telephone number in combination with one or more of the following pieces of information about the individual; passport number, driver's license or state identification card number, insurance policy number, ~~education, employment, employment history,~~ bank account number, credit card number, debit card number, ~~or any other financial information~~ passwords or pins required to get access to the individual's finances. A social security number, in and of itself, constitutes personal information under this definition.

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

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

NEW SECTION. Section 6-5. Record destruction. A business shall take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

NEW SECTION. Section 7-6. Computer security breach. (1) Any person or business that conducts business in Montana and that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the data system following discovery or notification of the breach to any resident of Montana whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person. The disclosure must be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subsection (3), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

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

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section must be made after the law enforcement agency determines that it will not compromise the investigation.

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

(a) "Breach of the security of the data system" means unauthorized acquisition of computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the person or business; and causes or is reasonably believed to cause loss or injury to a Montana resident. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the data system, provided that the personal information is not used or subject to further unauthorized disclosure.

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

~~(A) social security number;~~

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

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

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

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

(i) written notice;

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

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

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

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

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

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

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

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

(iii) notification to major statewide media.

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

(7) If an business discloses a security breach to any individual pursuant to this section and suggests, indicates, or implies to the individual that the individual may obtain a copy of the file on the individual with a consumer credit reporting agency, the business shall coordinate with the consumer credit reporting agency as to the timing content and distribution of the notice to the individual. This coordinating must not unreasonably delay the notice to affected individuals.

~~NEW SECTION. Section 8. Business relationship information disclosure. (1) Except as provided in subsection (4), if a business has an established business relationship with a customer~~

and has within the immediately preceding calendar year disclosed personal information that corresponds to any of the categories of personal information set forth in subsection (5)(a) to third parties and if the business knows or reasonably should know that the third parties used the personal information for the third parties' direct marketing purposes, that business shall, after the receipt of a written or electronic mail request or, if the business chooses to receive requests by toll-free telephone or facsimile numbers, a telephone or facsimile request from the customer, provide all of the following information to the customer free of charge, in writing or by electronic mail:

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

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

(2) (a) A business required to comply with this section shall designate a mailing address, electronic mail address, or, if the business chooses to receive requests by telephone or facsimile, a toll-free telephone or facsimile number, to which customers may deliver requests pursuant to subsection (1). A business required to comply with this section shall, at its election, do at least one of the following:

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

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

at one of the designated addresses or numbers.

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

(b) ~~A business that is required to comply with this section and 15 U.S.C. 6803 may comply with this section by providing the customer the disclosure required by 15 U.S.C. 6803, but only if the disclosure also complies with this section.~~

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

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

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

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

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

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

(ii) ~~marketing products or services to customers with whom the business has an established business relationship if, as a part of the marketing, the business does not disclose personal~~

~~information to third parties for the third parties' direct marketing purposes;~~

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

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

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

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

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

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

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

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

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

~~(e) disclosures of personal information between a financial institution and a business that has a private label credit card, affinity card, retail installment contract, or cobranded card program with the financial institution, if the personal information disclosed is necessary for the financial~~

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

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

~~(i) name and address;~~

~~(ii) electronic mail address;~~

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

~~(iv) names of children;~~

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

~~(vi) number of children;~~

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

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

~~(ix) telephone number;~~

~~(x) education;~~

~~(xi) political party affiliation;~~

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

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

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

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

~~(xvi) social security number;~~

~~(xvii) bank account number;~~

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

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

~~(xx) payment history; and~~

~~(xvi) information pertaining to the customer's creditworthiness, assets, income, or liabilities.~~

~~(b) If a list, description, or grouping of customer names or addresses is derived using any of the categories in subsection (5)(a) and is disclosed to a third party for direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate any other personal information from which the list was derived and that personal information, when it was disclosed, identified, described, or was associated with an individual, the categories set forth in subsection (5)(a) that correspond to the personal information used to derive the list, description, or grouping must be considered personal information for purposes of this section.~~

~~(6) (a) Disclosures of personal information for direct marketing purposes between affiliated third parties that share the same brand name are exempt from the requirements of subsection (1)(a) unless the personal information disclosed corresponds to one of the following categories, in which case the customer must be informed of those categories listed in this subsection (6) that correspond to the categories of personal information disclosed for direct marketing purposes and the third party recipients of personal information disclosed for direct marketing purposes pursuant to subsection (1)(b):~~

~~(i) number of children;~~

~~(ii) the age or gender of children;~~

~~(iii) electronic mail or other addresses of children;~~

~~(iv) height;~~

~~(v) weight;~~

~~(vi) race;~~

~~(vii) religion;~~

~~(viii) telephone number;~~

~~(ix) medical condition;~~

~~(x) drugs, therapies, or medical products or equipment used; (xi) social security number;~~

~~(xii) bank account number;~~

~~(xiii) credit card number;~~

~~(xiv) debit card number;~~

~~(xv) bank or investment account, debit card, or credit card balance.~~

~~(b) If a list, description, or grouping of customer names or addresses is derived using any of the categories in subsection (6)(a) and is disclosed to a third party or third parties sharing the same brand name for direct marketing purposes in a manner that permits the third party to identify, determine, or extrapolate the personal information from which the list was derived and that~~

~~personal information, when it was disclosed, identified, described, or was associated with an individual, any other personal information that corresponds to the categories in subsection (6)(a) used to derive the list, description, or grouping must be considered personal information for purposes of this section.~~

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

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

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

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

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

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

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

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

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

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

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

~~(d) "Employees who regularly have contact with customers" means employees whose contact with customers is not incidental to their primary employment duties and whose duties do not predominantly involve ensuring the safety or health of the businesses customers. The term~~

~~includes but is not limited to employees whose primary employment duties are as cashier, clerk, customer service, sales, or promotion. It does not, by way of example, include employees whose primary employment duties consist of food or beverage preparation or service, maintenance and repair of the business's facilities or equipment, direct involvement in the operation of a motor vehicle, aircraft, watercraft, amusement ride, heavy machinery, or similar equipment, security, or participation in a theatrical, literary, musical, artistic, or athletic performance or contest.~~

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

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

- ~~(i) an individual's name and address;~~
- ~~(ii) electronic mail address;~~
- ~~(iii) age or date of birth;~~
- ~~(iv) names of children;~~
- ~~(v) electronic mail or other addresses of children;~~
- ~~(vi) number of children;~~
- ~~(vii) the age or gender of children;~~
- ~~(viii) height;~~
- ~~(ix) weight;~~
- ~~(x) race;~~
- ~~(xi) religion;~~
- ~~(xii) occupation;~~
- ~~(xiii) telephone number;~~
- ~~(xiv) education;~~
- ~~(xv) political party affiliation;~~
- ~~(xvi) medical condition;~~

- ~~(xvii) drugs, therapies, or medical products or equipment used;~~
- ~~(xviii) the kind of product the customer purchased, leased, or rented;~~
- ~~(xix) real property purchased, leased, or rented;~~
- ~~(xx) the kind of service provided;~~
- ~~(xxi) social security number;~~
- ~~(xxii) bank account number;~~
- ~~(xxiii) credit card number;~~
- ~~(xxiv) debit card number;~~
- ~~(xxv) bank or investment account, debit card, or credit card balance;~~
- ~~(xxvi) payment history; or~~
- ~~(xxvii) information pertaining to creditworthiness, assets, income, or liabilities.~~

~~(g) "Third party" means one or more of the following:~~

~~(i) a business that is a separate legal entity from the business that has an established business relationship with a customer;~~

~~(ii) a business that has access to a database that is shared among businesses if the business is authorized to use the database for direct marketing purposes, unless the use of the database is exempt from being considered a disclosure for direct marketing purposes pursuant to subsection (4);~~

~~(iii) a business not affiliated by a common ownership or common corporate control with the business required to comply with subsection (1).~~

NEW SECTION Section 7 Business disclosure - Record keeping 1. A business must maintain a list of all third parties that it gives customer's personal information to for any type of consideration.

2. The list must include what categories of information are provided to the third party, the nature of third party's trade, and contact address for the third party.

3. This list must be made available to a customer or law enforcement upon request but need not be provided more than once a year to a customer or an individual at no cost to the customer or individual.

4. Customer's personal information received by a business for consideration from a third party will be considered customer's personal information of the business for this part.

5. (a) A business compliant with the opt out mechanism in 47 U.S.C. § 222(a) will be considered in compliance with this section.

(b) This section does not apply to a bank or trust company chartered under Title 32.

Chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code, a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code; and

(c) The department may also make rules allowing businesses to comply with relevant consumer privacy laws as an alternative to compliance with this section.

NEW SECTION. Section ~~9~~ 8. Waiver void -- remedy. (1) Any waiver of a provision of [sections 4 through 9] is contrary to public policy and is void and unenforceable.

(2) Any customer injured by a violation of [sections 4 through 9] may institute a civil action to recover damages. No business will be liable for a willful, intentional, or reckless violation in an amount more than \$250,000, or in an amount more than \$50,000 for other violations in any year regardless of the number of violations. This cause of action can not be brought as a class action.

(3) In addition, for a willful, intentional, or reckless violation of [section 8], a customer may recover a civil penalty not to exceed \$3,000 for each violation. For other violations, the customer may recover a civil penalty of up to ~~\$500~~ \$250 for each violation of [section 8].

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

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

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

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

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

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

NEW SECTION. Section ~~12~~ 11. Effective date. [This act] is effective ~~July 1, 2005~~ March 1, 2006.