

1 H BILL NO. 475  
2 INTRODUCED BY Hewners Vignat

3  
4 A BILL FOR AN ACT ENTITLED: "THE MONTANA PRIVACY ACT; TO  
5 IMPLEMENT ARTICLE II, SECTION 10, OF THE CONSTITUTION;  
6 AMENDING SECTION 94-8-114, R.C.M. 1947; AND REPEALING  
7 SECTIONS 41-119 AND 41-120, R.C.M. 1947."

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

10 Section 1. Short title. This may be cited as "The  
11 Montana Privacy Act".

12 Section 2. What right of privacy includes. The "right  
13 of privacy" set forth in section 10 of Article II of the  
14 Montana constitution includes:

- 15 (1) privacy of the home and other private places;
- 16 (2) privacy of communications;
- 17 (3) privacy of the mind; and
- 18 (4) privacy of the marriage and family.

19 Section 3. Privacy of the home and other private  
20 places -- definitions. (1) As used in this section the  
21 following definitions apply:

22 (a) "Home or other private places" means a person's  
23 dwelling or any other place or area where one may reasonably  
24 expect to be safe or protected from casual or hostile  
25 intrusion or surveillance. The term includes but is not

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

12 (b) "Enter" means to physically enter or in any other  
13 manner to accomplish 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 keeping 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 (2) Except as provided in subsection (3) of this  
21 section, it is unlawful for any person, including any agent  
22 or employee of any governmental unit, to enter a home or  
23 other private place for any purpose. Each entry by each  
24 person constitutes a separate offense.

25 (3) Subsection (2) does not apply to any trespass or

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1 entry obtained by:

2 (a) any person after consent is freely given by a  
3 proper person, either express or implied, except, when entry  
4 is by agents or employees of a governmental unit, consent  
5 may not be implied unless the person giving the consent is  
6 aware that consent may be withheld. The exception for  
7 agents or employees of a governmental unit does not apply to  
8 undercover agents or nonuniformed employees of a public law  
9 enforcement agency.

10 (b) agents and employees of the United States acting  
11 under lawful federal authority;

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

18 (d) a landlord or other person having a claim to such  
19 a place to the extent necessary for the rightful exercise of  
20 protection of such claim. For this purpose, a landlord or  
21 other lawful claimant to leased premises has the right of  
22 inspection only at reasonable times and only as often as may  
23 be reasonably necessary to protect the property over which  
24 he exercises such claim.

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

1 assistance whenever there are reasonable grounds to believe  
2 the premises are in danger of fire or other calamity;

3 (f) any person in case of an emergency whenever there  
4 are reasonable grounds to believe the occupant needs  
5 immediate assistance to avoid bodily injury or further  
6 physical illness or injury;

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

12 (h) any person acting under the authority and within  
13 the scope of a right of lawful inspection granted by law.

14 (i) any bona fide newsman in the immediate  
15 accompaniment of law enforcement officers obtaining entry  
16 under a valid or apparently valid search warrant or in the  
17 immediate accompaniment of law enforcement officers lawfully  
18 gaining entrance when there is evidence that a crime has  
19 been committed.

20 Section 4. Privacy of communications -- definitions.  
21 (1) For the purposes of this section the following  
22 definitions apply:

23 (a) "Contents", when used with respect to any wire or  
24 oral communication, includes any information concerning the  
25 identity of the parties to such communication or the

1 existence, substance, purport, or meaning of that  
2 communication.

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

6 (i) a telephone or telegraph instrument, equipment, or  
7 facility or any component thereof furnished to the  
8 subscriber or user for ordinary telephone or telegraph use  
9 or used by a communications common carrier in the ordinary  
10 course of its business; or

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

13 (c) "Intercept" means the acquisition of the contents  
14 of any wire or oral or written communication while such  
15 communication is being conducted or before it reaches the  
16 intended receiver or receivers through the use of any  
17 electronic, mechanical, or other device, by opening a sealed  
18 letter, or otherwise.

19 (d) "Mail covers" means the information received by  
20 copying or retaining some or all of the information  
21 contained on the outside of a sealed envelope containing a  
22 written communication.

23 (e) "Oral communication" means any oral communication  
24 uttered by a person with an expectation that such  
25 communication is not subject to interception, under

1 circumstances justifying such expectations.

2 (f) "Person" means any employee or agent of the state  
3 of Montana or any political subdivision thereof and any  
4 individual, partnership, association, joint-stock company,  
5 trust, or corporation.

6 (g) "Wire communication" means any communication made  
7 in whole or in part by aid of wire, cable, or other  
8 connection furnished or operated by any person engaged as a  
9 common carrier or public utility in providing or operating  
10 such facilities for the transmission of communication.

11 (h) "Written communication" means any letter or other  
12 written message prepared for delivery through the United  
13 States mail or for delivery by any other means with the  
14 expectation that such communication is not subject to  
15 interception, under circumstances justifying such  
16 expectations.

17 (2) Except as provided in subsection (4) of this  
18 section, it is unlawful for any person not a party to the  
19 communication to purposefully intercept, to attempt to  
20 intercept, or procure any other person to intercept or  
21 attempt to intercept any wire or oral or written  
22 communication without the consent of both the sender and the  
23 receiver of the communication or, if more than two parties,  
24 without the consent of all parties to the communication.

25 (3) Except as provided in subsection (4) of this

1 section, it is unlawful for any person to purposefully  
 2 disclose or use or attempt to disclose or use the contents  
 3 of any wire or oral or written communication knowing or  
 4 having reason to know that such information was obtained in  
 5 violation of subsection (2) of this section. .

6 (4) The provisions of subsections (2) and (3) do not  
 7 apply to:

8 (a) agents and employees of the United States acting  
 9 under lawful federal authority;

10 (b) an operator of a switchboard or an officer,  
 11 employee, or agent of any communication common carrier whose  
 12 facilities are used in the transmission of a wire  
 13 communication with respect to the interception, disclosure,  
 14 or use of that communication in the normal course of his  
 15 employment while engaged in any activity which is a  
 16 necessary incident to the rendition of his service or to the  
 17 protection of the rights or property of the carrier of such  
 18 communication; provided, that communication common carriers  
 19 may not utilize service observing or random monitoring  
 20 except for mechanical or service quality control checks;  
 21 provided, further, that the line of any subscriber of a  
 22 telephone company may not be monitored by a telephone  
 23 company for the purpose of service observing or random  
 24 monitoring, except phone communication to or from the  
 25 telephone company, if the subscriber so requests in writing

1 to the telephone company. Any subscriber may seek an  
 2 injunction in the district court to prevent such service  
 3 observing or random monitoring. Nothing in this subsection  
 4 prohibits any officer or employee of a communications common  
 5 carrier, in the testing, maintenance, and repair of its  
 6 equipment, from monitoring any line for the purpose of  
 7 determining the existence of telephone communications on the  
 8 line or determining whether the line is properly  
 9 functioning. The public service commission shall require  
 10 that each telephone company operating in this state,  
 11 including nonregulated cooperatives, file annually with it a  
 12 complete report of all service-observing activity, if any,  
 13 carried on by such telephone company, including any rules  
 14 adopted by such company for such purpose. The report may  
 15 include, for the purpose of service-quality control of phone  
 16 communications to or from telephone companies only, a  
 17 summary estimate of the total number of observations. The  
 18 report shall be made available to the public;

19 (c) an employer or a properly authorized agent of an  
 20 employer monitoring a telephone conversation of an employee  
 21 relating to his employment provided the employee has been  
 22 informed of the possibility of such monitoring;

23 (d) properly authorized persons connected with the  
 24 function of billing or allocation of charges made for such  
 25 services, with regard to the existence of wire

1 communications only;

2 (e) persons investigating the use of telephone or  
3 telegraph equipment in the commission of a crime, upon  
4 consent of at least one party to the conversation;

5 (f) telephone calls received by law enforcement  
6 officers, police stations, and fire stations, provided  
7 affirmative efforts are made to inform the public by  
8 publication, posters, or otherwise that such calls are  
9 recorded;

10 (g) a person properly authorized by the receiver of  
11 written communications to open and receive such  
12 communications on the receiver's behalf;

13 (h) law enforcement officers or agents in connection  
14 with the use of undercover agents or employees, provided at  
15 least one party to the conversation has consented.

16 (5) It is unlawful for any person to obtain mail  
17 covers, except upon a casual basis for the purpose of  
18 obtaining an address of the sender or receiver, except when  
19 the covers are received from federal authorities who  
20 properly obtained the covers pursuant to federal law.

21 (6) Except for use by public law enforcement officers  
22 and agents in the performance of their official duties and  
23 in conformance with this act, it is unlawful to purposefully  
24 manufacture, assemble, possess, sell, or advertise for sale  
25 any electronic, mechanical, or other device, knowing or

1 having reason to know that the design of such device renders  
2 it primarily useful for the purpose of the surreptitious  
3 interception of wire or oral communications.

4 (7) Without the consent of the person seeking  
5 professional advice, it is unlawful for any person to  
6 purposefully disclose or use the contents of any wire or  
7 oral or written communication, whether or not such  
8 communication has been intercepted in violation of  
9 subsection (2) of this section, if the communication was a  
10 part of a bona fide privileged relationship between a  
11 medical doctor and his patient, an attorney and his client,  
12 a minister or clergyman and his penitent or counselee, an  
13 accountant and his client, a school counselor and his  
14 counselee, a teacher and his student, a psychologist and his  
15 client, or a management consultant and his client, when the  
16 communication was given with the reasonable expectation that  
17 such communication will remain confidential. Nothing  
18 contained in this subsection prohibits the disclosure of  
19 such contents by the professional person:

20 (a) to advance the cause of the client or other person  
21 seeking advice for which the advice was sought;

22 (b) to his colleagues or other professional persons to  
23 provide better and more complete advice or assistance;

24 (c) to his employees when necessary for the efficient  
25 operation of his office;

1 (d) to properly administer a public medical assistance  
 2 program, to the extent necessary for such administration;  
 3 (e) to collect a fee from the client, to the extent  
 4 necessary to establish his right to such fee;  
 5 (f) to prevent the commission of a felony; or  
 6 (g) to defend a claim or complaint filed by the client  
 7 against a professional person.  
 8 (8) It is unlawful to compel disclosure, by force,  
 9 penalty, or imprisonment or threat of force, penalty, or  
 10 imprisonment, of the contents of any wire or 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. For the purpose of this  
 16 section the dissolution of a marriage does not affect the  
 17 bona fide and lawful family relationship between either  
 18 parent and his unemancipated children. This section does not  
 19 preclude compelling testimony properly relevant to the  
 20 issues in any court proceeding involving a complaint by one  
 21 member of the family and participant in the communication  
 22 against another family member and participant, including a  
 23 criminal complaint made on behalf of one or more such  
 24 members and participants. Further, this section does not  
 25 preclude out-of-court interviews relating to such complaints

1 conducted by law enforcement officials upon consent of the  
 2 person interviewed.

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

19 (2) For the purpose of this section, the following  
 20 definitions apply:

21 (a) "Organization" means any profit or nonprofit  
 22 corporation, partnership, proprietorship, or other  
 23 organization, including the state of Montana, its  
 24 departments and local subdivisions and their boards,  
 25 agencies, commissions, and bureaus.

1 (b) "Penalty" means any fine, loss of rights, loss of  
2 privileges, or loss of employment.

3 (c) "Political meeting" means any meeting at which  
4 candidates for political office are chosen or a principal  
5 purpose of which is to permit candidates in a primary  
6 election or in a general election to address the public or  
7 answer questions from the public.

8 (d) "Private thoughts, sentiments, emotions,  
9 sensations, religious beliefs, philosophical beliefs, or  
10 political beliefs" are thoughts, sentiments, emotions,  
11 sensations, religious beliefs, philosophical beliefs, or  
12 political beliefs that the holder has a reasonable  
13 expectation will not be disclosed.

14 (e) "Surveillance" means the continuous surreptitious  
15 observation of any particular individual or group of  
16 individuals or members of a single organization without  
17 their knowledge and consent. It includes the maintenance by  
18 any governmental unit, agency, employee, or agent thereof of  
19 any file of information about a person or group of persons,  
20 gathered primarily and substantially without the person's or  
21 group's participation or knowledge, the gathering and  
22 maintenance of which information is not otherwise authorized  
23 by law. Each entry of information in any such file is  
24 considered to be one "act of surveillance" as that term is  
25 used in this section.

1 (f) "Private organization charged with dispensing a  
2 governmental benefit" means an organization that dispenses a  
3 thing of value to the public or some segment thereof under  
4 contract or agreement with a governmental unit or agency  
5 thereof. For this purpose, obtaining a license or  
6 certificate of authority is not considered such a contract  
7 or agreement.

8 (3) It is unlawful for any person to compel  
9 disclosure, by force, penalty, or imprisonment or threat of  
10 force, penalty, or imprisonment, from an individual of his  
11 private thoughts, sentiments, emotions, sensations,  
12 religious beliefs, philosophical beliefs, or political  
13 beliefs, except in proper legal proceedings where such  
14 individual has himself made such items the subject of  
15 litigation or the issue has been properly raised by virtue  
16 of the nature of the proceedings.

17 (4) It is unlawful for any governmental unit or agency  
18 thereof or any private organization charged with dispensing  
19 a governmental benefit to require from any individual, as a  
20 condition for the receipt of any position or employment or  
21 the enjoyment of any right or other benefit, an oath,  
22 affirmation, or test that probes into such individual's  
23 religious, political, or philosophical beliefs. A simple  
24 oath or affirmation in the language of Article III, section  
25 3, of the Montana constitution does not violate this

1 provision.

2 (5) It is unlawful for any governmental unit or agency  
3 thereof or any private organization charged with dispensing  
4 a governmental benefit to require without express  
5 legislative authorization:

6 (a) a disclosure of religious, philosophical, or  
7 political beliefs from any individual as a condition for the  
8 receipt of a benefit or the enjoyment of a right of his  
9 membership in or affiliation with or attendance at meetings  
10 of any association, group, or other organization, the  
11 disclosure of which may reasonably amount to a disclosure in  
12 part and against his will; or

13 (b) a disclosure from any association, group, or  
14 organization of the names and addresses of any one or more  
15 of its members, provided privacy is necessary for the  
16 undertaking and continuation of the lawful activities of the  
17 association, group, or organization. The determination of  
18 whether or not such an individual or association is entitled  
19 to claim privacy under this subsection shall be made by a  
20 judge or a district court in camera in a proper legal  
21 proceeding.

22 (6) It is unlawful:

23 (a) for any person or governmental unit or agency  
24 thereof to require as a condition of employment or continued  
25 employment that an applicant or employee submit to a

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

10 (b) for any person or governmental unit or agency  
11 thereof to discharge any employee solely because of an  
12 opinion or alleged opinion that the employee did not tell  
13 the truth during a polygraph detection deception test or  
14 questioning under the effect of sodium thiopental 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  
21 either the plaintiff or the defendant submit to a  
22 polygraphic detection deception test or to questioning under  
23 the effect of sodium thiopental or to any other test or  
24 questioning by means of any mechanical device or chemical  
25 substance; or



1 (d) for any examiner or operator of any polygraph or  
 2 other mechanical device or a person who administers a  
 3 chemical substance or an assistant or any other person made  
 4 privy to such information to disclose or use any information  
 5 acquired during the conduct of such test without the consent  
 6 of the person examined.

7 (7) Subsections (c) and (d) of subsection (6) of this  
 8 section do not prohibit any test and the disclosure of  
 9 information from any test performed pursuant to 32-2142.1  
 10 through 32-2142.3.

11 (8) It is unlawful for any governmental unit or agency  
 12 thereof or any private organization charged with dispensing  
 13 a governmental benefit to require any individual, as a  
 14 condition for employment or the enjoyment of any right or  
 15 other benefit, to take a psychological personality inventory  
 16 test such as the Minnesota multiphasic personality  
 17 inventory, the Minnesota counseling inventory, or the  
 18 Edwards personal preference schedule, unless such tests are  
 19 used only for statistical purposes and the results are not  
 20 individually identifiable. The unit, agency, or  
 21 organization must first have published regulations pursuant  
 22 to the Montana Administrative Procedure Act or, if  
 23 inapplicable, in a manner similar thereto, setting forth the  
 24 compelling interest that outweighs this intrusion on an  
 25 individual's privacy.

1 (9) Except as set forth in subsection (10) of this  
 2 section, it is unlawful for any officer of any executive  
 3 department or executive agency of the state of Montana or of  
 4 any local subdivision or agency thereof or any person acting  
 5 or purporting to act under such officer's authority to  
 6 require or request or to attempt to require or request any  
 7 employee of the department or agency or any person applying  
 8 for such employment to:

9 (a) answer any questions designed to elicit from him  
 10 information concerning:

11 (i) his race, religion, or national origin or the  
 12 race, religion, or national origin of any of his forebears;

13 (ii) his personal relationship with any person  
 14 connected with him by blood or marriage, except when  
 15 necessary to disclose nepotism as defined by law;

16 (iii) his religious beliefs or practices;

17 (iv) his attitude or conduct with respect to sexual  
 18 matters;

19 (v) his property, income, or other assets; source of  
 20 income or liabilities; or his personal or domestic  
 21 expenditures or those of any member of his household; or

22 (b) make a report concerning any of his activities or  
 23 undertakings unless such activities or undertakings are  
 24 related to the performance of his job or to the development  
 25 of additional qualifications for his job or unless there is

1 reason to believe that he is engaged in outside activities  
2 or employment in conflict with his official duties.

3 (10) Nothing contained in subsection (9) prohibits:

4 (a) inquiry concerning the citizenship or race of any  
5 employee or person if his citizenship or race is a statutory  
6 condition of his obtaining or retaining employment;

7 (b) a physician from eliciting such information or  
8 authorizing such tests in the diagnosis or treatment of any  
9 such employee or person, on an individual case basis only,  
10 when such physician considers such information necessary to  
11 enable him to determine whether or not such individual is  
12 suffering from mental illness;

13 (c) an officer of such department or agency from  
14 advising any such employee of a specific charge of sexual  
15 misconduct made against that employee and affording him an  
16 opportunity to refute the charge;

17 (d) an employee of a taxing authority from obtaining  
18 the necessary information to carry out the functions of his  
19 job;

20 (e) an employer or other organization administering a  
21 pension plan or other plan for the benefit of the employee  
22 or his family from obtaining information necessary to carry  
23 out the purpose of the plan;

24 (f) an employer obtaining information necessary to  
25 comply with the requirements of federal law; or

1 (g) with regard to the items contained in (9)(a)(v)  
2 only, the requirement of a full disclosure of assets and  
3 income by an elected official or the requirement of a full  
4 disclosure of any matter which might tend to indicate a  
5 conflict of interest in respect to the performance of any of  
6 his duties by any employee or applicant.

7 (11) It is unlawful for any person to authorize or  
8 engage in the unreasonable surveillance of any individual,  
9 group of individuals, or members of any organization.  
10 Officers and agents of public law enforcement agencies may  
11 engage in surveillance provided that it does not continue  
12 beyond 24 hours without a written statement to the chief or  
13 director of the agency explaining the need for such  
14 surveillance.

15 (12) It shall be unlawful for any officer, employee,  
16 or agent of the state of Montana, any of the local  
17 subdivisions, or any agencies thereof to attend a political  
18 meeting for the purpose of observing or conducting  
19 surveillance of an individual, group of individuals, or  
20 organization suspected of committing or about to commit a  
21 criminal offense unless there is probable cause to believe  
22 that the offense in question is likely to be committed at  
23 the meeting or in the immediate vicinity of the meeting  
24 during the time at which the meeting is being held; provided  
25 that nothing contained in this subsection prohibits the

1 nonsurreptitious attendance at any meeting of any peace  
 2 officer or other person whose attendance at that meeting is  
 3 for the purpose of protecting, as authorized by law, the  
 4 security of any person lawfully attending the meeting or  
 5 participating in the meeting.

6 (13) It is unlawful for any law enforcement  
 7 organization to keep any records concerning political  
 8 matters with regard to any individual suspect present at any  
 9 political meeting.

10 Section 6. Marital or familial privacy. (1) It is  
 11 unlawful for any governmental unit or agency thereof to take  
 12 any action which interferes with the right of a married  
 13 couple:

14 (a) to decide for themselves whether to procreate  
 15 children;

16 (b) to use birth control devices and techniques  
 17 consistent with reasonable medical safeguards; or

18 (c) to do any other act or make any other choice  
 19 consistent with the marital relationship that does not cause  
 20 harm to each other or others.

21 (2) Nothing contained in this section prevents the  
 22 state of Montana from proscribing abortion to the extent  
 23 permitted under the constitution of the United States or  
 24 prohibits a person from publishing and distributing leaflets  
 25 or other material relating to the above matters.

1 (3) It is unlawful for any person to interfere by  
 2 force, penalty, or imprisonment or threat of force, penalty,  
 3 or imprisonment with the free choice of any individual to  
 4 refuse or accept sterilization. This subsection does 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 (4) It is unlawful for any governmental unit or agency  
 9 thereof to interfere with the religious training and  
 10 guidance of an unemancipated child when such religious  
 11 training and guidance is desired by both parents, without  
 12 the existence of compelling societal interest for such  
 13 interference.

14 Section 7. Inadmissible evidence. Except as otherwise  
 15 specifically provided by statute, no evidence obtained as a  
 16 result of any act or omission made unlawful under this act  
 17 shall be received in evidence in any trial, hearing, or  
 18 other proceeding in or before any court, grand jury,  
 19 department, officer, agency, regulatory body, or legislative  
 20 committee without the informed consent of the person or  
 21 persons whose privacy has been invaded.

22 Section 8. Penalties. (1) Except as otherwise  
 23 specifically provided by statute, any purposeful act or  
 24 omission made unlawful under sections 3 or 4 of this act is  
 25 punishable by fine of not more than \$1,000 or imprisonment

1 of not more than 1 year, or both, provided, however, that no  
 2 such act or omission is punishable unless it is first  
 3 established that the accused person knew such act or  
 4 omission was unlawful. Proof of such knowledge must be  
 5 established as an independent fact and cannot be inferred or  
 6 presumed.

7 (2) Any act or omission made unlawful under sections 5  
 8 or 6 of this act is punishable by a fine of not more than  
 9 \$500 or imprisonment of not more than 6 months, or both,  
 10 provided, however, that no such act or omission is  
 11 punishable unless it is first established that the accused  
 12 person knew such act or omission was unlawful. Proof of such  
 13 knowledge must be established as an independent fact and  
 14 cannot be inferred or presumed.

15 (3) Any electronic, mechanical, or other device  
 16 manufactured, assembled, possessed, sold, or advertised in  
 17 violation of section 4(6) of this act may be seized and  
 18 forfeited to the state of Montana. Upon proper court order  
 19 obtained from a district court of proper jurisdiction, such  
 20 property shall be destroyed.

21 Section 9. Civil action. (1) A person whose privacy  
 22 has been invaded because of an unlawful act or omission in  
 23 violation of any of the provisions of this act may file a  
 24 civil suit in a district court of proper jurisdiction  
 25 against any person who has committed the violation,

1 including any governmental unit or agency thereof, and upon  
 2 proper proof is entitled to:

3 (a) an injunction or other appropriate order enjoining  
 4 or restraining any violation of this act or requiring  
 5 compliance herewith;

6 (b) an appropriate order requiring the offending  
 7 person to delete from his file or files any information  
 8 gathered in violation of this act;

9 (c) actual damages, but not less than liquidated  
 10 damages, computed at the rate of \$100 for each violation for  
 11 each offender. Each day of a continuing interception of a  
 12 wire or oral communication and each day of a continuing  
 13 surveillance in violation of this act is considered a  
 14 separate violation. If an action is brought against both an  
 15 organization and its employees or agents, the injured party  
 16 is not entitled to double recovery. If other statutes  
 17 provide specifically and exclusively for a different measure  
 18 of damages or remedy, this subsection does not apply. This  
 19 provision does not apply to any act or omission which would  
 20 not be unlawful if consent were given by a proper person  
 21 provided the accused person acts under a reasonably formed,  
 22 although mistaken, impression that such consent was given.  
 23 This exception does not apply to an agent or employee of a  
 24 governmental unit acting in the course of his employment.

25 (d) punitive or exemplary damages as set forth in

1 17-268, as amended;

2 (e) a reasonable attorney's fee and other litigation  
3 costs reasonably incurred.

4 (2) It is not a necessary prerequisite to an action  
5 pursuant to this section that the injured party has suffered  
6 or been threatened with actual damages.

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

13 Section 11. Section 94-8-114, R.C.M. 1947, is amended  
14 to read as follows:

15 "94-8-114. Privacy in communications. (1) A person  
16 commits the offense of violating privacy in communications  
17 if he knowingly or purposely:

18 (a) ~~Communicates~~ communicates with any person by  
19 telephone with the intent to terrify, intimidate, threaten,  
20 harass, annoy, or offend; or ~~use over the telephone~~ uses any  
21 obscene, lewd, or profane language or ~~suggest~~ suggests any  
22 lewd or lascivious act; or ~~threaten~~ threatens to inflict  
23 injury or physical harm to the person or property of any  
24 person;

25 (b) ~~Uses~~ uses a telephone to attempt to extort money

1 or any other thing of value from any person; or to disturb  
2 by repeated telephone calls the peace, quiet, or right of  
3 privacy of any person at the place where the telephone call  
4 or calls were ~~are~~ received. The use of obscene, lewd, or  
5 profane language or the making of a threat or lewd or  
6 lascivious suggestions ~~shall be~~ is prima facie evidence of  
7 an intent to terrify, intimidate, threaten, harass, annoy,  
8 or offend.

9 ~~(c) Records or causes to be recorded by use of any  
10 hidden electronic or mechanical device which reproduces a  
11 human conversation without the knowledge of all parties to  
12 the conversation. Subsection (c) shall not apply to duty  
13 elected or appointed public officials or employees when such  
14 transcription or recording is done in the performance of  
15 official duty; nor to persons speaking at public meetings or  
16 persons given warning of such recordings.~~

17 ~~(d) Attempts by means of any machine, instrument,  
18 contrivance, or in any other manner, reads, or attempts to  
19 read any message or learn the contents thereof, while the  
20 same is being sent over any telegraph line, or learns or  
21 attempts to learn the contents of any message, whilst the  
22 same is in any telegraph office or is being received thereat  
23 or sent therefrom, or who uses or attempts to use, or  
24 communicate to others, any information so obtained.~~

25 ~~(e) Discloses the contents of a telegraphic message or~~

1 ~~any part thereof addressed to another person without the~~  
2 ~~permission of such person unless directed to do so by the~~  
3 ~~lawful order of a court.~~

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

10 (2) A person convicted of the offense of violating the  
11 privacy in communications shall be fined not to exceed five  
12 ~~hundred dollars--(\$500)~~ or be imprisoned in the county jail  
13 for a term not to exceed ~~six-(6)~~ months or both."

14 Section 12. Repealer. Sections 41-119 and 41-120,  
15 R.C.M. 1947, are repealed.

-End-

Committee on Judiciary  
Objection Raised to  
Adverse Committee Report

1 H BILL NO. 475  
2 INTRODUCED BY Huenniker Vincent

3  
4 A BILL FOR AN ACT ENTITLED: "THE MONTANA PRIVACY ACT; TO  
5 IMPLEMENT ARTICLE II, SECTION 10, OF THE CONSTITUTION;  
6 AMENDING SECTION 94-8-114, R.C.M. 1947; AND REPEALING  
7 SECTIONS 41-119 AND 41-120, R.C.M. 1947."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
10 Section 1. Short title. This may be cited as "The  
11 Montana Privacy Act".

12 Section 2. What right of privacy includes. The "right  
13 of privacy" set forth in section 10 of Article II of the  
14 Montana constitution includes:

- 15 (1) privacy of the home and other private places;
- 16 (2) privacy of communications;
- 17 (3) privacy of the mind; and
- 18 (4) privacy of the marriage and family.

19 Section 3. Privacy of the home and other private  
20 places -- definitions. (1) As used in this section the  
21 following definitions apply:

- 22 (a) "Home or other private places" means a person's  
23 dwelling or any other place or area where one may reasonably  
24 expect to be safe or protected from casual or hostile  
25 intrusion or surveillance. The term includes but is not

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

12 (b) "Enter" means to physically enter or in any other  
13 manner to accomplish 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 keeping 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 (2) Except as provided in subsection (3) of this  
21 section, it is unlawful for any person, including any agent  
22 or employee of any governmental unit, to enter a home or  
23 other private place for any purpose. Each entry by each  
24 person constitutes a separate offense.

25 (3) Subsection (2) does not apply to any trespass or

There are no changes in HB 475, & will not be re-run.  
Please refer to white copy for complete text. SECOND READING

HB 475

1 entry obtained by:

2 (a) any person after consent is freely given by a  
3 proper person, either express or implied, except, when entry  
4 is by agents or employees of a governmental unit, consent  
5 may not be implied unless the person giving the consent is  
6 aware that consent may be withheld. The exception for  
7 agents or employees of a governmental unit does not apply to  
8 undercover agents or nonuniformed employees of a public law  
9 enforcement agency.

10 (b) agents and employees of the United States acting  
11 under lawful federal authority;

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

18 (d) a landlord or other person having a claim to such  
19 a place to the extent necessary for the rightful exercise of  
20 protection of such claim. For this purpose, a landlord or  
21 other lawful claimant to leased premises has the right of  
22 inspection only at reasonable times and only as often as may  
23 be reasonably necessary to protect the property over which  
24 he exercises such claim.

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

1 assistance whenever there are reasonable grounds to believe  
2 the premises are in danger of fire or other calamity;

3 (f) any person in case of an emergency whenever there  
4 are reasonable grounds to believe the occupant needs  
5 immediate assistance to avoid bodily injury or further  
6 physical illness or injury;

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

12 (h) any person acting under the authority and within  
13 the scope of a right of lawful inspection granted by law.

14 (i) any bona fide newsman in the immediate  
15 accompaniment of law enforcement officers obtaining entry  
16 under a valid or apparently valid search warrant or in the  
17 immediate accompaniment of law enforcement officers lawfully  
18 gaining entrance when there is evidence that a crime has  
19 been committed.

20 Section 4. Privacy of communications -- definitions.

21 (1) For the purposes of this section the following  
22 definitions apply:

23 (a) "Contents", when used with respect to any wire or  
24 oral communication, includes any information concerning the  
25 identity of the parties to such communication or the