

1                    SENATE BILL NO. 12  
2 INTRODUCED BY TOWE

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  
26 limited to a person's residence or other enclosed habitat or

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

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

19            (2) Except as provided in subsection (3) of this  
20 section, it is unlawful for any person, including any agent  
21 or employee of any governmental unit, to enter a home or  
22 other private place for any purpose. Each entry by each  
23 person constitutes a separate offense.

24            (3) Subsection (2) does not apply to any trespass or  
25 entry obtained by:

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

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

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

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

24 (e) any person whose sole purpose is to render  
 25 assistance whenever there are reasonable grounds to believe

1 the premises are in danger of fire or other calamity;

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

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

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

13 Section 4. Privacy of communications — definitions.

14 (1) For the purposes of this section the following  
 15 definitions apply:

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

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

24 (i) a telephone or telegraph instrument, equipment, or  
 25 facility or any component thereof furnished to the

1 subscriber or user for ordinary telephone or telegraph use  
2 or used by a communications common carrier in the ordinary  
3 course of its business; or

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

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

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

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

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

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

1 such facilities for the transmission of communication.

2 (h) "Written communication" means any letter or other  
3 written message prepared for delivery through the United  
4 States mail or for delivery by any other means with the  
5 expectation that such communication is not subject to  
6 interception, under circumstances justifying such  
7 expectations.

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

16 (3) Except as provided in subsection (4) of this  
17 section, it is unlawful for any person to purposefully  
18 disclose or use or attempt to disclose or use the contents  
19 of any wire or oral or written communication knowing or  
20 having reason to know that such information was obtained in  
21 violation of subsection (2) of this section.

22 (4) The provisions of subsections (2) and (3) do not  
23 apply to:

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

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

1 that each telephone company operating in this state,  
 2 including nonregulated cooperatives, file annually with it a  
 3 complete report of all service-observing activity, if any,  
 4 carried on by such telephone company, including any rules  
 5 adopted by such company for such purpose. The report may  
 6 include, for the purpose of service-quality control of phone  
 7 communications to or from telephone companies only, a  
 8 summary estimate of the total number of observations. The  
 9 report shall be made available to the public;

10 (c) an employer or a properly authorized agent of an  
 11 employer monitoring a telephone conversation of an employee  
 12 relating to his employment provided the employee has been  
 13 informed of the possibility of such monitoring;

14 (d) properly authorized persons connected with the  
 15 function of billing or allocation of charges made for such  
 16 services, with regard to the existence of wire  
 17 communications only;

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

21 (f) telephone calls received by law enforcement  
 22 officers, police stations, and fire stations, provided  
 23 affirmative efforts are made to inform the public by  
 24 publication, posters, or otherwise that such calls are  
 25 recorded;

1 (g) a person properly authorized by the receiver of  
2 written communications to open and receive such  
3 communications on the receiver's behalf;

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

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

12 (6) Except for use by public law enforcement officers  
13 and agents in the performance of their official duties and  
14 in conformance with this act, it is unlawful to purposefully  
15 manufacture, assemble, possess, sell, or advertise for sale  
16 any electronic, mechanical, or other device, knowing or  
17 having reason to know that the design of such device renders  
18 it primarily useful for the purpose of the surreptitious  
19 interception of wire or oral communications.

20 (7) Without the consent of the person seeking  
21 professional advice, it is unlawful for any person to  
22 purposefully disclose or use the contents of any wire or  
23 oral or written communication, whether or not such  
24 communication has been intercepted in violation of  
25 subsection (2) of this section, if the communication was a

1 part of a bona fide privileged relationship between a  
2 medical doctor and his patient, an attorney and his client,  
3 a minister or clergyman and his penitent or counslee, an  
4 accountant and his client, a school counselor and his  
5 counslee, a teacher and his student, a psychologist and his  
6 client, or a management consultant and his client, when the  
7 communication was given with the reasonable expectation that  
8 such communication will remain confidential. Nothing  
9 contained in this subsection prohibits the disclosure of  
10 such contents by the professional person:

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

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

15 (c) to his employees when necessary for the efficient  
16 operation of his office;

17 (d) to properly administer a public medical assistance  
18 program, to the extent necessary for such administration;

19 (e) to collect a fee from the client, to the extent  
20 necessary to establish his right to such fee;

21 (f) to prevent the commission of a felony; or

22 (g) to defend a claim or complaint filed by the client  
23 against a professional person.

24 (8) It is unlawful to compel disclosure, by force,  
25 penalty, or imprisonment, or threat of force, penalty, or

1 imprisonment, of the contents of any wire or oral or written  
 2 communication between a husband and wife or between either  
 3 of them and their unemancipated children that took place  
 4 while a bona fide and lawful family relationship existed  
 5 under a reasonable expectation that such communication would  
 6 remain private and confidential. For the purpose of this  
 7 section the dissolution of a marriage does not affect the  
 8 bona fide and lawful family relationship between either  
 9 parent and his unemancipated children. This section does not  
 10 preclude compelling testimony properly relevant to the  
 11 issues in any court proceeding involving a complaint by one  
 12 member of the family and participant in the communication  
 13 against another family member and participant, including a  
 14 criminal complaint made on behalf of one or more such  
 15 members and participants. Further, this section does not  
 16 preclude out-of-court interviews relating to such complaints  
 17 conducted by law enforcement officials upon consent of the  
 18 person interviewed.

19 Section 5. Privacy of the mind and personality. (1)  
 20 The legislature finds that each person has a right to a  
 21 protective zone or a private enclave protecting his mind,  
 22 his personality, and his inner life which justifies a  
 23 reasonable expectation that certain private facts and  
 24 information about himself will not be improperly disclosed  
 25 or publicized. A person's thoughts, sentiments, emotions,

1 sensations, religious beliefs, philosophical beliefs, and  
 2 political beliefs clearly fall into this protective zone. In  
 3 addition, certain other facts, either singly or in  
 4 accumulation, are sufficiently private to justify a person  
 5 in expecting that they will not be disclosed without his  
 6 consent. In this connection, the more embarrassing the fact  
 7 or facts and the more likely they will expose a person to  
 8 infamy and disgrace, the closer they are to the core of the  
 9 protective zone or private enclave referred to above.

10 (2) For the purpose of this section, the following  
 11 definitions apply:

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

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

19 (c) "Political meeting" means any meeting at which  
 20 candidates for political office are chosen or a principal  
 21 purpose of which is to permit candidates in a primary  
 22 election or in a general election to address the public or  
 23 answer questions from the public.

24 (d) "Private thoughts, sentiments, emotions,  
 25 sensations, religious beliefs, philosophical beliefs, or

1 political beliefs\* are thoughts, sentiments, emotions,  
2 sensations, religious beliefs, philosophical beliefs, or  
3 political beliefs that the holder has a reasonable  
4 expectation will not be disclosed.

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

17 (f) "Private organization charged with dispensing a  
18 governmental benefit" means an organization that dispenses a  
19 thing of value to the public or some segment thereof under  
20 contract or agreement with a governmental unit or agency  
21 thereof. For this purpose, obtaining a license or  
22 certificate of authority is not considered such a contract  
23 or agreement.

24 (3) It is unlawful for any person to compel  
25 disclosure, by force, penalty, or imprisonment, or threat of

1 force, penalty, or imprisonment, from an individual of his  
2 private thoughts, sentiments, emotions, sensations,  
3 religious beliefs, philosophical beliefs, or political  
4 beliefs, except in proper legal proceedings where such  
5 individual has himself made such items the subject of  
6 litigation or the issue has been properly raised by virtue  
7 of the nature of the proceedings.

8 (4) It is unlawful for any governmental unit or agency  
9 thereof or any private organization charged with dispensing  
10 a governmental benefit to require from any individual, as a  
11 condition for the receipt of any position or employment or  
12 the enjoyment of any right or other benefit, an oath,  
13 affirmation, or test that probes into such individual's  
14 religious, political, or philosophical beliefs. A simple  
15 oath or affirmation in the language of Article III, section  
16 3, of the Montana constitution does not violate this  
17 provision.

18 (5) It is unlawful for any governmental unit or agency  
19 thereof or any private organization charged with dispensing  
20 a governmental benefit to require without express  
21 legislative authorization:

22 (a) a disclosure of religious, philosophical, or  
23 political beliefs from any individual as a condition for the  
24 receipt of a benefit or the enjoyment of a right of his  
25 membership in or affiliation with or attendance at meetings

1 of any association, group, or other organization, the  
2 disclosure of which may reasonably amount to a disclosure in  
3 part and against his will; or

4 (b) a disclosure from any association, group, or  
5 organization of the names and addresses of any one or more  
6 of its members, provided privacy is necessary for the  
7 undertaking and continuation of the lawful activities of the  
8 association, group, or organization. The determination of  
9 whether or not such an individual or association is entitled  
10 to claim privacy under this subsection shall be made by a  
11 judge or a district court in camera in a proper legal  
12 proceeding.

13 (6) It is unlawful:

14 (a) for any person or governmental unit or agency  
15 thereof to require as a condition of employment or continued  
16 employment that an applicant or employee submit to a  
17 polygraphic detection deception test, commonly known as a  
18 lie detector test, or to questioning under the effect of  
19 sodium thiopental or to any other test or questioning by  
20 means of any mechanical device or chemical substance. It is  
21 not unlawful, however, for qualified operators to use  
22 polygraphic detection deception tests and their results for  
23 law enforcement investigation or personnel recruitment for  
24 law enforcement upon the consent of any person taking such a  
25 test.

1 (b) for any person or governmental unit or agency  
2 thereof to discharge any employee solely because of an  
3 opinion or alleged opinion that the employee did not tell  
4 the truth during a polygraph detection deception test or  
5 questioning under the effect of sodium thiopental or any  
6 other test or questioning by means of any mechanical device  
7 or chemical substance, except where a valid and voluntary  
8 stipulation has been executed by the employer and the  
9 employee prior to such examination;

10 (c) for any court in the course of any civil trial,  
11 criminal trial, or pretrial proceeding to require that  
12 either the plaintiff or the defendant submit to a  
13 polygraphic detection deception test or to questioning under  
14 the effect of sodium thiopental or to any other test or  
15 questioning by means of any mechanical device or chemical  
16 substance; or

17 (d) for any examiner or operator of any polygraph or  
18 other mechanical device or a person who administers a  
19 chemical substance or an assistant or any other person made  
20 privy to such information to disclose or use any information  
21 acquired during the conduct of such test without the consent  
22 of the person examined.

23 (7) Subsections (c) and (d) of subsection (6) of this  
24 section do not prohibit any test and the disclosure of  
25 information from any test performed pursuant to 32-2142.1



1 through 32-2142.3.

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

17 (9) Except as set forth in subsection (10) of this  
18 section, it is unlawful for any officer of any executive  
19 department or executive agency of the state of Montana or of  
20 any local subdivision or agency thereof or any person acting  
21 or purporting to act under such officer's authority to  
22 require or request or to attempt to require or request any  
23 employee of the department or agency or any person applying  
24 for such employment to:

25 (a) answer any questions designed to elicit from his

1 information concerning:

2 (i) his race, religion, or national origin or the  
3 race, religion, or national origin of any of his forebears;

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

7 (iii) his religious beliefs or practices;

8 (iv) his attitude or conduct with respect to sexual  
9 matters;

10 (v) his property, income, or other assets; source of  
11 income or liabilities; or his personal or domestic  
12 expenditures or those of any member of his household; or

13 (b) make a report concerning any of his activities or  
14 undertakings unless such activities or undertakings are  
15 related to the performance of his job or to the development  
16 of additional qualifications for his job or unless there is  
17 reason to believe that he is engaged in outside activities  
18 or employment in conflict with his official duties.

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

20 (a) inquiry concerning the citizenship or race of any  
21 employee or person if his citizenship or race is a statutory  
22 condition of his obtaining or retaining employment;

23 (b) a physician from eliciting such information or  
24 authorizing such tests in the diagnosis or treatment of any  
25 such employee or person, on an individual case basis only,

1 when such physician considers such information necessary to  
2 enable him to determine whether or not such individual is  
3 suffering from mental illness;

4 (c) an officer of such department or agency from  
5 advising any such employee of a specific charge of sexual  
6 misconduct made against that employee and affording him an  
7 opportunity to refute the charge;

8 (d) an employee of a taxing authority from obtaining  
9 the necessary information to carry out the functions of his  
10 job;

11 (e) an employer or other organization administering a  
12 pension plan or other plan for the benefit of the employee  
13 or his family from obtaining information necessary to carry  
14 out the purpose of the plan;

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

17 (g) with regard to the items contained in (9) (a) (v)  
18 only, the requirement of a full disclosure of assets and  
19 income by an elected official or the requirement of a full  
20 disclosure of any matter which might tend to indicate a  
21 conflict of interest in respect to the performance of any of  
22 his duties by any employee or applicant.

23 (11) It is unlawful for any person to authorize or  
24 engage in the unreasonable surveillance of any individual,  
25 group of individuals, or members of any organization.

1 Officers and agents of public law enforcement agencies may  
2 engage in surveillance provided that it does not continue  
3 beyond 24 hours without a written statement to the chief or  
4 director of the agency explaining the need for such  
5 surveillance.

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

22 (13) It is unlawful for any law enforcement  
23 organization to keep any records concerning political  
24 matters with regard to any individual suspect present at any  
25 political meeting.

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

5 (a) to decide for themselves whether to procreate  
6 children;

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

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

12 (2) Nothing contained in this section prevents the  
13 state of Montana from proscribing abortion to the extent  
14 permitted under the constitution of the United States or  
15 prohibits a person from publishing and distributing leaflets  
16 or other material relating to the above matters.

17 (3) It is unlawful for any person to interfere by  
18 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 subsection does 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 (4) It is unlawful for any governmental unit or agency  
25 thereof to interfere with the religious training and

1 guidance of an unemancipated child when such religious  
2 training and guidance is desired by both parents, without  
3 the existence of compelling societal interest for such  
4 interference.

5 Section 7. Inadmissible evidence. Except as otherwise  
6 specifically provided by statute, no evidence obtained as a  
7 result of any act or omission made unlawful under this act  
8 shall be received in evidence in any trial, hearing, or  
9 other proceeding in or before any court, grand jury,  
10 department, officer, agency, regulatory body, or legislative  
11 committee without the informed consent of the person or  
12 persons whose privacy has been invaded.

13 Section 8. Penalties. (1) Except as otherwise  
14 specifically provided by statute, any purposeful act or  
15 omission made unlawful under sections 3 or 4 of this act is  
16 punishable by fine of not more than \$1,000 or imprisonment  
17 of not more than 1 year, or both.

18 (2) Any act or omission made unlawful under sections 5  
19 or 6 of this act is punishable by a fine of not more than  
20 \$500 or imprisonment of not more than 6 months, or both.

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

1 property shall be destroyed.

2 Section 9. Civil action. (1) A person whose privacy  
3 has been invaded because of an unlawful act or omission in  
4 violation of any of the provisions of this act may file a  
5 civil suit in a district court of proper jurisdiction  
6 against any person who has committed the violation,  
7 including any governmental unit or agency thereof, and upon  
8 proper proof is entitled to:

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

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

15 (c) actual damages, but not less than liquidated  
16 damages, computed at the rate of \$100 for each violation for  
17 each offender. Each day of a continuing interception of a  
18 wire or oral communication and each day of a continuing  
19 surveillance in violation of this act is considered a  
20 separate violation. If an action is brought against both an  
21 organization and its employees or agents, the injured party  
22 is not entitled to double recovery. If other statutes  
23 provide specifically and exclusively for a different measure  
24 of damages or remedy, this subsection does not apply.

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

1 17-208, 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 ~~threatens~~ 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 duly~~  
 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 recording.~~

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 learns 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-

Approved by Committee  
on Highways & Transportation

1 SENATE BILL NO. 12  
 2 INTRODUCED BY TOWE  
 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 BUT IS NOT LIMITED TO:  
 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

1 entry obtained by:

2 (a) any person after consent is freely given by a  
 3 proper ~~adult~~ person, either express or implied, except, when  
 4 entry is by agents or employees of a governmental unit,  
 5 consent may not be implied unless the person giving the  
 6 consent is aware that consent may be withheld. The  
 7 exception for agents or employees of a governmental unit  
 8 does not apply to undercover agents or nonuniformed  
 9 employees of a public law 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 NEWSMEN IN THE IMMEDIATE COMPANY OF~~  
 15 ~~LAW ENFORCEMENT OFFICERS OBTAINING ENTRY UNDER A VALID OR~~  
 16 ~~APPARENTLY VALID SEARCH WARRANT OR IN THE IMMEDIATE COMPANY~~  
 17 ~~OF LAW ENFORCEMENT OFFICERS LAWFULLY GAINING ENTRANCE WHEN~~  
 18 ~~THERE IS EVIDENCE THAT A CRIME HAS BEEN COMMITTED.~~

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

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

1 communication.

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

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

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

12 (c) "Intercept" means the acquisition of the contents  
13 of any wire or oral or written communication WHILE SUCH  
14 COMMUNICATION IS BEING CONDUCTED OR BEFORE IT REACHES THE  
15 INTENDED RECEIVER OR RECEIVERS through the use of any  
16 electronic, mechanical, or other device, by opening a sealed  
17 letter, or otherwise.

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

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

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

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

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

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

24 (3) Except as provided in subsection (4) of this  
25 section, it is unlawful for any person to purposefully



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

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

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

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

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

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

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

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

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

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

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

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

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

1 it primarily useful for the purpose of the surreptitious  
2 interception of wire or oral communications.

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

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

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

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

25 (d) to properly administer a public medical assistance

1 program, to the extent necessary for such administration;  
 2 (e) to collect a fee from the client, to the extent  
 3 necessary to establish his right to such fee;  
 4 (f) to prevent the commission of a felony; or  
 5 (g) to defend a claim or complaint filed by the client  
 6 against a professional person.  
 7 (8) It is unlawful to compel disclosure, by force,  
 8 penalty, or imprisonment, or threat of force, penalty, or  
 9 imprisonment, of the contents of any wire or oral or written  
 10 communication between a husband and wife or between either  
 11 of them and their unemancipated children that took place  
 12 while a bona fide and lawful family relationship existed  
 13 under a reasonable expectation that such communication would  
 14 remain private and confidential. For the purpose of this  
 15 section the dissolution of a marriage does not affect the  
 16 bona fide and lawful family relationship between either  
 17 parent and his unemancipated children. This section does not  
 18 preclude compelling testimony properly relevant to the  
 19 issues in any court proceeding involving a complaint by one  
 20 member of the family and participant in the communication  
 21 against another family member and participant, including a  
 22 criminal complaint made on behalf of one or more such  
 23 members and participants. Further, this section does not  
 24 preclude out-of-court interviews relating to such complaints  
 25 conducted by law enforcement officials upon consent of the

1 person interviewed.

2 Section 5. Privacy of the mind and personality. (1)  
 3 The legislature finds that each person has a right to a  
 4 protective zone or a private enclave protecting his mind,  
 5 his personality, and his inner life which justifies a  
 6 reasonable expectation that certain private facts and  
 7 information about himself will not be improperly disclosed  
 8 or publicized. A person's thoughts, sentiments, emotions,  
 9 sensations, religious beliefs, philosophical beliefs, and  
 10 political beliefs clearly fall into this protective zone. In  
 11 addition, certain other facts, either singly or in  
 12 accumulation, are sufficiently private to justify a person  
 13 in expecting that they will not be disclosed without his  
 14 consent. In this connection, the more embarrassing the fact  
 15 or facts and the more likely they will expose a person to  
 16 infamy and disgrace, the closer they are to the core of the  
 17 protective zone or private enclave referred to above. A  
 18 PERSON MAY WAIVE HIS RIGHT OF PRIVACY BY VOLUNTARILY  
 19 PROVIDING INFORMATION TO A REPRESENTATIVE OF THE NEWS MEDIA.  
 20 ANY SUCH WAIVER MADE AFTER THE INFORMATION HAS BEEN PROVIDED  
 21 MAY NOT BE REVOKED.

22 (2) For the purpose of this section, the following  
 23 definitions apply:

24 (a) "Organization" means any profit or nonprofit  
 25 corporation, partnership, proprietorship, or other

1 organization, including the state of Montana, its  
2 departments and local subdivisions and their boards,  
3 agencies, commissions, and bureaus.

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

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

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

17 (e) "Surveillance" means the continuous surreptitious  
18 observation of any particular individual or group of  
19 individuals or members of a single organization without  
20 their knowledge and consent. It includes the maintenance by  
21 any governmental unit, agency, employee, or agent thereof of  
22 any file of information about a person or group of persons,  
23 gathered primarily and substantially without the person's or  
24 group's participation or knowledge, the gathering and  
25 maintenance of which information is not otherwise authorized

1 by law. Each entry of information in any such file is  
2 considered to be one "act of surveillance" as that term is  
3 used in this section.

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

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

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

1 religious, political, or philosophical beliefs. A simple  
 2 oath or affirmation in the language of Article III, section  
 3 3, of the Montana constitution does not violate this  
 4 provision.

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

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

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

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

13 (b) for any person or governmental unit or agency  
 14 thereof to discharge any employee solely because of an  
 15 opinion or alleged opinion that the employee did not tell  
 16 the truth during a polygraph detection deception test or  
 17 questioning under the effect of sodium thiopental 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  
 24 either the plaintiff or the defendant submit to a  
 25 polygraphic detection deception test or to questioning under

1 the effect of sodium thiopental or to any other test or  
 2 questioning by means of any mechanical device or chemical  
 3 substance; or

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

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

14 (8) It is unlawful for any governmental unit or agency  
 15 thereof or any private organization charged with dispensing  
 16 a governmental benefit to require any individual, as a  
 17 condition for employment or the enjoyment of any right or  
 18 other benefit, to take a psychological personality inventory  
 19 test such as the Minnesota multiphasic personality  
 20 inventory, the Minnesota counseling inventory, or the  
 21 Edwards personal preference schedule, unless such tests are  
 22 used only for statistical purposes and the results are not  
 23 individually identifiable. The unit, agency, or  
 24 organization must first have published regulations pursuant  
 25 to the Montana Administrative Procedure Act or, if

1 inapplicable, in a manner similar thereto, setting forth the  
 2 compelling interest that outweighs this intrusion on an  
 3 individual's privacy.

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

12 (a) answer any questions designed to elicit from him  
 13 information concerning:

14 (i) his race, religion, or national origin or the  
 15 race, religion, or national origin of any of his forebears;

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

19 (iii) his religious beliefs or practices;

20 (iv) his attitude or conduct with respect to sexual  
 21 matters;

22 (v) his property, income, or other assets; source of  
 23 income or liabilities; or his personal or domestic  
 24 expenditures or those of any member of his household; or

25 (b) make a report concerning any of his activities or

1 undertakings unless such activities or undertakings are  
 2 related to the performance of his job or to the development  
 3 of additional qualifications for his job or unless there is  
 4 reason to believe that he is engaged in outside activities  
 5 or employment in conflict with his official duties.

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

7 (a) inquiry concerning the citizenship or race of any  
 8 employee or person if his citizenship or race is a statutory  
 9 condition of his obtaining or retaining employment;

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

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

20 (d) an employee of a taxing authority from obtaining  
 21 the necessary information to carry out the functions of his  
 22 job;

23 (e) an employer or other organization administering a  
 24 pension plan or other plan for the benefit of the employee  
 25 or his family from obtaining information necessary to carry

1 out the purpose of the plan;

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

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

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

18 (12) It shall be unlawful for any officer, employee,  
 19 or agent of the state of Montana, any of the local  
 20 subdivisions, or any agencies thereof to attend a political  
 21 meeting for the purpose of observing or conducting  
 22 surveillance of an individual, group of individuals, or  
 23 organization suspected of committing or about to commit a  
 24 criminal offense unless there is probable cause to believe  
 25 that the offense in question is likely to be committed at

1 the meeting or in the immediate vicinity of the meeting  
 2 during the time at which the meeting is being held; provided  
 3 that nothing contained in this subsection prohibits the  
 4 nonsurreptitious attendance at any meeting of any peace  
 5 officer or other person whose attendance at that meeting is  
 6 for the purpose of protecting, as authorized by law, the  
 7 security of any person lawfully attending the meeting or  
 8 participating in the meeting.

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

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

17 (a) to decide for themselves whether to procreate  
 18 children;

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

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

24 (2) Nothing contained in this section prevents the  
 25 state of Montana from proscribing abortion to the extent

1 permitted under the constitution of the United States or  
 2 prohibits a person from publishing and distributing leaflets  
 3 or other material relating to the above matters.

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

11 (4) It is unlawful for any governmental unit or agency  
 12 thereof to interfere with the religious training and  
 13 guidance of an unemancipated child when such religious  
 14 training and guidance is desired by both parents, without  
 15 the existence of compelling societal interest for such  
 16 interference.

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

25 Section 8. Penalties. (1) Except as otherwise



1 specifically provided by statute, any purposeful act or  
 2 omission made unlawful under sections 3 or 4 of this act is  
 3 punishable by fine of not more than \$1,000 or imprisonment  
 4 of not more than 1 year, or both. NO SUCH ACT OR OMISSION IS  
 5 PUNISHABLE UNLESS IT IS FIRST ESTABLISHED THAT THE ACCUSED  
 6 PERSON KNEW THE ACT OR OMISSION WAS UNLAWFUL. PROOF OF SUCH  
 7 KNOWLEDGE MUST BE ESTABLISHED AS AN INDEPENDENT FACT AND  
 8 CANNOT BE INFERRED OR PRESUMED.

9 (2) Any act or omission made unlawful under sections 5  
 10 or 6 of this act is punishable by a fine of not more than  
 11 \$500 or imprisonment of not more than 6 months, or both. NO  
 12 SUCH ACT OR OMISSION IS PUNISHABLE UNLESS IT IS FIRST  
 13 ESTABLISHED THAT THE ACCUSED PERSON KNEW THE ACT OR OMISSION  
 14 WAS UNLAWFUL. PROOF OF SUCH KNOWLEDGE MUST BE ESTABLISHED AS  
 15 AN INDEPENDENT FACT AND CANNOT BE INFERRED OR PRESUMED.

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

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

1 against any person who has committed the violation,  
 2 including any governmental unit or agency thereof, and upon  
 3 proper proof is entitled to:

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

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

10 (c) actual damages, but not less than liquidated  
 11 damages, computed at the rate of \$100 for each violation for  
 12 each offender. Each day of a continuing interception of a  
 13 wire or oral communication and each day of a continuing  
 14 surveillance in violation of this act is considered a  
 15 separate violation. If an action is brought against both an  
 16 organization and its employees or agents, the injured party  
 17 is not entitled to double recovery. If other statutes  
 18 provide specifically and exclusively for a different measure  
 19 of damages or remedy, this subsection does not apply.

20 (d) punitive or exemplary damages as set forth in  
 21 17-208, as amended;

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

24 (2) It is not a necessary prerequisite to an action  
 25 pursuant to this section that the injured party has suffered

1 or been threatened with actual damages.

2 ~~(3) DAMAGES MAY NOT BE AWARDED UNDER SUBSECTION (1)(C)~~  
 3 ~~OR (1)(D) WHEN THE ACT OR OMISSION COMPLAINED OF WOULD NOT~~  
 4 ~~BE UNLAWFUL IF CONSENT WERE GIVEN BY A PROPER PERSON AND~~  
 5 ~~WHEN THE ACCUSED PERSON ACTED UNDER A REASONABLY FORMED,~~  
 6 ~~ALTHOUGH MISTAKEN, IMPRESSION THAT SUCH CONSENT WAS GIVEN.~~  
 7 ~~THIS EXCEPTION DOES NOT APPLY TO AN AGENT OR EMPLOYEE OF A~~  
 8 ~~GOVERNMENTAL UNIT ACTING IN THE COURSE OF HIS EMPLOYMENT.~~

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

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

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

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

1 person;

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

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

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

1 ~~communicate to others, any information so obtained.~~  
2 ~~(e) Discloses the contents of a telegraphic message or~~  
3 ~~any part thereof, addressed to another person, without the~~  
4 ~~permission of such person, unless directed to do so by the~~  
5 ~~lawful order of a court.~~  
6 ~~(f) Opens or reads or causes to be read any sealed~~  
7 ~~letter not addressed to himself, without being authorized to~~  
8 ~~do so by either the writer of such letter or by the person~~  
9 ~~to whom it is addressed, and every person who, without the~~  
10 ~~like authority, publishes any of the contents of such~~  
11 ~~letters knowing the same to have been unlawfully opened.~~  
12 (2) A person convicted of the offense of violating the  
13 privacy in communications shall be fined not to exceed five  
14 hundred dollars ~~{ \$500 }~~ or be imprisoned in the county jail  
15 for a term not to exceed six ~~{ 6 }~~ months or both."  
16 Section 12. Repealer. Sections 41-119 and 41-120,  
17 R.C.M. 1947, are repealed.

-End-

SENATE BILL NO. 12

INTRODUCED BY TOWE

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

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

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

Section 2. What right of privacy includes. The "right of privacy" set forth in section 10 of Article II of the Montana constitution includes BUT IS NOT LIMITED TO:

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

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

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

limited to a person's residence or other enclosed habitat or a garage, barn, or other outbuilding connected with a residence; a motely, OR hotely--or room; an automobile or other enclosed vehicle or boat; an office, warehouse, or other commercial building or area in a building into which the public is not invited; a compartment in a public toilet or bath house, a locker or desk drawer or any other similar enclosure. The term does not include a place to which the public or a substantial part thereof has access or any such place or area not under the lawful control or possession of the person asserting the right of privacy.

(b) "Enter" means to physically enter or in any other manner to accomplish a sufficient entry by the use of any device or otherwise so that the contents, sounds, events, activities, or persons therein which a person has a reasonable expectation of keeping private can be observed, photographed, recorded, heard, or otherwise uncovered. It shall also mean the trespass on property for the purpose of gaining or attempting to gain such entry.

(2) Except as provided in subsection (3) of this section, it is unlawful for any person, including any agent or employee of any governmental unit, to enter a home or other private place for any purpose. Each entry by each person constitutes a separate offense.

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

1 entry obtained by:

2 (a) any person after consent is freely given by a  
3 proper adult person, either express or implied, except, when  
4 entry is by agents or employees of a governmental unit,  
5 consent may not be implied unless the person giving the  
6 consent is aware that consent may be withheld. The  
7 exception for agents or employees of a governmental unit  
8 does not apply to undercover agents or nonuniformed  
9 employees of a public law 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 AND TO CLEAN AND MAINTAIN A MOTEL  
21 OR A HOTEL ROOM. For this purpose, a landlord or other  
22 lawful claimant to leased premises has the right of  
23 inspection only at reasonable times and only as often as may  
24 be reasonably necessary to protect the property over which  
25 he exercises such claim.

1 (e) any person whose sole purpose is to render  
2 assistance whenever there are reasonable grounds to believe  
3 the premises are in danger of fire or other calamity;

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

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

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

15 (I) ANY BONA FIDE NEWSMEN IN THE IMMEDIATE COMPANY OF  
16 LAW ENFORCEMENT OFFICERS OBTAINING ENTRY UNDER A VALID OR  
17 APPARENTLY VALID SEARCH WARRANT OR IN THE IMMEDIATE COMPANY  
18 OF LAW ENFORCEMENT OFFICERS LAWFULLY GAINING ENTRANCE WHEN  
19 THERE IS EVIDENCE THAT A CRIME HAS 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 (b) 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. ~~A~~  
19 ~~PERSON MAY WAIVE HIS RIGHT OF PRIVACY BY VOLUNTARILY~~  
20 ~~PROVIDING INFORMATION TO A REPRESENTATIVE OF THE NEWS MEDIA.~~  
21 ~~ANY SUCH WAIVER MADE AFTER THE INFORMATION HAS BEEN PROVIDED~~  
22 ~~MAY NOT BE REVOKED.~~

23 (2) For the purpose of this section, the following  
24 definitions apply:

25 (a) "Organization" means any profit or nonprofit

1 corporation, partnership, proprietorship, or other  
2 organization, including the state of Montana, its  
3 departments and local subdivisions and their boards,  
4 agencies, commissions, and bureaus.

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

7 (c) "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 or  
11 answer questions from the public.

12 (d) "Private thoughts, sentiments, emotions,  
13 sensations, religious beliefs, philosophical beliefs, or  
14 political beliefs" are thoughts, sentiments, emotions,  
15 sensations, religious beliefs, philosophical beliefs, or  
16 political beliefs that the holder has a reasonable  
17 expectation will not be disclosed.

18 (e) "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 includes the maintenance by  
22 any governmental unit, agency, employee, or agent thereof of  
23 any file of information about a person or group of persons,  
24 gathered primarily and substantially without the person's or  
25 group's participation or knowledge, the gathering and

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

5 (f) "Private organization charged with dispensing a  
6 governmental benefit" means 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 is not considered such a contract  
11 or agreement.

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

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

1 affirmation, or test that probes into such individual's  
 2 religious, political, or philosophical beliefs. A simple  
 3 oath or affirmation in the language of Article III, section  
 4 3, of the Montana constitution does not violate this  
 5 provision.

6 (5) It is unlawful for any governmental unit or agency  
 7 thereof or any private organization charged with dispensing  
 8 a governmental benefit to require without express  
 9 legislative authorization:

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

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

1 (b) It is unlawful:

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

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

23 (c) for any court in the course of any civil trial,  
 24 criminal trial, or pretrial proceeding to require that  
 25 either the plaintiff or the defendant submit to a

1 polygraphic detection deception test or to questioning under  
 2 the effect of sodium thiopental or to any other test or  
 3 questioning by means of any mechanical device or chemical  
 4 substance; or

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

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

15 (8) It is unlawful for any governmental unit or agency  
 16 thereof or any private organization charged with dispensing  
 17 a governmental benefit to require any individual, as a  
 18 condition for employment or the enjoyment of any right or  
 19 other benefit, to take a psychological personality inventory  
 20 test such as the Minnesota multiphasic personality  
 21 inventory, the Minnesota counseling inventory, or the  
 22 Edwards personal preference schedule, unless such tests are  
 23 used only for statistical purposes and the results are not  
 24 individually identifiable. The unit, agency, or  
 25 organization must first have published regulations pursuant

1 to the Montana Administrative Procedure Act or, if  
 2 inapplicable, in a manner similar thereto, setting forth the  
 3 compelling interest that outweighs this intrusion on an  
 4 individual's privacy.

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

13 (a) answer any questions designed to elicit from him  
 14 information concerning:

15 (i) his race, religion, or national origin or the  
 16 race, religion, or national origin of any of his forebears;

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

20 (iii) his religious beliefs or practices;

21 (iv) his attitude or conduct with respect to sexual  
 22 matters;

23 (v) his property, income, or other assets; source of  
 24 income or liabilities; or his personal or domestic  
 25 expenditures or those of any member of his household; or

1 (b) make a report concerning any of his activities or  
 2 undertakings unless such activities or undertakings are  
 3 related to the performance of his job or to the development  
 4 of additional qualifications for his job or unless there is  
 5 reason to believe that he is engaged in outside activities  
 6 or employment in conflict with his official duties.

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

8 (a) inquiry concerning the citizenship or race of any  
 9 employee or person if his citizenship or race is a statutory  
 10 condition of his obtaining or retaining employment;

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

17 (c) an officer of such department or agency from  
 18 advising any such employee of a specific charge of sexual  
 19 misconduct made against that employee and affording him an  
 20 opportunity to refute the charge;

21 (d) an employee of a taxing authority from obtaining  
 22 the necessary information to carry out the functions of his  
 23 job;

24 (e) an employer or other organization administering a  
 25 pension plan or other plan for the benefit of the employee

1 or his family from obtaining information necessary to carry  
 2 out the purpose of the plan;

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

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

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

19 (12) It shall be unlawful for any officer, employee,  
 20 or agent of the state of Montana, any of the local  
 21 subdivisions, or any agencies thereof to attend a political  
 22 meeting for the purpose of observing or conducting  
 23 surveillance of an individual, group of individuals, or  
 24 organization suspected of committing or about to commit a  
 25 criminal offense unless there is probable cause to believe

1 that the offense in question is likely to be committed at  
 2 the meeting or in the immediate vicinity of the meeting  
 3 during the time at which the meeting is being held; provided  
 4 that nothing contained in this subsection prohibits the  
 5 nonsurreptitious attendance at any meeting of any peace  
 6 officer or other person whose attendance at that meeting is  
 7 for the purpose of protecting, as authorized by law, the  
 8 security of any person lawfully attending the meeting or  
 9 participating in the meeting.

10 (13) It is unlawful for any law enforcement  
 11 organization to keep any records concerning political  
 12 matters with regard to any individual suspect present at any  
 13 political meeting.

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

18 (a) to decide for themselves whether to procreate  
 19 children;

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

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

25 (2) Nothing contained in this section prevents the

1 state of Montana from proscribing abortion to the extent  
 2 permitted under the constitution of the United States or  
 3 prohibits a person from publishing and distributing leaflets  
 4 or other material relating to the above matters.

5 (3) It is unlawful for any person to interfere by  
 6 force, penalty, imprisonment, or threat of force, penalty,  
 7 or imprisonment with the free choice of any individual to  
 8 refuse or accept sterilization. This subsection does not  
 9 apply to a medical doctor seeking compensation for his  
 10 services or acting in a reasonable manner to protect the  
 11 health of his patient.

12 (4) It is unlawful for any governmental unit or agency  
 13 thereof to interfere with the religious training and  
 14 guidance of an unemancipated child when such religious  
 15 training and guidance is desired by both parents, without  
 16 the existence of compelling societal interest for such  
 17 interference.

18 Section 7. Inadmissible evidence. Except as otherwise  
 19 specifically provided by statute, no evidence obtained as a  
 20 result of any act or omission made unlawful under this act  
 21 shall ~~not~~ MAY be received in evidence in any trial, hearing, or  
 22 other proceeding in or before any court, grand jury,  
 23 department, officer, agency, regulatory body, or legislative  
 24 committee without the informed consent of the person or  
 25 persons whose privacy has been invaded.

1 Section 8. Penalties. (1) Except as otherwise  
 2 specifically provided by statute, any purposeful act or  
 3 omission made unlawful under sections 3 or 4 of this act is  
 4 punishable by fine of not more than \$1,000 or imprisonment  
 5 of not more than 1 year, or both. ~~NO SUCH ACT OR OMISSION IS~~  
 6 ~~PUNISHABLE UNLESS IT IS FIRST ESTABLISHED THAT THE ACCUSED~~  
 7 ~~PERSON KNEW THE ACT OR OMISSION WAS UNLAWFUL. PROOF OF SUCH~~  
 8 ~~KNOWLEDGE MUST BE ESTABLISHED AS AN INDEPENDENT FACT AND~~  
 9 ~~CANNOT BE INFERRED OR PRESUMED.~~

10 (2) Any act or omission made unlawful under sections 5  
 11 or 6 of this act is punishable by a fine of not more than  
 12 \$500 or imprisonment of not more than 6 months, or both. ~~NO~~  
 13 ~~SUCH ACT OR OMISSION IS PUNISHABLE UNLESS IT IS FIRST~~  
 14 ~~ESTABLISHED THAT THE ACCUSED PERSON KNEW THE ACT OR OMISSION~~  
 15 ~~WAS UNLAWFUL. PROOF OF SUCH KNOWLEDGE MUST BE ESTABLISHED AS~~  
 16 ~~AN INDEPENDENT FACT AND CANNOT BE INFERRED OR PRESUMED.~~

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

23 Section 9. Civil action. (1) A person whose privacy  
 24 has been invaded because of an unlawful act or omission in  
 25 violation of any of the provisions of this act may file a

1 civil suit in a district court of proper jurisdiction  
 2 against any person who has committed the violation,  
 3 including any governmental unit or agency thereof, and upon  
 4 proper proof is entitled to:

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

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

11 (c) actual damages, but not less than liquidated  
 12 damages, computed at the rate of \$100 for each violation for  
 13 each offender. Each day of a continuing interception of a  
 14 wire or oral communication and each day of a continuing  
 15 surveillance in violation of this act is considered a  
 16 separate violation. If an action is brought against both an  
 17 organization and its employees or agents, the injured party  
 18 is not entitled to double recovery. If other statutes  
 19 provide specifically and exclusively for a different measure  
 20 of damages or remedy, this subsection does not apply.

21 (d) punitive or exemplary damages as set forth in  
 22 17-208, as amended;

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

25 (2) It is not a necessary prerequisite to an action

1 pursuant to this section that the injured party has suffered  
2 or been threatened with actual damages.

3 ~~(3) DAMAGES MAY NOT BE AWARDED UNDER SUBSECTION (1)(C)~~  
4 ~~OR (1)(D) WHEN THE ACT OR OMISSION COMPLAINED OF WOULD NOT~~  
5 ~~BE UNLAWFUL IF CONSENT WERE GIVEN BY A PROPER PERSON AND~~  
6 ~~WHEN THE ACCUSED PERSON ACTED UNDER A REASONABLY FORMED,~~  
7 ~~ALTHOUGH MISTAKEN, IMPRESSION THAT SUCH CONSENT WAS GIVEN.~~  
8 ~~THIS EXCEPTION DOES NOT APPLY TO AN AGENT OR EMPLOYEE OF A~~  
9 ~~GOVERNMENTAL UNIT ACTING IN THE COURSE OF HIS EMPLOYMENT.~~

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

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

18 "94-8-114. Privacy in communications. (1) A person  
19 commits the offense of violating privacy in communications  
20 if he knowingly or purposely:

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

1 injury or physical harm to the person or property of any  
2 person;

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

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

20 ~~(d) Attempts by means of any machine, instrument,~~  
21 ~~contrivance, or in any other manner, reads, or attempts to~~  
22 ~~read any message or learn the contents thereof, while the~~  
23 ~~same is being sent over any telegraph line, or learns, or~~  
24 ~~attempts to learn the contents of any message, whilst the~~  
25 ~~same is in any telegraph office or is being received thereat.~~



1 ~~or sent therefrom, or who uses or attempts to use, or~~  
2 ~~communicate to others, any information so obtained.~~

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

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

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

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

-End-