

HOUSE BILL NO. 662

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA DRIVER PRIVACY PROTECTION ACT; REQUIRING EXPRESS CONSENT FOR DISCLOSURE TO BE OBTAINED ON A FORM PRESCRIBED BY THE DEPARTMENT; PROVIDING FOR INDIVIDUAL AND CLASS ACTION LAWSUITS AGAINST REQUESTERS WHO MISUSE DISCLOSED INFORMATION; REQUIRING THE DEPARTMENT TO MAINTAIN A LIST OF REQUESTERS; PROVIDING A DEFINITION; AND AMENDING SECTIONS 61-11-503, 61-11-506, 61-11-508, 61-11-509, 61-11-510, AND 61-11-515, MCA."

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

NEW SECTION. Section 1. Class action. (1) A person harmed by a requester who violates this part may sue the requester and may seek punitive damages, costs, and reasonable attorney fees.

(2) A class action suit against a requester who violates this part is permissible and may include an award of punitive damages, costs, and reasonable attorney fees.

Section 2. Section 61-11-503, MCA, is amended to read:

"61-11-503. Definitions. As used in this part, the following definitions apply:

(1) "Disclose" means to engage in any practice or conduct that makes available or known, by means of any communication to another person, organization, or entity, personal information contained in a motor vehicle record.

(2) "Express consent" means an affirmative authorization given in writing by a person to whom personal information pertains that specifically allows the department to release personal information to another

person, organization, or entity. Consent may be conveyed electronically if the conveyance includes an electronic signature, as defined in 30-18-102, from the person to whom the personal information pertains.

(3) "Highly restricted personal information" means an individual's photograph or image, social security number, or medical or disability information.

(4) "Motor vehicle record" means any record maintained by the department that pertains to a driver's license, commercial driver's license, driving permit, identification card, or title or registration for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle.

(5) "Person" does not mean a state agency or local government entity.

(6) (a) "Personal information" means information that identifies a person, including a person's name, address, telephone number, social security number, driver's license or identification number, date of birth, photograph or image, and medical or disability information.

(b) The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, a person's driver's license or vehicle registration status, or a vehicle's insurance status.

(7) "Record" includes all books, papers, photographs, photostats, cards, film, tapes, recordings, electronic data, printouts, or other documentary materials, regardless of physical form or characteristics.

(8) "Requester" means a person who applies for or receives a disclosure of personal information pursuant to this part."

Section 3. Section 61-11-506, MCA, is amended to read:

"61-11-506. Disclosure of personal information from motor vehicle record prohibited. (1) The department may not disclose personal information from a motor vehicle record unless the disclosure is permitted or required, as provided in 61-11-507, 61-11-508, or 61-11-509.

(2) No person may use personal information from a motor vehicle record for the purpose of marketing extended vehicle service contracts."

Section 4. Section 61-11-508, MCA, is amended to read:

1 **"61-11-508. Permitted disclosure of personal information -- specific uses.** (1) On application,
2 proof of the identity of the person requesting a record, and payment of fees required in 61-11-510, the
3 department may disclose personal information, including highly restricted personal information, from a motor
4 vehicle record to:

5 (a) the person who is the subject of the motor vehicle record; or

6 (b) a person who represents that the use of the information will be strictly limited to one or more of
7 the following:

8 (i) a federal, state, or local government agency, including a court or a law enforcement agency,
9 and any individual acting on behalf of the agency in carrying out its functions, including county government
10 elections officials verifying voter registration information and representatives of the news media for a legitimate
11 law enforcement purpose, as determined by the department; or

12 (ii) a person, organization, or entity, on the express consent of the person to whom the information
13 pertains on a form prescribed by the department.

14 (2) The department may not disclose a social security number unless:

15 (a) it is disclosed for the purposes of subtitle VI of Title 49 of the U.S.C.;

16 (b) it is disclosed to the department of public health and human services for use in administering
17 Title IV-D of the Social Security Act;

18 (c) the release of the social security number is specifically authorized by law, but only the final four
19 numbers of a social security number may be released to county government election officials verifying voter
20 registration information; or

21 (d) it is disclosed to the department of revenue for use in administering and enforcing Montana's
22 income tax laws. The department of revenue shall treat social security numbers received pursuant to this
23 subsection (2)(d) as confidential pursuant to 15-30-2618."
24

25 **Section 5.** Section 61-11-509, MCA, is amended to read:

26 **"61-11-509. Permitted disclosure of personal information, excluding highly restricted personal**
27 **information -- specific uses.** Upon application, proof of the identity of the person requesting a record, and
28 payment of the fees required in 61-11-510 and subject to the provisions of 61-11-105, the department may

1 disclose personal information, excluding highly restricted personal information, from a motor vehicle record to a
2 person who represents that the use of the personal information will be limited to one or more of the following
3 uses:

4 (1) in the normal course of business by a legitimate business or its agents, employees, or
5 contractors, but only:

6 (a) to verify the accuracy of personal information submitted by the individual to the business or its
7 agents, employees, or contractors; and

8 (b) if the submitted information is not correct or is no longer correct, to obtain the correct
9 information for the purposes of preventing fraud by pursuing legal remedies against or recovering on a debt or
10 security interest against the individual;

11 (2) by a party in interest, or the agent of a party in interest, in a civil, criminal, administrative, or
12 arbitral proceeding in any court or government agency or before any self-regulatory body, including the service
13 of process, an investigation in anticipation of litigation, and the execution or enforcement of judgments and
14 orders, or pursuant to an order of any court;

15 (3) by an insurer or insurance-support organization or a self-insured entity or its agents,
16 employees, or contractors, in connection with the following arising under insurance policies:

17 (a) the investigation of claims;

18 (b) antifraud activities;

19 (c) ratemaking; or

20 (d) underwriting;

21 (4) by an employer or its agent or insurer to obtain or verify information relating to a holder of a
22 commercial driver's license required under federal or state law;

23 (5) to conduct research activities and produce statistical reports and journalistic articles as long as
24 the personal information is not published, disclosed to a third party, or used to contact individuals;

25 (6) to provide notice to the owners of towed, abandoned, or impounded vehicles;

26 (7) for use by any licensed private investigative agency or licensed security service for any
27 purpose provided under this section;

28 (8) for use in activities pertaining to:

(a) motor vehicle or driver safety and theft;

(b) motor vehicle emissions;

(c) motor vehicle product alterations, recalls, or advisories;

(d) performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(e) removal of nonowner records from the original owner records of motor vehicle manufacturers;

(9) for any other use that is specifically related to the operation of a motor vehicle or to public safety and that is authorized by state law; and

(10) for any use by a requester who demonstrates to the department that the requester has obtained the express consent of the person on a form prescribed by the department to whom the information pertains."

Section 6. Section 61-11-510, MCA, is amended to read:

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

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

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

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

(i) recover the department's cost and expenses as provided in 2-6-1006 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 Montana tax appeal board, the department of revenue, any legislative branch agency or committee, or any criminal justice agency, as defined in 44-5-103.

(5) The department shall maintain a list of all requesters who complete and submit an application pursuant to this section that must show the scope and disposition of the request. The list must be subject to ordinary public records request laws.

Section 7. Section 61-11-515, MCA, is amended to read:

"61-11-515. Sale or disclosure of personal information by recipient. (1) A requester who receives personal information or highly restricted personal information pursuant to 61-11-507, 61-11-508, 61-11-509, or 61-11-510 may not use, sell, or disclose the information, except for a use that is specifically permitted in 61-11-507, 61-11-508, or 61-11-509.

(2) A requester who sells or discloses personal information or highly restricted personal information to a third party under this section shall create and maintain records for a period of not less than 5 years from the date of the sale or disclosure. The records must show the name, address, telephone number, and any other identifying information required by the department of the third party who bought or received the information and must document the permitted use for which the information was obtained. The records must be produced or made available for inspection at the request of the department."

NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 11, part 5, and the provisions of Title 61, chapter 11, part 5, apply to [section 1].

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