



AN ACT GENERALLY REVISING AND REORGANIZING MONTANA PUBLIC RECORDS LAWS; UPDATING DEFINITIONS AND PROVIDING NEW DEFINITIONS; CLARIFYING ACCESS TO PUBLIC INFORMATION; PROVIDING SAFETY AND SECURITY EXCEPTIONS; PROVIDING A PROCEDURE FOR PUBLIC INFORMATION REQUESTS; ALLOWING FEES FOR PUBLIC INFORMATION REQUESTS; ALLOWING SPECIAL FEES FOR CERTAIN INFORMATION; EMPHASIZING THE DISPOSITION OF PUBLIC RECORDS ACCORDING TO RETENTION SCHEDULES; UPDATING THE REQUIREMENTS FOR ESSENTIAL RECORDS; CLARIFYING THE PROHIBITION ON DISSEMINATING DISTRIBUTION LISTS; REVISING THE RECORDS MANAGEMENT DUTIES OF THE SECRETARY OF STATE; REQUIRING COLLABORATION BETWEEN THE DEPARTMENT OF ADMINISTRATION AND THE SECRETARY OF STATE; EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE RECORDS COMMITTEE; PROVIDING POWERS AND DUTIES OF THE MONTANA HISTORICAL SOCIETY FOR MANAGING HISTORIC RECORDS AND CONSTITUTIONAL OFFICER RECORDS; CLARIFYING AGENCY RESPONSIBILITIES FOR RECORDS MANAGEMENT; REVISING MEMBERSHIP AND DUTIES OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; REDUCING THE NOTICE REQUIREMENTS BEFORE DESTRUCTION OF CERTAIN LOCAL GOVERNMENT RECORDS; UPDATING PROTECTIONS OF PERSONAL INFORMATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-3-212, 2-3-221, 2-3-301, 2-15-2017, 5-11-203, 7-4-2614, 7-5-2132, 7-5-4124, 7-11-1007, 13-1-303, 13-21-228, 15-1-103, 15-1-521, 15-62-209, 17-8-403, 18-4-126, 19-2-403, 19-17-111, 22-1-211, 30-9A-522, 30-14-1603, 30-17-101, 32-11-107, 33-1-1403, 33-28-108, 46-23-110, 53-21-1108, 61-6-157, 61-11-510, AND 81-2-115, MCA; AND REPEALING SECTIONS 2-6-101, 2-6-102, 2-6-103, 2-6-104, 2-6-105, 2-6-106, 2-6-107, 2-6-108, 2-6-109, 2-6-110, 2-6-111, 2-6-112, 2-6-201, 2-6-202, 2-6-203, 2-6-204, 2-6-205, 2-6-206, 2-6-207, 2-6-208, 2-6-211, 2-6-212, 2-6-213, 2-6-214, 2-6-301, 2-6-302, 2-6-303, 2-6-304, 2-6-307, 2-6-401, 2-6-402, 2-6-403, 2-6-404, 2-6-405, 2-6-501, 2-6-502, 2-6-503, AND 2-6-504, MCA.

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

**Section 1. Purpose.** The purpose of this chapter is to ensure efficient and effective management of public records and public information, in accordance with Article II, sections 8 through 10, of the Montana constitution, for the state of Montana and its political subdivisions.

**Section 2. Definitions.** As used in this chapter, the following definitions apply:

(1) "Confidential information" means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

(a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;

(b) related to judicial deliberations in adversarial proceedings;

(c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and

(d) designated as confidential by statute or through judicial decisions, findings, or orders.

(2) "Constitutional officer" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials of the executive branch of government.

(3) "Constitutional officer record" means a public record prepared, owned, used, or retained by a constitutional officer.

(4) "Essential record" means a public record immediately necessary to:

(a) respond to an emergency or disaster;

(b) begin recovery or reestablishment of operations during and after an emergency or disaster;

(c) protect the health, safety, and property of Montana citizens; or

(d) protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.

(5) "Executive branch agency" means a department, board, commission, office, bureau, or other public authority of the executive branch of state government.

(6) "Historic record" means a public record found by the state archivist to have permanent administrative or historic value to the state.

(7) "Local government" means a city, town, county, consolidated city-county, special district, or school

district or a subdivision of one of these entities.

(8) "Local government records committee" means the committee provided for in [section 22].

(9) "Permanent record" means a public record designated for long-term or permanent retention.

(10) "Public agency" means the executive, legislative, and judicial branches of Montana state government, a political subdivision of the state, a local government, and any agency, department, board, commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.

(11) "Public information" means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.

(12) "Public officer" means any person who has been elected or appointed as an officer of state or local government.

(13) "Public record" means public information that is:

(a) fixed in any medium and is retrievable in usable form for future reference; and

(b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

(14) "Records manager" means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency's public records and information.

(15) "State records committee" means the state records committee provided for in [section 15].

**Section 3. Access to public information -- safety and security exceptions -- Montana historical society exception.** (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as

the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records will be made accessible to the public.

**Section 4. Public information requests -- fees.** (1) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

(2) Upon receiving a request for public information, a public agency shall respond in a timely manner to the requesting person by:

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3).

(3) A public agency may charge a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(4) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(5) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

(6) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

**Section 5. Special fees allowable for certain information.** (1) In addition to the fee allowed under

[section 4], the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative body or its members or staff.

(2) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(3) All fees received by the department of revenue under [section 4] and this section must be deposited in the property value improvement fund as provided in 15-1-521.

(4) In accordance with the fees allowed under [section 4], the Montana historical society may charge fees as approved by its board of trustees for copies of materials contained in its collections, based on documentable curatorial duties as set forth in 22-3-101.

**Section 6. Management of public records -- disposal and destruction.** (1) (a) Each public officer is responsible for properly managing the public records within the public officer's possession or control through an established records management plan that satisfies the requirements of this chapter.

(b) Executive branch agencies shall manage public records according to the provisions of [sections 13 through 21] and the rules and guidelines established by the secretary of state, the state records committee, and the Montana historical society.

(c) Local governments shall manage public records according to the provisions of [sections 22 through 24] and the rules and guidelines established by the secretary of state, the local government records committee, and the Montana historical society.

(d) Pursuant to 5-2-503 and 5-11-105, the legislative council shall administer the records management plan for the legislative branch. The legislative branch shall cooperate with the secretary of state, the state records committee, the local government records committee, and the Montana historical society in the development, implementation, and administration of the legislative records management plan using [sections 13 through 21] as guidance.

(e) The judicial branch shall establish a records management plan. The judicial branch may seek assistance from the secretary of state, the state records committee, the local government records committee, and the Montana historical society regarding development, implementation, and administration of the judicial records management plan.

(2) When a public record has reached the end of its retention period, the public officer shall ensure the record is disposed of, destroyed, or transferred according to the provisions of this chapter.

**Section 7. Preservation of public records -- possession of public records.** (1) All public records are and remain the property of the public agency possessing the records. The public records must be delivered by outgoing public officers and employees to their successors and must be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this chapter.

(2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or employee any public records that pertain to that public office, the current public officer or employee may file a complaint in the district court of the county where the outgoing public officer or employee resides, pursuant to the Montana Rules of Civil Procedure, to compel the outgoing public officer or employee to deliver any public records still in the outgoing public officer or employee's possession to the current public officer or employee.

**Section 8. Written notice of denial -- civil action -- costs to prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.

(2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.

(3) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of [sections 1 through 24] may be awarded costs and reasonable attorney fees.

**Section 9. Certified copies of records -- historic records and constitutional officer records -- exception.** (1) A person may request a certified copy of a public record from a public agency subject to the

provisions of [section 3]. The public agency may charge a fee for the certified copy in accordance with [section 4].

(2) A person may request a certified copy of a historic record or a constitutional officer record from the Montana historical society subject to the provisions of [section 3]. The Montana historical society may charge a fee for the certified copy in accordance with [sections 4 and 5(4)].

(3) A certified copy created by the Montana historical society of a historic record or a constitutional officer record has the same force in law as if made by the original public agency that created the record.

(4) Pursuant to 2-15-403, this section does not apply to certified copies provided by the secretary of state for information contained in the secretary of state's corporate and uniform commercial code electronic filing system.

**Section 10. Protection and storage of essential records.** (1) To provide for the continuity and preservation of civil government, each public officer shall designate certain public records as essential records. The list must be continually maintained by the public officers to ensure its accuracy. Each public officer shall collaborate with the appropriate continuity of government programs to ensure essential records are identified and maintained.

(2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to protect, store, back up, and recover essential records.

**Section 11. Prohibition on dissemination or use of distribution lists -- exceptions -- penalties.** (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list without first securing the permission of those on the list except by that agency.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

(e) persons certified as claims examiners under 39-71-320.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.

(8) This section does not apply to the use by the public employees' retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**Section 12. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited.** (1) This section may be cited as the "Gus Barber Antisecrecy Act".



(2) As used in this section, "public hazard" means a device, instrument, or manufactured product or a condition of a device, instrument, or manufactured product that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as otherwise provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or a written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

(a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;

(b) other information that is confidential under state or federal law; or

(c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section does not apply to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

**Section 13. Secretary of state -- powers and duties -- rulemaking authority.** (1) To ensure the proper

management and safeguarding of public records, the secretary of state shall:

- (a) establish guidelines based on accepted industry standards for managing public records;
- (b) upon request of another executive branch agency, review, analyze, and make recommendations regarding executive branch agency filing systems and procedures;
- (c) operate the state records center for the purpose of storing and servicing public records not retained in office space;
- (d) provide information and training materials for all phases of efficient and effective records management;
- (e) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies;
- (f) consult with the department of administration pursuant to [section 14];
- (g) adopt rules regarding management of public records;
- (h) adopt rules to implement the objectives of the state records committee and local government records committee; and
- (i) upon request, assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and provide services similar to those available to the executive branch.

(2) In addition to the requirements under subsection (1), the secretary of state may operate a central microfilm unit to microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state.

**Section 14. Department of administration -- powers and duties.** (1) To ensure compatibility with the information technology systems of state government and to promote adherence to records management principles and best practices, the department of administration, in consultation with the secretary of state, shall establish standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration, in consultation with the secretary of state, shall approve all acquisitions of executive branch agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure

compatibility with the standards developed under subsection (1).

(3) The department of administration is responsible for the management and operation of equipment, systems, facilities, and processes integral to the department's central computer center and statewide telecommunications system.

**Section 15. State records committee -- composition and meetings.** (1) There is a state records committee composed of:

(a) representatives of:

- (i) the department of administration;
- (ii) the legislative auditor;
- (iii) the attorney general;
- (iv) the secretary of state;
- (v) the Montana historical society;
- (vi) the governor;
- (vii) the clerk of the supreme court; and
- (viii) the state chief information officer; and

(b) five members representing executive branch agencies designated pursuant to subsections (4) and (5).

(2) The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee.

(3) The committee members representing the agencies in subsection (1)(a) are designated by the heads of the respective agencies, and their appointments must be submitted in writing to the secretary of state. These committee members serve at the pleasure of the heads of their respective agencies.

(4) To implement subsection (1)(b), the committee members in subsection (1)(a) shall develop a rotation by which each of the executive branch agencies is designated to select a representative to serve a 2-year term as a committee member. The secretary of state shall adopt the rotation by administrative rule.

(5) The committee shall establish guidelines for the heads of executive branch agencies in appointing representatives to ensure the executive branch representatives provide a balance of perspectives from records management, information technology, and legal professionals.

(6) The committee shall meet at least quarterly.

(7) Committee members shall serve without additional salary but are entitled to reimbursement for travel expenses incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Expenses must be paid from the appropriations made for operation of their respective agencies.

**Section 16. State records committee duties and responsibilities.** The purpose of the state records committee is to act as a resource for executive branch agencies and others by staying at the forefront of records management best practices. The committee shall:

- (1) gather and disseminate information on all phases of records management;
- (2) advise the secretary of state in developing records management standards, guidelines, and training materials;
- (3) develop guidelines to help agencies identify, maintain, and secure their essential records;
- (4) serve as a forum for continuing collaboration among records management, information technology, and legal professionals throughout state agencies;
- (5) make recommendations to the secretary of state for rulemaking regarding public records management;
- (6) regularly review existing public records laws and make recommendations to the secretary of state regarding pursuing statutory change; and
- (7) report biennially to the governor and, as provided in 5-11-210, the legislature on the activities of the committee, improvements in records management in state government, aspects of records management requiring further improvement, and committee recommendations and plans for further improvement.

**Section 17. Retention and disposition subcommittee -- approval required for record disposal.** (1) There is a subcommittee of the state records committee to be known as the retention and disposition subcommittee. The subcommittee is composed of the members of the state records committee who represent the following offices:

- (a) the department of administration;
- (b) the legislative auditor;
- (c) the attorney general;

- (d) the secretary of state; and
- (e) the Montana historical society.

(2) The subcommittee shall approve, modify, or disapprove the recommendations on retention schedules of all public records.

(3) Except as provided in subsection (4), no public record may be disposed of or destroyed without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction must be submitted to the subcommittee by the agency concerned.

(4) The subcommittee may by unanimous approval establish categories of records for which no disposal request is required if those records are retained for the designated retention period.

**Section 18. Historic records -- Montana historical society -- powers and duties.** To ensure the proper management and safeguarding of historic records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing, preserving, and providing access to historic records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, the local government records committee, and the state records committee, establish guidelines to inventory, catalog, retain, transfer, and provide access to all historic records;

(3) maintain and enforce restrictions on access to historic records in the custody of the state archives in accordance with the provisions of this part; and

(4) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate records and records considered to have no historical value.

**Section 19. Constitutional officer records -- Montana historical society.** (1) All constitutional officer records are the property of the state. The records must be delivered by outgoing constitutional officers to their successors, who shall preserve, store, transfer, destroy, or dispose of and otherwise manage them in accordance with the provisions of this section.

(2) Within 2 years after taking office as a constitutional officer, the current constitutional officer shall consult with staff members of the Montana historical society and transfer to the Montana historical society all of the constitutional officer records of the prior officeholder that are not necessary to the current operation of that

office and are considered worthy of preservation.

(3) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, shall review constitutional officer records and isolate any items of a purely personal nature. The personal papers are not subject to this section, but they may be deposited along with the constitutional officer records at the Montana historical society at the constitutional officer's discretion.

(4) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, may restrict access to certain segments of that officer's records. Restrictions may not be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of constitutional officer records arising between the state archives and a constitutional officer's office must be decided by a four-fifths vote of the members of the retention and disposition subcommittee provided for in [section 17].

**Section 20. Permanent records -- agency responsibilities -- state records center.** (1) All permanent records no longer required in the current operation of the office where they are made or kept and all records of each agency or activity of the executive branch of state government that has been abolished or discontinued must be maintained by the agency or transferred to the state records center in accordance with approved records retention schedules.

(2) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is merely a custodian of the agency records, and access is only by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. The state records center may charge fees to cover the cost of records storage and servicing.

(3) Prior to transferring a permanent record to the state records center, the transferring agency shall consult with the state archivist to determine whether the record is also a historic record. If the record is found to be a historic record, it must be transferred to the Montana historical society in accordance with the provisions of [section 18].

**Section 21. Agency records management duties.** Each department head shall administer the executive branch agency's records management function and shall:

- (1) coordinate all aspects of the agency records management function in accordance with procedures prescribed by the secretary of state and the state records committee;
- (2) analyze records inventory data and examine and compare all inventories within the agency to minimize duplication of records;
- (3) review and approve records disposal requests for submission to the retention and disposition subcommittee;
- (4) review established records retention schedules to ensure they are complete and current and make recommendations to the secretary of state and the state records committee regarding minimal retentions for all copies of public records within the agency;
- (5) incorporate records management requirements into the agency information technology plan provided for in 2-17-523;
- (6) ensure that all agency employees receive appropriate and ongoing records management training; and
- (7) after considering guidance from the state records committee regarding records manager qualifications, officially designate a qualified agency records manager to manage the functions provided for in this section.

**Section 22. Local government records committee -- composition and meetings.** (1) There is a local government records committee.

- (2) The committee consists of the following eight members:
  - (a) the state archivist;
  - (b) the state records manager;
  - (c) a representative of the department of administration;
  - (d) two local government records managers appointed by the director of the Montana historical society;
  - (e) two local government records managers appointed by the secretary of state; and
  - (f) a person representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning January 1 of the year following their appointment.

(4) Vacancies must be filled in the same manner they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice a year upon the call of the secretary of state or the presiding officer.

(7) Except for the member appointed in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

**Section 23. Local government records committee -- duties and responsibilities.** The local government records committee shall:

(1) approve, modify, or disapprove proposals for local government records retention and disposition schedules;

(2) appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist, one of the local government records managers, and the representative of the department of administration. Unless specifically authorized by statute or by the retention and disposition schedule, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of local government records must be submitted to the subcommittee by the entity concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must be referred to the local government records committee for approval. When approval is obtained from the subcommittee or from the local government records committee for the disposal of a record, the local government records committee shall consider the inclusion of a new category of record for which a disposal request is not required and shall update the schedule as necessary.

(3) establish a retention and disposition schedule for categories of records for which a disposal request



is not required. The local government records committee shall publish the retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

- (4) develop guidance for local governments to identify, maintain, and secure their essential records;
- (5) respond to requests for technical advice on matters relating to local government records; and
- (6) provide leadership and coordination in matters affecting the records of multiple local governments.

**Section 24. Disposal of local government public records prohibited prior to offering -- central registry -- notification.** (1) A local government public record more than 10 years old may not be destroyed unless it is first offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 60 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and allows the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection (3)(d) and the records committee's notice to the entities listed on the registry fulfills the notification requirements of this section.

**Section 25. Definitions.** As used in [sections 25 through 27], the following definitions apply:

(1) "Breach of the security of a data system" or "breach" means the unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained

by a state agency or by a third party on behalf of a state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) "Individual" means a human being.

(3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

(4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:

(i) a social security number or tax identification number;

(ii) a driver's license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; or

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

(b) The term does not include publicly available information from federal, state, local, or tribal government records.

(5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) "Third party" means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency.

**Section 26. Protection of personal information -- compliance -- extensions.** (1) Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal

information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.

(2) The procedures must include measures to:

- (a) eliminate the unnecessary use of personal information;
- (b) identify the person or state agency authorized to have access to personal information;
- (c) restrict access to personal information by unauthorized persons or state agencies;
- (d) identify circumstances in which redaction of personal information is appropriate;
- (e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;
- (f) eliminate the unnecessary storage of personal information on portable devices; and
- (g) protect data containing personal information if that data is on a portable device.

(3) Except as provided in subsection (4), each state agency that is created after [the effective date of this act] shall complete the requirements of this section within 1 year of its creation.

(4) The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.

**Section 27. Notification of breach of security of data system.** (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

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

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) A state agency or a third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information officer at the department of administration an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If a notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer.

**Section 28. Custody and reproduction of certain records by secretary of state.** (1) The secretary of state is charged with the custody of:

(a) the enrolled copy of the constitution;

- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all documents kept or deposited in the secretary of state's office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in [section 15].

(3) The state records committee may approve the disposal of original records once those records are reproduced as provided for in subsection (2) unless disposal takes the form of transfer of records. Reproduction is not necessary for transferred records. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

**Section 29.** Section 2-3-212, MCA, is amended to read:

**"2-3-212. Minutes of meetings -- public inspection.** (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

- (2) Minutes must include without limitation:
  - (a) the date, time, and place of the meeting;
  - (b) a list of the individual members of the public body, agency, or organization who were in attendance;
  - (c) the substance of all matters proposed, discussed, or decided; and
  - (d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a

court order."

**Section 30.** Section 2-3-221, MCA, is amended to read:

**"2-3-221. Costs to plaintiff prevailing party in certain actions to enforce constitutional right to know.** A plaintiff person alleging a deprivation of rights who prevails in an action brought in district court to enforce the plaintiff's person's rights under Article II, section 9, of the Montana constitution ~~may~~ may be awarded costs and reasonable attorney fees."

**Section 31.** Section 2-3-301, MCA, is amended to read:

**"2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail address and documents required -- ~~prohibiting fees~~ prohibited.** (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, shall provide for the receipt of public comment by the agency by use of an electronic mail system.

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its electronic mail address to which public comment may be made, including dissemination in:

- (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;
- (b) the telephone directory of state agencies published by the department of administration;
- (c) any notice of agency existence, purpose, and operations published on the internet ~~world-wide web,~~ popularly known as a "website", used by the agency; or

(d) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(c).

(3) An agency shall, at the request of another agency or person and subject to ~~2-6-102~~ [section 3], disseminate the electronic documents to that agency or person by electronic mail in place of surface mail. Notification of the availability of an electronic notice of proposed rulemaking may be sent to an interested person as provided in 2-4-302(2)(a)(ii). An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) An agency that receives electronic mail pursuant to subsection (1) shall retain the electronic mail as either an electronic or a paper copy to the same extent that other comments are retained.

(5) As used in this section, "agency" means a department, division, bureau, office, board, commission,

authority, or other agency of the executive branch of state government."

**Section 32.** Section 2-15-2017, MCA, is amended to read:

**"2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature.** (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

- (a) examine the trends and patterns of domestic violence-related fatalities in Montana;
- (b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and
- (c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

- (a) representatives from state departments that are involved in issues of domestic abuse;
- (b) representatives of private organizations that are involved in issues of domestic abuse;
- (c) medical and mental health care providers who are involved in issues of domestic abuse;
- (d) representatives from law enforcement, the judiciary, and the state bar of Montana;
- (e) representatives of Montana Indian tribes;
- (f) other concerned citizens; and
- (g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section.

(6) Upon written request from the commission, a person who possesses information or records that are

necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential information as defined in [section 2] and are ~~exempt from the provisions of Title 2, chapter 6~~ protected from disclosure. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the law and justice interim committee, the attorney general, the governor, and the chief justice of the Montana supreme court prior to each regular legislative session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report."

**Section 33.** Section 5-11-203, MCA, is amended to read:

**"5-11-203. Distribution of session laws -- ~~inspection~~ examination of journals.** (1) Immediately after the session laws are published, the legislative services division shall distribute them.

(2) The legislative services division shall make the house and senate journals available for ~~inspection~~



examination or copying by the public as provided in ~~Title 2, chapter 6, part 4~~ [sections 1 through 12]. The legislative services division may publish the journals in an electronic format.

- (3) The following entities may receive the number of copies of session laws listed at no cost:
- (a) to the library of congress, eight copies;
  - (b) to the state library, two copies;
  - (c) to the state historical library, two copies;
  - (d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;
  - (e) to the library of each custodial institution, one copy;
  - (f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102, one copy;
  - (g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;
  - (h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;
  - (i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;
  - (j) to each county clerk, one copy for the use of the county; and
  - (k) to each county attorney and to each clerk of a district court, one copy."

**Section 34.** Section 7-4-2614, MCA, is amended to read:

**"7-4-2614. Records of certificates of discharge from military service.** (1) It is the duty of the county clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of discharge of an honorably discharged person who served with the United States forces upon that person's request. It is not the clerk's duty to file the certificate.

(2) A record of a military discharge certificate is confidential information as defined in [section 2] and ~~exempt from the provisions of Title 2, chapter 6~~ is protected from disclosure. A military discharge certificate may be disclosed only to:

- (a) the service member for whom the certificate was recorded;

(b) if the service member is deceased, the next of kin of the service member or a mortuary, as defined in 10-2-111, for the purposes of securing the burial benefits to which the service member is entitled;

(c) a veterans' service officer or a veterans' service organization, as defined in 10-2-111;

(d) the veterans' affairs division of the Montana department of military affairs; or

(e) any person with written authorization from the service member or from the next of kin of the service member, if the service member is deceased.

(3) If an original discharge certificate was inadvertently filed and the county clerk still retains the certificate in its original form, upon the written request of the service member or of the service member's next of kin if the service member is deceased, the clerk shall return the filed certificate to the service member or to the service member's next of kin if the service member is deceased.

(4) For purposes of this section:

(a) "file" means to store in original form; and

(b) "record" means to make and keep a copy from which a certified original copy can be reproduced."

**Section 35.** Section 7-5-2132, MCA, is amended to read:

**"7-5-2132. Destruction of county records.** Upon the order of the board of county commissioners and with the written approval of the local government records destruction subcommittee provided for in ~~2-6-403~~ [section 23], a county officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office."

**Section 36.** Section 7-5-4124, MCA, is amended to read:

**"7-5-4124. Destruction of municipal records.** Upon the order of the city or town council or commission and with the written approval of the local government records destruction subcommittee provided for in ~~2-6-403~~ [section 23], a city or town officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office."

**Section 37.** Section 7-11-1007, MCA, is amended to read:

**"7-11-1007. Public hearing -- resolution of intention to create special district.** (1) The governing body shall hold at least one public hearing concerning the creation of a proposed special district prior to the

passage of a resolution of intention to create the special district. A resolution of intention to create a special district may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition that contains the required number of signatures as provided in 7-11-1003(1)(b).

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

(c) a general description of the territory or lands to be included within the proposed special district, giving the boundaries of the proposed special district;

(d) the general character of any proposed improvements and the proposed location for the proposed program or improvements;

(e) the estimated cost and method of financing the proposed program or improvements;

(f) any requirements specifically applicable to the type of special district;

(g) whether the proposed special district would be administered by the governing body or an appointed or elected board; and

(h) the duration of the proposed special district.

(3) (a) The governing body shall publish notice of passage of the resolution of intention to create a special district as provided in 7-1-2121 and 7-1-2122 or 7-1-4127 and 7-1-4129, as applicable. The notice must contain a notice of a hearing and the time and place where the hearing will be held.

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing distribution list in accordance with ~~2-6-109~~ [section 11].

(c) A copy of the notice described in subsection (3)(a) must be mailed to each owner or purchaser under contract for deed of the property included on the list referred to in subsection (3)(b) as shown by the current property tax record maintained by the department of revenue for the county."

**Section 38.** Section 13-1-303, MCA, is amended to read:

**"13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an

election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official either for a recount procedure or to process provisional ballots.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

- (i) contest begun;
- (ii) recount pending; or
- (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in ~~2-6-402~~ [section 22]."

**Section 39.** Section 13-21-228, MCA, is amended to read:

**"13-21-228. Use of voter's e-mail address.** (1) A local election official shall request an e-mail address from each covered voter who registers to vote after January 1, 2014.

(2) An e-mail address provided by a covered voter may not be made available to the public or any individual or organization other than a state or local election official and is ~~exempt from disclosure under Title 2, chapter 6~~ confidential information as defined in [section 2].

(3) The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission and verifying the voter's mailing address and physical location."

**Section 40.** Section 15-1-103, MCA, is amended to read:

**"15-1-103. Disposal of tax records -- procedure.** (1) Notwithstanding any other provisions of law, the department may dispose of tax records more than 3 years old if the records do not have any further value or as

provided in subsection (3).

(2) Authorization for disposal of tax records must be made by the director of the department or authorized employees of the department. A copy of the authorization and authenticated list of the records must be maintained by the department.

(3) The department may dispose of its original tax records after those records have been reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in ~~2-6-208~~ [section 15]. The department shall maintain the reproduction as the public record. The reproduction or certified copy of the reproduction may be used in place of the department's original in any court or proceeding and has the same force and effect as the department's original record."

**Section 41.** Section 15-1-521, MCA, is amended to read:

**"15-1-521. Property valuation improvement fund.** There is an account in the state special revenue fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and taxation process through improvements in technology and administration. The department shall deposit fees collected pursuant to ~~2-6-110(3)~~ [section 5] in the account."

**Section 42.** Section 15-62-209, MCA, is amended to read:

**"15-62-209. Access to records.** Information that identifies the contributor, account owner, or designated beneficiary of a family education savings account is ~~exempt from the provisions of 2-6-102 and 2-6-104 and any other confidential information as defined in [section 2] and is exempt from any provision of law permitting the public inspection examination~~ or copying of documents. The provisions of this section may not prevent the release of information about a specific designated beneficiary to a higher education institution at which the designated beneficiary is enrolled or to which the designated beneficiary has applied for admission."

**Section 43.** Section 17-8-403, MCA, is amended to read:

**"17-8-403. False claims -- procedures -- penalties.** (1) Except as provided in subsection (2), a person is liable to a governmental entity for a civil penalty of not less than \$5,500 and not more than \$11,000 for each act specified in this section, plus three times the amount of damages that a governmental entity sustains, along with expenses, costs, and attorney fees, if the person:

- (a) knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- (b) knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- (c) conspires to commit a violation of this subsection (1);
- (d) has possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;
- (e) is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;
- (f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;
- (g) knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or
- (h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent claim.

(2) In a civil action brought under 17-8-405 or 17-8-406, a court shall assess a civil penalty of not less than \$5,500 and not more than \$11,000 for each act specified in this section, plus not less than two times and not more than three times the amount of damages that a governmental entity sustains if the court finds all of the following:

- (a) The person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information.
- (b) The person fully cooperated with any investigation of the act by the government attorney.
- (c) At the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and the person did not have actual knowledge of the existence of an investigation into the act.

(3) A person who violates the provisions of this section is also liable to the governmental entity for the

expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

(4) Liability under this section is joint and several for any act committed by two or more persons.

(5) This section does not apply to claims, records, or statements made in relation to claims filed with the state compensation insurance fund under Title 39, chapter 71, or to claims, records, payments, or statements made under the tax laws contained in Title 15 or 16 or made to the department of natural resources and conservation under Title 77.

(6) (a) A court shall dismiss an action or claim brought under 17-8-406, unless opposed by the governmental entity or unless the action is brought by the government attorney or the person who is the original source of the information, if substantially the same allegations or transactions alleged in the action or claim were publicly disclosed in:

(i) a criminal, civil, or administrative hearing in which the governmental entity or an agent of the governmental entity is a party;

(ii) a state legislative, state auditor, or other governmental entity report, hearing, audit, or investigation;

or

(iii) the news media.

(b) The production of a record pursuant to Article II, section 9, of the Montana constitution or ~~Title 2, chapter 6, [section 3]~~ is not a public disclosure for purposes of this section.

(c) For purposes of this subsection (6), "original source" means an individual who:

(i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which the allegations or transactions in a claim are based; or

(ii) has knowledge that is independent of and materially adds to the publicly disclosed allegations and transactions and voluntarily provided the information to the governmental entity before filing an action.

(7) A person may not file a complaint or civil action brought under 17-8-406 against the state or an officer or employee of the state arising from conduct by the officer or employee within the scope of the officer's or employee's duties to the state unless the officer or employee has a financial interest in the conduct upon which the complaint or civil action arises.

(8) The amount of the civil penalty set forth in subsections (1) and (2) must be adjusted for inflation in a manner consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410.

(9) If a governmental entity does not intervene, the person who initiated the action has the same right

to conduct the action as the government attorney would have had if the governmental entity had intervened, including the right to inspect government records and interview officers and employees of the governmental entity."

**Section 44.** Section 18-4-126, MCA, is amended to read:

**"18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement information is a public ~~writing~~ record and must be available to the public as provided in ~~2-6-102~~ [section 3], 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with ~~the state records management program, Title 2, chapter 6~~ the provisions of [sections 1 through 21].

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with ~~the state records management program~~ [sections 1 through 21]."

**Section 45.** Section 19-2-403, MCA, is amended to read:

**"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.

(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.

(6) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the



appropriate retirement system, entitled to the benefits.

(7) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(8) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(9) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees.

A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(10) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(11) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(12) The board may implement third-party mailings under the provisions of ~~2-6-109~~ section 11. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(14) The board may by rule or otherwise delegate to the board's executive director or any other staff

member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13) or the contested case procedure of the Montana Administrative Procedure Act.

(15) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title."

**Section 46.** Section 19-17-111, MCA, is amended to read:

**"19-17-111. Records information management.** (1) The chief or designated official of a fire company shall maintain the records provided for in 19-17-108 and 19-17-110 for each active or inactive member of the fire company.

(2) Records must be maintained according to the state of Montana general records retention schedules, as published by the secretary of state pursuant to ~~Title 2, chapter 6~~ sections 13 through 21."

**Section 47.** Section 22-1-211, MCA, is amended to read:

**"22-1-211. Definitions.** As used in this part, the following definitions apply:

(1) "Depository library" means a library contracted by the state library under 22-1-212(2) to provide the general public access to state publications.

(2) "State agency" means any entity established or authorized by law to govern operations of the state, such as a state office, officer, department, division, section, bureau, board, commission, council, and agency of the state and all subdivisions of each.

(3) (a) "State publication" means any information originating in or produced by the authority of a state agency or at the total or partial expense of a state agency that the agency intends to distribute outside the agency, regardless of format or medium, source or copyright, license, or trademark.

(b) The term does not include information intended only for distribution to contractors or grantees of the agency, persons within the agency, or members of the public under ~~2-6-102~~ section 3 or information produced by a state agency that is intended strictly for internal administrative or operational purposes."

**Section 48.** Section 30-9a-522, MCA, is amended to read:

**"30-9A-522. Maintenance and destruction of records.** (1) Subject to the requirements of ~~Title 2,~~

~~chapter 6, part 2~~ [sections 13 through 21], the filing office shall maintain a record of the information provided in a filed financing statement for at least 1 year after the effectiveness of the filed financing statement has lapsed under 30-9A-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(a) if the record was filed or recorded in the filing office described in 30-9A-501(1)(a), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(b) if the record was filed or recorded in the filing office described in 30-9A-501(1)(b), by using the date and time file number assigned to the initial financing statement to which the record relates.

(2) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office may immediately destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement that complies with subsection (1)."

**Section 49.** Section 30-14-1603, MCA, is amended to read:

**"30-14-1603. Department to provide for no-call list database -- rules -- inclusion of national database -- database not public record -- no cost to subscribers.** (1) The department shall provide for the operation of a database containing a list of names and telephone numbers of residential subscribers who object to receiving telephone solicitations. A residential subscriber may be listed in the database without cost to the subscriber.

(2) The department shall promulgate rules and regulations governing the state no-call database that are necessary and appropriate to fully implement the provisions of this part. The rules must include but are not limited to rules specifying:

(a) the methods by which each residential subscriber may give notice to the department or a contractor designated by the department of the residential subscriber's objection to receiving telephone solicitations or the methods by which the residential subscriber may revoke the notice;

(b) the length of time for which a notice of objection is effective and the effect of a change of telephone number on the notice;

(c) the methods by which pertinent information may be collected and added to the no-call database;

(d) the methods for obtaining access to the no-call database by any person or entity desiring to make telephone solicitations if that person or entity is required to avoid calling the residential subscribers included in the no-call database;

(e) the cost to be assessed to a person or entity that is required to obtain access to the no-call database; and

(f) other matters relating to the no-call database that the department considers desirable.

(3) If the federal communications commission establishes a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations pursuant to 47 U.S.C. 227(c)(3), the department shall include that part of the single national database that relates to Montana in the no-call database established pursuant to this section.

(4) Information contained in the no-call database established pursuant to this section may be used only for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to 30-14-1605. The information ~~may not be considered a public record~~ is confidential information as defined in [section 2] pursuant to Title 2, chapter 6 and is protected from disclosure.

(5) In April, July, October, and January of each year, the department shall make a reasonable attempt to obtain subscription listings of residential subscribers in this state who have arranged to be included on any national no-call list and add those names to the state no-call list."

**Section 50.** Section 30-17-101, MCA, is amended to read:

**"30-17-101. Electronic directory of Montana products.** (1) (a) The department of commerce shall provide an electronic directory on the internet ~~or world wide web~~ of Montana businesses that market products qualifying as made in Montana or grown in Montana, as described in subsection (5).

(b) The department may make a decision on the appropriateness of listing a business on the electronic directory based upon the content or use of the products offered by the business.

(2) (a) The electronic directory may be compiled from eligible businesses that have contacted the department of commerce and that have agreed to be listed electronically on the internet ~~or world wide web~~. Agreement by a company also means that the company grants permission for inclusion on a ~~mailing~~ distribution list pursuant to ~~2-6-109(4)~~ [section 11(1)].

(b) The department of commerce is not responsible for listing a company if that company has not

contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having products made in Montana or grown in Montana.

(3) The electronic directory may contain information allowing a potential customer to access directly a business listed in the directory by telephone, mail, or electronic links if the business works with the department of commerce to facilitate and maintain direct access.

(4) The department of commerce may not process orders for a business listed in the electronic directory and is not responsible for handling customer questions or complaints on behalf of a business listed in the electronic directory.

(5) For the purposes of this section, a product is considered made in Montana or grown in Montana if the product has 50% or greater value-added within the state.

(6) For the purposes of this section, "value-added" means a finished product that has been created, made, produced, or enhanced in Montana by Montana residents resulting in a 50% or greater value-added product."

**Section 51.** Section 32-11-107, MCA, is amended to read:

**"32-11-107. Confidentiality.** (1) The director and other employees of the department may not disclose information acquired by them in the discharge of their duties under this chapter except to the extent that disclosure of the information is required by law, other than the public records provisions of ~~Title 2, chapter 6, [section 3]~~, or is required by court order.

(2) Notwithstanding subsection (1), the department may disclose information that is confidential under subsection (1) if the department determines that disclosure of the information is necessary to promote the public interest. This subsection does not authorize the disclosure of information acquired by the department in the course of an examination of a licensee.

(3) A BIDCO may provide to a current or prospective creditor or shareholder of the BIDCO a copy of an examination report on the BIDCO made by the department under this chapter."

**Section 52.** Section 33-1-1403, MCA, is amended to read:

**"33-1-1403. Confidentiality.** (1) The statement of actuarial opinion must be provided with the annual statement in accordance with the appropriate NAIC property and casualty annual statement instructions and is

a public writing, record within the meaning of ~~2-6-104~~ [section 2].

(2) (a) Actuarial reports, work papers, and actuarial opinion summaries retained by the commissioner are trade secrets and are privileged. The materials must be given confidential treatment, are not subject to subpoena, and are not subject to discovery, and the materials are not admissible in evidence in any private civil litigation.

(b) Subsection (2)(a) does not limit the commissioner's authority to release the documents to the actuarial board for counseling and discipline if the material is required for the board's professional disciplinary proceedings and if the board establishes procedures satisfactory to the commissioner to preserve the confidentiality of the documents.

(3) This section does not limit the commissioner's authority to use the actuarial reports, work papers, actuarial opinion summaries, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

(4) The commissioner and any person who receives actuarial reports, work papers, actuarial opinion summaries, or other information while acting under the authority of the commissioner may not testify in any private civil action concerning the documents or information subject to the provisions of subsection (2).

(5) To assist in the performance of the commissioner's duties, the commissioner may provide and receive documents and information pursuant to 33-1-311.

(6) A waiver of privilege or claim of confidentiality in the actuarial reports, work papers, or actuarial opinion summaries does not result from disclosure to the commissioner under this section or result from the exchange of documents and information authorized in subsections (2)(b) and (5)."

**Section 53.** Section 33-28-108, MCA, is amended to read:

**"33-28-108. Examinations and investigations.** (1) (a) The commissioner or some competent person appointed by the commissioner shall examine the affairs, transactions, accounts, records, and assets of each captive insurance company as often as the commissioner considers advisable but no less frequently than every 5 years.

(b) The expenses and charges of the examination must be paid to the commissioner by the company or companies examined.

(2) The provisions of Title 33, chapter 1, part 4, apply to examinations conducted under this section.

(3) Except as provided in subsection (4), all examination reports, preliminary examination reports or results, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential, are not subject to subpoena, and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company or upon court order.

(4) (a) Subsection (3) does not prevent the commissioner from using information obtained pursuant to this section in furtherance of the commissioner's regulatory authority under Title 33. The commissioner may, in the commissioner's discretion, grant access to information obtained pursuant to this section to public officers having jurisdiction over the regulation of insurance in any other state or country or to law enforcement officers of this state or any other state or agency of the federal government at any time, as long as the officers receiving the information agree in writing to hold it in a manner consistent with this section.

(b) Captive risk retention group reports produced pursuant to the examination requirements of this section are public ~~writings~~ records as defined in ~~2-6-101~~ [section 2].

(5) Except as provided in subsection (6), the provisions of this section apply to all business written by a captive insurance company.

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

(7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance company in the jurisdiction in which the foreign captive insurance company is formed."

**Section 54.** Section 46-23-110, MCA, is amended to read:

**"46-23-110. Records -- dissemination.** (1) The department and the board shall keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in ~~2-6-102~~ [section 3] and this section.

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board staff member shall review the file requested and determine whether any document in the file is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.

(7) The board may limit the time and place that the records may be inspected or copied."

**Section 55.** Section 53-21-1108, MCA, is amended to read:

**"53-21-1108. (Temporary) Disclosure of information -- confidentiality.** (1) The department shall provide the Montana suicide review team with a copy of each death certificate filed with the state that lists suicide as the cause of death. The department may not charge a fee for providing the death certificate.

(2) The suicide review team may request and may receive information from:

(a) a county coroner;

(b) the state medical examiner provided for in 44-3-201;

(c) an appropriate tribal official as designated by a tribe; and

(d) a health care provider as permitted in Title 50, chapter 16, part 5 or 8, or applicable federal law.

(3) Upon request of the suicide review team, a health care provider may disclose information about a patient without the patient's authorization or without the authorization of the representative of a patient who is deceased.

(4) The suicide review team shall maintain the confidentiality of the information received pursuant to 53-21-1105 through 53-21-1110.

(5) Materials and information obtained by the suicide review team are not subject to subpoena ~~or to the requirements related to public records under Title 2, chapter 6, are confidential information as defined in [section 2], and are protected from disclosure under [section 3].~~ (Terminates June 30, 2016--sec. 16, ch. 353, L. 2013.)"



**Section 56.** Section 61-6-157, MCA, is amended to read:

**"61-6-157. Creation of online motor vehicle liability insurance verification system.** (1) The department, in cooperation with the commissioner of insurance, shall establish an accessible common carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or operator with motor vehicle liability policy requirements under 61-6-103, 61-6-301, and 61-6-302 and facilitate or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

(2) The department may contract with a private vendor or vendors to establish and maintain the system.

(3) The system must:

(a) send requests to insurers for verification of motor vehicle liability insurance using electronic services established by the insurers, through the internet, world wide web, or a similar proprietary or common carrier electronic system in compliance with the specifications and standards of the insurance industry committee on motor vehicle administration and other applicable industry standards;

(b) include appropriate provisions to secure its data against unauthorized access and to maintain a record of all requests and responses;

(c) be accessible, without fee, to authorized personnel of the department, the courts, law enforcement personnel, county treasurers, and authorized agents under the provisions of 61-3-116;

(d) interface, wherever possible, with existing department and law enforcement systems;

(e) receive insurance data file transfers from insurers under specifications and standards set forth in subsection (3)(a) to identify vehicles that are not covered by an insurance policy;

(f) provide a means by which low-volume insurers that are unable to deploy an online interface with the system can report insurance policy data to the department or its designee for inclusion in the system;

(g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of self-insurance under 61-6-143, a surety or indemnity bond under 61-6-137 or 61-6-301, or a deposit of cash or securities under 61-6-138;

(h) be available 24 hours a day, 7 days a week, subject to reasonable allowances for scheduled maintenance or temporary system failures, to verify the insurance status of any vehicle in a manner prescribed by the department; and

(i) be used only for information-gathering and educational purposes until the completion of an appropriate

testing period of not less than 6 months.

(4) The provisions of ~~Title 2, chapter 6, parts 1 and 2, [sections 1 through 20]~~ do not apply to the information contained in the verification system.

(5) Every insurer shall cooperate with the department in establishing and maintaining the system and shall provide access to motor vehicle liability policy status information to verify liability coverage:

(a) for a vehicle insured by that company that is registered in this state; and

(b) if available, for a vehicle that is insured by that company or that is operated in this state and that is the subject of an accident investigation regardless of where the vehicle is registered."

**Section 57.** Section 61-11-510, MCA, is amended to read:

**"61-11-510. Prerequisites to disclosure.** (1) Prior to the disclosure of personal information or highly restricted personal information, as provided in 61-11-507, 61-11-508, or 61-11-509, the department shall require the requester to complete and submit an application, in a form prescribed by the department, identifying the requester and specifying the statutorily recognized uses for which the personal information or highly restricted personal information is being sought.

(2) The department shall require the requester to provide identification acceptable to the department.

(3) (a) The department shall collect the appropriate fees paid by the requester and shall determine the amount of the fees in accordance with 61-3-101, 61-11-105, and this subsection (3), and as appropriate, in accordance with the terms of a contract between the department and the requester.

(b) The department shall ensure that fees established by policy or contract:

(i) recover the department's cost and expenses as provided in ~~2-6-110(2)~~ [section 4] and 61-3-101;

(ii) include an additional amount necessary to compensate the department for costs associated with developing and maintaining the database from which information is requested; and

(iii) incorporate, when applicable, the convenience fee established under 2-17-1103.

(c) Except as provided in 61-11-105(5)(b) and subsection (3)(d) of this section, the department shall charge a fee to any person, including a representative of a federal, state, or local government entity or member of the news media who requests information under this section.

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the state tax appeal board, any legislative branch agency or committee, or any criminal

justice agency, as defined in 44-5-103."

**Section 58.** Section 81-2-115, MCA, is amended to read:

**"81-2-115. Confidentiality of information collected -- exceptions.** (1) Except as provided in subsections (2) through (4), all information regarding the testing of any livestock that is owned by or in the possession or custody of a livestock producer, livestock dealer as defined in 81-8-213, or livestock market as defined in 81-8-213 that is collected by the department:

(a) must be held confidential by the department and its employees;

(b) is not a public writing as described in 2-6-101 and is exempt from the public disclosure provisions of Title 2, chapter 6 record or public information as defined in [section 2] and is exempt from disclosure; and

(c) is not subject to discovery or introduction into evidence in any civil action.

(2) For the purposes of this section, "livestock" has the meaning provided in 81-2-702.

(3) The administrator, appointed pursuant to 81-1-301, may disclose information collected by the department from individual livestock producers, livestock dealers, or livestock markets for the purposes of the department's animal health programs whenever in the administrator's judgment the disclosure will assist in the implementation of the animal health programs. The administrator may disclose the information to another governmental entity pursuant to the conditions described in subsection (4) or if the governmental entity confirms in writing that the entity will maintain the confidentiality of the information.

(4) Animal disease diagnostic tests that identify the owner of the animal tested may not be disclosed unless:

(a) the administrator determines that disclosure is necessary to prevent the spread of an animal disease or to protect the public health;

(b) the owner gives written permission to disclose the information;

(c) the information is disclosed in actions or administrative proceedings commenced under the provisions of Title 81, chapter 2, 4, 5, 6, 8, 9, or 30;

(d) disclosure is required by subpoena or court order; or

(e) the information is disclosed to a law enforcement agency in connection with the investigation or prosecution of criminal offenses.

(5) Upon release by the administrator or the board of any information to any other governmental entity

or to any person, the administrator shall:

(a) notify the person to whom the information refers or pertains that the release has been made and the name of the governmental entity or person to whom the information was released; and

(b) provide to the person to whom the information refers a copy or summary of the information contained in the release."

**Section 59. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 2-6-101. Definitions.
- 2-6-102. Citizens entitled to inspect and copy public writings.
- 2-6-103. Filing and copying fees.
- 2-6-104. Records of officers open to public inspection.
- 2-6-105. Removal of public records.
- 2-6-106. Possession of records.
- 2-6-107. Proceedings to compel delivery of records.
- 2-6-108. Attachment and warrant to enforce.
- 2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.
- 2-6-110. Electronic information and nonprint records -- public access -- fees.
- 2-6-111. Custody and reproduction of records by secretary of state.
- 2-6-112. Concealment of public hazards prohibited -- concealment of information related to settlement or resolution of civil suits prohibited.
- 2-6-201. Purpose.
- 2-6-202. Definitions.
- 2-6-203. Secretary of state's powers and duties -- rulemaking authority.
- 2-6-204. State records committee approval.
- 2-6-205. Preservation of public records.
- 2-6-206. Protection and storage of essential records.
- 2-6-207. Certified copies of public records.
- 2-6-208. Records committee -- composition and meetings.
- 2-6-211. Transfer and storage of public records.

- 2-6-212. Disposal of public records.
- 2-6-213. Agency responsibilities and transfer schedules.
- 2-6-214. Department of administration -- powers and duties.
- 2-6-301. Definitions.
- 2-6-302. Official records management -- powers and duties.
- 2-6-303. Ownership of records -- transfer.
- 2-6-304. Outgoing officials -- records management duties.
- 2-6-307. Certified copies of official records.
- 2-6-401. Definitions.
- 2-6-402. Local government records committee -- creation.
- 2-6-403. Duties and responsibilities.
- 2-6-404. Rulemaking authority.
- 2-6-405. Destruction of local government public records prohibited prior to offering -- central registry -- notification.
- 2-6-501. Definitions.
- 2-6-502. Protection of social security numbers -- compliance.
- 2-6-503. Extensions.
- 2-6-504. Notification of breach of security of data system.

**Section 60. Codification instruction.** (1) [Sections 1 through 27] are intended to be codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1 through 27].

(2) [Section 28] is intended to be codified as an integral part of Title 2, chapter 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to [section 28].

**Section 61. Coordination instruction.** If both House Bill No. 74 and [this act] are passed and approved, then [section 25 of this act] must be amended as follows:

**"NEW SECTION. Section 25. Definitions.** As used in [sections 25 through 27], the following definitions apply:

- (1) "Breach of the security of a data system" or "breach" means the unauthorized acquisition of

computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of a state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) "Individual" means a human being.

(3) "Person" means an individual, a partnership, a corporation, an association, or a public organization of any character.

(4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:

(i) a social security number ~~or tax identification number~~;

(ii) a driver's license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa; ~~or~~

(iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account;

(iv) medical record information as defined in 33-19-104;

(v) a taxpayer identification number; or

(vi) an identity protection personal identification number issued by the United States internal revenue service.

(b) The term does not include publicly available information from federal, state, local, or tribal government records.

(5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) "State agency" means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) "Third party" means:

- (a) a person with a contractual obligation to perform a function for a state agency; or
- (b) a state agency with a contractual or other obligation to perform a function for another state agency."

**Section 62. Coordination instruction.** If both House Bill No. 74 and [this act] are passed and approved, then [section 27 of this act] must be amended as follows:

"NEW SECTION. **Section 27. Notification of breach of security of data system.** (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

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

compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) A state agency or third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information officer at the department of administration and to the attorney general's consumer protection office an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If a notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer and the consumer protection office."

**Section 63. Coordination instruction.** If both House Bill No. 448 and [this act] are passed and approved and if both contain a section that amends 2-3-221, then House Bill No. 448 is void.

**Section 64. Coordination instruction.** If both House Bill No. 28 and [this act] are passed and approved, then the reference in House Bill No. 28 to "2-6-102, 2-6-110" in [section 1(1)(a)] must be changed to "[sections 3 through 5 of House Bill No. 123]".

**Section 65. Coordination instruction.** If both House Bill No. 608 and [this act] are passed and approved, then the reference in House Bill No. 608 to "2-6-102" in [section 6(3)] must be changed to "[section 3 of House Bill No. 123]".

**Section 66. Coordination instruction.** If both Senate Bill No. 399 and [this act] are passed and approved, then the reference in Senate Bill No. 399 to "2-6-102 and 2-6-104" in [section 13] must be changed to [section 3 of House Bill No. 123]".



**Section 67. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 8(1) of House Bill No. 119] must be amended as follows:

"(1) Information provided or developed under [sections 1 through 9] for an own risk and solvency assessment or ORSA summary report and in the possession of or control of the commissioner or any other person under [sections 1 through 9] is recognized as proprietary and containing trade secrets. The information is confidential by law information as provided in [section 2 of House Bill No. 123] and privileged, is not admissible as in evidence in any civil action, and is not subject to subpoena, discovery, ~~the provisions of 2-6-102;~~ or the provisions of the Freedom of Information Act, 5 U.S.C. 552."

**Section 68. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 8(8) of House Bill No. 119] must be amended as follows:

"(8) Information in the possession of or control of the NAIC or a third-party consultant pursuant to [sections 1 through 9] is confidential by law information as provided in [section 2 of House Bill No. 123] and privileged, is not admissible in evidence in any private civil action, and is not subject to ~~2-6-102;~~ subpoena; or discovery."

**Section 69. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 15(1) of House Bill No. 119] must be amended as follows:

"(1) Except as provided in subsection (9), a company's confidential information is confidential information as provided in [section 2 of House Bill No. 123] ~~confidential~~ and privileged, and is not subject to subpoena; or discovery, ~~or public information requests under 2-6-102 or~~ and is not admissible in evidence in any private civil action."

**Section 70. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 31(1) of House Bill No. 119], amending 33-2-116(1), must be amended as follows:

"(1) Documents, materials, and other information in the possession or control of the commissioner that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1104(3)(l), 33-2-1104(3)(m), 33-2-1111, and 33-2-1113 ~~must be~~ are confidential by law information as provided in [section

2 of House Bill No. 123] and privileged, are not subject to ~~2-6-102~~, subpoena, or discovery, and are not admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, and other information to further any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which the documents, materials, or other information pertains unless the commissioner, after giving notice and an opportunity to be heard to the insurer and the insurer's affiliates who would be affected, determines that the interest of policyholders, shareholders, or the public would be served by the publication. On a determination that the interest of policyholders, shareholders, or the public would be served, the commissioner may publish all or any part of the documents, materials, or other information in a manner that the commissioner considers appropriate."

**Section 71. Coordination instruction.** If both House Bill No. 119 and [this act] are passed and approved, then [section 31(7) of House Bill No. 119], amending 33-2-1116(7), must be amended as follows:

"(7) Documents, materials, and other information in the possession or control of the NAIC pursuant to [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section are confidential by law information as provided in [section 2 of House Bill No. 123] and privileged, are not admissible in evidence in a private civil action, and are not subject to ~~2-6-102~~, subpoena, or discovery."

**Section 72. 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.

- END -

I hereby certify that the within bill,  
HB 0123, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015.

HOUSE BILL NO. 123

INTRODUCED BY D. JONES

BY REQUEST OF THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE

AN ACT GENERALLY REVISING AND REORGANIZING MONTANA PUBLIC RECORDS LAWS; UPDATING DEFINITIONS AND PROVIDING NEW DEFINITIONS; CLARIFYING ACCESS TO PUBLIC INFORMATION; PROVIDING SAFETY AND SECURITY EXCEPTIONS; PROVIDING A PROCEDURE FOR PUBLIC INFORMATION REQUESTS; ALLOWING FEES FOR PUBLIC INFORMATION REQUESTS; ALLOWING SPECIAL FEES FOR CERTAIN INFORMATION; EMPHASIZING THE DISPOSITION OF PUBLIC RECORDS ACCORDING TO RETENTION SCHEDULES; UPDATING THE REQUIREMENTS FOR ESSENTIAL RECORDS; CLARIFYING THE PROHIBITION ON DISSEMINATING DISTRIBUTION LISTS; REVISING THE RECORDS MANAGEMENT DUTIES OF THE SECRETARY OF STATE; REQUIRING COLLABORATION BETWEEN THE DEPARTMENT OF ADMINISTRATION AND THE SECRETARY OF STATE; EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE RECORDS COMMITTEE; PROVIDING POWERS AND DUTIES OF THE MONTANA HISTORICAL SOCIETY FOR MANAGING HISTORIC RECORDS AND CONSTITUTIONAL OFFICER RECORDS; CLARIFYING AGENCY RESPONSIBILITIES FOR RECORDS MANAGEMENT; REVISING MEMBERSHIP AND DUTIES OF THE LOCAL GOVERNMENT RECORDS COMMITTEE; REDUCING THE NOTICE REQUIREMENTS BEFORE DESTRUCTION OF CERTAIN LOCAL GOVERNMENT RECORDS; UPDATING PROTECTIONS OF PERSONAL INFORMATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-3-212, 2-3-221, 2-3-301, 2-15-2017, 5-11-203, 7-4-2614, 7-5-2132, 7-5-4124, 7-11-1007, 13-1-303, 13-21-228, 15-1-103, 15-1-521, 15-62-209, 17-8-403, 18-4-126, 19-2-403, 19-17-111, 22-1-211, 30-9A-522, 30-14-1603, 30-17-101, 32-11-107, 33-1-1403, 33-28-108, 46-23-110, 53-21-1108, 61-6-157, 61-11-510, AND 81-2-115, MCA; AND REPEALING SECTIONS 2-6-101, 2-6-102, 2-6-103, 2-6-104, 2-6-105, 2-6-106, 2-6-107, 2-6-108, 2-6-109, 2-6-110, 2-6-111, 2-6-112, 2-6-201, 2-6-202, 2-6-203, 2-6-204, 2-6-205, 2-6-206, 2-6-207, 2-6-208, 2-6-211, 2-6-212, 2-6-213, 2-6-214, 2-6-301, 2-6-302, 2-6-303, 2-6-304, 2-6-307, 2-6-401, 2-6-402, 2-6-403, 2-6-404, 2-6-405, 2-6-501, 2-6-502, 2-6-503, AND 2-6-504, MCA.