



AN ACT REQUIRING THE RELEASE OF AN ORIGINAL BIRTH CERTIFICATE UPON THE WRITTEN REQUEST OF AN ADULT ADOPTEE; AND AMENDING SECTIONS 42-2-409, 42-6-102, 42-6-109, AND 50-15-223, MCA.

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

Section 1. Section 42-2-409, MCA, is amended to read:

"42-2-409. Counseling requirements. (1) Counseling of the birth mother is required in department, agency, and direct parental placement adoptions. If any other parent is involved in an adoptive placement, counseling of that parent is encouraged.

(2) Counseling must be performed by a person employed by the department or by a staff person of a licensed child-placing agency designated to provide this type of counseling. Unless the counseling requirement is waived for good cause by a court, a minimum of 3 hours of counseling must be completed prior to execution of a relinquishment of parental rights and consent to adopt. A relinquishment and consent to adopt executed prior to completion of required counseling is void.

(3) During counseling, the counselor shall offer an explanation of:

(a) adoption procedures and options that are available to a parent through the department or licensed child-placing agencies;

(b) adoption procedures and options that are available to a parent through direct parental placement adoptions, including the right to an attorney and that legal expenses are an allowable expense that may be paid by a prospective adoptive parent as provided in 42-7-101 and 42-7-102;

(c) the alternative of parenting rather than relinquishing the child for adoption;

(d) the resources that are available to provide assistance or support for the parent and the child if the parent chooses not to relinquish the child;

(e) the legal and personal effect and impact of terminating parental rights and of adoption;

(f) the options for contact and communication between the birth family and the adoptive family;

(g) postadoptive issues, including grief and loss, and the existence of a postadoptive counseling and support program;

(h) the reasons for and importance of providing accurate medical and social history information under 42-3-101;

(i) the operation of the confidential intermediary program; and

(j) the fact that the adoptee may be provided with a copy of the original birth certificate upon request after reaching 18 years of age, ~~unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate~~ unless the birth parent has specifically requested in writing that the vital statistics bureau withhold release of the original birth certificate. The birth parent may change the request at any time by notifying the vital statistics bureau in writing of the change.

(4) The counselor shall prepare a written report containing a description of the topics covered and the number of hours of counseling. The report must specifically include the counselor's opinion of whether or not the parent understood all of the issues and was capable of informed consent. The report must, on request, be released to the person counseled, to the department, to an agency, or with the consent of the person counseled, to an attorney for the prospective adoptive parents."

Section 2. Section 42-6-102, MCA, is amended to read:

"42-6-102. Disclosure of records -- nonidentifying and identifying information -- consensual release. (1) The department or an authorized person or agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or birth parent, or an extended family member of an adoptee or birth parent;

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122;

(c) identifying information limited to the specific information required to assist an adoptee to become enrolled in or a member of an Indian tribe; ~~and~~

(d) identifying information to authorized personnel during a federal child and family services review; and

(e) an original birth certificate as provided for in 42-6-109.

(2) Information may be disclosed to any person who consents in writing to the release of confidential information to other interested persons who have also consented. Identifying information pertaining to an adoption

involving an adoptee who is still a child may not be disclosed based upon a consensual exchange of information unless the adoptee's adoptive parent consents in writing."

Section 3. Section 42-6-109, MCA, is amended to read:

"42-6-109. Release of original birth certificate -- certificate of adoption. (1) ~~For a person adopted on or before July 1, 1967, in~~ In addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate ~~upon the written request~~ of an adoptee:

(a) upon the written request of a person who was adopted before October 1, 1985, or 30 years or more ago, whichever date is later;

(b) upon a court order for a person adopted on or after October 1, 1985, and before October 1, 1997;
and

(c) for a person adopted on or after October 1, 1997, upon:

(i) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or

(ii) a court order.

~~(2) For a person adopted between July 1, 1967, and September 30, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon a court order.~~

~~(3) For a person adopted on or after October 1, 1997, in addition to any copy of an adoptee's original birth certificate authorized for release by a court order issued pursuant to 50-15-121 or 50-15-122, the department shall furnish a copy of the original birth certificate upon:~~

~~(a) the written request of an adoptee who has attained 18 years of age unless the birth parent has requested in writing that the original birth certificate not be automatically released; or~~

~~(b) a court order.~~

~~(4)~~(2) For a person adopted on or after October 1, 1997, and subject to subsection (5), upon Upon the request of an adoptive parent or an adoptee who has attained 18 years of age, the department shall issue a certificate of adoption that states the date and place of adoption, the date of birth of the adoptee, the name of each adoptive parent, and the name of the adoptee as provided in the decree.

~~(5) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order.~~

(3) A birth parent may request in writing to the vital statistics bureau that the birth certificate for an adoptee not be released without a court order. The birth parent may change the request at any time by notifying the vital statistics bureau in writing of the change.

~~(6)(4)~~ The department may release a copy of the adoptee's original birth certificate if release of this document is required to assist an adoptee to become enrolled in or a member of an Indian tribe."

Section 4. Section 50-15-223, MCA, is amended to read:

"50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity. (1) The department shall establish a new certificate of birth for a person born in this state when the department receives the following:

(a) a certificate of adoption, as provided in 50-15-311, a certificate of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(b) a request that a new certificate be established if the request shows that:

(i) a district court, court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction has determined the paternity of the person and information necessary to identify the original certificate of birth is provided; or

(ii) both parents have acknowledged the paternity of the person and request that the surname be changed from that shown on the original certificate.

(2) The date of birth and the city and county of birth must be stated in the newly established certificate of birth. The department shall substitute the new certificate of birth for the original certificate of birth in the files. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or paternity acknowledgment are only subject to inspection, except upon order of a district court, as provided by rule, as provided in Title 42, chapter 6, part 1, or as otherwise provided by state law.

(3) Upon receipt of a report of an amended decree of adoption, the department shall amend the certificate of birth as provided in rules adopted by the department.

(4) Upon receipt of a report or decree of annulment of adoption, the department shall restore the original certificate of birth issued before the adoption to its place in the files and the certificate of birth issued upon adoption and evidence pertaining to the adoption proceeding may not be open to inspection, except:

(a) as provided in Title 42, chapter 6, part 1;

(b) upon order of a district court; or

(c) as provided by rule adopted by the department.

(5) Upon written request of both parents and receipt of a sworn acknowledgment and other credible evidence of paternity signed by both parents of a child born outside of marriage, the department shall reflect the paternity on the child's certificate of birth if paternity is not already shown on the certificate of birth.

(6) If a certificate of birth is not on file for the adopted child for whom a new certificate of birth is to be established under this section and the date and place of birth have not been determined in the adoption or paternity proceedings pertaining to the child, a delayed certificate of birth must be filed with the department, as provided in 50-15-204, before a new certificate of birth may be established. The new certificate of birth must be prepared on a form prescribed by the department.

(7) When a new certificate of birth is established by the department, the department shall direct that all copies of the original certificate of birth in the custody of any other custodian of vital records in this state be forwarded immediately to the department.

(8) (a) The department shall, upon request of the adopting parents, prepare and register a certificate of birth in this state for a person who was born in a foreign country and adopted through a district court in this state.

(b) The certificate of birth must be established by the department upon receipt of a certificate of adoption, conforming to the requirements of 50-15-311, from the court that reflects entry of an order of adoption, proof of the date and place of the child's birth, and a request for the establishment of a certificate of birth from the court, the adopting parents, or the adopted person, if the person is 18 years of age or older.

(c) The certificate of birth must be labeled "Certificate of Foreign Birth" and must contain the actual country of birth. A statement must be included on the certificate indicating that it is not evidence of United States citizenship for the child for whom it is issued.

(d) After registration of the certificate of birth in the new name of the adopted person, the department shall seal and file the certificate of adoption, which is not subject to inspection, except upon order of the district court, as provided by rule, or as otherwise provided by state law.

(9) The department may promulgate rules necessary to implement this section."

- END -

I hereby certify that the within bill,
HB 0397, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2015.

President of the Senate

Signed this _____ day
of _____, 2015.

HOUSE BILL NO. 397
INTRODUCED BY K. DUDIK

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