

HOUSE BILL NO. 694

INTRODUCED BY E. BUTCHER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING PUBLIC ACCESS TO PUBLIC DOCUMENTS; REQUIRING THAT A WRITTEN REQUEST FOR A PUBLIC DOCUMENT MUST BE COMPLIED WITH WITHIN 5 DAYS; REVISING AND CLARIFYING THE PRICE THAT MAY BE CHARGED FOR PROVIDING A COPY OF A PUBLIC DOCUMENT; AND AMENDING SECTIONS 2-6-101, 2-6-102, 2-6-103, 2-6-110, 7-1-4144, 13-37-119, 30-10-905, AND 39-71-223, MCA."

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

Section 1. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents, including official records, as defined in 2-6-301, and public records, as defined in 2-6-401;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private."

Section 2. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect

and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) or (4) of this section and as otherwise expressly provided by statute.

(2) (a) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy and copying costs as provided in subsection (2)(c), and the copy is admissible as evidence in ~~like~~ cases and with ~~like~~ the same effect as the original writing.

(b) The certified copy provision of this subsection (2) does not apply to the public record of electronic mail provided in an electronic format.

(c) Unless otherwise expressly provided by statute, the cost of providing a copy of a public writing may not exceed the lesser of:

(i) the agency's reasonable cost, including:

(A) the cost of purchasing the materials used for copying the public writing or for transferring the data that is the public writing, if the person requesting the information does not provide the material; and

(B) the current hourly rate of the lowest-paid employee employed by the agency that has custody of the public writing for each hour, or fraction of an hour, after one-half hour of copying or data-transfer service has been provided; or

(ii) comparable commercial charges for similar service.

(d) Whenever a citizen requests, in writing, a copy of a public writing, the public officer having custody of the public writing shall provide the copy within 5 days of the date on which the request is made and all fees have been paid.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and

1 facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny
2 any more information than is required to protect an individual privacy interest or safety or security interest.

3 (5) For the purposes of this section, the term "agency" has the meaning provided in 2-6-109."
4

5 **Section 3.** Section 2-6-103, MCA, is amended to read:

6 **"2-6-103. Filing and copying fees.** (1) The secretary of state shall charge and collect fees for filing and
7 fees for copying services as determined under 2-6-102(2)(c).

8 (2) A member of the legislature or state or county officer may not be charged for any search relative to
9 matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed
10 by the legislature relative to the member's official duties.

11 (3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing
12 electronic information.

13 (4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable.

14 (5) ~~Fees~~ Except for copying fees, fees authorized by this section must be set and deposited in
15 accordance with 2-15-405."
16

17 **Section 4.** Section 2-6-110, MCA, is amended to read:

18 **"2-6-110. Electronic information and nonprint records -- public access -- fees.** (1) (a) Except as
19 provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the
20 custody of public agencies that is in electronic format or other nonprint media, including but not limited to
21 videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the
22 information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are
23 applicable to the electronic or nonprint information. Whenever a person requests, in writing, a copy of public
24 information under this section, the agency having custody of the public information shall provide the copy within
25 5 days of the date on which the request is made and all fees have been paid.

26 (b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society
27 established pursuant to 22-3-101.

28 (2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

29 (a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person
30 requesting the information does not provide the media; and

1 ~~(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;~~
2 ~~—— (c) expenses incurred by the agency for providing online computer access to the person requesting~~
3 ~~access;~~
4 ~~—— (d) other out-of-pocket expenses directly associated with the request for information, including the~~
5 ~~retrieval or production of electronic mail; and~~
6 ~~—— (e)(b) the current hourly rate for the current fiscal year for a state employee classified as grade 10,~~
7 ~~market salary, under 2-18-312 of the lowest-paid employee employed by the agency that has custody of the~~
8 ~~information for each hour, or fraction of an hour, after one-half hour of copying service has been provided.~~

9 (3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an
10 additional fee as reimbursement for the cost of developing and maintaining the property valuation and
11 assessment system database from which the information is requested. The fee must be charged to persons,
12 federal agencies, state agencies, and other entities requesting the database or any part of the database from any
13 department property valuation and assessment system. The fee may not be charged to the governor's office of
14 budget and program planning, the state tax appeal board, or any legislative agency or committee.

15 (b) The department of revenue may not charge a fee for information provided from any department
16 property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other
17 governmental functions or to an individual taxpayer concerning the taxpayer's property.

18 (c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be
19 deposited in a state special revenue fund as provided in 15-1-521.

20 (d) ~~Fees~~ Except for copying fees, fees charged by the secretary of state pursuant to this section must
21 be set and deposited in accordance with 2-15-405.

22 (4) For the purposes of this section, the term "agency" has the meaning provided in ~~2-3-102 but includes~~
23 ~~legislative, judicial, and state military agencies~~ 2-6-109.

24 (5) An agency may not charge more than the amount provided under subsection (2) for providing a copy
25 of an existing nonprint record.

26 (6) An agency shall ensure that a copy of information provided to a requester is of a quality that reflects
27 the condition of the original if requested by the requester.

28 (7) This section does not authorize the release of electronic security codes giving access to private
29 information."
30

1 **Section 5.** Section 7-1-4144, MCA, is amended to read:

2 **"7-1-4144. Public records.** (1) Except as provided in subsection (2), all records and other written
3 materials in the possession of a municipality ~~shall~~ must be available for inspection and reproduction by any
4 person during normal office hours. The governing body may impose ~~reasonable~~ fees determined as provided in
5 2-6-102(2)(c) for providing copies of public records.

6 (2) Personal records, medical records, and other records ~~which~~ that relate to matters in which the right
7 to individual privacy exceeds the merits of public disclosure ~~shall~~ are not ~~be~~ available to the public unless the
8 person they concern requests they be made public.

9 (3) Except as provided by law and as determined by the chief law enforcement administrator, law
10 enforcement records ~~which~~ that relate to matters in which the right to individual privacy or law enforcement
11 security exceeds the merits of public disclosure ~~shall~~ are not ~~be~~ available to the public."

12
13 **Section 6.** Section 13-37-119, MCA, is amended to read:

14 **"13-37-119. Availability of information.** (1) The commissioner shall make statements and other
15 information filed with ~~his~~ the commissioner's office available for public inspection and copying during regular office
16 hours and make copying facilities available free of charge or at a charge ~~not to exceed actual cost~~ determined
17 as provided in 2-6-102(2)(c).

18 (2) The commissioner shall preserve statements and other information filed with ~~his~~ the commissioner's
19 office for a period of 10 years from date of receipt.

20 (3) The commissioner shall prepare and publish summaries of the statements received and such other
21 reports as ~~he~~ the commissioner considers appropriate.

22 (4) The commissioner shall provide for wide public dissemination of summaries and reports."
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24 **Section 7.** Section 30-10-905, MCA, is amended to read:

25 **"30-10-905. Administration.** (1) The administration of the provisions of this part is under the general
26 supervision and control of the state auditor. The state auditor shall adopt forms and rules necessary to implement
27 this part.

28 (2) A document is filed when it is received by the state auditor. The state auditor shall keep a register
29 of all applications for licenses to offer and sell living trusts in this state. The register must be open for public
30 inspection. The information contained in or filed with an application must be made available to the public.

(3) Upon request and at a ~~reasonable~~ charge determined as provided in 2-6-102(2)(c), the state auditor shall furnish to any person photostatic or other copies, certified under the seal of office if requested, of any entry in the register or any document filed with the state auditor that is a matter of public record. In any proceeding or prosecution under this part, a certified copy is prima facie evidence of the contents of the entry or document certified.

(4) A person who has received a license to offer and sell living trusts in this state shall make and keep accounts and other records as required by the state auditor. The records are subject at any time to reasonable periodic, special, or other examination, within or outside this state, by representatives of the state auditor if necessary to protect the public interest or for the protection of consumers."

Section 8. Section 39-71-223, MCA, is amended to read:

"39-71-223. Certified copies of public records -- fees. (1) The department shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting ~~such~~ copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The department may establish fees ~~reasonably calculated~~ determined as provided in 2-6-102(2)(c) to reimburse the department for its ~~actual~~ cost in making ~~such~~ the records available."

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