HOUSE BILL 381
By Briley

SENATE BILL 256

By Haynes

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, Part 21 and Title 56, relative to consumer credit protection and identity theft deterrence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the “Clean Credit and Identity Theft Protection Act of 2007”.

SECTION 2. Tennessee Code Annotated, Section 47-18-2102, is amended by inserting the following as new, appropriately designated subdivisions thereto and by renumbering the remaining subdivisions accordingly:

( ) "Consumer" means an individual;

( ) "Consumer report" or "credit report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

(A) Credit or insurance to be used primarily for personal, family, or household purposes, except that nothing in this part authorizes the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance;

(B) Employment purposes; or

(C) Any other purpose authorized under 15 U.S.C. § 1681b;

( ) "Consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the

practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties;

( ) "Credit card" has the same meaning as in § 103 of the federal Truth in Lending Act;

( ) "Credit header information" means written, oral, or other communication of any information by a consumer reporting agency regarding the social security number of the consumer, or any derivative thereof, and any other personally identifiable information of the consumer that is derived using any nonpublic personal information, except the name, address, and telephone number of the consumer if all are listed in a residential telephone directory available in the locality of the consumer;

( ) "Credit history" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used, or collected in whole or in part, for the purpose of determining personal lines insurance premiums or eligibility for coverage;

( ) "Debit card" means any card or device issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account holding assets of the consumer at such financial institution, for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 18, Part 21, is amended by inserting sections 4 through 8 below as new, appropriately designated sections thereto.

SECTION 4.

(a) As used in this section, unless the context otherwise requires:

(1) "Reviewing the account" or "account review" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements; and

(2) “Security freeze” means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer reporting agency from releasing all or any part of the consumer’s credit report or any information derived from it without the express authorization of the consumer. If a security freeze is in place, such a report or information may not be released to a third party without prior express authorization from the consumer. This subdivision (a)(2) does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer’s credit report.

(b)

(1) A consumer may elect to place a security freeze on such consumer’s credit report by:

(A) Making a request by mail;

(B) Making a request by telephone by providing certain personal identification; or

(C) Making a request directly to the consumer reporting agency through a secure web site or secure electronic mail connection. Credit reporting agencies shall make a secure web site or secure electronic mail method of requesting a security freeze available by no later than July 1, 2007.

(2) A consumer reporting agency shall place a security freeze on a consumer’s credit report no later than three (3) business days after receiving a request by mail. Requests by telephone, secure web site or secure electronic

mail shall be honored within fifteen (15) minutes after the request has been completed. On and after July 1, 2008, a consumer reporting agency shall place a security freeze on a consumer's credit report no later than one (1) business day after receiving a request by mail.

(3) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within three (3) business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the release of such consumer's credit for a specific party or period of time, or when permanently lifting the freeze. On and after July 1, 2008, the consumer reporting agency shall send such a written confirmation and unique personal identification number of password to the consumer no later than one (1) business day after placing the freeze.

(4) If the consumer wishes to allow such consumer's credit report to be accessed for a specific party or period of time while a freeze is in place, the consumer shall contact the consumer reporting agency via telephone, mail, secure website or secure electronic mail, with a request that the freeze be temporarily lifted, and provide the following:

(A) Proper identification;

(B) The unique personal identification number or password provided by the consumer reporting agency pursuant to subdivision (b)(3); and

(C) The proper information regarding the third party who is to receive the credit report or the time period for which the report shall be available to users of the credit report.

(5) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (b)(4) shall comply with the request no later than three (3) business days after receiving the request by mail or no later than fifteen (15) minutes if after receiving the request by electronic mail or by telephone. On and after July 1, 2008, a consumer reporting agency shall honor such a request no later than one (1) business day after receiving the request by mail.

(6) A consumer reporting agency shall develop procedures involving the use of telephone, fax, or, upon the consent of the consumer in the manner required by the federal Electronic Signatures in Global and National Commerce Act for legally required notices, by the Internet, e-mail, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report pursuant to subdivision (b)(4) in an expedited manner.

(7) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

(A) Upon consumer request, pursuant to subdivision (b)(4) or (10);

(B) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subdivision (b)(7)(B), the consumer reporting agency shall notify the consumer in writing five (5) business days prior to removing the freeze on the consumer's credit report.

(8) If a third party requests access to a consumer credit report on which a security freeze is in effect, and this request is in connection with an application

for credit or any other use, and the consumer does not allow such consumer's credit report to be accessed for that specific party or period of time, the third party may treat the application as incomplete.

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

(10) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three (3) business days of receiving a request for removal from the consumer, who provides both of the following:

(A) Proper identification, and

(B) The unique personal identification number or password provided by the consumer reporting agency pursuant to subdivision (b)(3). On and after July 1, 2008, a consumer reporting agency shall remove a security freeze within one (1) business day after receiving such a request.

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

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

(13) The provisions of this section do not apply to the use of a consumer credit report by any of the following:

(A) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt;

(B) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted pursuant to subdivision (b)(4) for purposes of facilitating the extension of credit or other permissible use;

(C) Any person acting pursuant to a court order, warrant, or subpoena;

(D) A state or local agency which administers a program for establishing and enforcing child support obligations;

(E) The department of health or its agents or assigns acting to investigate fraud;

(F) The department of revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(G) A consumer reporting agency for its database or file that consists entirely of the following, and is used solely for, one (1) or more of the following: criminal record information, tenant screening, employment screening, and fraud prevention or detection;

(H) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act;

(I) Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; or

(J) Any person or entity for the purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request.

(14) A consumer shall not be charged for any security freeze services, including but not limited to the placement or lifting of a security freeze. A consumer, however, may be charged no more than five dollars ($5.00) for a one-time reissue or for each subsequent reissue of the same or a new personal identification number if the consumer fails to retain the original personal identification number provided by the agency.

(c) At any time that a consumer is required to receive a summary of rights required pursuant to § 609 of the federal Fair Credit Reporting Act or pursuant to state law, the following notice shall be included:

"Tennessee Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report at no charge to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a "security freeze" on your credit report pursuant to state law.

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

The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five (5) business days (and by July 1, 2008, no later than one (1) business day) you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the release of your credit report for a specific party, parties or period of time after the freeze

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

1. The unique personal identification number or password provided by the consumer reporting agency.

2. Proper identification to verify your identity.

3. The proper information regarding the third party or parties who are to receive the credit report or the period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to lift temporarily a freeze on a credit report shall comply with the request no later than three (3) business days after receiving the request by mail and no later than fifteen (15) minutes after receiving the request by telephone or by electronic mail. (By July 1, 2008, the consumer reporting agency must temporarily lift the freeze within one (1) business day of receiving the request by mail.)

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

If you are actively seeking a new credit, loan, utility, telephone, or insurance account, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, with enough advance notice before you apply for new credit for the lifting to take effect. If you lift the freeze by mail, until July 1, 2008, you should lift the freeze at least three (3) business days before applying, and on or after July 1, 2008, you should lift the freeze at least one

(1) business day before applying. If you lift the freeze electronically or by telephone, you should lift the freeze at least fifteen (15) minutes before applying for a new account.

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

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

(1) Notification within five (5) business days of the release of the information, including specificity as to the information released and the third party recipient of the information;

(2) File a complaint with the Federal Trade Commission, the office of the attorney general and reporter, and the department of commerce and insurance; and

(3) In a civil action against the consumer reporting agency, recover:

(A) Injunctive relief to prevent or restrain further violation of the security freeze;

(B) A civil penalty in an amount not to exceed ten thousand dollars ($10,000) for each violation plus any damages available pursuant to other applicable laws;

(C) Reasonable expenses, court costs, investigative costs, and attorney's fees; and

(D) Punitive damages;

(4) Each violation of the security freeze shall be counted as a separate incident for purposes of imposing penalties pursuant to this section.

SECTION 5. A consumer reporting agency may furnish information from a consumer's credit header only to those who have a permissible purpose to obtain the consumer's consumer report pursuant to 15 U.S.C. § 1681(b), and that permissible purpose applies to the request for the credit header information.

SECTION 6.

(a) A person who has learned or reasonably suspects that such person has been the victim of identity theft may contact the local law enforcement agency that has jurisdiction over such person's actual residence, which shall take a police report of the matter, and provide the complainant with a copy of that report. Notwithstanding the fact that jurisdiction may lie elsewhere for investigation and prosecution of a crime of identity theft, the local law enforcement agency shall take the complaint and provide the complainant with a copy of the complaint and may refer the complaint to a law enforcement agency in that different jurisdiction.

(b) Nothing in this section shall interfere with the discretion of a local police department to allocate resources for investigations of crimes. A complaint filed under this section is not required to be counted as an open case for purposes such as compiling open case statistics.

SECTION 7.

(a) A person who reasonably believes that such person is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move for an expedited judicial determination of such person's factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial

determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(b) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(c) Upon making a determination of factual innocence, the court shall provide the consumer written documentation of such order.

(d) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) The administrative office of the courts shall develop a form for use in issuing an order pursuant to this section.

(f) The department of safety shall establish and maintain a database of individuals who have been victims of identity theft and who have received determinations

of factual innocence. The department of safety shall provide a victim of identity theft or such victim's authorized representative access to the data base in order to establish that the individual has been a victim of identity theft. Access to the data base shall be limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

(g) The department of safety shall establish and maintain a toll free number to provide access to information under subdivision (f).

(h) In order for a victim of identity theft to be included in the database established pursuant to subsection (f), the victim shall submit to the department of safety a court order obtained pursuant to any provision of law, a full set of fingerprints, and any other information prescribed by the department.

(i) Upon receiving information pursuant to subsection (h), the department of safety shall verify the identity of the victim against any drivers license or other identification record maintained by the department of safety.

SECTION 8.

(a) Every consumer credit reporting agency shall, upon request from a consumer that is not covered by the free disclosures provided in 15 U.S.C. § 1681j(a)-(d), clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that nothing in this subdivision (a)(1) shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or other risk scores or predictors that are governed by 15 U.S.C. § 1681g(f);

(2) The sources of the information;

(3) Identification of each person, including each end-user identified pursuant to 15 U.S.C. § 1681e, that procured a consumer report for employment purposes, during the two-year period preceding the date on which the request is made, or for any other purpose, during the one-year period preceding the date on which the request is made. Identification of a person pursuant to this subdivision (a)(3) shall include the name of the person or, if applicable, the trade name, written in full, under which such person conducts business; and upon request of the consumer, the address and telephone number of the person. This subdivision (a)(3) shall not apply if:

(A) The end user is an agency or department of the United States government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information, as defined in 15 U.S.C. § 1681b(b)(4)(D)(i); and

(B) The head of the agency or department makes a written finding as prescribed under 15 U.S.C. § 1681b(b)(4)(A);

(4) The dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure or which can be inferred from the file;

(5) A record of all inquiries received by the agency during the one-year period preceding the request that identified the consumer in connection with a credit or insurance transaction that was not initiated by the consumer; and

(6) If the consumer requests the credit file and not the credit score, a statement that the consumer may request and obtain a credit score.

(b) In the case of a request pursuant to subsection (a), a consumer reporting agency may impose a reasonable charge on a consumer for making a report pursuant to this section, which charge:

(1) Shall not exceed two dollars ($2.00) for each of the first twelve (12) requests from the consumer in a calendar year;

(2) Shall not exceed eight dollars ($8.00) for any additional request beyond the initial twelve (12) requests from the consumer in a calendar year; and

(3) Shall be indicated to the consumer before making the disclosure.

(c) In the case of a request pursuant to subsection (a), a consumer reporting agency must provide the consumer with an opportunity to access such consumer's report through all of the following means:

(1) In writing;

(2) In person, upon the appearance of the consumer at the place of business of the consumer reporting agency where disclosures are regularly provided, during normal business hours, and on reasonable notice;

(3) By telephone, if the consumer has made a written request for disclosure;

(4) By electronic means, if the agency offers electronic access for any other purpose; and

(5) By any other reasonable means that is available from the agency.

(d) A consumer reporting agency shall provide a report under subsection (a) by no later than:

(1) Twenty-four (24) hours after the time at which the request is made, if the disclosure is made by electronic means, pursuant to subdivision (c)(4); and

(2) Five (5) days after the date on which the request is made, if the disclosure is made in writing, in person, by telephone or by any other reasonable means that is available from the agency.

SECTION 9. Tennessee Code Annotated, Section 47-18-2107(a)(1), is amended by deleting the current language in its entirety and by substituting instead the following:

(1) "Breach of the security of the system" means unauthorized acquisition of unencrypted computerized data or non-computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by the information holder. Good faith acquisition of personal information by an employee or agent of the information holder for the purposes of the information holder is not a breach of the security of the system; provided, that the personal information is not used or subject to further unauthorized disclosure. Breach of the security of non-computerized data may include, but is not limited to, unauthorized photocopying, facsimiles, or other paper-based transmittal of documents;

SECTION 10. Tennessee Code Annotated, Section 47-18-2107(a)(3), is amended by deleting the current language in its entirety and by substituting instead the following:

(3)

(A) ''Personal information'' means an individual's last name, address, or phone number in combination with any one (1) or more of the following data elements, when either the name or the data elements are not encrypted or redacted, or encrypted with an encryption key that was also acquired:

(i) Social security number;

(ii) Driver's license number or state identification card number;

(iii) Account number, credit or debit card number, if circumstances exist wherein such a number could be used without additional identifying information, access codes, or passwords;

(iv) Account passwords or personal identification numbers (PINs) or other access codes;

(v) Biometric data; or

(vi) Any of subdivisions (a)(3)(A)(i)-(v) when not in connection with the individual's last name, address or phone number if the information compromised would be sufficient to perform or attempt to perform identity theft against the person whose information was compromised;

(B) "Personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records, provided that such publicly available information has not been aggregated or consolidated into an electronic database or similar system by the governmental agency or by another person.

SECTION 11. Tennessee Code Annotated, Section 47-18-2107(b), is amended by deleting the first sentence of that subsection and by substituting instead the following:

Any information holder that owns or uses personal information in any form shall disclose any breach of the security of the system that includes personal information concerning a Tennessee resident to that Tennessee resident following discovery or notification of the breach.

SECTION 12. Tennessee Code Annotated, Section 47-18-2107(e), is amended by inserting the following as a new subdivision (4) thereto:

(4) Such notice shall include:

(A) To the extent possible, a description of the categories of information that was, or is reasonably believed to have been, acquired by an unauthorized person, including social security numbers, driver's license or state identification numbers and financial data;

(B) A toll-free number that the individual may use to contact the agency or person, or the agent of the agency or person, and from which the individual may learn:

(i) The types of information the agency or person maintained about that individual or about individuals in general;

(ii) Whether or not the agency or person maintained information about that individual; and

(iii) The toll-free contact telephone numbers and addresses for the major credit reporting agencies.

SECTION 13. Tennessee Code Annotated, Section 47-18-2107, is amended by inserting the following as new subsections (j) through (m):

(j) The notification required by this section may be delayed if a law enforcement agency determines, in writing, that the notification may impede a criminal investigation.

(k) A person required to provide notification pursuant to this section shall provide or arrange for the provision of, to each individual to whom notification is provided under subsection (b) and on request and at no cost to such individual, consumer credit reports from at least one (1) of the major credit reporting agencies beginning not later than two (2) months following a breach of security and continuing on a quarterly basis for a period of two (2) years thereafter.

(l) Any waiver of the provisions of this part is contrary to public policy, and is void and unenforceable.

(m)

(1) Any individual injured by a violation of this section may institute a civil action to recover damages.

(2) Any business that violates, proposes to violate, or has violated this section may be enjoined.

(3) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

SECTION 14. Tennessee Code Annotated, Title 47, Chapter 18, Part 21, is amended by inserting the following as a new, appropriately designated section thereto:

(a) Except as provided in subsection (c), a person or entity, including a state or local agency, shall not:

(1) Intentionally communicate or otherwise make available to the general public an individual's federal social security number;

(2) Print an individual's federal social security number on any card required for the individual to access products or services provided by the person or entity;

(3) Require an individual to transmit such individual's federal social security number over the Internet, unless the connection is secure or the social security number is encrypted, the number is essential to the transaction, and there is no other identifier that could reasonably be used;

(4) Require an individual to use such individual's federal social security number to access an Internet web site;

(5) Print an individual's federal social security number on any materials that are mailed to the individual, unless state or federal law requires the social security number to be on the document to be mailed;

(6) Sell, lease, loan, trade, rent, or otherwise disclose an individual's federal social security number to a third party for any purpose without written consent to the disclosure from the individual; or

(7) Refuse to do business with an individual because the individual will not consent to the receipt by such person of the federal social security account number of such individual, unless such person is expressly required under federal law, in connection with doing business with an individual, to submit to the United States government such individual's social security account number.

(b) This section does not apply to documents that are recorded or required to be open to the public pursuant to title 10, chapter 7, part 5.

(c) Any entity covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this section are implemented on or before the effective date of this section.

(e)

(1) A person who violates this section is responsible for the payment of a civil penalty of not more than three thousand dollars ($3,000).

(2) A knowing violation of this section is a Class A misdemeanor.

(3) An individual may bring a civil action against a person who violates this section and may recover actual damages or five thousand dollars ($5,000), whichever is greater, plus reasonable court costs and attorney's fees.

SECTION 15. Tennessee Code Annotated, Title 47, Chapter 18, Part 21, is amended by inserting the following as a new, appropriately designated section thereto:

(a) As used in this section, unless the context otherwise requires:

(1) "Business" means sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to

operate at a profit. "Business" includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this state, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. "Business" also includes an entity that destroys records;

(2) "Dispose" includes:

(A) The discarding or abandonment of records containing personal information; and

(B) The sale, donation, discarding or transfer of any medium, including computer equipment, or computer media, containing records of personal information, or other non-paper media upon which records of personal information is stored, or other equipment for non-paper storage of information;

(3) "Personal Information" means any information that identifies, relates to, describes, or is capable of being associated with a particular individual, including, but not limited to, a name, signature, social security number, fingerprint and other biometric information, photograph or computerized image, physical characteristics or description, address, telephone number, passport number, driver's license or state identification care number, date of birth, medical information, bank account number, credit card number, debit card number, or any other financial information; and

(4) "Records" means any material on which written, drawn, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics. "Records" does not include publicly available

directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address or telephone number.

(b) Any business that conducts business in this state and any business that maintains or otherwise possesses personal information of residents of this state must take all reasonable measures to protect against unauthorized access to or use of the information in connection with, or after its disposal. Such reasonable measures must include, but may not be limited to:

(1) Implementing and monitoring compliance with polices and procedures that require the burning, pulverizing or shredding of papers containing personal information so that the information cannot practicably be read or reconstructed;

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other non-paper media containing personal information so that the information cannot practicably be read or reconstructed;

(3) After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of personal information in a manner consistent with this statute. Due diligence should ordinarily include, but may not be limited to, one (1) or more of the following: reviewing an independent audit of the disposal company's operations or its compliance with this statute or its equivalent, or both; obtaining information about the disposal company from several references or other reliable sources and requiring that the disposal company be certified by a recognized trade association or similar third party with a reputation for high standards of quality review; or reviewing and evaluating the disposal company's information

security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal company; and

(4) For disposal companies explicitly hired to dispose of records containing personal information, implementing and monitoring compliance with policies and procedures that protect against unauthorized access to or use of personal information during or after the collection and transportation and disposing of such information in accordance with subdivisions (b)(1) and (2) above.

(c) Procedures relating to the adequate destruction or proper disposal of personal records must be comprehensively described and classified as official policy in the writings of the business entity, including corporate and employee handbooks and similar corporate documents.

(d)

(1) Any person or business that violates this section may be subject to a civil penalty of not more than three thousand dollars ($3,000).

(2) Any individual aggrieved by a violation of this section may bring a civil action to enjoin further violations and to recover actual damages, costs, and reasonable attorney's fees.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, an to that end the provisions of this act are declared to be severable.

SECTION 17. Sections 7 and 14 of this act shall take January 1, 2008, the public welfare requiring it. All other provisions of this act shall take effect July 1, 2007, the public welfare requiring it.