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As of: June 6, 2014 (10:26am)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act revising and reorganizing the public records laws; ; repealing sections 2-6-101, 2-6-102, 2-6-103, 2-6-104, 2-6-105, 2-6-106, 2-6-107, 2-6-108, 2-6-109, 2-6-110, 2-6-111, 2-6-112, 2-6-201, 2-6-202, 2-6-203, 2-6-204, 2-6-205, 2-6-206, 2-6-207, 2-6-208, 2-6-211, 2-6-212, 2-6-213, 2-6-214, 2-6-301, 2-6-302, 2-6-303, 2-6-304, 2-6-307, 2-6-401, 2-6-402, 2-6-403, 2-6-404, 2-6-405, 2-6-501, 2-6-502, 2-6-503, and 2-6-504, MCA; and providing an effective date."

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

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

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

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

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government.

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

(a) respond to an emergency or disaster;

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

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

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

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

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

(5) "Local government" means any city, town, county, consolidated city-county, school district, or subdivision of one of these entities.

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

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

(8) "Public agency" means any political subdivision, including a municipality, county, school district, and any agency or department of the state of Montana.

(9) "Public information" means information, regardless of physical form or characteristics, relating to the conduct of the public's business and prepared, owned, used, or retained by any public agency.

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

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

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

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

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

NEW SECTION. **Section 3. Access to public information -- privacy and security exceptions.** (1) Every [person] has a right to inspect and receive a copy of any public information of this state, except for information that is constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure or as otherwise expressly prohibited by statute.

(2) A [public officer] may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety

of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A [public officer] may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

(3) The provisions of this section do not apply to collections of the Montana historical society.

NEW SECTION. **Section 4. Public information requests -- fees.** (1) Every [public officer] with custody of public information shall provide a [person] an accurate copy of the information at the [person's] request, except as provided in [section 3], on payment of the fees for the copy as provided for this section. A [public officer] must allow public information to be inspected at all times during office hours.

(2) A [public agency] may charge a fee for providing copies of public information to a [person]. The fee may not exceed the actual costs directly incident to providing the [person] with a copy, including the time required to gather the public information.

NEW SECTION. **Section 5. Special fees allowable for certain information.** (1) In addition to the fees allowed under [section

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

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

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

(4) In addition to the fees allowed under [section 4], the Montana historical society may charge additional fees for copies of materials contained in its collections.

NEW SECTION. Section 6. Preservation of public records.

All public records are and remain the property of the state. The public records must be delivered by outgoing officials and employees to their successors and must be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only

in accordance with the provisions of this chapter.

NEW SECTION. **Section 7. Possession of public records -- compelling delivery -- attachment and warrant to enforce.** (1)

Each [public officer] is entitled to the possession of all [public records] pertaining to that office or in the custody of a former [public officer] by virtue of that office.

(2) If any [person] refuses or neglects to deliver any [public records] pertaining to a [public office] to the current [public officer], the [public officer] may apply, by complaint, to any district court or judge of the county where the person refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any [public records] to be delivered to the petitioners.

(3) The execution of the order and delivery of the [public records] may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a constable of the county, commanding the sheriff or constable to search for the [public records] and to take and deliver them to the plaintiff.

NEW SECTION. **Section 8. [Historic records] and [constitutional officer records] -- certified copies.** (1) The Montana historical society shall reproduce and certify copies of [historic] records and [constitutional officer] records in its possession upon the request of any [citizen].

(2) The certified copy of a [historic] record or [constitutional officer record] has the same force in law as if made by the original custodian.

NEW SECTION. **Section 9. Management of public records -- disposal and destruction.** Each [public officer] is responsible for properly managing the public records within the [public officer's] possession or control through an established records management plan. [Executive branch agencies] and [local governments?] shall manage [public records] according to the rules and guidelines established by the secretary of state, the state records committee, the local government records committee, and the Montana historical society. When a [public record] has reached the end of its retention period, the [public officer] shall ensure the record is disposed of, destroyed, or transferred according to the provisions of this chapter.

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

(2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall

look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to protect, store, back up, and recover essential records.

NEW SECTION. **Section 11. Prohibition on dissemination or use of distribution lists -- exceptions -- penalties.** (1) Except as provided in subsections (3) through (9), to protect the privacy of those who deal with state and local government:

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

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

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency.

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

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

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

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

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

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

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

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

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

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

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

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

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

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

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

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

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

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party

stipulate to an order that would violate this section.

(6) This section does not apply to:

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

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

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

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

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

(9) This section has no applicability to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Any materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

NEW SECTION. **Section 13. Secretary of state -- powers and duties -- rulemaking authority.** (1) To ensure the proper management and safeguarding of public records, the secretary of state shall:

(a) establish guidelines and adopt industry standards for managing public records;

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

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

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

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

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

(g) adopt rules regarding management of public records;

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

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

(2) In addition to the requirements under subsection (1), the secretary of state may operate a central microfilm unit that

will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state.

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

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

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

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

- (a) representatives of:
 - (i) the department of administration;
 - (ii) the legislative auditor;
 - (iii) the attorney general;
 - (iv) the secretary of state;
 - (v) the Montana historical society;
 - (vi) the clerk of the supreme court; and
 - (vii) the state chief information officer; and
- (b) five members representing executive branch agencies designated pursuant to subsections (4) and (5).

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

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

(4) To implement subsection (1)(b), the presiding officer shall develop a rotation by which each of the executive branch agencies is designated to select a representative to serve a 2-year term as a committee member. The rotation must be adopted by administrative rule and published in the Administrative Rules of Montana.

(5) The presiding officer shall establish guidelines for the heads of executive branch agencies to ensure the executive branch representatives provide a balance of perspectives from

records management, information technology, and legal professionals.

(6) The committee shall meet at least quarterly.

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

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

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

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

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

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

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

(6) regularly review existing public records laws and make recommendations to the secretary of state regarding pursuing

statutory change.

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, providing 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.

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

(2) Within 2 years after taking office as a constitutional officer, the current constitutional officer shall consult with staff members of the Montana historical society and transfer to

the Montana historical society all of the constitutional officer records of the prior officeholder that are not necessary to the current operation of that office and considered worthy of preservation.

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

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

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

(6) (a) In accordance with [section 8], the Montana historical society shall reproduce and certify copies of constitutional officer records in its possession upon application

of any person.

(b) The certified copy of a constitutional officer record has the same force in law as if made by the original custodian.

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

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

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

(4) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule.

NEW SECTION. **Section 21. Agency records management duties.**

Each department head shall administer the executive branch agency's records management function and shall:

(1) coordinate all aspects of the agency records management function, including disposition, scheduling, and transfer in accordance with procedures prescribed by the secretary of state and the state records committee;

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

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

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

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

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

(7) after considering guidance from the state records

committee, officially designate a qualified agency records custodian to manage the functions provided for in this section.

NEW SECTION. **Section 22. Local government records**

committee -- composition and meetings. (1) There is a local government records committee.

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

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of administration;

(d) two local government records custodians appointed by the director of the Montana historical society;

(e) two local government records custodians appointed by the secretary of state; and

(f) a person representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

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

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

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

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

(7) Except as provided in subsection (2)(f), members of the

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

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

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

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

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

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

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

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

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

NEW SECTION. Section 24. Disposal of local government public records prohibited prior to offering -- central registry - - notification. (1) A local government public record more than 10 years old may not be destroyed without it first being offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed

must be noticed to the entities listed in subsection (1) at least 60 days prior to disposal.

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

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

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

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

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

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

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

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

(2) "Individual" means a human being.

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

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

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

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

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

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

(5) "Redaction" means the alteration of personal information contained within data to make all or a significant part of the

data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

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

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

(7) "Third party" means:

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

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

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

(2) The procedures must include measures to:

(a) eliminate the unnecessary use of personal information;

(b) identify the person or state agency authorized to have

access to personal information;

(c) restrict access to personal information by unauthorized persons or state agencies;

(d) identify circumstances when redaction of personal information is appropriate;

(e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;

(f) eliminate the unnecessary storage of personal information on portable devices; and

(g) protect data containing personal information if that data is on a portable device.

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

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

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

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

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

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

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

(b) A state agency notified of a breach by a third party

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

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

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

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

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

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

(a) the enrolled copy of the constitution;

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

(c) the journals of the legislature;

(d) the great seal;

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

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

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

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

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

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

NEW SECTION. **Section 29. Filing and copying fees.** (1) The secretary of state shall charge and collect fees for filing and copying services.

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

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

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable.

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

Section 30. Section 2-3-301, MCA, is amended to read:

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

(2) As part of the agency action required by subsection (1), an agency shall disseminate by appropriate media its

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electronic mail address to which public comment may be made, including dissemination in:

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

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

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

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

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

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

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

{*Internal References to 2-3-301: None.*}

Section 31. Section 7-5-2132, MCA, is amended to read:

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

{*Internal References to 7-5-2132: None.*}

Section 32. Section 7-5-4124, MCA, is amended to read:

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

{*Internal References to 7-5-4124: None.*}

Section 33. Section 7-11-1007, MCA, is amended to read:

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

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

(2) The resolution must designate:

(a) the proposed name of the special district;

(b) the necessity for the proposed special district;

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

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

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

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

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

(h) the duration of the proposed special district.

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

(b) At the same time that notice is published pursuant to subsection (3)(a), the governing body shall provide a list of

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those properties subject to potential assessment, fees, or taxation under the creation of the proposed special district. The list may not be distributed or sold for use as a mailing list in accordance with ~~2-6-109~~ [section 11].

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

{*Internal References to 7-11-1007:*

7-11-1003 ok	7-11-1006 ok	7-11-1008 ok	7-11-1008 ok
7-11-1011 ok	7-11-1023 * ok	7-11-1112 ok	7-13-2512 ok}

Section 34. Section 13-1-303, MCA, is amended to read:

"13-1-303. Disposition of ballots and other election

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

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

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

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

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

{*Internal References to 13-1-303: None.*}

Section 35. Section 15-1-103, MCA, is amended to read:

"15-1-103. Disposal of tax records -- procedure. (1)

Notwithstanding any other provisions of law, the department may dispose of tax records more than 3 years old if the records do not have any further value or as provided in subsection (3).

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

(3) The department may dispose of its original tax records after those records have been reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in ~~2-6-208~~ [section 15]. The

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department shall maintain the reproduction as the public record. The reproduction or certified copy of the reproduction may be used in place of the department's original in any court or proceeding and has the same force and effect as the department's original record."

{*Internal References to 15-1-103:*
2-6-110 ok}

Section 36. Section 15-1-521, MCA, is amended to read:

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

{*Internal References to 15-1-521:*
2-6-110 ok}

Section 37. Section 15-62-209, MCA, is amended to read:

"15-62-209. Access to records. Information that identifies the contributor, account owner, or designated beneficiary of a family education savings account is exempt from the provisions of ~~2-6-102 and 2-6-104~~ [section 3] and any other provision of law permitting the public inspection or copying of documents. The provisions of this section may not prevent the release of information about a specific designated beneficiary to a higher education institution at which the designated beneficiary is

enrolled or to which the designated beneficiary has applied for admission."

{*Internal References to 15-62-209: None.*}

Section 38. Section 18-4-126, MCA, is amended to read:

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

(2) All procurement records must be retained, managed, and disposed of in accordance with the state records management program, Title 2, chapter 6.

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

{*Internal References to 18-4-126:
18-4-303 ok*}

Section 39. Section 19-2-403, MCA, is amended to read:

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

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

(3) The board shall establish uniform rules that are

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necessary to determine service credit for fractional years of service.

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

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

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

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

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

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

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

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

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

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

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

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct

hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

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

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

{*Internal References to 19-2-403:*

19-2-706 ok

19-2-715 ok

19-3-511 ok

19-3-908 ok

19-3-2104 ok}

Section 40. Section 22-1-211, MCA, is amended to read:

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

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

(2) "State agency" means any entity established or authorized by law to govern operations of the state, such as a

state office, officer, department, division, section, bureau, board, commission, council, and agency of the state and all subdivisions of each.

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

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

{*Internal References to 22-1-211:*
1-11-301 ok }

Section 41. Section 30-17-101, MCA, is amended to read:

"30-17-101. Electronic directory of Montana products.

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

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

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

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

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

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

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

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

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{*Internal References to 30-17-101:*

2-2-121 ok

30-17-102 ok

30-17-102 ok

30-17-102 ok }

Section 42. 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 ~~2-6-101~~ [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)."

{*Internal References to 33-1-1403: None.*}

Section 43. Section 33-28-108, MCA, is amended to read:

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

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

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

(3) Except as provided in subsection (4), all examination

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

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

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

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

(6) The examination for a branch captive insurance company may only be of branch business and branch operations if the

branch captive insurance company has satisfied the requirements of 33-28-107(2)(d) to the satisfaction of the commissioner.

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

{*Internal References to 33-28-108:*
33-28-109 ok}

Section 44. Section 46-23-110, MCA, is amended to read:

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

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

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

interest that clearly exceeds the merits of public disclosure.

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

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

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

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

{*Internal References to 46-23-110: None.*}

Section 45. Section 61-11-510, MCA, is amended to read:

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

(2) The department shall require the requester to provide

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identification acceptable to the department.

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

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

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

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

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

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

(d) The department may not charge a fee for information requested by the governor's office of budget and program planning, the state tax appeal board, any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103."

{*Internal References to 61-11-510:*

61-11-105 ok 61-11-507 ok 61-11-508 ok 61-11-509 ok
61-11-515 ok}

Section 46. Section 81-2-115, MCA, is amended to read:

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

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

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

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

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

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

maintain the confidentiality of the information.

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

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

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

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

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

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

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

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

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

{*Internal References to 81-2-115: None.*}

NEW SECTION. **Section 47. {standard} Repealer.** The

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following sections of the Montana Code Annotated are repealed:

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

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- 2-6-211. Transfer and storage of public records.
- 2-6-212. Disposal of public records.
- 2-6-213. Agency responsibilities and transfer schedules.
- 2-6-214. Department of administration -- powers and duties.
- 2-6-301. Definitions.
- 2-6-302. Official records management -- powers and duties.
- 2-6-303. Ownership of records -- transfer.
- 2-6-304. Outgoing officials -- records management duties.
- 2-6-307. Certified copies of official records.
- 2-6-401. Definitions.
- 2-6-402. Local government records committee -- creation.
- 2-6-403. Duties and responsibilities.
- 2-6-404. Rulemaking authority.
- 2-6-405. Destruction of local government public records prohibited prior to offering -- central registry -- notification.
- 2-6-501. Definitions.
- 2-6-502. Protection of social security numbers -- compliance.
- 2-6-503. Extensions.
- 2-6-504. Notification of breach of security of data system.

{*Internal References to 2-6-101: 2-6-202 ok 2-6-401 ok 33-1-1403 x*
33-28-108 x 81-2-115 x
Internal References to 2-6-102: 2-3-301 x 15-62-209 x 18-4-126 x
22-1-211 x 46-23-110 x
Internal References to 2-6-103: None.
Internal References to 2-6-104: 15-62-209 ok
Internal References to 2-6-105: None.
Internal References to 2-6-106: None.
Internal References to 2-6-107: None.
Internal References to 2-6-108: None.
Internal References to 2-6-109: 7-11-1007 x 19-2-403 x 30-17-101 x
Internal References to 2-6-110: 2-6-103 ok 15-1-521 x 61-11-510 x
Internal References to 2-6-111: None.

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Internal References to 2-6-112: None.
Internal References to 2-6-201: None.
Internal References to 2-6-202: None.
Internal References to 2-6-203: None.
Internal References to 2-6-204: None.
Internal References to 2-6-205: None.
Internal References to 2-6-206: 2-6-211 ok
Internal References to 2-6-207: None.
Internal References to 2-6-208: 2-6-111 ok 2-6-111 ok 2-6-202 ok
2-6-302 ok 15-1-103
Internal References to 2-6-211: 2-6-206 ok
Internal References to 2-6-212: None.
Internal References to 2-6-213: None.
Internal References to 2-6-214: None.
Internal References to 2-6-301: None.
Internal References to 2-6-302: None.
Internal References to 2-6-303: None.
Internal References to 2-6-304: None.
Internal References to 2-6-307: None.
Internal References to 2-6-401: None.
Internal References to 2-6-402: 2-6-302 ok 2-6-401 ok 2-6-404 ok
2-6-405 ok 13-1-303
Internal References to 2-6-403: 2-6-404 7-5-2132 7-5-4124
20-1-212 71-3-705 71-3-810
Internal References to 2-6-404: None.
Internal References to 2-6-405: None.
Internal References to 2-6-501: None.
Internal References to 2-6-502: None.
Internal References to 2-6-503: 2-6-502
Internal References to 2-6-504: None.}

NEW SECTION. **Section 48. {standard} Codification**

instruction. (1) [Sections 1 through 12] are intended to be codified as an integral part of Title 2, chapter 6, part 11, and the provisions of Title 2, chapter 6, part 11, apply to [sections 1 through 11].

(2) [Sections 13 through 21] are intended to be codified as an integral part of Title 2, chapter 6, part 12, and the provisions of Title 2, chapter 6, part 12, apply to [sections 12 through 20].

(3) [Sections 22 through 24] are intended to be codified as

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an integral part of Title 2, chapter 6, part 13, and the provisions of Title 2, chapter 6, part 13, apply to [sections 21 through 23].

(4) [Sections 25 through 27] are intended to be codified as an integral part of Title 2, chapter 6, part 15, and the provisions of Title 2, chapter 6, part 15, apply to [sections 24 through 26].

(5) [Sections 28 through 29] are intended to be codified as an integral part of Title 2, chapter 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to [sections 27 through 28].

NEW SECTION. **Section 49.** {standard} **Effective date.** [This act] is effective October 1, 2015.

- END -

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