

SENATE BILL NO. 148

INTRODUCED BY J. TESTER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING ACCESS TO PUBLIC INFORMATION; ALLOWING GOVERNMENTAL ENTITIES TO REQUIRE A PERSON ACCESSING PUBLIC DOCUMENTS TO RECORD THE PERSON'S NAME SO THAT A PERSON WHOSE PUBLIC RECORDS HAVE BEEN ACCESSED HAS THE ABILITY TO KNOW WHO HAS ACCESSED THOSE DOCUMENTS; SPECIFYING THE KIND OF INFORMATION COLLECTED ON A MARRIAGE LICENSE APPLICATION THAT MAY BE RELEASED TO THE PUBLIC WITHOUT RESTRICTION; DEFINING "AUTHORIZED REPRESENTATIVE"; PROVIDING THAT THE MARRIAGE LICENSE AND THE CERTIFICATE OF MARRIAGE ARE PUBLIC DOCUMENTS; AND AMENDING SECTIONS 40-1-107, 50-15-101, AND 50-15-122, MCA."

WHEREAS, an opinion by the Attorney General, issued on March 23, 2000, 48 A.G. Op. 10, held that applications for marriage licenses should be treated as confidential records once they have been completed and filed with the Clerk of the District Court; and

WHEREAS, the same opinion interprets the intent of the Legislature in enacting sections 50-15-121 and 50-15-122, MCA, to allow general information about a marriage to be made public, while safeguarding the detailed background information about the bride and groom; and

WHEREAS, the opinion seeks to clarify who is entitled to receive marriage license application information that is not made available to the public.

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

NEW SECTION. Section 1. Roster of public document access. (1) An agency or a local government entity may require a person inspecting public writings, as provided in 2-6-102 or 2-6-110, to provide the person's name to the agency or local government entity for inclusion on a public roster. The purpose of establishing the public roster is to allow a person to whom the public records relate to know who has accessed the public information concerning the person.

(2) As used in this section, the following definitions apply:

(a) "Agency" has the meaning given in 2-6-110.

- (b) "Local government entity" has the meaning given in 2-7-501.
- (c) "Person" has the meaning given in 2-4-102.

Section 2. Section 40-1-107, MCA, is amended to read:

"40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, [social security number,] and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name; and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

[(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.]

(4) The information contained in the marriage license application is subject to the disclosure restrictions provided in 50-15-122(5). (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)"

Section 3. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4, the following definitions apply:

(1) "Authorized representative" means a person:

(a) designated by an individual to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

~~(1)~~(2) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

~~(2)~~(3) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(3)~~(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

~~(4)~~(5) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(5)~~(6) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

~~(6)~~(7) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

~~(7)~~(8) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

~~(8)~~(9) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

~~(9)~~(10) "Person in charge of disposition of a dead body" means a person who places or causes a dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

~~(10)~~(11) "Physician" means a person legally authorized to practice medicine in this state.

~~(11)~~(12) "Registration" means the process by which vital records are completed, filed, and incorporated into the official records of the department.

~~(12)~~(13) "Research" means a systematic investigation designed primarily to develop or contribute to generalizable knowledge.

~~(13)~~(14) "System of vital statistics" means the registration, collection, preservation, amendment, and certification of vital records. The term includes the collection of reports required by this chapter and related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

~~(14)~~(15) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and dissolution of marriage and related reports.

~~(15)~~(16) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

Section 4. Section 50-15-122, MCA, is amended to read:

"50-15-122. Disclosure of information from vital records or vital reports -- rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, ~~it is unlawful for any a person to~~ may not permit inspection of or ~~to~~ disclose information contained in vital records or in vital reports or ~~to~~ copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in a vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) (a) Immediately upon the filing of a record with the department, the fact that a birth, ~~or~~ death, or

dissolution of marriage has occurred ~~or a record of marriage or dissolution of marriage~~ may be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121, complete birth records may be released to the public 30 years after the date of birth. The department shall adopt rules that provide for the continued safekeeping of the records.

(b) Upon the filing of a record of marriage with the department, information that may be released to the public without restriction is specifically limited to:

(i) the names of the parties, the age of the parties, and their place of birth;

(ii) the date and place of the marriage;

(iii) the names and addresses of the parents of the parties;

(iv) the name of the officiant; and

(v) the type of ceremony.

(c) Any other information contained in a marriage license application that is not authorized to be disclosed under subsection (5)(b) is considered confidential and is subject to the disclosure limitations and penalties provided in 50-15-114.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those

jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection."

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 6, part 1, and the provisions of Title 2, chapter 6, part 1, apply to [section 1].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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