



MONTANA

MONTANA AT A GLANCE

EXISTENCE AND STATUS OF ABORTION BAN	STATE CONSTITUTIONAL PROTECTION OF ABORTION RIGHTS	STATUTORY PROTECTION OF ABORTION RIGHTS	OTHER FACTORS
No ban	State constitutional right to privacy protects abortion rights	None	Statutory public policy language protects life of the unborn; indicates intent to regulate abortion as permitted by law; highly vulnerable to enactment of new ban



Existence and Status of Abortion Ban: No abortion ban. The legislature repealed its pre-*Roe* ban.

State Constitutional Protection of Abortion Rights: If the legislature were to enact a new ban, such a ban should be struck down under the Montana Constitution’s explicit right to privacy, which provides:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.¹⁰²

The Montana Supreme Court has recognized strong protection for the right to choose abortion under this provision of the state Constitution.¹⁰³

Statutory Protection of Abortion Rights: None.

Other Factors: The legislature has a stated policy to extend protection to every human life including the unborn (although this statement appears to be limited to protect “viable” unborn life)¹⁰⁴ and to “restrict abortion to the extent permissible under decisions of appropriate courts of paramount legislation.”¹⁰⁵ Montana is highly vulnerable to enactment of a new ban.

¹⁰² MONT. CONST. art. II, § 10.

¹⁰³ *Armstrong v. State*, 989 P.2d 364 (Mont. 1999) (abortion regulation impacted women’s right to choose and her right to obtain an abortion and was thus an unconstitutional violation of her right to privacy).

¹⁰⁴ MONT. CODE ANN. § 50-20-102 (“The Legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life. It is the policy of the state to preserve and protect the lives of all human beings and to provide protection for the viable human life. The protection afforded to a person by Montana’s constitutional right of privacy is not absolute, but may be infringed upon by a compelling state interest.”); *see also* § 41-1-103 (rights of unborn children).

¹⁰⁵ MONT. CODE ANN. § 50-20-103.

Conclusion: Currently there is no abortion ban on the books in Montana. Although a ban is likely to be enacted if *Roe* is overturned, it should be struck down by the courts pursuant to the right to privacy in the Montana Constitution.

Legislative Session in Montana: Jan. 3 – late April, 2005

Source: National Conference of State Legislators (NCSL) website
<http://www.ncsl.org/programs/legman/about/sess2005.htm>