

OFFICE OF THE GOVERNOR  
STATE OF MONTANA

BRIAN SCHWEITZER  
GOVERNOR

JOHN BOHLINGER  
LT. GOVERNOR



April 4, 2011

The Honorable Jim Peterson  
President of the Senate  
State Capitol  
Helena, MT 59620

The Honorable Mike Milburn  
Speaker of the House  
State Capitol  
Helena, MT 59620

Dear President Peterson and Speaker Milburn:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby veto Senate Bill No. 176 (SB 176), "**AN ACT PROHIBITING QUALIFIED HEALTH INSURANCE PLANS OFFERED THROUGH A HEALTH INSURANCE EXCHANGE IN MONTANA FROM COVERING ABORTION SERVICES.**" I issue this veto because I have been advised that SB 176 is unconstitutional under Montana's constitutional guarantee of individual privacy.

Unlike the federal constitution, Article II, section 10 of the Montana Constitution guarantees Montanans an express right of privacy. The Montana Supreme Court has held, unequivocally, that the state constitutional right of privacy embraces the right of a woman to decide whether to have an abortion. *Armstrong v. State*, 1999 MT 261. I have been advised that SB 176 infringes upon the right of privacy and a woman's right to access reproductive health care found in the Montana Constitution, and for this reason is unconstitutional.

Senate Bill 176 implements a provision of the federal health care reform act related to insurance plans offered through health insurance exchanges, which will be launched in 2014. The federal act authorizes states to prohibit abortion coverage in health insurance plans offered through an exchange in their state (the "opt-out" provision). SB 176 is Montana lawmakers' attempt to implement the "opt-out" provision in Montana. It must be mentioned, also, that payment for a "rider" to a health insurance plan offered through an exchange would lie solely with the consumer purchasing the plan. It is not paid for by the federal government or with federal or state funds.

While the federal health care reform act gives states the option whether to exclude abortion coverage from all health insurance plans offered through an exchange, when Montana exercises its discretion, the state is bound by the requirements of Montana's own Constitution.

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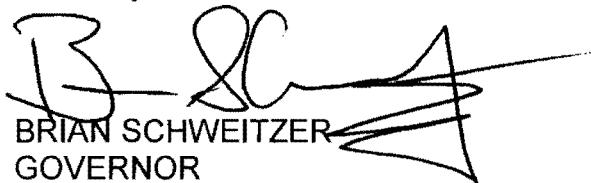
The Montana Supreme Court stated in *Armstrong*: “[T]he State has no more compelling interest or constitutional justification for interfering with the exercise of this right [of a woman to terminate her pre-viability pregnancy] than it would if she chose to carry the fetus to term. . . . [I]f the State has the power to infringe the right of procreative autonomy in favor of birth, then, necessarily, it also has the power to *require* abortion under some circumstances.” *Id.* at ¶ 49.

Montana case law could not be clearer. Under that case law, I have been advised that SB 176 is unconstitutional. It would be a waste of taxpayer's money and the State's resources to sign a bill that is unconstitutional and subject the State and other parties to unnecessary litigation. It is for this reason that I have chosen to veto SB 176.

Each of us holds deep and differing opinions on the subject of abortion, including the circumstances under which either an abortion, itself, or government regulation of abortion is appropriate. However, given my obligation to uphold the Montana Constitution, and where legal counsel has advised me that SB 176 is unconstitutional, I believe I have no choice but to veto the bill.

I respectfully ask that you sustain my veto of SB 176 for the same reasons.

Sincerely,

  
BRIAN SCHWEITZER  
GOVERNOR

cc: Legislative Services Division