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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.~~

1 ~~\_\_\_\_\_ (b) "Local government entity" has the meaning given in 2-7-501.~~

2 ~~\_\_\_\_\_ (c) "Person" has the meaning given in 2-4-102.~~

3

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

5 **"40-1-107. Form of application, license, marriage certificate, and consent.** (1) The director of the  
6 department of public health and human services shall prescribe the form for an application for a marriage  
7 license, which must include the following information:

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

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

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

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

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

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

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

22 (4) The information contained in the marriage license application is subject to the disclosure  
23 restrictions provided in 50-15-122(5). (Bracketed language terminates on occurrence of contingency--sec.  
24 1, Ch. 27, L. 1999.)"

25

26 **Section 2.** Section 50-15-101, MCA, is amended to read:

27 **"50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4, the following  
28 definitions apply:

29 (1) "Authorized representative" means a person:

30 (a) designated by an individual, IN A NOTARIZED WRITTEN DOCUMENT, to have access to the individual's

1 vital records:

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

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

4 ~~(1)~~(2) "Dead body" means a human body or parts of a human body from which it reasonably may  
5 be concluded that death occurred.

6 ~~(2)~~(3) "Department" means the department of public health and human services provided for in  
7 2-15-2201.

8 ~~(3)~~(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part  
9 1.

10 ~~(4)~~(5) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from  
11 its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated  
12 by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of  
13 life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary  
14 muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished  
15 from fleeting respiratory efforts or gasps.

16 ~~(5)~~(6) "Final disposition" means the burial, interment, cremation, removal from the state, or other  
17 authorized disposition of a dead body or fetus.

18 ~~(6)~~(7) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons  
19 contained in 40-1-402.

20 ~~(7)~~(8) "Live birth" means the complete expulsion or extraction from the mother as a product of  
21 conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after  
22 expulsion or extraction, the child breathes or shows any other evidence of life, such as beating of the  
23 heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are  
24 distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory  
25 efforts or gasps.

26 ~~(8)~~(9) "Local registrar" means a person appointed by the department to act as its agent in  
27 administering this chapter in the area set forth in the letter of appointment.

28 ~~(9)~~(10) "Person in charge of disposition of a dead body" means a person who places or causes a  
29 dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise  
30 disposes of the body or fetus and who is a funeral director licensed under Title 37, chapter 19, an

1 employee acting for a funeral director, or a person who first assumes custody of a dead body or fetus.

2 ~~(10)~~(11) "Physician" means a person legally authorized to practice medicine in this state.

3 ~~(11)~~(12) "Registration" means the process by which vital records are completed, filed, and  
4 incorporated into the official records of the department.

5 ~~(12)~~(13) "Research" means a systematic investigation designed primarily to develop or contribute  
6 to generalizable knowledge.

7 ~~(13)~~(14) "System of vital statistics" means the registration, collection, preservation, amendment,  
8 and certification of vital records. The term includes the collection of reports required by this chapter and  
9 related activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

10 ~~(14)~~(15) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and  
11 dissolution of marriage and related reports.

12 ~~(15)~~(16) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal  
13 death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

14

15 **Section 3.** Section 50-15-122, MCA, is amended to read:

16 **"50-15-122. Disclosure of information from vital records or vital reports -- rules.** (1) It is the policy  
17 of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to  
18 ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy,  
19 ~~it is unlawful for any~~ a person ~~to~~ may not permit inspection of or ~~to~~ disclose information contained in vital  
20 records or in vital reports or ~~to~~ copy or issue a copy of all or a part of a record or report unless authorized  
21 by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted  
22 under this chapter must provide for adequate standards of security and confidentiality of vital records.

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

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

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

7 (5) (a) Immediately upon the filing of a record with the department, the fact that a birth ~~or death~~  
 8 or dissolution of marriage OR DEATH has occurred or a record of marriage or dissolution of marriage may  
 9 be released to the public without restriction. Notwithstanding the restrictions provided in 50-15-121,  
 10 complete birth records may be released to the public 30 years after the date of birth. The department shall  
 11 adopt rules that provide for the continued safekeeping of the records.

12 (b) Upon the filing of a record of marriage with the ~~department~~ CLERK OF THE DISTRICT COURT,  
 13 information that may be released to the public without restriction is specifically limited to:

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

15 (ii) the date and place of the marriage;

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

17 (iv) the name of the officiant; and

18 (v) the type of ceremony.

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

22 (D) NOTWITHSTANDING THE RESTRICTIONS PROVIDED IN 50-15-121 AND THIS SECTION, THE INFORMATION  
 23 CONTAINED IN A MARRIAGE LICENSE AND MARRIAGE CERTIFICATE MAY BE RELEASED TO THE PUBLIC 30 YEARS AFTER THE  
 24 DATE OF THE MARRIAGE.

25 (E) UPON THE FILING OF A RECORD OF A DISSOLUTION OF MARRIAGE WITH THE CLERK OF THE DISTRICT COURT,  
 26 THAT RECORD MAY BE RELEASED TO THE PUBLIC WITHOUT RESTRICTION UNLESS DESIGNATED CONFIDENTIAL BY THE COURT.  
 27 A RECORD OF DISSOLUTION OF MARRIAGE DESIGNATED CONFIDENTIAL BY THE COURT MAY BE PROVIDED TO A FEDERAL,  
 28 STATE, OR LOCAL GOVERNMENT AGENCY UPON REQUEST WHEN THE RECORD IS USED SOLELY IN THE CONDUCT OF THE  
 29 AGENCY'S OFFICIAL DUTIES.

30 (6) The department may provide the national center for health statistics or a successor agency

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

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

15 (8) Subject to this chapter and rules implementing this chapter, the department may, by  
 16 agreement, transmit copies of records and other reports required to be compiled by this chapter to offices  
 17 of vital statistics outside this state when the records or reports concern residents of those jurisdictions or  
 18 persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes  
 19 for which the records may be used, and the agreement must provide instructions concerning proper  
 20 retention, confidentiality requirements, and disposition of the copies. Copies received by the department  
 21 from offices of vital statistics in other states must be handled as provided for in this subsection."  
 22

23 ~~NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an~~  
 24 ~~integral part of Title 2, chapter 6, part 1, and the provisions of Title 2, chapter 6, part 1, apply to [section~~  
 25 ~~4].~~

26  
 27 **NEW SECTION. Section 4. Severability.** If a part of [this act] is invalid, all valid parts that are  
 28 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
 29 applications, the part remains in effect in all valid applications that are severable from the invalid  
 30 applications.

31 - END -