

1 HOUSE JOINT RESOLUTION NO. 20

2 INTRODUCED BY M. MENAHAN

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4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA URGING THE UNITED STATES CONGRESS TO ADOPT AN AMENDMENT TO THE U.S.
6 CONSTITUTION PROVIDING FOR A FEDERAL RIGHT OF PRIVACY SIMILAR TO THE EXPRESS RIGHT OF
7 PRIVACY FOUND IN ARTICLE II, SECTION 10, OF THE MONTANA CONSTITUTION AND SEND THE
8 AMENDMENT TO THE STATES FOR RATIFICATION.

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10 WHEREAS, the federal right of privacy under the United States Constitution is not established by express
11 provision in the Constitution but was established by a series of judicial opinions, especially majority opinions of
12 the U.S. Supreme Court beginning with *Griswold v. Connecticut*, 381 U.S. 479 (1965); and

13 WHEREAS, because the federal right of privacy is not based upon the demonstrable text of the U.S.
14 Constitution, the Supreme Court's application of the federal right to privacy is sometimes subject to question, it
15 has sometimes been hard to predict how the right would be made to apply in some situations, and the right might
16 be extinguished by a majority of the justices of the U.S. Supreme Court; and

17 WHEREAS, the growing complexity of modern society, the growing complexity of business transactions
18 and relationships, the growing use of mass data storage, retrieval, and transfer, and the increased use of
19 technology in government surveillance and crime-fighting techniques intended to deter crime and terrorism all
20 indicate that the future holds more and not fewer potential challenges to the privacy of the individual; and

21 WHEREAS, in order to appropriately respond to growing challenges to our privacy, a codified right to
22 privacy would enhance the individual right of privacy; and

23 WHEREAS, the state right of Montanans to privacy is based upon the written text of Article II, section 10,
24 of the Montana Constitution, which provides that the right of individual privacy is essential to the well-being of
25 a free society and that the right shall not be infringed without the showing of a compelling state interest; and

26 WHEREAS, the Montana Constitution affords Montana residents broader protection from warrantless
27 governmental intrusion in search and seizure cases than does the United States Constitution, and this heightened
28 expectation of privacy is one that society is willing to recognize as objectively reasonable; and

29 WHEREAS, the right to privacy found in the Montana Constitution may serve as a model for a federal
30 right of privacy in an amendment to the U.S. Constitution.

1 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
2 STATE OF MONTANA:

3 That the Legislature of the State of Montana urges the United States Congress to adopt an amendment
4 to the U.S. Constitution expressly providing for a federal right of privacy and send the proposed amendment to
5 the states for ratification in accordance with the provisions of Article V of the U.S. Constitution.

6 BE IT FURTHER RESOLVED, that the language of the amendment expressly providing for a federal right
7 of privacy should be patterned as nearly as practicable upon the express right of privacy found in Article II, section
8 10, of the Montana Constitution.

9 BE IT FURTHER RESOLVED, that the Secretary of State is directed to send copies of this resolution to
10 the Secretary of State of each state in the Union, to the presiding officers of both houses of the Legislature of
11 each state in the Union, to the Majority Leader of the United States Senate, to the Speaker of the United States
12 House of Representatives, and to the Montana Congressional Delegation.

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