

1 Senate BILL NO. 400
 2 INTRODUCED BY Edus

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 4 A BILL FOR AN ACT ENTITLED: "AN ACT ENTITLED THE MONTANA
 5 PRIVACY ACT OF 1975; TO IMPLEMENT ARTICLE II, SECTION 10 OF
 6 THE NEW CONSTITUTION; AND REPEALING SECTIONS 41-119, 41-120,
 7 94-3203, 94-3320, 94-3321, 94-3323, 94-35-220, 94-35-274,
 8 AND 94-35-275, R.C.M. 1947."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Short title. This act shall be known and
 12 may be cited as "The Montana Privacy Act".

13 Section 2. What right of privacy includes. The "right
 14 of privacy" set forth in section 10 of Article II of the
 15 Montana constitution includes: (1) privacy of the home and
 16 other private places,

17 (2) privacy of communications,

18 (3) privacy of the mind, and

19 (4) privacy of the marriage and family.

20 Section 3. Privacy of the home and other private
 21 places — definitions. As used in this act: (1) "home and
 22 other private places" means a person's dwelling and any
 23 other place or area where one may reasonably expect to be
 24 safe or protected from casual or hostile intrusion or
 25 surveillance. The term shall include, but not be limited

1 to, a person's residence or other enclosed habitat, garage
 2 or barn or other outbuildings connected with a residence,
 3 motel, or hotel, room, automobile or other enclosed vehicle,
 4 boat, office, warehouse or other commercial building or area
 5 in building into which the public is not invited,
 6 compartment in a public toilet or bath house, locker, and
 7 desk drawer or any other similar enclosure. The term does
 8 not include a place to which the public or a substantial
 9 part thereof has access or any such place or area not under
 10 the lawful control or possession of the person asserting the
 11 right of privacy.

12 (2) "enter" means physically entering, or in any other
 13 manner accomplishing a sufficient entry by the use of any
 14 device or otherwise so that the contents, sounds, events,
 15 activities, or persons therein which a person has a
 16 reasonable expectation of remaining private can be observed,
 17 photographed, recorded, heard, or otherwise uncovered. It
 18 shall also mean the trespass on property for the purpose of
 19 gaining or attempting to gain such entry.

20 (3) Except as provided in subsection (4) of this
 21 section, it shall be unlawful for any person, including any
 22 agent or employee of any governmental unit to enter a home
 23 or other private place for any purpose. For the purposes of
 24 this act, each entry by each person shall constitute a
 25 separate offense.

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1 (4) Subsection (7) shall not apply to any such
2 trespass or entry obtained:

3 (a) By any person upon consent freely given by a
4 proper adult person either express or implied except, in the
5 case of agents or employees of a governmental unit, such
6 consent cannot be implied unless the person giving such
7 consent is aware that such consent can be withheld.

8 (b) By agents and employees of the United States
9 acting under lawful federal authority.

10 (c) By agents or employees of the state or of local
11 governmental units acting under the authority of a valid
12 search warrant, a writ of attachment, writ of execution or
13 other writ or order lawfully obtained under proper legal
14 process or making a lawful search incident to a lawful
15 arrest.

16 (d) By a landlord or other person holding a bona fide
17 legal claim to such a place only to the extent necessary for
18 the rightful exercise or protection of such claim. For this
19 purpose, a landlord or other lawful claimant to leased
20 premises shall have the right of inspections only at
21 reasonable times and only as often as may be reasonably
22 necessary to protect the property over which he exercises
23 such claim. (A tenant may not unreasonably withhold consent
24 to exhibit the premises.)

25 (e) By any person whose sole purpose is to render

1 assistance when there is reasonable grounds for belief that
2 the premises are in danger of fire or other calamity.

3 (f) By any person in case of an emergency where there
4 is probable cause to believe the occupant needs immediate
5 assistance to avoid serious bodily injury.

6 (g) By any employee or agent of a business regulated
7 under the provisions of Title 70 of R.C.M. 1947, when acting
8 in compliance with any rule, regulation, or order pronounced
9 or authorized by the public service commission pursuant to
10 the provisions of Title 70, R.C.M. 1947.

11 Section 4. Privacy of communications. (1) For the
12 purposes of this act:

13 (a) "Contents" when used with respect to any wire or
14 oral communication, includes any information concerning the
15 identity of the parties to such communication or the
16 existence, substance, purport, or meaning of that
17 communication.

18 (b) "Electronic, mechanical, or other device" means
19 any device or apparatus which can be used to intercept a
20 wire or oral communication other than:

21 (i) any telephone or telegraph instrument, equipment
22 or facility, or any component thereof, (A) furnished to the
23 subscriber or user for ordinary telephone or telegraph use;
24 or (B) used by a communications common carrier in the
25 ordinary course of its business.

1 (ii) a hearing aid or similar device being used to
2 correct subnormal hearing to not better than normal.

3 (c) "Intercept" means the acquisition of the contents
4 of any wire, oral or written or communication through the
5 use of any electronic, mechanical, or other device, through
6 the opening of a sealed letter, or otherwise.

7 (d) "Mail covers" means the information received from
8 the copying or retaining of some or all the information
9 contained on the outside of a sealed envelope containing a
10 written communication.

11 (e) "Oral communication" means any oral communication
12 uttered by a person with an expectation that such
13 communication is not subject to interception under
14 circumstances justifying such expectations.

15 (f) "Person" means any employee or agent of the state
16 of Montana, or any political subdivision thereof, and any
17 individual, partnership, association, joint-stock company,
18 trust, or corporation.

19 (g) "Wire communication" means any communication made
20 in whole or in part by aid of wire, cable, or other
21 connection furnished or operated by any person engaged as a
22 common carrier or public utility in providing or operating
23 such facilities for the transmission of communication.

24 (h) "Written communication" means any letter or other
25 written message prepared for delivery through the United

1 States mail or for delivery by any other means with the
2 expectation that such communication is not subject to
3 interception under circumstances justifying such
4 expectations.

5 (2) Except as provided in subsection (4) herein, it
6 shall be unlawful for any person not a party to the
7 communication to wilfully intercept, or attempt to
8 intercept, or procure any other person to intercept or
9 attempt to intercept, any wire, oral or written
10 communication without the consent of both the sender and the
11 receiver of the communication or, if more than two parties,
12 without the consent of all parties to the communication.

13 (3) Except as provided in subsection (4) herein, it
14 shall be unlawful for any person to wilfully disclose or use
15 or attempt to disclose or use the contents of any wire,
16 oral, or written communication knowing or having reason to
17 know that such information was obtained in violation of
18 subsection (2) hereof.

19 (4) The provisions of subsection (2) and (3) shall not
20 apply to:

21 (a) agents and employees of the United States acting
22 under lawful federal authority.

23 (b) to an operator of a switchboard, or an officer,
24 employee, or agent of any communication common carrier whose
25 facilities are used in the transmission of a wire

1 communication with respect to the interception, disclosure,
 2 or use of that communication in the normal course of his
 3 employment while engaged in any activity which is a
 4 necessary incident to the rendition of his service or to the
 5 protection of the rights or property of the carrier of such
 6 communication; provided, that said communication common
 7 carriers shall not utilize service observing or random
 8 monitoring except for mechanical or service quality control
 9 checks; provided, further, that the line of any subscriber
 10 of a telephone company shall not be monitored by a telephone
 11 company for the purpose of service observing or random
 12 monitoring, except phone communication to or from said
 13 telephone company, if he shall so request in writing to the
 14 telephone company. Any subscriber may seek an injunction in
 15 the district court to prevent such service observing or
 16 random monitoring. Nothing in this provision shall prohibit
 17 any officer or employee of a communications common carrier
 18 from monitoring any line for the purpose of determining the
 19 existence of telephone communications on said line or
 20 determining whether said line is properly functioning in the
 21 testing, maintenance and repair of its equipment. The
 22 public service commission shall require that each telephone
 23 company operating in this state, including non-regulated
 24 cooperatives, file annually with it a complete report of all
 25 service observing activity, if any, carried on by such

1 telephone company including any rules or regulations adopted
 2 by such company for such purpose. Such report may include,
 3 for the purposes of service quality control of phone
 4 communications to or from telephone companies only, a
 5 summary estimate of the total number of observations. These
 6 reports shall be made available to the public.

7 (c) with regard to the existence of wire
 8 communications only, to properly authorized persons
 9 connected with the function of billing or allocation of
 10 charges made for such services.

11 (d) to persons attempting to prevent the use of
 12 telephone or telegraph equipment for the commission of a
 13 crime upon consent of at least one party to the
 14 conversation.

15 (e) to telephone calls received by law enforcement
 16 offices, police stations and fire stations provided the
 17 taping of such calls is evidenced by an electronic tone or
 18 beep not less often than once every two seconds.

19 (f) to a properly authorized person authorized by the
 20 receiver of written communications to open and receive such
 21 communications on the receiver's behalf.

22 (5) It shall be unlawful for any person to obtain mail
 23 covers, except upon a casual basis for the purpose of
 24 obtaining an address of the sender or receiver.

25 (6) It shall be unlawful to wilfully manufacture,

1 assemble, possess, sell, or advertise for sale any
 2 electronic, mechanical, or other device, knowing or having
 3 reason to know that the design of such device renders it
 4 primarily useful for the purpose of the surreptitious
 5 interception of wire or oral communications.

6 (7) It shall be unlawful for any person to wilfully
 7 disclose or use the contents of any wire, oral, or written
 8 communication whether or not such communication has been
 9 intercepted in violation of subsection (2) hereof if the
 10 communication was a part of a bona fide privileged
 11 relationship between a medical doctor and his patient, an
 12 attorney and his client, a minister or clergyman and his
 13 penitent or counselee, an accountant and his client, a
 14 school counselor and his counselee, a psychologist and his
 15 client, a management consultant and his client, when the
 16 communication was given with the reasonable expectation that
 17 such communication will remain confidential without the
 18 consent of the person seeking such professional advice.
 19 Provided, however, nothing contained in this subsection
 20 shall prohibit the disclosure or use of such contents by
 21 such professional person, (a) for the purpose of advancing
 22 the cause of the client or other person seeking advice for
 23 which the advice was sought, (b) to his colleagues or other
 24 professional persons for the purpose of providing better and
 25 more complete advice or assistance, (c) to his employees

1 necessary for the efficient operation of his office, (d) for
 2 the purpose of proper administration of a public medical
 3 assistance program only to the extent necessary for such
 4 administration, (e) for the purpose of collecting a fee from
 5 said client only to the extent necessary to establish his
 6 right to such fee, and (f) for the purpose of preventing the
 7 commission of a felony.

8 (8) It shall be unlawful to compel disclosure by
 9 force, penalty, or imprisonment or threat of force, penalty,
 10 or imprisonment, the contents of any wire, oral, or written
 11 communication between a husband and wife or between either
 12 of them and their unemancipated children that took place
 13 while a bona fide and lawful family relationship existed
 14 under a reasonable expectation that such communication would
 15 remain private and confidential without the consent of all
 16 parties thereto. For the purpose of this act the
 17 termination of a marriage by divorce shall not affect the
 18 bona fide family relationship between either parent and
 19 their unemancipated children. This section shall not
 20 preclude compelling testimony properly relevant to the
 21 issues in any court proceeding involving a complaint by one
 22 (1) member of the family and participant in the
 23 communication against another such member and participant
 24 including a criminal complaint made on behalf of one (1) or
 25 more such members and participants. Further, this section

1 shall not preclude out-of-court interviews relating to such
2 complaints conducted by law enforcement officials upon
3 consent of the person interviewed.

4 Section 5. Privacy of the mind and personality.

5 (1) It is the finding of the legislature that every person
6 has a right to a protective zone or a private enclave
7 protecting his mind, his personality, and his inner life
8 which justifies a reasonable expectation that certain
9 private facts and information about himself will not be
10 improperly disclosed or publicized. A person's thoughts,
11 sentiments, emotions, sensations, religious beliefs,
12 philosophical beliefs, and political beliefs clearly fall
13 into this protective zone. In addition, certain other
14 facts, either singly or in accumulation, are sufficiently
15 private to justify a person in expecting that they will not
16 be disclosed without his consent. In this connection, the
17 more embarrassing the fact or facts and the more likely they
18 will expose a person to infamy and disgrace, the closer they
19 are to the core of the protective zone or private enclave
20 referred to above.

21 (2) For the purposes of this act:

22 (a) "Administrative purposes" when used in connection
23 with automated personal data systems means using such a
24 system for the purpose of affecting the subject individuals
25 directly as individuals such as for making determinations

1 relating to their qualifications, character, rights,
2 opportunities, or benefits.

3 (b) "Automated personal data system" means a personal
4 data system that is stored, in whole or in part, in
5 computer-accessible files.

6 (c) "Computer accessible" means recorded on magnetic
7 tape, magnetic disk, magnetic drum, punched card, or
8 optically scannable paper or film, or other storage devices
9 connected to a computer system, and readily accessible.

10 (d) "Organization" means any profit or nonprofit
11 corporation, partnership, proprietorship, or other
12 organization including the state of Montana, its departments
13 and its local subdivisions and their boards, agencies,
14 commissions, and bureaus.

15 (e) "Penalty" means any fine, loss of rights, loss of
16 privileges, or loss of employment.

17 (f) "Personal data" means all data that (i) describes
18 anything about an individual, such as identifying
19 characteristics, measurements, test scores, (ii) evidences
20 of things done by or to an individual, such as records of
21 financial transactions, medical treatment, or other
22 services, and (iii) affords a clear basis for inferring
23 personal characteristics or things done by or to an
24 individual, such as the mere record of his presence in a
25 place, attendance at a meeting, or admission to some type of

1 service institution.

2 (g) "Personal data system" means a collection of
3 records kept by one or more organizations containing
4 personal data that can be associated with identifiable
5 individuals whether kept for administrative or statistical
6 reporting and research purposes.

7 (h) "Political meeting" means any meeting at which
8 candidates for political office are chosen or a principal
9 purpose of which is to permit candidates in a primary
10 election or in a general election to address the public
11 and/or to answer questions from the public.

12 (i) "Private facts and information" means any facts or
13 information about a person that such person is justified in
14 a reasonable expectation they will not be disclosed or used
15 for some other purpose without his consent.

16 (j) "Private thoughts, sentiments, emotions,
17 sensations, religious beliefs, philosophical beliefs and
18 political beliefs" are thoughts, sentiments, emotions,
19 sensations, religious beliefs, philosophical beliefs, and
20 political beliefs that the holder has a reasonable
21 expectation will not be disclosed.

22 (k) "Public notice" means, for an agency of the state
23 of Montana such publication that is required for notice of
24 proposed regulations promulgated by that agency under the
25 Montana Administrative Procedure Act, and for other

1 organizations' publication in a newspaper of general
2 circulation in the area in which the organization operates
3 or such other notice as may be approved by the department of
4 business regulation. In any event, copies of such notice
5 must be readily available from the organization upon
6 request.

7 (l) "Standard universal identifier" means a
8 systematically assigned label that attempts to distinguish
9 an individual from all others in a way which makes such
10 label unique, permanent, ubiquitous, indispensable, brief,
11 and reliable for all individuals and readily available for
12 anyone who needs it.

13 (m) "Statistical-reporting or research purposes" when
14 used in connection with automated personal data systems
15 means using such a system for the purpose of statistical
16 reporting or research only and not to affect any individual
17 directly.

18 (n) "Surveillance" means the continuous surreptitious
19 observation of any particular individual or group of
20 individuals or members of a single organization without
21 their knowledge and consent. It shall also include the
22 maintenance by any governmental unit, agency, employee, or
23 agent thereof, of any file of information about a person or
24 group of persons gathered primarily and substantially
25 without that person's or group's participation or knowledge,

1 the gathering and maintenance of which information is not
 2 otherwise authorized by law. Each entry of information in
 3 any such file shall be deemed to be one "act of
 4 surveillance" as that term is used in this act.

5 (c) "Private organization charged with dispensing a
 6 governmental benefit" is an organization that dispenses a
 7 thing of value to the public or some segment thereof under
 8 contract or agreement with a governmental unit or agency
 9 thereof. For this purpose, obtaining a license or
 10 certificate of authority shall not be considered such a
 11 contract or agreement.

12 (3) It shall be unlawful for any person to compel
 13 disclosure by force, penalty, or imprisonment or threat of
 14 force, penalty, or imprisonment, from an individual, his
 15 private thoughts, sentiments, emotions, sensations,
 16 religious beliefs, philosophical beliefs, and political
 17 beliefs, except in proper legal proceedings where such
 18 individual has himself made such items the subject of
 19 litigation.

20 (4) It shall be unlawful for any governmental unit or
 21 agency thereof or any private organization charged with
 22 dispensing a governmental benefit to require from any
 23 individual as a condition for the receipt of any position or
 24 employment or the enjoyment of any right or other benefit an
 25 oath, affirmation, or test that probes into such

1 individual's religious, political, or philosophical beliefs.
 2 In this connection, a simple oath or affirmation in the
 3 language of Article III, section 3 of the Montana
 4 constitution will not violate this provision.

5 (5) It shall be unlawful for any governmental unit or
 6 agency thereof or any private organization charged with
 7 dispensing a governmental benefit to require without express
 8 legislative authorization (a) a disclosure from any
 9 individual as a condition for the receipt of a benefit or
 10 the enjoyment of a right of his membership in or affiliation
 11 with or attendance at meetings of any association, group, or
 12 other organization the disclosure of which may reasonably
 13 amount to a disclosure in part and against his will of his
 14 religious, philosophical, or political beliefs, and (b) a
 15 disclosure from any association, group, or organization of
 16 the names and addresses of any one or more of its members
 17 provided said privacy is necessary for the undertaking and
 18 continuation of the lawful activities of said association,
 19 group, or organization. The determination of whether or not
 20 such an individual or association is entitled to claim
 21 privacy under this provision shall be made by a judge of a
 22 district court in camera in a proper legal proceeding.

23 (6) It shall be unlawful:

24 (a) for any person or governmental unit or agency
 25 thereof to require as a condition of employment or continued

1 employment that an applicant or employee submit to a
 2 polygraphic detection deceptive test, commonly known as a
 3 lie detector test, or to questioning under the effect of
 4 thiopental sodium or to any other test or questioning by
 5 means of any mechanical device or chemical substance. It
 6 shall not be unlawful, however, for qualified operators to
 7 use polygraphic detection deception tests and their results
 8 for law enforcement investigation upon the consent of any
 9 person taking such a test.

10 (b) For any person or governmental unit or agency
 11 thereof to discharge any employee solely because of an
 12 alleged or actual opinion that the employee did not tell the
 13 truth during a polygraph detection deception test or
 14 questioning under the effect of thiopental sodium or any
 15 other test or questioning by means of any mechanical device
 16 or chemical substance, except where a valid and voluntary
 17 stipulation has been executed by the employer and the
 18 employee prior to such examination.

19 (c) For any court in the course of any civil trial,
 20 criminal trial or pretrial proceeding to require that either
 21 the plaintiff or the defendant submit to a polygraphic
 22 detection deception test or to questioning under the effect
 23 of thiopental sodium or to any other test or questioning by
 24 means of any mechanical device or chemical substance.

25 (d) For any examiner or operator of any polygraph or

1 other mechanical device or chemical substance or his
 2 assistants or any other person made privy to such
 3 information to disclose or use any information acquired
 4 during the conduct of such test without the consent of the
 5 person examined.

6 (7) It shall be unlawful for any governmental unit or
 7 agency thereof or any private organization charged with
 8 dispensing a governmental benefit to require any individual
 9 as a condition for employment or the enjoyment of any right
 10 or other benefit to take a psychological personality
 11 inventory test such as the Minnesota Multiphasic Personality
 12 Inventory, the Minnesota Counseling Inventory, and the
 13 Edwards Personal Preference Schedule unless such tests are
 14 used only for statistical purposes and the results are not
 15 individually identifiable regulations pursuant to the
 16 Montana Administrative Procedure Act, or, if inapplicable,
 17 in a manner similar thereto, setting forth the compelling
 18 interest that outweighs this intrusion on an individual's
 19 privacy.

20 (8) Except as set forth in subsection (9) herein, it
 21 shall be unlawful for any officer of any executive
 22 department or any executive agency of the state of Montana
 23 or of any local subdivision or agency thereof, or for any
 24 person acting or purporting to act under his authority, to
 25 require or request, or to attempt to require or request, any

1 employee of said department, governmental unit, or agency,
 2 or any person applying for such employment, to (a) answer
 3 any questions designed to elicit from his information
 4 concerning (i) his race, religion, or national origin, or
 5 the race, religion, or national origin of any of his
 6 forebearers, (ii) his personal relationship with any person
 7 connected with him by blood or marriage, (iii) his religious
 8 beliefs or practices, (iv) his attitude or conduct with
 9 respect to sexual matters, (v) his property, income, or
 10 other assets, source of income, or liabilities, or his
 11 personal or domestic expenditures or those of any member of
 12 his household, or (b) make a report concerning any of his
 13 activities or undertakings unless such activities or
 14 undertakings are related to the performance of his job or to
 15 the development of additional qualifications for his job or
 16 unless there is reason to believe that he is engaged in
 17 outside activities or employment in conflict with his
 18 official duties.

19 (9) Nothing contained in subsection (8) herein shall
 20 be construed to prohibit (a) inquiry concerning the
 21 citizenship or race of any such employee or person if his
 22 citizenship or race is a statutory condition of his
 23 obtaining or retaining employment, (b) a physician from
 24 eliciting such information or authorizing such tests in the
 25 diagnosis or treatment of any such employee or person in an

1 individual case basis only where such physician deems such
 2 information necessary to enable him to determine whether or
 3 not such individual is suffering from mental illness, (c) an
 4 officer of such department or agency from advising any such
 5 employee of a specific charge of sexual misconduct made
 6 against that employee, and affording him an opportunity to
 7 refute the charge, (d) any employee of a taxing authority
 8 from obtaining the necessary information to carry out the
 9 functions of his job, (e) an employer or other organization
 10 administering a pension plan, or other plan for the benefit
 11 of the employee or his family, to the extent necessary to
 12 carry out the purpose of the plan, (f) an employer obtaining
 13 information necessary to comply with the requirements of
 14 federal law, and (g) with regard to the items contained in
 15 (8) (a) (v) only, the requirement of a full disclosure of
 16 assets and income by an elected official and the requirement
 17 of a full disclosure of any matter which might tend to
 18 indicate a conflict of interest in respect to the
 19 performance of any of his duties by any other employee or
 20 applicant.

21 (10) It shall be unlawful for any person to use, for
 22 the purpose of advertising for any item for sale or for any
 23 other advertising or commercial purposes, the name, picture,
 24 or portrait of an individual without the individual's
 25 informed consent, or in the case of a minor, the informed

1 consent of his parent or guardian, or, in the case of a
 2 deceased individual, the informed consent of his heirs or
 3 personal representatives. For the purpose of this
 4 provision, the use of a name, picture, or portrait of an
 5 individual by an organization representing the news media in
 6 a bona fide news story or by a nonprofit organization
 7 publishing a year book or historical record when not
 8 contained in a paid advertisement, shall not be considered
 9 use for an advertising or commercial purpose.

10 (11) It shall be unlawful for any person to furnish
 11 any other person or organization any identification or other
 12 record indicating that any person has been arrested on any
 13 criminal offense unless such record discloses that such
 14 person pleaded guilty or nolo contendere to or was convicted
 15 of such charge or offense in a court of justice except while
 16 the arrest is reasonably contemporaneous, such information
 17 may be released to the news media. The submission of
 18 information about a person suspected of a criminal offense
 19 prior to final disposition of his case by local law
 20 enforcement agencies and their employees to other bona fide
 21 law enforcement agencies shall not constitute a violation of
 22 this provision provided a complete and accurate statement as
 23 to the final disposition of the case is sent to the same
 24 agency in the same manner within five (5) days of such final
 25 disposition.

1 All photographs, fingerprints or other documents
 2 relating solely to an individual charged with a criminal
 3 offense prepared by law enforcement officers after his
 4 arrest shall, upon request as hereinafter provided, be
 5 returned to him and his name shall be expunged from any
 6 index upon his acquittal or unconditional release without
 7 being convicted, except as follows:

8 (a) Nothing herein shall prevent the proper law
 9 enforcement agency from maintaining all records lawfully
 10 obtained and held prior to such arrest, and

11 (b) Nothing herein shall prevent the proper law
 12 enforcement agency from maintaining all records of any
 13 person who is admitted to probation upon terms and
 14 conditions pursuant to the deferred imposition of a sentence
 15 received as provided in section 54-133(c), R.C.M. 1947.

16 It shall be unlawful for any person in possession and
 17 control of such photographs, fingerprints or other records
 18 to refuse to return them as required in the preceding
 19 sentence upon a request by the individual who was so
 20 arrested or his proper representative.

21 (12) It shall be unlawful for any person to authorize
 22 or engage in the unreasonable surveillance of any
 23 individual, group of individuals or members of any
 24 organization.

25 (13) It shall be unlawful for any officer, employee or

1 agent of the state of Montana, any of the local
 2 subdivisions, or any agencies thereof to attend a political
 3 meeting for the purpose of observing or conducting
 4 surveillance on an individual, group of individuals or
 5 organization suspected of committing or about to commit a
 6 criminal offense unless there is probable cause to believe
 7 that the offense in question is likely to be committed at
 8 the meeting or in the immediate vicinity of the meeting
 9 during the time at which the meeting is being held; provided
 10 that nothing contained herein shall prohibit the
 11 nonsurreptitious attendance at any meeting of any peace
 12 officer or other person whose attendance at that meeting is
 13 for the purpose of protecting, as authorized by law, the
 14 security of any person lawfully attending the meeting or
 15 participating in the meeting.

16 (14) It shall be unlawful for any law enforcement
 17 organization to keep any records with regard to any
 18 individual suspect present at any political meeting.

19 (15) It shall be unlawful for any person or
 20 organization to knowingly violate any of the following
 21 safeguard requirements for automated personal data systems:

22 Safeguard 1: Any organization maintaining a record of
 23 individually identifiable personal data, which it does not
 24 maintain as part of an automated personal data system, shall
 25 make no transfer of such data to another organization,

1 without the prior informed consent of the individual to whom
 2 the data pertain, if it knows that, as a consequence of the
 3 transfer, such data will become part of an automated
 4 personal data system; provided, however, that (1) any person
 5 may transfer such data to an automated personal data system
 6 for the purpose of assisting in the collection of any debt
 7 outstanding and unpaid upon the effective date of this act,
 8 (2) law enforcement personnel may transfer data relating to
 9 criminal identification, stolen property and missing persons
 10 to an automated personal data system maintained and operated
 11 by law enforcement personnel and may further transfer
 12 information to the national criminal information center
 13 system pursuant to the rules and regulations governing that
 14 system, and (3) information relating to a borrower properly
 15 obtained in connection with the transfer or assignment of
 16 his loan may be transferred to an automated personal data
 17 system without violating this act.

18 Safeguard 2: Any organization maintaining an automated
 19 personal data system shall identify one person immediately
 20 responsible for the system, and make any other
 21 organizational arrangements that are necessary to assure
 22 continuing attention to the compliance with these
 23 safeguards.

24 Safeguard 3: Any organization maintaining an automated
 25 personal data system shall take affirmative action to inform

1 each of its employees having any responsibility or function
2 in the design, development, operation, or maintenance of the
3 system, or the use of any data contained therein, about
4 these safeguards and any rules and procedures promulgated by
5 such organization to assure compliance with them.

6 Safeguard 4: No organization shall take any
7 disciplinary or other punitive action against any individual
8 who brings to the attention of appropriate authorities, the
9 press, or any member of the public, evidence of
10 noncompliance with these safeguards. Any organization
11 maintaining automated personal data systems shall provide a
12 system of penalties for any employee who initiates or
13 otherwise contributes to any such disciplinary action.

14 Safeguard 5: Any organization maintaining an automated
15 personal data system shall take reasonable precautions to
16 protect data in the system from any anticipated threats or
17 hazards to the security of the system.

18 Safeguard 6: No transfer of individually identifiable
19 personal data to another system may be made without the
20 informed consent of the subject individual, except (1) a
21 transfer from one system to another within the same
22 organization may be made without such consent if the
23 conditions of the transfer provide substantial assurance
24 that the requirements for security and limitations of access
25 will not be weakened by the transfer, (2) a transfer by or

1 to any organization which is required by federal law to
2 transfer such data to a federal agency or which is required
3 or specifically permitted by federal law to receive such
4 data from a federal agency to the extent the transfer is
5 consistent with such requirement or permissions, (3) a
6 transfer to the department of revenue of such data from the
7 federal internal revenue service in connection with their
8 function of collecting taxes, (4) a transfer of such data to
9 another system for the purpose of assisting in the
10 collection of any money debt outstanding and unpaid upon the
11 effective date of this act, (5) a transfer of debt relating
12 to criminal identification, stolen property, and missing
13 persons by law enforcement personnel to another system
14 operated by law enforcement personnel and a transfer of
15 information to the national criminal information center
16 system pursuant to the rules and regulations governing that
17 system, and (6) a transfer of information relating to a
18 borrower properly obtained in connection with the transfer
19 or assignment of his loan.

20 Safeguard 7: Any organization maintaining an automated
21 personal data system for administrative purposes shall
22 maintain a complete and accurate record of every access to
23 and use made of any data in the system, including the
24 identity of all persons and organizations to which access
25 has been given.

1 Safeguard 8: Any organization maintaining an automated
2 personal data system for administrative purposes shall
3 maintain data in the system with such accuracy,
4 completeness, timeliness, and pertinence as is necessary to
5 assure accuracy and fairness in any determination relating
6 to an individual's qualifications, character, rights,
7 opportunities, or benefits that may be made on the basis of
8 such data.

9 Safeguard 9: Any organization maintaining an automated
10 personal data system that is used in any way for
11 administrative purposes shall eliminate data from
12 computer-accessible files when the data are no longer
13 timely.

14 Safeguard 10: Any organization maintaining an
15 automated personal data system that is used for
16 statistical-reporting and research purposes shall have the
17 capacity to make sufficient data readily available along
18 with sufficient information to permit reconstruction of the
19 conditions and suppositions under which the data were
20 collected necessary to allow an independent analysis.

21 Safeguard 11: Any organization maintaining an
22 automated personal data system for administrative purposes
23 that publicly disseminates statistical reports or research
24 findings based on personal data drawn from the system, or
25 from administrative systems of other organizations, shall

1 make such data publicly available for independent analysis
2 on reasonable terms, and shall take reasonable precautions
3 to assure that no data made available for independent
4 analysis will be used in a way that might reasonably be
5 expected to prejudice judgments about any individual data
6 subject's character, qualifications, rights, opportunities,
7 or benefits.

8 Safeguard 12: Any organization maintaining an
9 automated personal data system shall give public notice of
10 the existence and character of its system once each year.
11 Any organization maintaining more than one system shall
12 publish such annual notices for all its systems
13 simultaneously. Any organization proposing to establish a
14 new system, or to enlarge an existing system, shall give
15 public notice long enough in advance of the initiation or
16 enlargement of the system to assure individuals who may be
17 affected by its operation a reasonable opportunity to
18 comment. The public notice shall specify:

- 19 (a) The name of the system;
20 (b) The nature and purpose or purposes of the system;
21 (c) The categories and number of persons on whom data
22 are maintained or are to be maintained;
23 (d) The categories of data maintained or to be
24 maintained, indicating which categories are stored or are to
25 be stored in computer-accessible files;

1 (e) The organization's policies and practices
2 regarding data storage, duration of retention of data, and
3 disposal thereof;

4 (f) The categories of data sources;

5 (g) A description of all types of use made or to be
6 made of data, indicating those involving computer-accessible
7 files, and including all classes of users and the
8 organizational relationships among them;

9 (h) In an automated personal data system used for
10 administrative purposes, the procedures whereby an
11 individual can (i) be informed if he is the subject of data
12 in the system; (ii) gain access to such data; and (iii)
13 contest their accuracy, completeness, pertinence, and the
14 necessity for retaining them;

15 (i) In an automated personal data system used for
16 statistical reporting and research, the procedures whereby
17 an individual, group, or organization can gain access to
18 data used for this purpose for independent analysis;

19 (j) In an automated personal data system used for
20 statistical reporting and research, a statement of the
21 system's provisions for data confidentiality and the legal
22 basis for such provisions;

23 (k) The title, name, and address of the person
24 immediately responsible for the system.

25 Safeguard 13: Any organization maintaining an

1 automated personal data system shall inform an individual
2 asked to supply personal data for the system whether he is
3 legally required, or may refuse, to supply the data
4 requested, and also of any specific consequences for him,
5 which are known to the organization, of providing or not
6 providing such data.

7 Safeguard 14: Any organization maintaining an
8 automated personal data system for administrative purposes
9 shall inform an individual, upon his request, whether he is
10 the subject of data in the system, and, if so make such data
11 fully available to the individual, upon his request, in a
12 form comprehensible to him, provided, however, that any
13 information about such individual received from a third
14 person before the effective date of this act on the
15 condition that such information would remain confidential
16 need not be disclosed in the absence of a court order
17 requiring such disclosure.

18 Safeguard 15: Any organization maintaining an
19 automated personal data system shall not allow any other use
20 of individually identifiable data that is not within the
21 stated purposes of the system as reasonably understood by
22 the individual, unless informed consent of the individual
23 has been explicitly obtained.

24 Safeguard 16: Any organization maintaining an
25 automated personal data system for administrative purposes

1 shall inform an individual, upon his request, about the uses
2 made of data about him, including the identity of all
3 persons and organizations involved and their relationships
4 with the system.

5 Safeguard 17: An organization shall not make data from
6 an automated personal data system available in response to a
7 demand for data made by means of compulsory legal process,
8 unless it has first notified the individual to whom the data
9 pertains of the demand and has made the data being sought
10 fully available to such individual.

11 Safeguard 18: An organization maintaining an automated
12 personal data system for administrative purposes shall
13 develop and maintain procedures that (i) allow an individual
14 who is the subject of data in the system to contest their
15 accuracy, completeness, pertinence, and the necessity for
16 retaining them; (ii) permit data to be corrected or amended
17 when the individual to whom they pertain so requests; and
18 (iii) assure, when there is disagreement with the individual
19 about whether a correction or amendment should be made, that
20 the individual's claim is noted and included in any
21 subsequent disclosure or dissemination of the disputed data.

22 Any organization may obtain a waiver or exemption of
23 any portion or all of any one or more of these safeguard
24 requirements from the department of business regulation
25 pursuant to the procedures promulgated for this purpose by

1 said department upon a showing of a clearly paramount and
2 strongly justified societal interest in such waiver or
3 exemption. The decision of the said department on any such
4 application shall be an adjudicatory decision under the
5 terms of the Montana Administrative Procedure Act. The full
6 text of any such waiver or exemption granted under this
7 subsection shall be published by the department of business
8 regulation in the Montana Administrative Code.

9 (16) It shall be unlawful for any officer, employee,
10 or agent of an organization maintaining an automated
11 personal data system or any person who has received
12 information from such a system without proper authority or
13 without the informed consent of the subject individual to
14 disclose any personal data received from such a system that
15 can be identifiable with or traceable to specific
16 individuals except (a) disclosure made in the ordinary
17 course of the business or activity contemplated by the
18 system as set forth in their annual public notice, (b)
19 disclosures made with the informed consent of the subject
20 individual, and (c) by order of or response to a subpoena of
21 a district court. Any person in charge of or privy to
22 information contained in any such system used exclusively
23 for statistical reporting or research may not be compelled
24 to disclose any such data in any criminal or civil
25 proceedings in any court of law of this state. Adequate

1 precautions must be taken to insure that any data released
2 in statistical form by any such system will not reasonably
3 result in the identification of individual data subjects in
4 violation of this provision.

5 (17) It shall be unlawful for any person to require by
6 means of withholding or threatening to withhold the
7 enjoyment of any right or benefit the disclosure of an
8 individual's social security number issued by the social
9 security administration of the United States or any other
10 label that is functionally similar to a standard universal
11 identifier; provided, however, this provision shall not
12 apply to (a) employers or their agents in connection with
13 the administration of the federal Social Security Act, or
14 other appropriate payroll function, (b) federal agencies and
15 federal agents acting under lawful federal authority, (c)
16 the department of revenue of the state of Montana when such
17 use is connected with its function of collecting taxes, (d)
18 the department of social and rehabilitation services of the
19 state of Montana when such use is limited to the
20 administration of its welfare and related services and the
21 collection of child support payments, and (e) any person
22 granted specific authority to use such number or label by
23 the Montana legislature, or by the department of business
24 regulation when the legislature is not in session subject to
25 ratification in the next session of the legislature. It

1 shall also be unlawful for any person to use such a number
2 or label for promotional or commercial purposes.

3 Section 6. Marital or familial privacy. (1) It shall
4 be unlawful for any governmental unit or agency thereof to
5 take any action which interferes with the right of a married
6 couple (a) to decide for themselves whether to procreate
7 children, (b) to use birth control devices and techniques
8 consistent with reasonable medical safeguards, and (c) to do
9 any other act or make any other choice consistent with the
10 marital relationship that does not cause harm to each other
11 or others; provided, however, that nothing contained herein
12 shall prevent the state of Montana from proscribing abortion
13 to the extent permitted under the Constitution of the United
14 States, and provided further, that nothing contained herein
15 shall prohibit any person from publishing and distributing
16 leaflets or other material relating to the above matters.

17 (2) It shall be unlawful for any person to interfere
18 by force, penalty, imprisonment or threat of force, penalty,
19 or imprisonment with the free choice of any individual to
20 refuse or accept sterilization. This provision shall not
21 apply to a medical doctor seeking compensation for his
22 services or acting in a reasonable manner to protect the
23 health of his patient.

24 (3) It shall be unlawful for any governmental unit or
25 agency thereof to interfere with the religious training and

1 guidance of an unemancipated child desired by both parents
2 without the existence of compelling societal interest for
3 such interference.

4 Section 7. Penalties. (1) Any act or omission made
5 unlawful under section 2 and 3 of this act shall be
6 punishable by fine of not more than ten thousand dollars
7 (\$10,000) or imprisonment of not more than five (5) years,
8 or both.

9 (2) Any act or omission made unlawful under sections 4
10 and 5 of this act shall be punishable by a fine of not more
11 than one thousand dollars (\$1,000) or imprisonment of not
12 more than one (1) year, or both.

13 (3) No evidence obtained as a result of any act or
14 omission made unlawful under this act shall be received in
15 evidence in any trial, hearing, or other proceeding in or
16 before any court, grand jury, department, officer, agency,
17 regulatory body, or legislative committee without the
18 informed consent of the person or persons whose privacy has
19 been invaded.

20 (4) Any electronic, mechanical, or other device
21 manufactured, assembled, possessed, sold or advertised in
22 violation of subsection (6) of section 3 of this act may be
23 seized and forfeited to the state of Montana. Upon proper
24 court order obtained from a district court of proper
25 jurisdiction, said property shall be destroyed.

1 Section 8. Civil action. Any person whose privacy has
2 been invaded because of an unlawful act or omission in
3 violation of any of the provisions of this act may file a
4 civil suit in a district court of proper jurisdiction
5 against any person who has committed any such violation
6 including any governmental unit or agency thereof, and upon
7 proper proof shall be entitled:

8 (1) To an injunction or other appropriate order
9 enjoining or restraining any violation of this act or
10 requiring compliance herewith;

11 (2) To an appropriate order requiring the offending
12 person to delete from their file or files any information
13 gathered in violation of this act;

14 (3) To actual damages but not less than liquidated
15 damages computed at the rate of two hundred dollars (\$200)
16 for each violation for each offender. For this purpose each
17 day of a continuing interception of the wire or oral
18 communications and each day of a continuing surveillance in
19 violation of this act shall be considered a separate
20 violation. Provided, however, if an action is brought
21 against both an organization and its employees or agents,
22 the injured party shall not be entitled to duplicitous
23 recovery.

24 (4) To punitive or exemplary damages as set forth in
25 section 17-208, R.C.M. 1947.

1 (5) To a reasonable attorney's fee and other
2 litigation costs reasonably incurred.

3 It shall not be a necessary prerequisite to an action
4 pursuant to this section that the injured party has
5 suffered, or be threatened with, actual damages.

6 Section 9. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

12 Section 10. Sections 41-119, 41-120, 94-3202, 94-3320,
13 94-3321, 94-3323, 94-35-220, 94-35-274, and 94-35-275,
14 R.C.M. 1947, are repealed.

-End-

Approved by Committee
on Judiciary

1 SENATE BILL NO. 400
 2 INTRODUCED BY TOWE
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ENTITLED THE MONTANA
 5 PRIVACY ACT OF 1975; TO IMPLEMENT ARTICLE II, SECTION 10 OF
 6 THE NEW CONSTITUTION; AMENDING 94-8-114, R.C.M. 1947; AND
 7 REPEALING SECTIONS 41-119, AND 41-120, 94-3203, 94-3320,
 8 94-3321, 94-3323, 94-35-220, 94-35-274, AND 94-35-275,
 9 R.C.M. 1947."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Short title. This act shall be known and
 13 may be cited as "The Montana Privacy Act".

14 Section 2. What right of privacy includes. The "right
 15 of privacy" set forth in section 10 of Article II of the
 16 Montana constitution includes: (1) privacy of the home and
 17 other private places,

18 (2) privacy of communications,

19 (3) privacy of the mind, and

20 (4) privacy of the marriage and family.

21 Section 3. Privacy of the home and other private
 22 places -- definitions. As used in this act: (1) "home and
 23 other private places" means a person's dwelling and any
 24 other place or area where one may reasonably expect to be
 25 safe or protected from casual or hostile intrusion or

1 surveillance. The term shall include, but not be limited
 2 to, a person's residence or other enclosed habitat, garage
 3 or barn or other outbuildings connected with a residence,
 4 motel, or hotel, room, automobile or other enclosed vehicle,
 5 boat, office, warehouse or other commercial building or area
 6 in a building into which the public is not invited,
 7 compartment in a public toilet or bath house, locker, and
 8 desk drawer or any other similar enclosure. The term does
 9 not include a place to which the public or a substantial
 10 part thereof has access or any such place or area not under
 11 the lawful control or possession of the person asserting the
 12 right of privacy.

13 (2) "enter" means physically entering, or in any other
 14 manner accomplishing a sufficient entry by the use of any
 15 device or otherwise so that the contents, sounds, events,
 16 activities, or persons therein which a person has a
 17 reasonable expectation of remaining private can be observed,
 18 photographed, recorded, heard, or otherwise uncovered. It
 19 shall also mean the trespass on property for the purpose of
 20 gaining or attempting to gain such entry.

21 (3) Except as provided in subsection (4) of this
 22 section, it shall be unlawful for any person, including any
 23 agent or employee of any governmental unit to enter a home
 24 or other private place for any purpose. For the purposes of
 25 this act, each entry by each person shall constitute a

1 separate offense.

2 (4) Subsection ~~(7)~~ (3) shall not apply to any such
3 trespass or entry obtained:

4 (a) By any person upon consent freely given by a
5 proper adult person either express or implied except, in the
6 case of agents or employees of a governmental unit, such
7 consent cannot be implied unless the person giving such
8 consent is aware that such consent can be withheld.

9 (b) By agents and employees of the United States
10 acting under lawful federal authority.

11 (c) By agents or employees of the state or of local
12 governmental units acting under the authority of a valid
13 search warrant, a writ of attachment, writ of execution or
14 other writ or order lawfully obtained under proper legal
15 process or making a lawful search incident to a lawful
16 arrest.

17 (d) By a landlord or other person holding a bona fide
18 legal claim to such a place only to the extent necessary for
19 the rightful exercise or protection of such claim. For this
20 purpose, a landlord or other lawful claimant to leased
21 premises shall have the right of inspections only at
22 reasonable times and only as often as may be reasonably
23 necessary to protect the property over which he exercises
24 such claim. ~~(A tenant may not unreasonably withhold consent
25 to exhibit the premises.)~~

1 (e) By any person whose sole purpose is to render
2 assistance when there is reasonable grounds for belief that
3 the premises are in danger of fire or other calamity.

4 (f) By any person in case of an emergency where there
5 is probable cause to believe the occupant needs immediate
6 assistance to avoid serious bodily injury.

7 (g) By any employee or agent of a business regulated
8 under the provisions of Title 70 of R.C.M. 1947, when acting
9 in compliance with any rule, regulation, or order pronounced
10 or authorized by the public service commission pursuant to
11 the provisions of Title 70, R.C.M. 1947.

12 Section 4. Privacy of communications. (1) For the
13 purposes of this act:

14 (a) "Contents" when used with respect to any wire or
15 oral communication, includes any information concerning the
16 identity of the parties to such communication or the
17 existence, substance, purport, or meaning of that
18 communication.

19 (b) "Electronic, mechanical, or other device" means
20 any device or apparatus which can be used to intercept a
21 wire or oral communication other than:

22 (i) any telephone or telegraph instrument, equipment
23 or facility, or any component thereof, (A) furnished to the
24 subscriber or user for ordinary telephone or telegraph use;
25 or (B) used by a communications common carrier in the

1 ordinary course of its business.

2 (ii) a hearing aid or similar device being used to
3 correct subnormal hearing to not better than normal.

4 (c) "Intercept" means the acquisition of the contents
5 of any wire, oral or written or communication through the
6 use of any electronic, mechanical, or other device, through
7 the opening of a sealed letter, or otherwise.

8 (d) "Mail covers" means the information received from
9 the copying or retaining of some or all the information
10 contained on the outside of a sealed envelope containing a
11 written communication.

12 (e) "Oral communication" means any oral communication
13 uttered by a person with an expectation that such
14 communication is not subject to interception under
15 circumstances justifying such expectations.

16 (f) "Person" means any employee or agent of the state
17 of Montana, or any political subdivision thereof, and any
18 individual, partnership, association, joint-stock company,
19 trust, or corporation.

20 (g) "Wire communication" means any communication made
21 in whole or in part by aid of wire, cable, or other
22 connection furnished or operated by any person engaged as a
23 common carrier or public utility in providing or operating
24 such facilities for the transmission of communication.

25 (h) "Written communication" means any letter or other

1 written message prepared for delivery through the United
2 States mail or for delivery by any other means with the
3 expectation that such communication is not subject to
4 interception under circumstances justifying such
5 expectations.

6 (2) Except as provided in subsection (4) herein, it
7 shall be unlawful for any person not a party to the
8 communication to wilfully intercept, or attempt to
9 intercept, or procure any other person to intercept or
10 attempt to intercept, any wire, oral or written
11 communication without the consent of both the sender and the
12 receiver of the communication or, if more than two parties,
13 without the consent of all parties to the communication.

14 (3) Except as provided in subsection (4) herein, it
15 shall be unlawful for any person to wilfully disclose or use
16 or attempt to disclose or use the contents of any wire,
17 oral, or written communication knowing or having reason to
18 know that such information was obtained in violation of
19 subsection (2) hereof.

20 (4) The provisions of subsections (2) and (3) shall
21 not apply to:

22 (a) agents and employees of the United States acting
23 under lawful federal authority.

24 (b) to an operator of a switchboard, or an officer,
25 employee, or agent of any communication common carrier whose

1 facilities are used in the transmission of a wire
 2 communication with respect to the interception, disclosure,
 3 or use of that communication in the normal course of his
 4 employment while engaged in any activity which is a
 5 necessary incident to the rendition of his service or to the
 6 protection of the rights or property of the carrier of such
 7 communication; provided, that said communication common
 8 carriers shall not utilize service observing or random
 9 monitoring except for mechanical or service quality control
 10 checks; provided, further, that the line of any subscriber
 11 of a telephone company shall not be monitored by a telephone
 12 company for the purpose of service observing or random
 13 monitoring, except phone communication to or from said
 14 telephone company, if he shall so request in writing to the
 15 telephone company. Any subscriber may seek an injunction in
 16 the district court to prevent such service observing or
 17 random monitoring. Nothing in this provision shall prohibit
 18 any officer or employee of a communications common carrier
 19 from monitoring any line for the purpose of determining the
 20 existence of telephone communications on said line or
 21 determining whether said line is properly functioning in the
 22 testing, maintenance and repair of its equipment. The
 23 public service commission shall require that each telephone
 24 company operating in this state, including non-regulated
 25 cooperatives, file annually with it a complete report of all

1 service observing activity, if any, carried on by such
 2 telephone company including any rules or regulations adopted
 3 by such company for such purpose. Such report may include,
 4 for the purposes of service quality control of phone
 5 communications to or from telephone companies only, a
 6 summary estimate of the total number of observations. These
 7 reports shall be made available to the public.

8 (c) with regard to the existence of wire
 9 communications only, to properly authorized persons
 10 connected with the function of billing or allocation of
 11 charges made for such services.

12 (d) to persons attempting to prevent the use of
 13 telephone or telegraph equipment for the commission of a
 14 crime upon consent of at least one party to the
 15 conversation.

16 (e) to telephone calls received by law enforcement
 17 offices, police stations and fire stations provided the
 18 taping of such calls is evidenced by an electronic tone or
 19 beep not less often than once every two seconds.

20 (f) to a properly authorized person authorized by the
 21 receiver of written communications to open and receive such
 22 communications on the receiver's behalf.

23 (5) It shall be unlawful for any person to obtain mail
 24 covers, except upon a casual basis for the purpose of
 25 obtaining an address of the sender or receiver.

1 (b) It shall be unlawful to wilfully manufacture,
 2 assemble, possess, sell, or advertise for sale any
 3 electronic, mechanical, or other device, knowing or having
 4 reason to know that the design of such device renders it
 5 primarily useful for the purpose of the surreptitious
 6 interception of wire or oral communications.

7 (7) It shall be unlawful for any person to wilfully
 8 disclose or use the contents of any wire, oral, or written
 9 communication whether or not such communication has been
 10 intercepted in violation of subsection (2) hereof if the
 11 communication was a part of a bona fide privileged
 12 relationship between a medical doctor and his patient, an
 13 attorney and his client, a minister or clergyman and his
 14 penitent or counselee, an accountant and his client, a
 15 school counselor and his counselee, A TEACHER AND HIS
 16 STUDENT, a psychologist and his client, a management
 17 consultant and his client, when the communication was given
 18 with the reasonable expectation that such communication will
 19 remain confidential without the consent of the person
 20 seeking such professional advice. Provided, however,
 21 nothing contained in this subsection shall prohibit the
 22 disclosure or use of such contents by such professional
 23 person, (a) for the purpose of advancing the cause of the
 24 client or other person seeking advice for which the advice
 25 was sought, (b) to his colleagues or other professional

1 persons for the purpose of providing better and more
 2 complete advice or assistance, (c) to his employees
 3 necessary for the efficient operation of his office, (d) for
 4 the purpose of proper administration of a public medical
 5 assistance program only to the extent necessary for such
 6 administration, (e) for the purpose of collecting a fee from
 7 said client only to the extent necessary to establish his
 8 right to such fee, and (f) for the purpose of preventing the
 9 commission of a felony.

10 (8) It shall be unlawful to compel disclosure by
 11 force, penalty, or imprisonment or threat of force, penalty,
 12 or imprisonment, the contents of any wire, oral, or written
 13 communication between a husband and wife or between either
 14 of them and their unemancipated children that took place
 15 while a bona fide and lawful family relationship existed
 16 under a reasonable expectation that such communication would
 17 remain private and confidential without the consent of all
 18 parties thereto. For the purpose of this act the
 19 termination of a marriage by divorce shall not affect the
 20 bona fide family relationship between either parent and
 21 their unemancipated children. This section shall not
 22 preclude compelling testimony properly relevant to the
 23 issues in any court proceeding involving a complaint by one
 24 (1) member of the family and participant in the
 25 communication against another such member and participant

1 including a criminal complaint made on behalf of one (1) or
 2 more such members and participants. Further, this section
 3 shall not preclude out-of-court interviews relating to such
 4 complaints conducted by law enforcement officials upon
 5 consent of the person interviewed.

6 Section 5. Privacy of the mind and personality.

7 (1) It is the finding of the legislature that every person
 8 has a right to a protective zone or a private enclave
 9 protecting his mind, his personality, and his inner life
 10 which justifies a reasonable expectation that certain
 11 private facts and information about himself will not be
 12 improperly disclosed or publicized. A person's thoughts,
 13 sentiments, emotions, sensations, religious beliefs,
 14 philosophical beliefs, and political beliefs clearly fall
 15 into this protective zone. In addition, certain other
 16 facts, either singly or in accumulation, are sufficiently
 17 private to justify a person in expecting that they will not
 18 be disclosed without his consent. In this connection, the
 19 more embarrassing the fact or facts and the more likely they
 20 will expose a person to infamy and disgrace, the closer they
 21 are to the core of the protective zone or private enclave
 22 referred to above.

23 (2) For the purposes of this act:

24 ~~(a)--"Administrative purposes"--when-used-in--connection~~
 25 ~~with--automated--personal--data--systems--means-using-such-a~~

1 ~~system for the purpose of affecting the subject individuals~~
 2 ~~directly as individuals such as for making determinations~~
 3 ~~relating to their qualifications, character, rights,~~
 4 ~~opportunities, or benefits.~~

5 ~~(b) "Automated personal data system" means a personal~~
 6 ~~data system that is stored, in whole or in part, in~~
 7 ~~computer-accessible files.~~

8 ~~(c) "Computer accessible" means recorded on magnetic~~
 9 ~~tape, magnetic disk, magnetic drum, punched card, or~~
 10 ~~optically scannable paper or film, or other storage devices~~
 11 ~~connected to a computer system, and readily accessible.~~

12 ~~(d)(A) "Organization" means any profit or nonprofit~~
 13 ~~corporation, partnership, proprietorship, or other~~
 14 ~~organization including the state of Montana, its departments~~
 15 ~~and its local subdivisions and their boards, agencies,~~
 16 ~~commissions, and bureaus.~~

17 ~~(e)(L) "Penalty" means any fine, loss of rights, loss~~
 18 ~~of privileges, or loss of employment.~~

19 ~~(f) "Personal data" means all data that (i) describes~~
 20 ~~anything about an individual, such as identifying~~
 21 ~~characteristics, measurements, test scores, (ii) evidences~~
 22 ~~of things done by or to an individual, such as records of~~
 23 ~~financial transactions, medical treatment, or other~~
 24 ~~services, and (iii) affords a clear basis for inferring~~
 25 ~~personal characteristics or things done by or to an~~

1 individual, such as the mere record of his presence in a
2 place, attendance at a meeting, or admission to some type of
3 service institution.

4 ~~(g) "Personal data system" means a collection of~~
5 ~~records kept by one or more organizations containing~~
6 ~~personal data that can be associated with identifiable~~
7 ~~individuals whether kept for administrative or statistical~~
8 ~~reporting and research purposes.~~

9 ~~(h)(C) "Political meeting" means any meeting at which~~
10 ~~candidates for political office are chosen or a principal~~
11 ~~purpose of which is to permit candidates in a primary~~
12 ~~election or in a general election to address the public~~
13 ~~and/or to answer questions from the public.~~

14 ~~(i) "Private facts and information" means any facts or~~
15 ~~information about a person that such person is justified in~~
16 ~~a reasonable expectation they will not be disclosed or used~~
17 ~~for some other purpose without his consent.~~

18 ~~(j)(D) "Private thoughts, sentiments, emotions,~~
19 ~~sensations, religious beliefs, philosophical beliefs and~~
20 ~~political beliefs" are thoughts, sentiments, emotions,~~
21 ~~sensations, religious beliefs, philosophical beliefs, and~~
22 ~~political beliefs that the holder has a reasonable~~
23 ~~expectation will not be disclosed.~~

24 ~~(k) "Public notice" means, for an agency of the state~~
25 ~~of Montana such publication that is required for notice of~~

1 ~~proposed regulations promulgated by that agency under the~~
2 ~~Montana Administrative Procedure Act, and for other~~
3 ~~organizations' publication in a newspaper of general~~
4 ~~circulation in the area in which the organization operates~~
5 ~~or such other notice as may be approved by the department of~~
6 ~~business regulation. In any event, copies of such notice~~
7 ~~must be readily available from the organization upon~~
8 ~~request.~~

9 ~~(l) "Standard universal identifier" means a~~
10 ~~systematically assigned label that attempts to distinguish~~
11 ~~an individual from all others in a way which makes such~~
12 ~~label unique, permanent, ubiquitous, indispensable, brief,~~
13 ~~and reliable for all individuals and readily available for~~
14 ~~anyone who needs it.~~

15 ~~(m) "Statistical reporting or research purposes" when~~
16 ~~used in connection with automated personal data systems~~
17 ~~means using such a system for the purpose of statistical~~
18 ~~reporting or research only and not to affect any individual~~
19 ~~directly.~~

20 ~~(n)(E) "Surveillance" means the continuous~~
21 ~~surreptitious observation of any particular individual or~~
22 ~~group of individuals or members of a single organization~~
23 ~~without their knowledge and consent. It shall also include~~
24 ~~the maintenance by any governmental unit, agency, employee,~~
25 ~~or agent thereof, of any file of information about a person~~

1 or group of persons gathered primarily and substantially
2 without that person's or group's participation or knowledge,
3 the gathering and maintenance of which information is not
4 otherwise authorized by law. Each entry of information in
5 any such file shall be deemed to be one "act of
6 surveillance" as that term is used in this act.

7 ~~(e)~~ (F) "Private organization charged with dispensing a
8 governmental benefit" is an organization that dispenses a
9 thing of value to the public or some segment thereof under
10 contract or agreement with a governmental unit or agency
11 thereof. For this purpose, obtaining a license or
12 certificate of authority shall not be considered such a
13 contract or agreement.

14 (3) It shall be unlawful for any person to compel
15 disclosure by force, penalty, or imprisonment or threat of
16 force, penalty, or imprisonment, from an individual, his
17 private thoughts, sentiments, emotions, sensations,
18 religious beliefs, philosophical beliefs, and political
19 beliefs, except in proper legal proceedings where such
20 individual has himself made such items the subject of
21 litigation.

22 (4) It shall be unlawful for any governmental unit or
23 agency thereof or any private organization charged with
24 dispensing a governmental benefit to require from any
25 individual as a condition for the receipt of any position or

1 employment or the enjoyment of any right or other benefit an
2 oath, affirmation, or test that probes into such
3 individual's religious, political, or philosophical beliefs.
4 In this connection, a simple oath or affirmation in the
5 language of Article III, section 3 of the Montana
6 constitution will not violate this provision.

7 (5) It shall be unlawful for any governmental unit or
8 agency thereof or any private organization charged with
9 dispensing a governmental benefit to require without express
10 legislative authorization (a) a disclosure from any
11 individual as a condition for the receipt of a benefit or
12 the enjoyment of a right of his membership in or affiliation
13 with or attendance at meetings of any association, group, or
14 other organization the disclosure of which may reasonably
15 amount to a disclosure in part and against his will of his
16 religious, philosophical, or political beliefs, and (b) a
17 disclosure from any association, group, or organization of
18 the names and addresses of any one or more of its members
19 provided said privacy is necessary for the undertaking and
20 continuation of the lawful activities of said association,
21 group, or organization. The determination of whether or not
22 such an individual or association is entitled to claim
23 privacy under this provision shall be made by a judge or a
24 district court in camera in a proper legal proceeding.

25 (6) It shall be unlawful:

1 (a) for any person or governmental unit or agency
 2 thereof to require as a condition of employment or continued
 3 employment that an applicant or employee submit to a
 4 polygraphic detection deceptive test, commonly known as a
 5 lie detector test, or to questioning under the effect of
 6 thiopental sodium or to any other test or questioning by
 7 means of any mechanical device or chemical substance. It
 8 shall not be unlawful, however, for qualified operators to
 9 use polygraphic detection deception tests and their results
 10 for law enforcement investigation OR PERSONNEL RECRUITMENT
 11 FOR LAW ENFORCEMENT upon the consent of any person taking
 12 such a test.

13 (b) For any person or governmental unit or agency
 14 thereof to discharge any employee solely because of an
 15 alleged or actual opinion that the employee did not tell the
 16 truth during a polygraph detection deception test or
 17 questioning under the effect of thiopental sodium or any
 18 other test or questioning by means of any mechanical device
 19 or chemical substance, except where a valid and voluntary
 20 stipulation has been executed by the employer and the
 21 employee prior to such examination.

22 (c) For any court in the course of any civil trial,
 23 criminal trial or pretrial proceeding to require that either
 24 the plaintiff or the defendant submit to a polygraphic
 25 detection deception test or to questioning under the effect

1 of thiopental sodium or to any other test or questioning by
 2 means of any mechanical device or chemical substance.

3 (d) For any examiner or operator of any polygraph or
 4 other mechanical device or chemical substance or his
 5 assistants or any other person made privy to such
 6 information to disclose or use any information acquired
 7 during the conduct of such test without the consent of the
 8 person examined.

9 (E) SUBPARAGRAPHS (C) AND (D) SHALL NOT PROHIBIT ANY
 10 TEST AND THE DISCLOSURE OF INFORMATION FROM ANY TEST
 11 PERFORMED PURSUANT TO SECTIONS 32-2142.1 THROUGH 32-2142.3,
 12 R.C.M. 1947.

13 (7) It shall be unlawful for any governmental unit or
 14 agency thereof or any private organization charged with
 15 dispensing a governmental benefit to require any individual
 16 as a condition for employment or the enjoyment of any right
 17 or other benefit to take a psychological personality
 18 inventory test such as the Minnesota Multiphasic Personality
 19 Inventory, the Minnesota Counseling Inventory, and the
 20 Edwards Personal Preference Schedule unless such tests are
 21 used only for statistical purposes and the results are not
 22 individually identifiable. THE UNIT, AGENCY OR ORGANIZATION
 23 MUST FIRST HAVE PUBLISHED regulations pursuant to the
 24 Montana Administrative Procedure Act, or, if inapplicable,
 25 in a manner similar thereto, setting forth the compelling

1 interest that outweighs this intrusion on an individual's
2 privacy.

3 (8) Except as set forth in subsection (9) herein, it
4 shall be unlawful for any officer of any executive
5 department or any executive agency of the state of Montana
6 or of any local subdivision or agency thereof, or for any
7 person acting or purporting to act under his authority, to
8 require or request, or to attempt to require or request, any
9 employee of said department, governmental unit, or agency,
10 or any person applying for such employment, to (a) answer
11 any questions designed to elicit from him information
12 concerning (i) his race, religion, or national origin, or
13 the race, religion, or national origin of any of his
14 forebearers, (ii) his personal relationship with any person
15 connected with him by blood or marriage, (iii) his religious
16 beliefs or practices, (iv) his attitude or conduct with
17 respect to sexual matters, (v) his property, income, or
18 other assets, source of income, or liabilities, or his
19 personal or domestic expenditures or those of any member of
20 his household, or (b) make a report concerning any of his
21 activities or undertakings unless such activities or
22 undertakings are related to the performance of his job or to
23 the development of additional qualifications for his job or
24 unless there is reason to believe that he is engaged in
25 outside activities or employment in conflict with his

1 official duties.

2 (9) Nothing contained in subsection (8) herein shall
3 be construed to prohibit (a) inquiry concerning the
4 citizenship or race of any such employee or person if his
5 citizenship or race is a statutory condition of his
6 obtaining or retaining employment, (b) a physician from
7 eliciting such information or authorizing such tests in the
8 diagnosis or treatment of any such employee or person in an
9 individual case basis only where such physician deems such
10 information necessary to enable him to determine whether or
11 not such individual is suffering from mental illness, (c) an
12 officer of such department or agency from advising any such
13 employee of a specific charge of sexual misconduct made
14 against that employee, and affording him an opportunity to
15 refute the charge, (d) any employee of a taxing authority
16 from obtaining the necessary information to carry out the
17 functions of his job, (e) an employer or other organization
18 administering a pension plan, or other plan for the benefit
19 of the employee or his family, to the extent necessary to
20 carry out the purpose of the plan, (f) an employer obtaining
21 information necessary to comply with the requirements of
22 federal law, and (g) with regard to the items contained in
23 (8) (a) (v) only, the requirement of a full disclosure of
24 assets and income by an elected official and the requirement
25 of a full disclosure of any matter which might tend to

1 indicate a conflict of interest in respect to the
2 performance of any of his duties by any other employee or
3 applicant.

4 (10) It shall be unlawful for any person to use, for
5 the purpose of advertising for any item for sale or for any
6 other advertising or commercial purposes, the name, picture,
7 or portrait of an individual without the individual's
8 informed consent, or in the case of a minor, the informed
9 consent of his parent or guardian, or, in the case of a
10 deceased individual, the informed consent of his heirs or
11 personal representatives. For the purpose of this
12 provision, the use of a name, picture, or portrait of an
13 individual by an organization representing the news media in
14 a bona fide news story or by a nonprofit organization
15 publishing a year book or historical record when not
16 contained in a paid advertisement, shall not be considered
17 use for an advertising or commercial purpose.

18 (11) It shall be unlawful for any person to furnish
19 any other person or organization any identification or other
20 record indicating that any person has been arrested on any
21 criminal offense unless such record discloses that such
22 person pleaded guilty or nolo contendere to or was convicted
23 of such charge or offense in a court of justice except while
24 the arrest is reasonably contemporaneous, such information
25 may be released to the news media. The submission of

1 information about a person suspected of a criminal offense
2 prior to final disposition of his case by local law
3 enforcement agencies and their employees to other bona fide
4 law enforcement agencies shall not constitute a violation of
5 this provision provided a complete and accurate statement as
6 to the final disposition of the case is sent to the same
7 agency in the same manner within five (5) days of such final
8 disposition.

9 All photographs, fingerprints or other documents
10 relating solely to an individual charged with a criminal
11 offense prepared by law enforcement officers after his
12 arrest shall, upon request as hereinafter provided, be
13 returned to him and his name shall be expunged from any
14 index upon his acquittal or unconditional release without
15 being convicted, except as follows:

16 (a) Nothing herein shall prevent the proper law
17 enforcement agency from maintaining all records lawfully
18 obtained and held prior to such arrest, and

19 (b) Nothing herein shall prevent the proper law
20 enforcement agency from maintaining all records of any
21 person who is admitted to probation upon terms and
22 conditions pursuant to the A deferred imposition of a
23 sentence, ~~received as provided in section 54-133(e), R.C.M.,~~
24 ~~1947.~~

25 It shall be unlawful for any person in possession and

1 control of such photographs, fingerprints or other records
2 to refuse to return them as required in the preceding
3 sentence upon a request by the individual who was so
4 arrested or his proper representative.

5 (12) It shall be unlawful for any person to authorize
6 or engage in the unreasonable surveillance of any
7 individual, group of individuals or members of any
8 organization.

9 (13) It shall be unlawful for any officer, employee or
10 agent of the state of Montana, any of the local
11 subdivisions, or any agencies thereof to attend a political
12 meeting for the purpose of observing or conducting
13 surveillance on an individual, group of individuals or
14 organization suspected of committing or about to commit a
15 criminal offense unless there is probable cause to believe
16 that the offense in question is likely to be committed at
17 the meeting or in the immediate vicinity of the meeting
18 during the time at which the meeting is being held; provided
19 that nothing contained herein shall prohibit the
20 nonsurreptitious attendance at any meeting of any peace
21 officer or other person whose attendance at that meeting is
22 for the purpose of protecting, as authorized by law, the
23 security of any person lawfully attending the meeting or
24 participating in the meeting.

25 (14) It shall be unlawful for any law enforcement

1 organization to keep any records with regard to any
2 individual suspect present at any political meeting.

3 ~~(15) It shall be unlawful for any person or~~
4 ~~organization to knowingly violate any of the following~~
5 ~~safeguard requirements for automated personal data systems:~~

6 ~~Safeguard 1: Any organization maintaining a record of~~
7 ~~individually identifiable personal data, which it does not~~
8 ~~maintain as part of an automated personal data system, shall~~
9 ~~make no transfer of such data to another organization,~~
10 ~~without the prior informed consent of the individual to whom~~
11 ~~the data pertain, if it knows that, as a consequence of the~~
12 ~~transfer, such data will become part of an automated~~
13 ~~personal data system; provided, however, that (1) any person~~
14 ~~may transfer such data to an automated personal data system~~
15 ~~for the purpose of assisting in the collection of any debt~~
16 ~~outstanding and unpaid upon the effective date of this act,~~
17 ~~(2) law enforcement personnel may transfer data relating to~~
18 ~~criminal identification, stolen property and missing persons~~
19 ~~to an automated personal data system maintained and operated~~
20 ~~by law enforcement personnel and may further transfer~~
21 ~~information to the national criminal information center~~
22 ~~system pursuant to the rules and regulations governing that~~
23 ~~system, and (3) information relating to a borrower properly~~
24 ~~obtained in connection with the transfer or assignment of~~
25 ~~his loan may be transferred to an automated personal data~~

1 ~~system without violating this act.~~

2 ~~Safeguard 2: Any organization maintaining an automated~~
 3 ~~personal data system shall identify one person immediately~~
 4 ~~responsible for the system, and make any other~~
 5 ~~organizational arrangements that are necessary to assure~~
 6 ~~continuing attention to the compliance with these~~
 7 ~~safeguards.~~

8 ~~Safeguard 3: Any organization maintaining an automated~~
 9 ~~personal data system shall take affirmative action to inform~~
 10 ~~each of its employees having any responsibility or function~~
 11 ~~in the design, development, operation, or maintenance of the~~
 12 ~~system, or the use of any data contained therein, about~~
 13 ~~these safeguards and any rules and procedures promulgated by~~
 14 ~~such organization to assure compliance with them.~~

15 ~~Safeguard 4: No organization shall take any~~
 16 ~~disciplinary or other punitive action against any individual~~
 17 ~~who brings to the attention of appropriate authorities, the~~
 18 ~~press, or any member of the public, evidence of~~
 19 ~~noncompliance with these safeguards. Any organization~~
 20 ~~maintaining automated personal data systems shall provide a~~
 21 ~~system of penalties for any employee who initiates or~~
 22 ~~otherwise contributes to any such disciplinary action.~~

23 ~~Safeguard 5: Any organization maintaining an automated~~
 24 ~~personal data system shall take reasonable precautions to~~
 25 ~~protect data in the system from any anticipated threats or~~

1 ~~hazards to the security of the system.~~

2 ~~Safeguard 6: No transfer of individually identifiable~~
 3 ~~personal data to another system may be made without the~~
 4 ~~informed consent of the subject individual, except (1) a~~
 5 ~~transfer from one system to another within the same~~
 6 ~~organization may be made without such consent if the~~
 7 ~~conditions of the transfer provide substantial assurance~~
 8 ~~that the requirements for security and limitations of access~~
 9 ~~will not be weakened by the transfer, (2) a transfer by or~~
 10 ~~to any organization which is required by federal law to~~
 11 ~~transfer such data to a federal agency or which is required~~
 12 ~~or specifically permitted by federal law to receive such~~
 13 ~~data from a federal agency to the extent the transfer is~~
 14 ~~consistent with such requirement or permissions, (3) a~~
 15 ~~transfer to the department of revenue of such data from the~~
 16 ~~federal internal revenue service in connection with their~~
 17 ~~function of collecting taxes, (4) a transfer of such data to~~
 18 ~~another system for the purpose of assisting in the~~
 19 ~~collection of any money debt outstanding and unpaid upon the~~
 20 ~~effective date of this act, (5) a transfer of debt relating~~
 21 ~~to criminal identification, stolen property, and missing~~
 22 ~~persons by law enforcement personnel to another system~~
 23 ~~operated by law enforcement personnel and a transfer of~~
 24 ~~information to the national criminal information center~~
 25 ~~system pursuant to the rules and regulations governing that~~

1 ~~system, and (6) a transfer of information relating to a~~
2 ~~borrower properly obtained in connection with the transfer~~
3 ~~or assignment of his loan.~~

4 ~~Safeguard 7: Any organization maintaining an automated~~
5 ~~personal data system for administrative purposes shall~~
6 ~~maintain a complete and accurate record of every access to~~
7 ~~and use made of any data in the system, including the~~
8 ~~identity of all persons and organizations to which access~~
9 ~~has been given.~~

10 ~~Safeguard 8: Any organization maintaining an automated~~
11 ~~personal data system for administrative purposes shall~~
12 ~~maintain data in the system with such accuracy,~~
13 ~~completeness, timeliness, and pertinence as is necessary to~~
14 ~~assure accuracy and fairness in any determination relating~~
15 ~~to an individual's qualifications, character, rights,~~
16 ~~opportunities, or benefits that may be made on the basis of~~
17 ~~such data.~~

18 ~~Safeguard 9: Any organization maintaining an automated~~
19 ~~personal data system that is used in any way for~~
20 ~~administrative purposes shall eliminate data from~~
21 ~~computer-accessible files when the data are no longer~~
22 ~~timely.~~

23 ~~Safeguard 16: Any organization maintaining an~~
24 ~~automated personal data system that is used for~~
25 ~~statistical reporting and research purposes shall have the~~

1 ~~capacity to make sufficient data readily available along~~
2 ~~with sufficient information to permit reconstruction of the~~
3 ~~conditions and suppositions under which the data were~~
4 ~~collected necessary to allow an independent analysis.~~

5 ~~Safeguard 11: Any organization maintaining an~~
6 ~~automated personal data system for administrative purposes~~
7 ~~that publicly disseminates statistical reports or research~~
8 ~~findings based on personal data drawn from the system, or~~
9 ~~from administrative systems of other organizations, shall~~
10 ~~make such data publicly available for independent analysis~~
11 ~~on reasonable terms, and shall take reasonable precautions~~
12 ~~to assure that no data made available for independent~~
13 ~~analysis will be used in a way that might reasonably be~~
14 ~~expected to prejudice judgments about any individual data~~
15 ~~subject's character, qualifications, rights, opportunities,~~
16 ~~or benefits.~~

17 ~~Safeguard 12: Any organization maintaining an~~
18 ~~automated personal data system shall give public notice of~~
19 ~~the existence and character of its system once each year.~~
20 ~~Any organization maintaining more than one system shall~~
21 ~~publish such annual notices for all its systems~~
22 ~~simultaneously. Any organization proposing to establish a~~
23 ~~new system, or to enlarge an existing system, shall give~~
24 ~~public notice long enough in advance of the initiation or~~
25 ~~enlargement of the system to assure individuals who may be~~

1 ~~affected by its operation a reasonable opportunity to~~
 2 ~~comment. The public notice shall specify:~~

3 ~~(a) The name of the system;~~

4 ~~(b) The nature and purpose or purposes of the system;~~

5 ~~(c) The categories and number of persons on whom data~~
 6 ~~are maintained or are to be maintained;~~

7 ~~(d) The categories of data maintained or to be~~
 8 ~~maintained, indicating which categories are stored or are to~~
 9 ~~be stored in computer accessible files;~~

10 ~~(e) The organization's policies and practices~~
 11 ~~regarding data storage, duration of retention of data, and~~
 12 ~~disposal thereof;~~

13 ~~(f) The categories of data sources;~~

14 ~~(g) A description of all types of use made or to be~~
 15 ~~made of data, indicating those involving computer accessible~~
 16 ~~files, and including all classes of users and the~~
 17 ~~organizational relationships among them;~~

18 ~~(h) In an automated personal data system used for~~
 19 ~~administrative purposes, the procedures whereby an~~
 20 ~~individual can (i) be informed if he is the subject of data~~
 21 ~~in the system; (ii) gain access to such data; and (iii)~~
 22 ~~contest their accuracy, completeness, pertinence, and the~~
 23 ~~necessity for retaining them;~~

24 ~~(i) In an automated personal data system used for~~
 25 ~~statistical reporting and research, the procedures whereby~~

1 ~~an individual, group, or organization can gain access to~~
 2 ~~data used for this purpose for independent analysis;~~

3 ~~(j) In an automated personal data system used for~~
 4 ~~statistical reporting and research, a statement of the~~
 5 ~~system's provisions for data confidentiality and the legal~~
 6 ~~basis for such provisions;~~

7 ~~(k) The title, name, and address of the person~~
 8 ~~immediately responsible for the system.~~

9 ~~Safeguard 13: Any organization maintaining an~~
 10 ~~automated personal data system shall inform an individual~~
 11 ~~asked to supply personal data for the system whether he is~~
 12 ~~legally required, or may refuse, to supply the data~~
 13 ~~requested, and also of any specific consequences for him,~~
 14 ~~which are known to the organization, of providing or not~~
 15 ~~providing such data.~~

16 ~~Safeguard 14: Any organization maintaining an~~
 17 ~~automated personal data system for administrative purposes~~
 18 ~~shall inform an individual, upon his request, whether he is~~
 19 ~~the subject of data in the system, and, if so make such data~~
 20 ~~fully available to the individual, upon his request, in a~~
 21 ~~form comprehensible to him, provided, however, that any~~
 22 ~~information about such individual received from a third~~
 23 ~~person before the effective date of this act on the~~
 24 ~~condition that such information would remain confidential~~
 25 ~~need not be disclosed in the absence of a court order~~

1 requiring such disclosure.

2 ~~Safeguard 15: Any organization maintaining an~~
3 ~~automated personal data system shall not allow any other use~~
4 ~~of individually identifiable data that is not within the~~
5 ~~stated purposes of the system as reasonably understood by~~
6 ~~the individual, unless informed consent of the individual~~
7 ~~has been explicitly obtained.~~

8 ~~Safeguard 16: Any organization maintaining an~~
9 ~~automated personal data system for administrative purposes~~
10 ~~shall inform an individual, upon his request, about the uses~~
11 ~~made of data about him, including the identity of all~~
12 ~~persons and organizations involved and their relationships~~
13 ~~with the system.~~

14 ~~Safeguard 17: An organization shall not make data from~~
15 ~~an automated personal data system available in response to a~~
16 ~~demand for data made by means of compulsory legal process,~~
17 ~~unless it has first notified the individual to whom the data~~
18 ~~pertains of the demand and has made the data being sought~~
19 ~~fully available to such individual.~~

20 ~~Safeguard 18: An organization maintaining an automated~~
21 ~~personal data system for administrative purposes shall~~
22 ~~develop and maintain procedures that (i) allow an individual~~
23 ~~who is the subject of data in the system to contest their~~
24 ~~accuracy, completeness, pertinence, and the necessity for~~
25 ~~retaining them; (ii) permit data to be corrected or amended~~

1 ~~when the individual to whom they pertain so requests; and~~
2 ~~(iii) assure, when there is disagreement with the individual~~
3 ~~about whether a correction or amendment should be made, that~~
4 ~~the individual's claim is noted and included in any~~
5 ~~subsequent disclosure or dissemination of the disputed data.~~

6 ~~Any organization may obtain a waiver or exemption of~~
7 ~~any portion or all of any one or more of these safeguard~~
8 ~~requirements from the department of business regulation~~
9 ~~pursuant to the procedures promulgated for this purpose by~~
10 ~~said department upon a showing of a clearly paramount and~~
11 ~~strongly justified societal interest in such waiver or~~
12 ~~exemption. The decision of the said department on any such~~
13 ~~application shall be an adjudicatory decision under the~~
14 ~~terms of the Montana Administrative Procedure Act. The full~~
15 ~~text of any such waiver or exemption granted under this~~
16 ~~subsection shall be published by the department of business~~
17 ~~regulation in the Montana Administrative Code.~~

18 ~~(16) It shall be unlawful for any officer, employee,~~
19 ~~or agent of an organization maintaining an automated~~
20 ~~personal data system or any person who has received~~
21 ~~information from such a system without proper authority or~~
22 ~~without the informed consent of the subject individual to~~
23 ~~disclose any personal data received from such a system that~~
24 ~~can be identifiable with or traceable to specific~~
25 ~~individuals except (a) disclosure made in the ordinary~~

1 ~~course of the business or activity contemplated by the~~
 2 ~~system as set forth in their annual public notice, (b)~~
 3 ~~disclosures made with the informed consent of the subject~~
 4 ~~individual, and (c) by order of or response to a subpoena of~~
 5 ~~a district court. Any person in charge of or privy to~~
 6 ~~information contained in any such system used exclusively~~
 7 ~~for statistical reporting or research may not be compelled~~
 8 ~~to disclose any such data in any criminal or civil~~
 9 ~~proceedings in any court of law of this state. Adequate~~
 10 ~~precautions must be taken to insure that any data released~~
 11 ~~in statistical form by any such system will not reasonably~~
 12 ~~result in the identification of individual data subjects in~~
 13 ~~violation of this provision.~~

14 ~~(17) It shall be unlawful for any person to require by~~
 15 ~~means of withholding or threatening to withhold the~~
 16 ~~enjoyment of any right or benefit the disclosure of an~~
 17 ~~individual's social security number issued by the social~~
 18 ~~security administration of the United States or any other~~
 19 ~~label that is functionally similar to a standard universal~~
 20 ~~identifier; provided, however, this provision shall not~~
 21 ~~apply to (a) employers or their agents in connection with~~
 22 ~~the administration of the federal social security act, or~~
 23 ~~other appropriate payroll function, (b) federal agencies and~~
 24 ~~federal agents acting under lawful federal authority, (c)~~
 25 ~~the department of revenue of the state of Montana when such~~

1 ~~use is connected with its function of collecting taxes, (d)~~
 2 ~~the department of social and rehabilitation services of the~~
 3 ~~state of Montana when such use is limited to the~~
 4 ~~administration of its welfare and related services and the~~
 5 ~~collection of child support payments, and (e) any person~~
 6 ~~granted specific authority to use such number or label by~~
 7 ~~the Montana legislature, or by the department of business~~
 8 ~~regulation when the legislature is not in session subject to~~
 9 ~~ratification in the next session of the legislature. It~~
 10 ~~shall also be unlawful for any person to use such a number~~
 11 ~~or label for promotional or commercial purposes.~~

12 Section 6. Marital or familial privacy. (1) It shall
 13 be unlawful for any governmental unit or agency thereof to
 14 take any action which interferes with the right of a married
 15 couple (a) to decide for themselves whether to procreate
 16 children, (b) to use birth control devices and techniques
 17 consistent with reasonable medical safeguards, and (c) to do
 18 any other act or make any other choice consistent with the
 19 marital relationship that does not cause harm to each other
 20 or others; provided, however, that nothing contained herein
 21 shall prevent the state of Montana from proscribing abortion
 22 to the extent permitted under the Constitution of the United
 23 States, and provided further, that nothing contained herein
 24 shall prohibit any person from publishing and distributing
 25 leaflets or other material relating to the above matters.

1 (2) It shall be unlawful for any person to interfere
 2 by force, penalty, imprisonment or threat of force, penalty,
 3 or imprisonment with the free choice of any individual to
 4 refuse or accept sterilization. This provision shall not
 5 apply to a medical doctor seeking compensation for his
 6 services or acting in a reasonable manner to protect the
 7 health of his patient.

8 (3) It shall be unlawful for any governmental unit or
 9 agency thereof to interfere with the religious training and
 10 guidance of an unemancipated child desired by both parents
 11 without the existence of compelling societal interest for
 12 such interference.

13 Section 7. Penalties. (1) Any EXCEPT AS OTHERWISE
 14 SPECIFICALLY PROVIDED BY STATUTE, ANY act or omission made
 15 unlawful under sections ~~2-and-3~~ 3 AND 4 of this act shall be
 16 punishable by fine of not more than ~~ten~~ ONE thousand dollars
 17 ~~(\$10,000)~~ (\$1,000) or imprisonment of not more than ~~five~~ (5)
 18 ~~years~~ ONE (1) YEAR, or both.

19 (2) Any act or omission made unlawful under sections 4
 20 5 and 5 6 of this act shall be punishable by a fine of not
 21 more than ~~one-thousand~~ FIVE HUNDRED dollars ~~(\$1,000)~~ (\$500)
 22 or imprisonment of not more than ~~one--(1)--year~~ SIX (6)
 23 MONTHS, or both.

24 (3) ~~NO~~ EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED BY
 25 STATUTE, NO evidence obtained as a result of any act or

1 omission made unlawful under this act shall be received in
 2 evidence in any trial, hearing, or other proceeding in or
 3 before any court, grand jury, department, officer, agency,
 4 regulatory body, or legislative committee without the
 5 informed consent of the person or persons whose privacy has
 6 been invaded.

7 (4) Any electronic, mechanical, or other device
 8 manufactured, assembled, possessed, sold or advertised in
 9 violation of subsection (6) of section 3 of this act may be
 10 seized and forfeited to the state of Montana. Upon proper
 11 court order obtained from a district court of proper
 12 jurisdiction, said property shall be destroyed.

13 Section 8. Civil action. Any person whose privacy has
 14 been invaded because of an unlawful act or omission in
 15 violation of any of the provisions of this act may file a
 16 civil suit in a district court of proper jurisdiction
 17 against any person who has committed any such violation
 18 including any governmental unit or agency thereof, and upon
 19 proper proof shall be entitled:

20 (1) To an injunction or other appropriate order
 21 enjoining or restraining any violation of this act or
 22 requiring compliance herewith;

23 (2) To an appropriate order requiring the offending
 24 person to delete from their file or files any information
 25 gathered in violation of this act;

1 (3) To actual damages but not less than liquidated
 2 damages computed at the rate of ~~two~~ ONE hundred dollars
 3 ~~(1200)~~ (1100) for each violation for each offender. For
 4 this purpose each day of a continuing interception of the
 5 wire or oral communications and each day of a continuing
 6 surveillance in violation of this act shall be considered a
 7 separate violation. Provided, however, if an action is
 8 brought against both an organization and its employees or
 9 agents, the injured party shall not be entitled to
 10 duplicitous recovery. IF OTHER STATUTES PROVIDE SPECIFICALLY
 11 AND EXCLUSIVELY FOR A DIFFERENT MEASURE OF DAMAGES OR
 12 REMEDY, THIS SUBSECTION SHALL NOT APPLY.

13 (4) To punitive or exemplary damages as set forth in
 14 section 17-208, K.C.M. 1947.

15 (5) To a reasonable attorney's fee and other
 16 litigation costs reasonably incurred.

17 It shall not be a necessary prerequisite to an action
 18 pursuant to this section that the injured party has
 19 suffered, or be BEEN threatened with, actual damages.

20 Section 9. Severability. If a part of this act is
 21 invalid, all valid parts that are severable from the invalid
 22 part remain in effect. If a part of this act is invalid in
 23 one or more of its applications, the part remains in effect
 24 in all valid applications that are severable from the
 25 invalid applications.

1 SECTION 10. SECTION 94-8-114, K.C.M. 1947, IS AMENDED
 2 TO READ AS FOLLOWS:

3 "94-8-114. Privacy in communications. (1) A person
 4 commits the offense of violating privacy in communications
 5 if he knowingly or purposely:

6 (a) Communicates with any person by telephone with the
 7 intent to terrify, intimidate, threaten, harass, annoy or
 8 offend, or use any obscene, lewd or profane language or
 9 suggest any lewd or lascivious act, or threaten to inflict
 10 injury or physical harm to the person or property of any
 11 person.

12 (b) Uses a telephone to attempt to extort money or any
 13 other thing of value from any person, or to disturb by
 14 repeated telephone calls the peace, quiet or right of
 15 privacy of any person at the place where the telephone call
 16 or calls were received. The use of obscene, lewd or profane
 17 language or the making of a threat or lewd or lascivious
 18 suggestions shall be prima facie evidence of an intent to
 19 terrify, intimidate, threaten, harass, annoy or offend.

20 ~~(c) Records or causes to be recorded by use of any~~
 21 ~~hidden electronic or mechanical device which reproduces a~~
 22 ~~human conversation without the knowledge of all parties to~~
 23 ~~the conversation. Subsection (c) shall not apply to duly~~
 24 ~~elected or appointed public officials or employees when such~~
 25 ~~transcription or recording is done in the performance of~~

1 ~~official duty, nor to persons speaking at public meetings or~~
2 ~~persons given warning of such recording.~~

3 ~~(d) Attempts by means of any machine, instrument,~~
4 ~~contrivance, or in any other manner, reads, or attempts to~~
5 ~~read any other manner, reads, or attempts to read any~~
6 ~~message or learn the contents thereof, while the same is~~
7 ~~being sent over any telegraph line, or learns or attempts to~~
8 ~~learn the contents of any message, whilst the same is in any~~
9 ~~telegraph office or is being received thereat or sent~~
10 ~~therefrom, or who uses or attempts to use, or communicate to~~
11 ~~others, any information so obtained.~~

12 ~~(e) Discloses the contents of a telegraphic message or~~
13 ~~any part thereof, addressed to another person without the~~
14 ~~permission of such person, unless directed to do so by the~~
15 ~~lawful order of a court.~~

16 ~~(f) Opens or reads or causes to be read any sealed~~
17 ~~letter not addressed to himself, without being authorized to~~
18 ~~do so by either the writer of such letter or by the person~~
19 ~~to whom it is addressed, and every person who, without the~~
20 ~~like authority, publishes any of the contents of such~~
21 ~~letters knowing the same to have been unlawfully opened.~~

22 (2) A person convicted of the offense of violating the
23 privacy in communications shall be fined not to exceed five
24 hundred dollars (\$500) or be imprisoned in the county jail
25 for a term not to exceed six (6) months or both."

1 Section 11. Sections 41-119, AND 41-120, 94-3202,
2 94-3320, 94-3321, 94-3323, 94-35-220, 94-35-274, and
3 94-35-275, h.C.B. 1947, are repealed.

-End-