

LEGAL REVIEW NOTE

Bill No.: SB154

LC#: LC 0908 To Legal Review Copy, as of
January 4, 2023

Short Title: Define the right to privacy

Attorney Reviewer: Todd Everts/Julie Johnson

Date: January 16, 2023

CONFORMITY WITH STATE AND FEDERAL CONSTITUTIONS

As required pursuant to section 5-11-112(1)(c), MCA, it is the Legislative Services Division's statutory responsibility to conduct "legal review of draft bills". The comments noted below regarding conformity with state and federal constitutions are provided to assist the Legislature in making its own determination as to the constitutionality of the bill. The comments are based on an analysis of jurisdictionally relevant state and federal constitutional law as applied to the bill. The comments are not written for the purpose of influencing whether the bill should become law but are written to provide information relevant to the Legislature's consideration of this bill. The comments are not a formal legal opinion and are not a substitute for the judgment of the judiciary, which has the authority to determine the constitutionality of a law in the context of a specific case.

*This review is intended to inform the bill draft requestor of potential constitutional conformity issues that may be raised by the bill as drafted. This review **IS NOT** dispositive of the issue of constitutional conformity and the general rule as repeatedly stated by the Montana Supreme Court is that an enactment of the Legislature is presumed to be constitutional unless it is proven beyond a reasonable doubt that the enactment is unconstitutional. See Alexander v. Bozeman Motors, Inc., 356 Mont. 439, 234 P.3d 880 (2010); Eklund v. Wheatland County, 351 Mont. 370, 212 P.3d 297 (2009); St. v. Pyette, 337 Mont. 265, 159 P.3d 232 (2007); and Elliott v. Dept. of Revenue, 334 Mont. 195, 146 P.3d 741 (2006).*

Legal Reviewer Comments:

As drafted, SB154 provides: "The right of individual privacy as referenced in the Montana Constitution, the Montana Code Annotated, or the Administrative Rules of Montana does not create, and may not be construed as creating or recognizing, a right to abortion or to governmental funding of abortion."

However, the Montana Supreme Court has interpreted the right to privacy under Art. II, section 10 of the Montana Constitution, to mean that a woman has a right to choose to have an abortion

before viability unless the state can demonstrate a compelling interest for infringing the right. *Armstrong v. State*, 1999 MT 261, ¶ 75, 296 Mont. 361, 390, 989 P.2d 364, 384.

Because SB154 provides that there is no right for a woman to choose to have an abortion, the bill raises potential conformity issues with the requirements of the Montana Constitution.

Requester Comments:

I do not disagree that the Montana Supreme Court interpreted the right to privacy to mean a right to an abortion. I do disagree with the last word of the legal review. "Constitution" should be struck and "Supreme Court" should be inserted.

Keith Regier, SD #3