Title	A Bill for an Act to protect the privacy of Montana Citizens by restricting use of Social Security numbers, and providing penalties.	
Section 1	Policy. It is the purpose of the legislature to implement Article II, Section 10 of the Montana Constitution, the "Right of Privacy", by restricting the use, trade, sale, and barter, and misuse of and demands for surrendering the Social Security numbers of the citizens of Montana for purposes other than those of tax collections and payments, and for purposes of paying monies into or withdrawing funds from the federal Social Security fund. The legislature seeks to enhance privacy protections for individuals and to prevent fraudulent misuse of the Social Security account number.	The Montana Supreme Court has said there is a balancing test between the Right to Know (Article II Section 9) and the Right of Privacy (Article II Section 10). Court determines the balance. So when legislation tries to draw a bright line, there may be a problem. Apparently successful legislation leaves discretionary room for courts. There is a concern that saying legislative intent is for X to be private information may run afoul of the court's balancing act.
Section 2	**Public postings of Social Security numbers.** No agency of state government or political subdivision thereof, and no private business, entity or corporation may post another person's Social Security number where it is available to the general public or available to persons without a specific need to have access to such information. This prohibition does not prohibit a person's printing, publication or use by themselves of their own Social Security number. This prohibition includes: a. Social Security numbers printed on bills, invoices, statements or other customer account paperwork sent through the mails or posted in any public place, and b. Social Security numbers included in electronic files and databases accessible electronically or via the Internet, and c. Social Security numbers printed on any personal forms, such as account ledgers, student documents, employment documents, medical records, insurance records or any other paperwork or electronic files not kept in a secured location with availability limited to persons with a specific need to know, and d. Social Security numbers appearing on any lists of persons that is posted in any public place, or publicly-accessible place, whether printed, written or electronic.	There's a concern about the exclusions to the act being at the end. So where it says "No state agency…" – there is no reference to the exclusions for federally authorized state agencies, etc. (This usually is resolved with: "Except as provided in Section ABC,…") **There are countless situations that at present would be in violation. There is no period mentioned for public and private parties to come into compliance. – from ITSD** Current law regarding election data bases seek driver's license numbers or last 4 digits of the social security numbers and require rules that protect such information from general view. There also are provisions that allow for dissemination of public lists, which means that care must be taken to keep private information from being on those lists. The following statutes have some relevance: 13-2-108. **Rulemaking for statewide voter registration list.** (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter. (2) The rules must include but are not limited to: … (f) information security with respect to keeping from general public distribution **driver's license numbers, whole or partial social security numbers,**

		and address information protected from general disclosure pursuant to 13-2-115; … **13-2-110. (Effective July 1, 2006) Application for voter registration -- sufficiency and verification of information -- identifiers assigned for voting purposes.** (1) An individual may apply for voter registration in person or by mail … (4) Except as provided in subsection (5): (a) an applicant for voter registration shall provide the applicant's driver's license number; or (b) if the applicant does not have a driver's license, the applicant shall provide **the last four digits of the applicant's social security number.** (5) If an applicant does not have a driver's license or social security number: … **13-2-115. (Effective July 1, 2006) Certification of statewide voter registration list -- local lists to be prepared.** (1) Immediately after regular registration is closed under 13-2-301, the secretary of state shall certify the official statewide voter registration list. …. (5) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names. (6) (a) **Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:** (i) proves to the election administrator, as provided in subsection (6)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or (ii) proves to the election administrator, as provided in subsection (6)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor. **13-2-122. Charges for registers, elector lists, and mailing labels made available to public.** (1) Except as provided in subsection (2), upon written request, the secretary of state

		or a local election administrator shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, or mailing labels for registered electors. … (2) For an elector whose address information is protected from general distribution under 13-2-115(5) or (6), the secretary of state or a local election administrator may not include the elector's residential address on any register, list, or mailing labels but may list only the elector's name. **13-2-123. Election administrator to provide list of electors to secretary of state.** (1) The election administrator in each county shall provide to the secretary of state the following information, when possible, for each elector: (a) name; (b) mailing address; (c) precinct number; (d) residence address; (e) telephone number; (f) driver's license number or **last four digits of the elector's social security number;** (g) date of birth; (h) gender; (i) legislative house district; (j) date of registration; (k) whether the elector's name is on the active or inactive list of electors; and (l) whether the elector is a legally registered elector or a provisionally registered elector. (2) The information must be provided in accordance with rules adopted under 13-2-108.
Section 3	Social Security number not to be used as an account number or numeric identifier. No public or private entity may use a person's Social Security number as an account number, or as a numerical or electronic identifier for that person.	There's a concern about the exclusions to the act being at the end. So where it says "No state agency…" – there is no reference to the exclusions for federally authorized state agencies, etc. **There are countless situations that at present would be in violation. There is no period mentioned for public and private parties to come into compliance. - ITSD** Currently, federal law requires SSNs to be provided to financial institutions. Some banks, investment firms, insurers or their affiliates use SSNs as identifiers. (Helena survey)
Section 4	Sale or trade of Social Security numbers prohibited. No state agency or political subdivision of the state, nor any private corporation, business, other entity or person may sell, trade or barter the Social Security number of any	Federal law (PL 94-455) says misuse of SSN for any purpose is a violation. Unlawful disclosure or compelling disclosure is a felony.

	individual or individuals.	
Section 5	Records to be secured. Any records, whether paper or electronic, which contain the Social Security number of any individual or individuals must be secured from access by persons who do not have a specific need to access such records. At any time when such records are not both actively in use and physically supervised by a person with need to access, such records must be secured with at least one physical lock, or, if electronic, with a physical lock, a password changed monthly, or common encryption.	Definition of common encryption is recommended. **What's the expectation? 64-bit, 128-bit, 256-bit encryption? ITSD** **Password change requirements address a different problem than encryption and a physical lock addresses something else again. - ITSD** **There are countless situations that at present would be in violation. There is no period mentioned for public and private parties to come into compliance. - ITSD**
Section 6	Records to be destroyed. Any records, whether paper or electronic, which contain the Social Security number of any individual or individuals must be discarded when not needed for ongoing purpose of official government or actual private business. Such records may not be retained for simple convenience, or because of the cost or difficulty of destruction. Such paper records must be destroyed by shredding or burning, and such electronic records must be destroyed by secure wiping of the electronic media upon which they are stored. Such records may not be released from the secured care of those with an active need for the records without first destroying the records.	What is the difference between this and Section 9? Recommend combination of two, with appropriate references to: • Definition of Public Records in 2-6-202, MCA; • Secretary of State's duties regarding management and safeguarding of public records in 2-6-203, MCA, & • 2-6-205 through 2-6-214 Existing law: **30-14-1703. Record destruction.** A business shall take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable. Definition of "Records" in 30-14-1702 covers electronic data: (5) (a) "Records" means any material, regardless of the physical form, on which personal information is recorded. (b) The term does not include publicly available directories containing personal information that an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.
Section 7	Printing of Social Security number on identity cards prohibited. No state agency, political subdivision of the	**There are countless situations that at present would be in violation.**

	state, or private corporation, business, other entity or person may print the Social Security number of an individual, or require an individual to print or affix their own Social Security number, on any card, badge or other identification device used to identify the individual, including identity cards or documents required to obtain goods or service.	**There is no period mentioned for public and private parties to come into compliance. - ITSD**
Section 8	Requiring Social Security Number as a condition of providing goods or services prohibited. No state agency, political subdivision of the state, private corporation, business, other entity or person may require an individual to provide their Social Security number as a condition of sale of goods or services, or of providing goods or services. For the purpose of this Act, goods and services includes education and medical services. For the purposes of this section, it is not a defense that a person believed themselves to have the authority to demand the Social Security of another individual as a condition of providing goods or services, or that the individual's Social Security number is desired for credit analysis or credit reporting purposes. It is a defense if the person or entity is required by federal or state law to demand the Social Security number of an individual as a condition of providing goods or services.	This apparently would prevent requests for social security numbers for credit card applications, job applications (not W-2s), rental applications. Federal law requires SSNs by/for: • Internal Revenue Service • Buyers of savings bonds • Department of Defense • Banks, S&Ls, Credit Unions, securities brokers/dealers • Anyone receiving/applying for benefit paid by federal funds (PL 92-603) • AFCD benefits, Child Support Enforcement (PL 93-647) • Allowed by states for tax, public assistance, driver's license or motor vehicle registration (PL 94-455) • Food stamps (PL 96-58) • SSN of all adult members of household required when children in household apply for school lunch program (PL 97-35) • Prisoners, if convicted of felony, required to give SSNs to DHHS. • All SSNs to be given to Selective Service System for individuals required to register for draft. (PL 97-86) • Applicants for federal loans required to give SSNs (PL 97-365) • All interest-bearing account holders must provide SSN. (PL 98-67) • Persons in trade or business must file a report, including SSNs, for cash transactions > $10,000. • Payers of alimony to give SSN to IRS of spouse receiving alimony. • Tax filers must include SSN of dependents aged 5 or older (in 1990 amended to 1 yr or older).

		• Commercial motor vehicle operators required to use SSN. (PL 99-750) • Applicants for higher ed loans to submit SSN under PL 99-498. • HUD program eligibility may require SSN. • Parents must give own SSNs to state when state issues birth certificate (PL 100-485) • States/Blood donation facilities may use SSNs as identifiers. • SSN required of parent of child receiving school lunch (PL 101-147) • Officers of food/retail stores that redeem food stamps must provide SSN (PL 101-624) • If law passed after 10/1/90 requires SSN, SSN is confidential. (101-624) • SSN may be used to select jury and for federal work comp (PL 103-296) • Personal Responsibility and Work Opportunity Reconciliation Act says states to require SSN for applicants of professional/occupational license, CDL, marriage license, divorce decree, support order, paternity case, death certificates for child support enforcement and EI Tax Cr. • PL 104-208 required SSN appear on driver's license. Repealed in 1999. • SSN applicants under age 18 must provide parents' SSNs (PL 105-34) • SSN cannot be visible in mailed government checks. (PL 106-433) • Recipient of DOT funds under PL 107-87 may not disseminate SSNs obtained by state DMVs. • Federal, state, local governments may not display SSNs or derivatives on DMV-issued drivers' licenses, vehicle registrations (PL 108-458)
Section 9	Business records to be destroyed. When a business ceases to do business, and/or when any of its records are no longer actively needed, business records, including data stored electronically on electronic storage media, must be shredded or burned, or, in the case of electronic records, completely wiped clean, where they contain Social Security numbers, driver's license numbers, dates of birth, medical	Existing law: **30-14-1703. Record destruction.** A business shall take all reasonable steps to destroy or arrange for the destruction of a customer's records within its custody or control containing personal information that is no longer necessary to be retained by the business by shredding, erasing, or otherwise modifying the personal information in those records to make it unreadable or undecipherable.

	information, account balances, or credit limit information.	Definition of "Records" in 30-14-1702 covers electronic data: (5) (a) "Records" means any material, regardless of the physical form, on which personal information is recorded. (b) The term does not include publicly available directories containing personal information that an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number. **Electronic wiping is a complex business. Should specify the DOD Level 3 reference. Will place a financial/effort burden on small businesses to buy software/contract to have this done. - ITSD**
Section 10	Refusal to do business. Any person who refuses to do business with an individual because the individual will not consent to surrender of his or her Social Security number shall be considered to have committed an unfair or deceptive act or practice, which is prohibited.	The Privacy Act of 1974 requires the federal government to offer services even if a recipient does not disclose a SSN except when other federal law requires disclosure or a system of records existed and operated before 1/1/75 and required disclosure to verify an individual's identity. §552a(note) Section 7(a). The section also says any state or local government, but the 9th Circuit Court of Appeals in Dittman v. State of CA 98-16385 said that only the federal government is subject to civil remedy.
Section 11	Intent to commit harm. No person may obtain or use the Social Security number of an individual with the intent to locate or identify such individual, with the intent to physically injure or harm such individual, to illegally attempt to obtain or to obtain credit in the name of that individual, or to use the identity of such individual for any illegal purpose.	There's a concern about the exclusions to the act being at the end. Would be advisable to include, except as required by federal law … (the use of commas here raises questions about whether the injury or harm is integral to the intent).
Section 12	Criminal penalties. Any person or entity in violation of this Act may be incarcerated in the county jail for a period not to exceed one year, or may be fined an amount not to exceed $10,000, or both.	Discrepancy between misdemeanor jail time and amount of fine?
Section 13	Civil remedy. If six months shall have passed since an alleged violation of this section, and no criminal charges have been filed against any person or persons alleged to have been responsible for the violation, an individual who has been injured by having their Social Security number misused under the terms of this Act may pursue a civil action against the person or persons alleged to have been responsible for the misuse. In such an action, the individual	Doesn't mention attorneys fees.

	whose Social Security number is found to have been misused is entitled to compensatory and punitive damages.	
Section 14	Separate offenses. For the purpose of criminal penalties or civil remedies under this Act, each occurrence shall be considered to be a separate offense.	
Section 15	Exceptions. This Act does not apply to: a. Persons who or entities that are required by law to obtain Social Security numbers for income tax purposes, or for payment of monies into or out of the Social Security Trust Fund, including the Montana Department of Revenue and its employees, and b. When required by federal law, and b. Maintenance of active files for necessary law enforcement purposes by county sheriffs departments, city police departments, the Montana State Prison, and the Crime Control Division of the Department of Justice, and their full-time employees.	Probably should say "required by federal or state law" Doesn't include Department of Corrections. (DOC uses SSNs to track dispositions in criminal justice system/records.)
Section 16	Severability. (Standard severability clause.)	

NOTE: Detective Fulford of the Kalispell Police Department also is interested in a bill that would protect personal identity information on state, county, and city public data bases. The personal identity information would be available only to the agency maintaining the data base, agencies authorized by statute, and criminal justice agencies but not to the general public. This approach is an effort to prevent identity thieves from surfing public data bases on the Internet or otherwise and obtaining personal identity information of others.

As mentioned for the Gary Marbut proposal, the balancing act is: public right to know vs. individual privacy.