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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the Department of Justice

A Bill for an Act entitled: "The Identity Theft Protection Act; providing an effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1.** DEFINITIONS. For the purposes of this part, the following terms shall have the following meanings:

1. The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.
2. "Consumer" means an individual.
3. "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.
4. "Credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:
  - a) credit or insurance to be used primarily for personal, family, or

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household purposes;

b) employment purposes; or

c) any other purpose authorized under section 15 U.S.C. 1681b.

5. "Security freeze" means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumers credit report or any information derived from it without the express authorization of the consumer. If a security freeze is in place, such a report or information may not be released to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumers credit report.

6. "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

7. "Proper identification" means information sufficient to verify identity.

NEW SECTION. **Section 2.** Election of placement of security freeze on credit report; procedure

1. A consumer may elect to place a security freeze on his or her credit report by making a request:

(a) in writing by regular or certified mail to a consumer reporting agency; or

(b) directly to the consumer reporting agency through a secure electronic connection. Consumer reporting agencies shall make a secure electronic method of requesting a security freeze available within 1 (one) year of this Act's effective date.

2. A consumer reporting agency which receives a valid request, including the \$3 fee, from a consumer requesting a security freeze shall notify all other consumer reporting agencies within twenty-four hours of receiving the request.

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Upon receipt of a notice pursuant to this subsection, a consumer reporting agency shall comply with all of the provisions of this Act for no additional fees.

3. A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving a request from the consumer. Except, that if as a part of this request, a consumer notifies a consumer reporting agency that they have been notified of a security breach involving their personal information or are a victim of identity theft, the consumer reporting agency shall place a security freeze on a consumer's credit report no later than twenty-four (24) hours after receiving written or electronic notice from a consumer.

4. The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of his credit for a specific party or period of time.

5. If the consumer wishes to allow his consumer report to be accessed for a specific party or period of time while a freeze is in place, he shall contact the consumer reporting agency via regular or certified mail, telephone, or a secure electronic method and request that the freeze be temporarily lifted, and provide all of the following:

- (a) proper identification;
- (b) the unique personal identification number or password provided by the consumer reporting agency pursuant to subsection C of this part; and
- (c) the proper information regarding the third party who is to receive the consumer report or the time period for which the consumer report shall be available to users of the consumer report.

6. A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a consumer report pursuant to subsection 4 of this part shall comply with the request no later than three business days after receiving the request or at the earliest time required by any other state, whichever is earlier.

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7. A consumer reporting agency shall develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the Electronic Signatures in Global and National Commerce Act [E-Sign] for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection 4 in an expedited manner. A consumer reporting agency shall develop these procedures within one year of this Act's effective date.

8. A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer report only in the following cases:

(a) Upon consumer request, pursuant to sub 4 or 10 of this part; or

(b) If the consumer report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer report pursuant to this paragraph, the consumer reporting agency shall notify the consumer in writing at least five business days prior to removing the freeze on the consumer report.

9. If a third party requests access to a consumer report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer does not allow his consumer report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

10. If a third party requests access to a consumer credit report or information derived from it on which a security freeze is in effect for the purpose of receiving, extending, or otherwise utilizing the credit therein, and not for the sole purpose of account review, the consumer credit report agency must notify the consumer that an attempt has been made to access the credit report.

11. A security freeze shall remain in place until the consumer requests that the

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security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides both of the following:

- a.) proper identification, and
- b.) the unique personal identification number or password provided by the consumer reporting agency pursuant to of subsection 3.

12. A consumer reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

13. A consumer reporting agency may not suggest or otherwise state or imply to a third party that the consumer's security freeze reflects a negative credit score, history, report or rating.

14. Notice of Rights. At any time that a consumer is required to receive a summary of rights required under section 609 of the federal "Fair Credit Reporting Act," 15 U.S.C. § 1681g, the following notice shall be included:

Montana Consumers Have the Right to Obtain a Security Freeze.

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to Montana law.

The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties or period of time after the

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freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

- (1) The unique personal identification number or password provided by the consumer reporting agency;
- (2) Proper identification to verify your identity; and
- (3) The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three business days or less, if the request is made electronically, after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, a few days before actually applying for new credit.

You have a right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer reporting agency or a user of your credit report.

15. The provisions of this part do not apply to the use of a consumer report by the following:

- a.) a person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to

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assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt.

b) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under subsection 4 for purposes of facilitating the extension of credit or other permissible use.

c) any person acting pursuant to a court order, warrant, or subpoena.

d) any federal, state or local agency which administers a program for establishing and enforcing child support obligations.

e) any federal, state or local agency or its agents or assigns acting to investigate fraud.

f) any federal, state or local agency or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities.

g) a person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act.

h) a check services company or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payments.

i) a demand deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a demand deposit account at the inquiring bank or financial institution.

16. Fees. (a) A consumer reporting agency shall not charge a fee to a consumer who has been the victim of identity theft or has been notified of a security breach involving their personal information.

(b) The consumer reporting agency receiving the initial request may charge a one-time administration fee, not to exceed \$3 (three), to a consumer who elects to place a security freeze on that consumer's credit report. A consumer may not be charged for any other security freeze services, except as described in subsection(c), including

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but not limited to the removal or temporary lifting of a security freeze.

(c) A consumer may be charged a reasonable fee, not to exceed \$5, if the consumer fails to retain the original personal identification number provided by the consumer reporting agency and must be reissued the same or a new personal identification number.

### 17. Violations; Penalties.

If a consumer reporting agency erroneously, whether by accident or design, violates the security freeze by providing access to credit information that has been placed under a security freeze, the affected consumer is entitled to:

- 1) Notification within five business days of the release of the information, including specificity as to the information released and the third party recipient of the information.
- 2) File a complaint with the Federal Trade Commission and Montana Office of Consumer Protection and Victim Services.
- 3) In a civil action against the consumer reporting agency recover:
  - a) injunctive relief to prevent or restrain further violation of the security freeze, and/or
  - b) a civil penalty in an amount not to exceed \$10,000 for each violation plus any damages available under other civil laws, and
  - c) reasonable expenses, court costs, investigative costs, and attorneys fees.

**NEW SECTION. Section 3. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 4. Effective date.** This act is effective on July 1, 2007.

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