

HOUSE BILL NO. 123

INTRODUCED BY D. JONES

BY REQUEST OF THE EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND REORGANIZING MONTANA PUBLIC  
6 RECORDS LAWS; UPDATING DEFINITIONS AND PROVIDING NEW DEFINITIONS; CLARIFYING ACCESS  
7 TO PUBLIC INFORMATION; PROVIDING ~~PRIVACY~~ SAFETY AND SECURITY EXCEPTIONS; PROVIDING A  
8 PROCEDURE FOR PUBLIC INFORMATION REQUESTS; ALLOWING FEES FOR PUBLIC INFORMATION  
9 REQUESTS; ALLOWING SPECIAL FEES FOR CERTAIN INFORMATION; EMPHASIZING THE DISPOSITION  
10 OF PUBLIC RECORDS ACCORDING TO RETENTION SCHEDULES; UPDATING THE REQUIREMENTS FOR  
11 ESSENTIAL RECORDS; CLARIFYING THE PROHIBITION ON DISSEMINATING DISTRIBUTION LISTS;  
12 REVISING THE RECORDS MANAGEMENT DUTIES OF THE SECRETARY OF STATE; REQUIRING  
13 COLLABORATION BETWEEN THE DEPARTMENT OF ADMINISTRATION AND THE SECRETARY OF STATE;  
14 EXPANDING THE MEMBERSHIP AND DUTIES OF THE STATE RECORDS COMMITTEE; PROVIDING  
15 POWERS AND DUTIES OF THE MONTANA HISTORICAL SOCIETY FOR MANAGING HISTORIC RECORDS  
16 AND CONSTITUTIONAL OFFICER RECORDS; CLARIFYING AGENCY RESPONSIBILITIES FOR RECORDS  
17 MANAGEMENT; REVISING MEMBERSHIP AND DUTIES OF THE LOCAL GOVERNMENT RECORDS  
18 COMMITTEE; REDUCING THE NOTICE REQUIREMENTS BEFORE DESTRUCTION OF CERTAIN LOCAL  
19 GOVERNMENT RECORDS; UPDATING PROTECTIONS OF PERSONAL INFORMATION; PROVIDING  
20 RULEMAKING AUTHORITY; AMENDING SECTIONS 2-3-212, 2-3-221, 2-3-301, 2-15-2017, 5-11-203, 7-4-2614,  
21 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,  
22 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,  
23 46-23-110, 53-21-1108, 61-6-157, 61-11-510, AND 81-2-115, MCA; AND REPEALING SECTIONS 2-6-101,  
24 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,  
25 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,  
26 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  
27 2-6-504, MCA."

28  
29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
30



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

4

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

6            (1) "CONFIDENTIAL INFORMATION" MEANS INFORMATION THAT IS ACCORDED CONFIDENTIAL STATUS OR IS  
 7 PROHIBITED FROM DISCLOSURE AS PROVIDED BY APPLICABLE LAW. THE TERM INCLUDES INFORMATION THAT IS:

8            (A) CONSTITUTIONALLY PROTECTED FROM DISCLOSURE BECAUSE AN INDIVIDUAL PRIVACY INTEREST CLEARLY  
 9 EXCEEDS THE MERITS OF PUBLIC DISCLOSURE;

10            (B) RELATED TO JUDICIAL DELIBERATIONS IN ADVERSARIAL PROCEEDINGS;

11            (C) NECESSARY TO MAINTAIN THE SECURITY AND INTEGRITY OF SECURE FACILITIES OR INFORMATION SYSTEMS  
 12 OWNED BY OR SERVING THE STATE; AND

13            (D) DESIGNATED AS CONFIDENTIAL BY STATUTE OR THROUGH JUDICIAL DECISIONS, FINDINGS, OR ORDERS.

14            ~~(1)~~(2) "Constitutional officer" means the governor, lieutenant governor, attorney general, secretary of  
 15 state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials  
 16 of the executive branch of government.

17            (3) "CONSTITUTIONAL OFFICER RECORD" MEANS A PUBLIC RECORD PREPARED, OWNED, USED, OR RETAINED BY  
 18 A CONSTITUTIONAL OFFICER.

19            ~~(2)~~(4) "Essential record" means a public record immediately necessary to:

20            (a) respond to an emergency or disaster;

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

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

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

25            ~~(3)~~(5) "Executive branch agency" means a department, board, commission, office, bureau, or other public  
 26 authority of the executive branch of state government.

27            ~~(4)~~(6) "Historic record" means a public record found by the state archivist to have permanent  
 28 administrative or historic value to the state.

29            ~~(5)~~(7) "Local government" means a city, town, county, consolidated city-county, SPECIAL DISTRICT, or  
 30 school district or a subdivision of one of these entities.

1           ~~(6)~~(8) "Local government records committee" means the committee provided for in [section 22].

2           ~~(7)~~(9) "Permanent record" means a public record designated for long-term or permanent retention.

3           ~~(8)~~(10) "Public agency" means ~~any political subdivision, including a municipality, county, school district,~~  
4 ~~LOCAL GOVERNMENT and any agency or department of the state of Montana~~ THE EXECUTIVE, LEGISLATIVE, AND  
5 JUDICIAL BRANCHES OF MONTANA STATE GOVERNMENT, A POLITICAL SUBDIVISION OF THE STATE, A LOCAL GOVERNMENT,  
6 AND ANY AGENCY, DEPARTMENT, BOARD, COMMISSION, OFFICE, BUREAU, DIVISION, OR OTHER PUBLIC AUTHORITY OF THE  
7 EXECUTIVE, LEGISLATIVE, OR JUDICIAL BRANCH OF THE STATE OF MONTANA.

8           ~~(9)~~(11) "Public information" means information, ~~regardless of physical form or characteristics, relating~~  
9 ~~to the conduct of the public's business and prepared, owned, used, or retained by any public agency~~ PREPARED,  
10 OWNED, USED, OR RETAINED BY ANY PUBLIC AGENCY RELATING TO THE TRANSACTION OF OFFICIAL BUSINESS,  
11 REGARDLESS OF FORM, EXCEPT FOR CONFIDENTIAL INFORMATION THAT MUST BE PROTECTED AGAINST PUBLIC  
12 DISCLOSURE UNDER APPLICABLE LAW.

13           ~~(10)~~(12) "Public officer" means any person who has been elected or appointed as an officer of state or  
14 local government.

15           ~~(11)~~(13) "Public record" means public information that is:

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

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

19           ~~(12)~~(14) "Records manager" means an individual designated by a public agency to be responsible for  
20 coordinating the efficient and effective management of the agency's public records and information.

21           ~~(13)~~(15) "State records committee" means the state records committee provided for in [section 15].

22  
23           NEW SECTION. Section 3. Access to public information -- **privacy SAFETY and security exceptions**  
24 -- MONTANA HISTORICAL SOCIETY EXCEPTION. (1) ~~Every~~ EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (3), EVERY  
25 person has a right to examine and obtain a copy of any public information of this state, ~~except for information that~~  
26 is constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of  
27 public disclosure or as otherwise expressly prohibited by statute.

28           (2) A public officer may withhold from public scrutiny information relating to ~~individual privacy or individual~~  
29 ~~or public safety or the security of public facilities, including public schools, jails, correctional facilities, private~~  
30 ~~correctional facilities, and prisons, if release of the information may jeopardize~~ JEOPARDIZES the safety of facility

1 personnel, the public, students in a public school, or inmates of a facility. ~~Security features that may be protected~~  
 2 ~~under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building~~  
 3 ~~materials, alarm system plans, surveillance techniques, and facility staffing plans, including staff numbers and~~  
 4 ~~locations.~~ A public officer may not withhold from public scrutiny any more information than is required to protect  
 5 ~~an individual privacy interest or safety or security interest~~ INDIVIDUAL OR PUBLIC SAFETY OR THE SECURITY OF PUBLIC  
 6 FACILITIES.

7 ~~(3) The provisions of this section do not apply to collections of the Montana historical society when~~  
 8 ~~restrictions on access have been imposed by collection creators or donors and the collections do not contain~~  
 9 ~~public information.~~

10 (3) THE MONTANA HISTORICAL SOCIETY MAY HONOR RESTRICTIONS IMPOSED BY PRIVATE RECORD DONORS AS  
 11 LONG AS THE RESTRICTIONS DO NOT APPLY TO PUBLIC INFORMATION. ALL RESTRICTIONS MUST EXPIRE NO LATER THAN  
 12 50 YEARS FROM THE DATE THE PRIVATE RECORD WAS RECEIVED. UPON THE EXPIRATION OF THE RESTRICTION, THE  
 13 PRIVATE RECORDS WILL BE MADE ACCESSIBLE TO THE PUBLIC.

14  
 15 NEW SECTION. Section 4. Public information requests -- fees. (1) A person may request public  
 16 information from a public agency. A public agency shall make the means of requesting public information  
 17 accessible to all persons.

18 (2) Upon receiving a request for public information, a public agency shall respond in a timely manner to  
 19 the requesting person ~~with an estimate of the time it will take to fulfill the request and any fees that may be~~  
 20 ~~charged pursuant to subsection (3)~~ BY:

21 (A) MAKING THE PUBLIC INFORMATION MAINTAINED BY THE PUBLIC AGENCY AVAILABLE FOR INSPECTION AND  
 22 COPYING BY THE REQUESTING PERSON; OR

23 (B) PROVIDING THE REQUESTING PERSON WITH AN ESTIMATE OF THE TIME IT WILL TAKE TO FULFILL THE REQUEST  
 24 IF THE PUBLIC INFORMATION CANNOT BE READILY IDENTIFIED AND GATHERED AND ANY FEES THAT MAY BE CHARGED  
 25 PURSUANT TO SUBSECTION (3).

26 (3) A public agency may charge a fee for fulfilling a public information request. ~~The~~ EXCEPT WHERE A FEE  
 27 IS OTHERWISE PROVIDED FOR BY LAW, THE fee may not exceed the actual costs directly incident to fulfilling the  
 28 request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include  
 29 the time required to gather public information. THE PUBLIC AGENCY MAY REQUIRE THE REQUESTING PERSON TO PAY  
 30 THE ESTIMATED FEE PRIOR TO IDENTIFYING AND GATHERING THE REQUESTED PUBLIC INFORMATION.

1           (4) A PUBLIC AGENCY IS NOT REQUIRED TO ALTER OR CUSTOMIZE PUBLIC INFORMATION TO PROVIDE IT IN A FORM  
 2 SPECIFIED TO MEET THE NEEDS OF THE REQUESTING PERSON.

3           (5) IF A PUBLIC AGENCY AGREES TO A REQUEST TO CUSTOMIZE A RECORDS REQUEST RESPONSE, THE COSTS  
 4 OF THE CUSTOMIZATION MAY BE INCLUDED IN THE FEES CHARGED BY THE AGENCY.

5           ~~(4)~~(6) (a) The secretary of state is authorized to charge fees under this section. The fees must be set  
 6 and deposited in accordance with 2-15-405. The fees must be collected in advance.

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

10  
 11           NEW SECTION. Section 5. Special fees allowable for certain information. (1) In addition to the fee  
 12 allowed under [section 4], the department of revenue may charge an additional fee as reimbursement for the cost  
 13 of developing and maintaining the property valuation and assessment system database from which the  
 14 information is requested. The fee must be charged to persons, federal agencies, state agencies, and other  
 15 entities requesting the database or any part of the database from any department property valuation and  
 16 assessment system. The fee may not be charged to the governor's office of budget and program planning, the  
 17 state tax appeal board, or any legislative body or its members or staff.

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

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

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

26  
 27           NEW SECTION. Section 6. Management of public records -- disposal and destruction. (1) (a) Each  
 28 public officer is responsible for properly managing the public records within the public officer's possession or  
 29 control through an established records management plan that satisfies the requirements of this chapter.

30           (b) Executive branch agencies shall manage public records according to the provisions of [sections 13

1 through 21] and the rules and guidelines established by the secretary of state, the state records committee, and  
 2 the Montana historical society.

3 (c) Local governments shall manage public records according to the provisions of [sections 22 through  
 4 24] and the rules and guidelines established by the secretary of state, the local government records committee,  
 5 and the Montana historical society.

6 (d) Pursuant to 5-2-503 and 5-11-105, the legislative council shall administer the records management  
 7 plan for the legislative branch. The legislative branch ~~may seek assistance from~~ SHALL COOPERATE WITH the  
 8 secretary of state, the state records committee, the local government records committee, and the Montana  
 9 historical society ~~regarding~~ IN THE development, implementation, and administration of the legislative records  
 10 management plan USING [SECTIONS 13 THROUGH 21] AS GUIDANCE.

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

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

17  
 18 **NEW SECTION. Section 7. Preservation of public records -- possession of public records.** (1) All  
 19 public records are and remain the property of the ~~state~~ PUBLIC AGENCY POSSESSING THE RECORDS. The public  
 20 records must be delivered by outgoing public officers and employees to their successors and must be preserved,  
 21 stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of  
 22 this chapter.

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

28  
 29 **NEW SECTION. Section 8. Written notice of denial -- civil action -- costs to plaintiff PREVAILING**  
 30 **PARTY in certain actions to enforce constitutional OR STATUTORY rights.** (1) A public agency that denies an

1 information request to release information or records shall provide a written explanation for the denial.

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

5 (3) A ~~plaintiff~~ ~~PERSON WHOSE ORIGINAL INFORMATION REQUEST WAS DENIED ALLEGING A DEPRIVATION OF~~  
6 ~~RIGHTS~~ who prevails in an action brought in district court to enforce the ~~plaintiff's~~ ~~PERSON'S~~ rights under Article II,  
7 section 9, of the Montana constitution ~~OR UNDER THE PROVISIONS OF [SECTIONS 1 THROUGH 24]~~ ~~may~~ ~~MUST~~ ~~MAY~~ be  
8 awarded costs and reasonable attorney fees.

9

10 NEW SECTION. **Section 9. Certified copies of records -- historic records and constitutional**  
11 **officer records -- EXCEPTION.** (1) A person may request a certified copy of a public record from a public agency  
12 subject to the provisions of [section 3]. The public agency may charge a fee for the certified copy in accordance  
13 with [section 4].

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

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

19 (4) PURSUANT TO 2-15-403, THIS SECTION DOES NOT APPLY TO CERTIFIED COPIES PROVIDED BY THE SECRETARY  
20 OF STATE FOR INFORMATION CONTAINED IN THE SECRETARY OF STATE'S CORPORATE AND UNIFORM COMMERCIAL CODE  
21 ELECTRONIC FILING SYSTEM.

22

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

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

1  
2 **NEW SECTION. Section 11. Prohibition on dissemination or use of distribution lists -- exceptions**

3 **-- penalties.** (1) Except as provided in subsections (3) through (9), to protect the privacy of those who deal with  
4 state and local government:

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

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

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

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

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

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

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

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

17 (d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37,  
18 chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through  
19 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

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

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

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

24 (7) This section does not apply to ~~a corporate information list developed by the secretary of state~~  
25 ~~containing the name, address, registered agent, officers, and directors of business, nonprofit, religious,~~  
26 ~~professional, and close corporations authorized to do business in this state~~ THE SECRETARY OF STATE'S ELECTRONIC  
27 FILING SYSTEM DEVELOPED PURSUANT TO 2-15-404 AND CONTAINING CORPORATE AND UNIFORM COMMERCIAL CODE  
28 INFORMATION.

29 (8) This section does not apply to the use by the public employees' retirement board of a list of  
30 board-administered retirement system participants to send materials on behalf of a retiree organization formed



1 for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the  
 2 Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not  
 3 released to the organization.

4 (9) THIS SECTION DOES NOT APPLY TO LISTS OF INDIVIDUALS WHO SIGN ATTENDANCE SHEETS OR SIGN-IN SHEETS  
 5 AT A HEARING OR MEETING OF A PUBLIC AGENCY.

6 ~~(9)(10)~~ This section does not apply to a public school providing lists of graduating students to  
 7 representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

8 ~~(10)(11)~~ A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

9  
 10 **NEW SECTION. Section 12. Concealment of public hazards prohibited -- concealment of**

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

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

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

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

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

24 (6) This section does not apply to:

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

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

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

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

1 the court in which the case was filed.

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

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

10

11 **NEW SECTION. Section 13. Secretary of state -- powers and duties -- rulemaking authority.** (1)

12 To ensure the proper management and safeguarding of public records, the secretary of state shall:

13 (a) establish guidelines based on accepted industry standards for managing public records;

14 (b) upon request of another executive branch agency, review, analyze, and make recommendations  
15 regarding executive branch agency filing systems and procedures;

16 (c) operate the state records center for the purpose of storing and servicing public records not retained  
17 in office space;

18 (d) provide information and training materials for all phases of efficient and effective records  
19 management;

20 (e) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies;

21 (f) consult with the department of administration pursuant to [section 14];

22 (g) adopt rules regarding management of public records;

23 (h) adopt rules to implement the objectives of the state records committee and local government records  
24 committee; and

25 (i) upon request, assist and advise in the establishment of records management procedures in the  
26 legislative and judicial branches of state government and provide services similar to those available to the  
27 executive branch.

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

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

8           (2) The department of administration, in consultation with the secretary of state, shall approve all  
 9 acquisitions of executive branch agency records management equipment or systems used to electronically  
 10 capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure  
 11 compatibility with the standards developed under subsection (1).

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

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

- 18           (a) representatives of:  
 19           (i) the department of administration;  
 20           (ii) the legislative auditor;  
 21           (iii) the attorney general;  
 22           (iv) the secretary of state;  
 23           (v) the Montana historical society;  
 24           (vi) THE GOVERNOR;  
 25           ~~(vi)~~(vii) the clerk of the supreme court; and  
 26           ~~(vii)~~(viii) the state chief information officer; and  
 27           (b) five members representing executive branch agencies designated pursuant to subsections (4) and  
 28 (5).

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

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

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

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

10 (6) The committee shall meet at least quarterly.

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

14  
15 **NEW SECTION. Section 16. State records committee duties and responsibilities.** The purpose of  
16 the state records committee is to act as a resource for executive branch agencies and others by staying at the  
17 forefront of records management best practices. The committee shall:

18 (1) gather and disseminate information on all phases of records management;

19 (2) advise the secretary of state in developing records management standards, guidelines, and training  
20 materials;

21 (3) develop guidelines to help agencies identify, maintain, and secure their essential records;

22 (4) serve as a forum for continuing collaboration among records management, information technology,  
23 and legal professionals throughout state agencies;

24 (5) make recommendations to the secretary of state for rulemaking regarding public records  
25 management;

26 (6) regularly review existing public records laws and make recommendations to the secretary of state  
27 regarding pursuing statutory change; and

28 (7) report biennially to the governor and, as provided in 5-11-210, the legislature on the activities of the  
29 committee, improvements in records management in state government, aspects of records management requiring  
30 further improvement, and committee recommendations and plans for further improvement.

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**NEW SECTION. 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.

**NEW SECTION. 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.

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

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

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

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

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

21  
22            **NEW SECTION. Section 20. Permanent records -- agency responsibilities -- state records center.**

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

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

1 The state records center may charge fees to cover the cost of records storage and servicing.

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

6  
7 **NEW SECTION. Section 21. Agency records management duties.** Each department head shall  
8 administer the executive branch agency's records management function and shall:

9 (1) coordinate all aspects of the agency records management function in accordance with procedures  
10 prescribed by the secretary of state and the state records committee;

11 (2) analyze records inventory data and examine and compare all inventories within the agency to  
12 minimize duplication of records;

13 (3) review and approve records disposal requests for submission to the retention and disposition  
14 subcommittee;

15 (4) review established records retention schedules to ensure they are complete and current and make  
16 recommendations to the secretary of state and the state records committee regarding minimal retentions for all  
17 copies of public records within the agency;

18 (5) incorporate records management requirements into the agency information technology plan provided  
19 for in 2-17-523;

20 (6) ensure that all agency employees receive appropriate and ongoing records management training;  
21 and

22 (7) after considering guidance from the state records committee regarding records manager  
23 qualifications, officially designate a qualified agency records manager to manage the functions provided for in  
24 this section.

25  
26 **NEW SECTION. Section 22. Local government records committee -- composition and meetings.**

27 (1) There is a local government records committee.

28 (2) The committee consists of the following eight members:

29 (a) the state archivist;

30 (b) the state records manager;

- 1 (c) a representative of the department of administration;
- 2 (d) two local government records managers appointed by the director of the Montana historical society;
- 3 (e) two local government records managers appointed by the secretary of state; and
- 4 (f) a person representing the Montana state genealogical society, appointed by the secretary of state,
- 5 who shall serve as a volunteer.

6 (3) Committee members subject to appointment shall hold office for a period of 2 years beginning

7 January 1 of the year following their appointment.

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

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

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

11 officer.

12 (7) Except for the member appointed in subsection (2)(f), members of the committee not serving as part

13 of their compensated government employment must be compensated in accordance with 2-18-501 through

14 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government

15 employment may not receive additional compensation, but the employing governmental entity shall furnish, in

16 accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred

17 in attending committee meetings.

18

19 **NEW SECTION. Section 23. Local government records committee -- duties and responsibilities.**

20 The local government records committee shall:

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

22 schedules;

23 (2) appoint a subcommittee, known as the local government records destruction subcommittee, to handle

24 requests for disposal of records. The subcommittee consists of the state archivist, one of the local government

25 records managers, and the representative of the department of administration. Unless specifically authorized by

26 statute or by the retention and disposition schedule, a local government public record may not be destroyed or

27 otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request

28 for the disposal or destruction of local government records must be submitted to the subcommittee by the entity

29 concerned. If there is not unanimous approval of the subcommittee, the issue of the disposition of a record must

30 be referred to the local government records committee for approval. When approval is obtained from the



1 subcommittee or from the local government records committee for the disposal of a record, the local government  
 2 records committee shall consider the inclusion of a new category of record for which a disposal request is not  
 3 required and shall update the schedule as necessary.

4 (3) establish a retention and disposition schedule for categories of records for which a disposal request  
 5 is not required. The local government records committee shall publish the retention and disposition schedules.  
 6 Updates to those schedules, if any, must be published at least annually.

7 (4) develop guidance for local governments to identify, maintain, and secure their essential records;

8 (5) respond to requests for technical advice on matters relating to local government records; and

9 (6) provide leadership and coordination in matters affecting the records of multiple local governments.

10  
 11 **NEW SECTION. Section 24. Disposal of local government public records prohibited prior to**

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

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

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

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

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

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

29  
 30 **NEW SECTION. Section 25. Definitions.** As used in [sections 25 through 27], the following definitions

1 apply:

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

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

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

7 (2) "Individual" means a human being.

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

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

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

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

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

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

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

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

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

28 (7) "Third party" means:

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

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

1  
2           **NEW SECTION. Section 26. Protection of personal information -- compliance -- extensions.** (1)  
3 Each state agency that maintains the personal information of an individual shall develop procedures to protect  
4 the personal information while enabling the state agency to use the personal information as necessary for the  
5 performance of its duties under federal or state law.

6           (2) The procedures must include measures to:  
7           (a) eliminate the unnecessary use of personal information;  
8           (b) identify the person or state agency authorized to have access to personal information;  
9           (c) restrict access to personal information by unauthorized persons or state agencies;  
10          (d) identify circumstances in which redaction of personal information is appropriate;  
11          (e) dispose of documents that contain personal information in a manner consistent with other record  
12 retention requirements applicable to the state agency;

13          (f) eliminate the unnecessary storage of personal information on portable devices; and  
14          (g) protect data containing personal information if that data is on a portable device.

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

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

23  
24           **NEW SECTION. Section 27. Notification of breach of security of data system.** (1) (a) Upon  
25 discovery or notification of a breach of the security of a data system, a state agency that maintains computerized  
26 data containing personal information in the data system shall make reasonable efforts to notify any person whose  
27 unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized  
28 person.

29          (b) The notification must be made without unreasonable delay, consistent with the legitimate needs of  
30 law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the

1 breach and to restore the reasonable integrity of the data system.

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

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

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

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

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

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

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

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

23 (5) A STATE AGENCY OR A THIRD PARTY THAT IS REQUIRED TO ISSUE A NOTIFICATION TO AN INDIVIDUAL  
24 PURSUANT TO THIS SECTION SHALL SIMULTANEOUSLY SUBMIT TO THE STATE'S CHIEF INFORMATION OFFICER AT THE  
25 DEPARTMENT OF ADMINISTRATION AN ELECTRONIC COPY OF THE NOTIFICATION AND A STATEMENT PROVIDING THE DATE  
26 AND METHOD OF DISTRIBUTION OF THE NOTIFICATION. THE ELECTRONIC COPY AND STATEMENT OF NOTIFICATION MUST  
27 EXCLUDE ANY INFORMATION THAT IDENTIFIES THE PERSON WHO IS ENTITLED TO RECEIVE NOTIFICATION. IF A NOTIFICATION  
28 IS MADE TO MORE THAN ONE PERSON, A SINGLE COPY OF THE NOTIFICATION THAT INCLUDES THE NUMBER OF PEOPLE WHO  
29 WERE NOTIFIED MUST BE SUBMITTED TO THE CHIEF INFORMATION OFFICER.

30

1            **NEW SECTION. Section 28. Custody and reproduction of certain records by secretary of state.**

2        (1) The secretary of state is charged with the custody of:

3            (a) the enrolled copy of the constitution;

4            (b) all the acts and resolutions passed by the legislature;

5            (c) the journals of the legislature;

6            (d) the great seal;

7            (e) ~~all books, records, parchments, maps, and papers~~ DOCUMENTS kept or deposited in the secretary of  
8 state's office pursuant to law.

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

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

16           ~~(4) The secretary of state shall prepare enlarged typed or photographic copies of the records whenever  
17 their production is required by law.~~

18           ~~————(5) At least two copies must be made of all records reproduced as provided for in subsection (2). The  
19 secretary of state shall place one copy in a fireproof storage place and shall retain the other copy in the office with  
20 suitable equipment for displaying a record by projection to not less than its original size and for preparing copies  
21 of the record for persons entitled to copies.~~

22           ~~————(6) All duplicates of records must be identified and indexed.~~

23  
24           ~~———— **NEW SECTION. Section 29. Filing and copying fees -- exceptions.** (1) The secretary of state shall  
25 charge and collect fees for filing and copying services.~~

26           ~~————(2) A member of the legislature or a state or county officer may not be charged for a search relative to  
27 matters pertaining to the duties of the member's or officer's office or for a certified copy of any law or resolution  
28 passed by the legislature relative to the member's or officer's official duties.~~

29           ~~————(3) The secretary of state may not charge a fee, other than as authorized in [section 4], for providing  
30 public information.~~

1 ~~\_\_\_\_\_ (4) Fees must be collected in advance and are not refundable.~~

2 ~~\_\_\_\_\_ (5) Fees authorized by this section must be set and deposited in accordance with 2-15-405.~~

3

4 **SECTION 29. SECTION 2-3-212, MCA, IS AMENDED TO READ:**

5 **"2-3-212. Minutes of meetings -- public inspection.** (1) Appropriate minutes of all meetings required  
6 by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of  
7 a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an  
8 official recording is made, a written record of the meeting must also be made and must include the information  
9 specified in subsection (2).

10 (2) Minutes must include without limitation:

11 (a) the date, time, and place of the meeting;

12 (b) a list of the individual members of the public body, agency, or organization who were in attendance;

13 (c) the substance of all matters proposed, discussed, or decided; and

14 (d) at the request of any member, a record of votes by individual members for any votes taken.

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

18 (4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall  
19 ensure that accurate and appropriate minutes MINUTES TAKEN IN COMPLIANCE WITH SUBSECTION (2) are kept of the  
20 closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for  
21 inspection except pursuant to a court order."

22

23 **SECTION 30. SECTION 2-3-221, MCA, IS AMENDED TO READ:**

24 **"2-3-221. Costs to plaintiff prevailing party in certain actions to enforce constitutional right to**  
25 **know.** A plaintiff person who alleges a violation and ALLEGING A DEPRIVATION OF RIGHTS who prevails in an action  
26 brought in district court to enforce the plaintiff's PERSON'S rights under Article II, section 9, of the Montana  
27 constitution ~~may~~ must MAY be awarded costs and reasonable attorney fees."

28

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

30 **"2-3-301. Agency to accept public comment electronically -- dissemination of electronic mail**

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

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

7 (a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

8 (b) the telephone directory of state agencies published by the department of administration;

9 (c) any notice of agency existence, purpose, and operations published on the internet ~~world-wide-web,~~  
 10 ~~popularly known as a "website", used by the agency;~~ or

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

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

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

19 (5) As used in this section, "agency" means a department, division, bureau, office, board, commission,  
 20 authority, or other agency of the executive branch of state government."

21

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

23 **"2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and**  
 24 **records -- criminal liability for unauthorized disclosure -- report to legislature.** (1) There is a domestic  
 25 violence fatality review commission in the department of justice.

26 (2) The commission shall:

27 (a) examine the trends and patterns of domestic violence-related fatalities in Montana;

28 (b) educate the public, service providers, and policymakers about domestic violence fatalities and  
 29 strategies for intervention and prevention; and

30 (c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities

1 due to domestic violence.

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

4 (a) representatives from state departments that are involved in issues of domestic abuse;

5 (b) representatives of private organizations that are involved in issues of domestic abuse;

6 (c) medical and mental health care providers who are involved in issues of domestic abuse;

7 (d) representatives from law enforcement, the judiciary, and the state bar of Montana;

8 (e) representatives of Montana Indian tribes;

9 (f) other concerned citizens; and

10 (g) a member of the legislature who serves on either the house judiciary committee or the senate  
11 judiciary committee.

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

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

18 (6) Upon written request from the commission, a person who possesses information or records that are  
19 necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the  
20 commission with the information and records. A person who provides information or records upon request of the  
21 commission is not criminally or civilly liable for providing information or records in compliance with this section.

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

24 (8) The records of the commission are confidential INFORMATION AS DEFINED IN [SECTION 2] and are  
25 ~~exempt from the provisions of Title 2, chapter 6 protected from disclosure under [section 3]~~. The records are not  
26 subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are  
27 reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall  
28 disclose conclusions and recommendations upon request but may not disclose information, records, or data that  
29 are otherwise confidential. The commission may not use the information, records, or data for purposes other than  
30 those designated by subsections (2)(a) and (2)(c).



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

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

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

13

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

15 **"5-11-203. Distribution of session laws -- ~~inspection~~ examination of journals.** (1) Immediately after  
16 the session laws are published, the legislative services division shall distribute them.

17 (2) The legislative services division shall make the house and senate journals available for ~~inspection~~  
18 examination or copying by the public as provided in ~~Title 2, chapter 6, part 4~~ [sections 1 through 12]. The  
19 legislative services division may publish the journals in an electronic format.

20 (3) The following entities may receive the number of copies of session laws listed at no cost:

21 (a) to the library of congress, eight copies;

22 (b) to the state library, two copies;

23 (c) to the state historical library, two copies;

24 (d) to the state law librarian, four copies for the use of the library and additional copies as may be  
25 required for exchange with libraries and institutions maintained by other states and territories and public libraries;

26 (e) to the library of each custodial institution, one copy;

27 (f) to each Montana member of congress, each United States district judge in Montana, each of the  
28 judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102, one copy;

29 (g) to any agency, board, commission, or office of the state, other than a state officer, and to any other  
30 subdivision of the state upon request and approval by the legislative council, one copy;

1 (h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of  
2 representatives from the session at which the laws were adopted, one copy;

3 (i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the  
4 Montana university system, one copy;

5 (j) to each county clerk, one copy for the use of the county; and

6 (k) to each county attorney and to each clerk of a district court, one copy."  
7

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

9 **"7-4-2614. Records of certificates of discharge from military service.** (1) It is the duty of the county  
10 clerk of any county of this state to record, without charge and in a book kept for that purpose, the certificate of  
11 discharge of an honorably discharged person who served with the United States forces upon that person's  
12 request. It is not the clerk's duty to file the certificate.

13 (2) A record of a military discharge certificate is confidential INFORMATION AS DEFINED IN [SECTION 2] and  
14 ~~exempt from the provisions of Title 2, chapter 6 is protected from disclosure under [section 3].~~ A military discharge  
15 certificate may be disclosed only to:

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

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

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

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

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

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

27 (4) For purposes of this section:

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

29 (b) "record" means to make and keep a copy from which a certified original copy can be reproduced."  
30

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

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

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

8           **"7-5-4124. Destruction of municipal records.** Upon the order of the city or town council or commission  
9 and with the written approval of the local government records destruction subcommittee provided for in ~~2-6-403~~  
10 [section 23], a city or town officer may destroy records that have met the retention period, as contained in the local  
11 government records retention and disposition schedules, and that are no longer needed by the office."  
12

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

14           **"7-11-1007. Public hearing -- resolution of intention to create special district.** (1) The governing  
15 body shall hold at least one public hearing concerning the creation of a proposed special district prior to the  
16 passage of a resolution of intention to create the special district. A resolution of intention to create a special  
17 district may be based upon a decision of the governing body as provided in 7-11-1003(1)(a) or upon a petition  
18 that contains the required number of signatures as provided in 7-11-1003(1)(b).

19           (2) The resolution must designate:

20           (a) the proposed name of the special district;

21           (b) the necessity for the proposed special district;

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

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

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

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

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

30           (h) the duration of the proposed special district.

1 (3) (a) The governing body shall publish notice of passage of the resolution of intention to create a  
 2 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  
 3 contain a notice of a hearing and the time and place where the hearing will be held.

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

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

11

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

13 **"13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election  
 14 and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an  
 15 election must be kept in the unopened packages received from the election judges for a period of 12 months. The  
 16 packages may be opened only when an order for opening is given by the proper official either for a recount  
 17 procedure or to process provisional ballots.

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

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

24 (i) contest begun;

25 (ii) recount pending; or

26 (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

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

30

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

2           **"13-21-228. Use of voter's e-mail address.** (1) A local election official shall request an e-mail address  
3 from each covered voter who registers to vote after January 1, 2014.

4           (2) An e-mail address provided by a covered voter may not be made available to the public or any  
5 individual or organization other than a state or local election official and is ~~exempt from disclosure under Title 2,~~  
6 ~~chapter 6 [section 3]~~ CONFIDENTIAL INFORMATION AS DEFINED IN [SECTION 2].

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

10

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

12           **"15-1-103. Disposal of tax records -- procedure.** (1) Notwithstanding any other provisions of law, the  
13 department may dispose of tax records more than 3 years old if the records do not have any further value or as  
14 provided in subsection (3).

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

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

23

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

25           **"15-1-521. Property valuation improvement fund.** There is an account in the state special revenue  
26 fund to be used by the department for increasing the efficiency of the property appraisal, assessment, and  
27 taxation process through improvements in technology and administration. The department shall deposit fees  
28 collected pursuant to ~~2-6-110(3)~~ [section 5] in the account."

29

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

1           **"15-62-209. Access to records.** Information that identifies the contributor, account owner, or designated  
 2 beneficiary of a family education savings account is ~~exempt from the provisions of 2-6-102 and 2-6-104 [section~~  
 3 ~~3] and any other~~ CONFIDENTIAL INFORMATION AS DEFINED IN [SECTION 2] AND IS EXEMPT FROM ANY provision of law  
 4 permitting the public ~~inspection~~ examination or copying of documents. The provisions of this section may not  
 5 prevent the release of information about a specific designated beneficiary to a higher education institution at  
 6 which the designated beneficiary is enrolled or to which the designated beneficiary has applied for admission."  
 7

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

9           **"17-8-403. False claims -- procedures -- penalties.** (1) Except as provided in subsection (2), a person  
 10 is liable to a governmental entity for a civil penalty of not less than \$5,500 and not more than \$11,000 for each  
 11 act specified in this section, plus three times the amount of damages that a governmental entity sustains, along  
 12 with expenses, costs, and attorney fees, if the person:

13           (a) knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

14           (b) knowingly makes, uses, or causes to be made or used a false record or statement material to a false  
 15 or fraudulent claim;

16           (c) conspires to commit a violation of this subsection (1);

17           (d) has possession, custody, or control of public property or money used or to be used by the  
 18 governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;

19           (e) is authorized to make or deliver a document certifying receipt of property used or to be used by the  
 20 governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property,  
 21 makes or delivers a receipt without completely knowing that the information on the receipt is true;

22           (f) knowingly buys or receives as a pledge of an obligation or debt public property of the governmental  
 23 entity from any person who may not lawfully sell or pledge the property;

24           (g) knowingly makes, uses, or causes to be made or used a false record or statement material to an  
 25 obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and  
 26 improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity; or

27           (h) as a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity,  
 28 subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or  
 29 fraudulent claim to the governmental entity within a reasonable time after discovery of the false or fraudulent  
 30 claim.

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

5 (a) The person committing the act furnished the government attorney with all information known to that  
6 person about the act within 30 days after the date on which the person first obtained the information.

7 (b) The person fully cooperated with any investigation of the act by the government attorney.

8 (c) At the time that the person furnished the government attorney with information about the act, a  
9 criminal prosecution, civil action, or administrative action had not been commenced with respect to the act and  
10 the person did not have actual knowledge of the existence of an investigation into the act.

11 (3) A person who violates the provisions of this section is also liable to the governmental entity for the  
12 expenses, costs, and attorney fees of the civil action brought to recover the penalty or damages.

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

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

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

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

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

25 or

26 (iii) the news media.

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

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

30 (i) prior to a public disclosure, voluntarily disclosed to the governmental entity the information on which

1 the allegations or transactions in a claim are based; or

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

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

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

10 (9) If a governmental entity does not intervene, the person who initiated the action has the same right  
11 to conduct the action as the government attorney would have had if the governmental entity had intervened,  
12 including the right to inspect government records and interview officers and employees of the governmental  
13 entity."

14

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

16 **"18-4-126. Public access to procurement information -- records -- retention.** (1) Procurement  
17 information is a public ~~writing~~ record and must be available to the public as provided in ~~2-6-102~~ [section 3],  
18 18-4-303, and 18-4-304.

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

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

24

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

26 **"19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters  
27 enumerated in 19-2-302.

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

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



1 years of service.

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

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

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

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

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

15 (9) The board shall enter into memoranda of understanding with the teachers' retirement system to  
16 exchange retirement system-related confidential information regarding members, former members, or retirees.  
17 A memorandum must state that:

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

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

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

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

28 (12) The board may implement third-party mailings under the provisions of ~~2-6-409~~ [section 11]. If  
29 third-party mailings are implemented, the board shall adopt rules governing means of implementation, including  
30 the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees

1 generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of  
2 participants of retirement systems or plans administered by the board.

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

8 (14) The board may by rule or otherwise delegate to the board's executive director or any other staff  
9 member any of the powers or duties conferred by law upon the board except as otherwise provided by law and  
10 except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13)  
11 or the contested case procedure of the Montana Administrative Procedure Act.

12 (15) The board shall perform other duties and may exercise the powers concerning the defined  
13 contribution plan for plan members as provided in chapter 3, part 21, of this title."  
14

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

16 **"19-17-111. Records information management.** (1) The chief or designated official of a fire company  
17 shall maintain the records provided for in 19-17-108 and 19-17-110 for each active or inactive member of the fire  
18 company.

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

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

23 **"22-1-211. Definitions.** As used in this part, the following definitions apply:

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

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

29 (3) (a) "State publication" means any information originating in or produced by the authority of a state  
30 agency or at the total or partial expense of a state agency that the agency intends to distribute outside the

1 agency, regardless of format or medium, source or copyright, license, or trademark.

2 (b) The term does not include information intended only for distribution to contractors or grantees of the  
3 agency, persons within the agency, or members of the public under ~~2-6-102~~ [section 3] or information produced  
4 by a state agency that is intended strictly for internal administrative or operational purposes."  
5

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

7 **"30-9A-522. Maintenance and destruction of records.** (1) Subject to the requirements of ~~Title 2,~~  
8 ~~chapter 6, part 2~~ [sections 13 through 21], the filing office shall maintain a record of the information provided in  
9 a filed financing statement for at least 1 year after the effectiveness of the filed financing statement has lapsed  
10 under 30-9A-515 with respect to all secured parties of record. The record must be retrievable by using the name  
11 of the debtor and:

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

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

17 (2) Except to the extent that a statute governing disposition of public records provides otherwise, the  
18 filing office may immediately destroy any written record evidencing a financing statement. However, if the filing  
19 office destroys a written record, it shall maintain another record of the financing statement that complies with  
20 subsection (1)."  
21

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

23 **"30-14-1603. Department to provide for no-call list database -- rules -- inclusion of national**  
24 **database -- database not public record -- no cost to subscribers.** (1) The department shall provide for the  
25 operation of a database containing a list of names and telephone numbers of residential subscribers who object  
26 to receiving telephone solicitations. A residential subscriber may be listed in the database without cost to the  
27 subscriber.

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

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

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

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

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

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

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

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

17 (4) Information contained in the no-call database established pursuant to this section may be used only  
 18 for the purpose of compliance with 30-14-1602 and this section or in a proceeding or action pursuant to  
 19 30-14-1605. The information ~~may not be considered a public record~~ IS CONFIDENTIAL INFORMATION AS DEFINED IN  
 20 [SECTION 2] pursuant to Title 2, chapter 6 and is protected from disclosure under [section 3].

21 (5) In April, July, October, and January of each year, the department shall make a reasonable attempt  
 22 to obtain subscription listings of residential subscribers in this state who have arranged to be included on any  
 23 national no-call list and add those names to the state no-call list."  
 24

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

26 **"30-17-101. Electronic directory of Montana products.** (1) (a) The department of commerce shall  
 27 provide an electronic directory on the internet ~~or world wide web~~ of Montana businesses that market products  
 28 qualifying as made in Montana or grown in Montana, as described in subsection (5).

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

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

5 (b) The department of commerce is not responsible for listing a company if that company has not  
 6 contacted the department, has not agreed to a listing pursuant to subsection (2), or does not qualify as having  
 7 products made in Montana or grown in Montana.

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

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

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

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

19

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

21 **"32-11-107. Confidentiality.** (1) The director and other employees of the department may not disclose  
 22 information acquired by them in the discharge of their duties under this chapter except to the extent that  
 23 disclosure of the information is required by law, other than the public records provisions of ~~Title 2, chapter 6,~~  
 24 [section 3], or is required by court order.

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

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

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**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.

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

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

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

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

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

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

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

22 (7) As a condition of licensure of a branch captive insurance company, the foreign captive insurance  
23 company shall grant authority to the commissioner for examination of the affairs of the foreign captive insurance  
24 company in the jurisdiction in which the foreign captive insurance company is formed."  
25

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

27 **"46-23-110. Records -- dissemination.** (1) The department and the board shall keep a record of the  
28 board's acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided  
29 in ~~2-6-102~~ [section 3] and this section.

30 (2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure

1 under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information  
2 in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

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

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

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

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

13 (7) The board may limit the time and place that the records may be inspected or copied."  
14

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

16 **"53-21-1108. (Temporary) Disclosure of information -- confidentiality.** (1) The department shall  
17 provide the Montana suicide review team with a copy of each death certificate filed with the state that lists suicide  
18 as the cause of death. The department may not charge a fee for providing the death certificate.

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

20 (a) a county coroner;

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

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

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

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

27 (4) The suicide review team shall maintain the confidentiality of the information received pursuant to  
28 53-21-1105 through 53-21-1110.

29 (5) Materials and information obtained by the suicide review team are not subject to subpoena ~~or to the~~  
30 ~~requirements related to public records under Title 2, chapter 6,~~ ARE CONFIDENTIAL INFORMATION AS DEFINED IN



1 [SECTION 2], and are protected from disclosure under [section 3]. (Terminates June 30, 2016--sec. 16, ch. 353,  
2 L. 2013.)"

3

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

5 **"61-6-157. Creation of online motor vehicle liability insurance verification system.** (1) The  
6 department, in cooperation with the commissioner of insurance, shall establish an accessible common  
7 carrier-based motor vehicle insurance verification system to verify the compliance of a motor vehicle owner or  
8 operator with motor vehicle liability policy requirements under 61-6-103, 61-6-301, and 61-6-302 and facilitate  
9 or monitor proof of financial responsibility filings under 61-6-133 and 61-6-134.

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

11 (3) The system must:

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

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

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

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

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

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

25 (g) provide a means to track separately or distinguish motor vehicles that are subject to a certificate of  
26 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  
27 securities under 61-6-138;

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

1 (i) be used only for information-gathering and educational purposes until the completion of an appropriate  
2 testing period of not less than 6 months.

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

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

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

8 (b) if available, for a vehicle that is insured by that company or that is operated in this state and that is  
9 the subject of an accident investigation regardless of where the vehicle is registered."  
10

10

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

12 **"61-11-510. Prerequisites to disclosure.** (1) Prior to the disclosure of personal information or highly  
13 restricted personal information, as provided in 61-11-507, 61-11-508, or 61-11-509, the department shall require  
14 the requester to complete and submit an application, in a form prescribed by the department, identifying the  
15 requester and specifying the statutorily recognized uses for which the personal information or highly restricted  
16 personal information is being sought.

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

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

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

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

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

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

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

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

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

2

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

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

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

9 (b) is not a public ~~writing as described in 2-6-101 and is exempt from the public disclosure provisions~~  
10 ~~of Title 2, chapter 6 record or public information as defined in [section 2] and is exempt from disclosure under~~  
11 ~~[section 3]~~; and

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

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

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

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

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

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

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

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

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

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

1 or to any person, the administrator shall:

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

4 (b) provide to the person to whom the information refers a copy or summary of the information contained  
5 in the release."  
6

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

- 9 2-6-101. Definitions.
- 10 2-6-102. Citizens entitled to inspect and copy public writings.
- 11 2-6-103. Filing and copying fees.
- 12 2-6-104. Records of officers open to public inspection.
- 13 2-6-105. Removal of public records.
- 14 2-6-106. Possession of records.
- 15 2-6-107. Proceedings to compel delivery of records.
- 16 2-6-108. Attachment and warrant to enforce.
- 17 2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions -- penalty.
- 18 2-6-110. Electronic information and nonprint records -- public access -- fees.
- 19 2-6-111. Custody and reproduction of records by secretary of state.
- 20 2-6-112. Concealment of public hazards prohibited -- concealment of information related to settlement or  
21 resolution of civil suits prohibited.
- 22 2-6-201. Purpose.
- 23 2-6-202. Definitions.
- 24 2-6-203. Secretary of state's powers and duties -- rulemaking authority.
- 25 2-6-204. State records committee approval.
- 26 2-6-205. Preservation of public records.
- 27 2-6-206. Protection and storage of essential records.
- 28 2-6-207. Certified copies of public records.
- 29 2-6-208. Records committee -- composition and meetings.
- 30 2-6-211. Transfer and storage of public records.

- 1 2-6-212. Disposal of public records.
- 2 2-6-213. Agency responsibilities and transfer schedules.
- 3 2-6-214. Department of administration -- powers and duties.
- 4 2-6-301. Definitions.
- 5 2-6-302. Official records management -- powers and duties.
- 6 2-6-303. Ownership of records -- transfer.
- 7 2-6-304. Outgoing officials -- records management duties.
- 8 2-6-307. Certified copies of official records.
- 9 2-6-401. Definitions.
- 10 2-6-402. Local government records committee -- creation.
- 11 2-6-403. Duties and responsibilities.
- 12 2-6-404. Rulemaking authority.
- 13 2-6-405. Destruction of local government public records prohibited prior to offering -- central registry --
- 14 notification.
- 15 2-6-501. Definitions.
- 16 2-6-502. Protection of social security numbers -- compliance.
- 17 2-6-503. Extensions.
- 18 2-6-504. Notification of breach of security of data system.

19

20 NEW SECTION. Section 60. Codification instruction. (1) [Sections 1 through 27] are intended to be

21 codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1

22 through 27].

23 (2) [~~Sections 28 and 29~~] are [SECTION 28] IS intended to be codified as an integral part of Title 2, chapter

24 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to [~~sections 28 and 29~~] [SECTION 28].

25

26 COORDINATION SECTION. SECTION 61. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 74 AND

27 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 25 OF THIS ACT] MUST BE AMENDED AS FOLLOWS:

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

29 apply:

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

1 computerized data that:

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

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

5 (2) "Individual" means a human being.

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

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

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

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

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

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

17 (v) a taxpayer identification number; or

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

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

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

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

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

30 (7) "Third party" means:

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

3

4 COORDINATION SECTION. SECTION 62. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 74 AND  
 5 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 27 OF THIS ACT] MUST BE AMENDED AS FOLLOWS:

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

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

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

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

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

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

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

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



1 develop and maintain:

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

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

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

12  
13 COORDINATION SECTION. SECTION 63. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 448 AND  
14 [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 2-3-221, THEN HOUSE BILL NO.  
15 448 IS VOID.

16  
17 COORDINATION SECTION. SECTION 64. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 28 AND  
18 [THIS ACT] ARE PASSED AND APPROVED, THEN THE REFERENCE IN HOUSE BILL NO. 28 TO "2-6-102, 2-6-110" IN [SECTION  
19 1(1)(A)] MUST BE CHANGED TO "[SECTIONS 3 THROUGH 5 OF HOUSE BILL NO. 123]".

20  
21 COORDINATION SECTION. SECTION 65. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 608 AND  
22 [THIS ACT] ARE PASSED AND APPROVED, THEN THE REFERENCE IN HOUSE BILL NO. 608 TO "2-6-102" IN [SECTION 6(3)]  
23 MUST BE CHANGED TO "[SECTION 3 OF HOUSE BILL NO. 123]".

24  
25 COORDINATION SECTION. SECTION 66. COORDINATION INSTRUCTION. IF BOTH SENATE BILL NO. 399 AND  
26 [THIS ACT] ARE PASSED AND APPROVED, THEN THE REFERENCE IN SENATE BILL NO. 399 TO "2-6-102 AND 2-6-104" IN  
27 [SECTION 13] MUST BE CHANGED TO [SECTION 3 OF HOUSE BILL NO. 123]".

28  
29 COORDINATION SECTION. SECTION 67. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 119 AND  
30 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 8(1) OF HOUSE BILL NO. 119] MUST BE AMENDED AS FOLLOWS:



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

7  
8           COORDINATION SECTION. SECTION 68. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 119 AND  
9 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 8(8) OF HOUSE BILL NO. 119] MUST BE AMENDED AS FOLLOWS:

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

14  
15           COORDINATION SECTION. SECTION 69. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 119 AND  
16 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 15(1) OF HOUSE BILL NO. 119] MUST BE AMENDED AS FOLLOWS:

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

21  
22           COORDINATION SECTION. SECTION 70. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 119 AND  
23 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 31(1) OF HOUSE BILL NO. 119], AMENDING 33-2-116(1), MUST  
24 BE AMENDED AS FOLLOWS:

25           "(1) Documents, materials, and other information in the possession or control of the commissioner that  
26 are obtained by or disclosed to the commissioner or any other person in the course of an examination or  
27 investigation made pursuant to 33-2-1115 and all information reported pursuant to 33-2-1104(3)(l),  
28 33-2-1104(3)(m), 33-2-1111, and 33-2-1113 ~~must be~~ are confidential by law information as provided in [section  
29 2 of House Bill No. 123] and privileged, are not subject to ~~2-6-102~~, subpoena; or discovery, and are not  
30 admissible in evidence in any private civil action. The commissioner is authorized to use the documents,

1 materials, and other information to further any regulatory or legal action brought as a part of the commissioner's  
2 official duties. The commissioner may not otherwise make the documents, materials, or other information public  
3 without the prior written consent of the insurer to which the documents, materials, or other information pertains  
4 unless the commissioner, after giving notice and an opportunity to be heard to the insurer and the insurer's  
5 affiliates who would be affected, determines that the interest of policyholders, shareholders, or the public would  
6 be served by the publication. On a determination that the interest of policyholders, shareholders, or the public  
7 would be served, the commissioner may publish all or any part of the documents, materials, or other information  
8 in a manner that the commissioner considers appropriate."  
9

10 COORDINATION SECTION. SECTION 71. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 119 AND  
11 [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 31(7) OF HOUSE BILL NO. 119], AMENDING 33-2-1116(7), MUST  
12 BE AMENDED AS FOLLOWS:

13 "(7) Documents, materials, and other information in the possession or control of the NAIC pursuant to  
14 [sections 10 through 16], 33-2-521 through 33-2-529, 33-2-531, 33-2-537, and this section are confidential by law  
15 information as provided in [section 2 of House Bill No. 123] and privileged, are not admissible in evidence in a  
16 private civil action, and are not subject to ~~2-6-102~~, subpoena; or discovery."  
17

18 NEW SECTION. SECTION 72. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE  
19 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS  
20 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID  
21 APPLICATIONS.

22 - END -