



AN ACT REVISING ADOPTION LAWS REGARDING LICENSURE REQUIREMENTS FOR CHILD-PLACEMENT AGENCIES; PROVIDING AN EXEMPTION FROM LICENSURE FOR AN ATTORNEY OR HEALTH CARE PROVIDER ASSISTING A PARENT IN IDENTIFYING OR LOCATING A CHILD FOR ADOPTION OR AN ADOPTIVE PARENT; AMENDING SECTIONS 42-7-105 AND 52-8-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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

Section 1. Section 42-7-105, MCA, is amended to read:

"42-7-105. Prohibited activities -- violations -- penalties. (1) A person, other than the department, an attorney or health care provider acting under 52-8-103(2), or a licensed child-placing agency, may not:

- (a) advertise in any public medium that the person:
 - (i) knows of a child who is available for adoption; or
 - (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child; or
- (b) engage in placement activities as defined in 52-8-101.

(2) An individual other than an extended family member or stepparent of a child may not obtain legal or physical custody of a child for purposes of adoption unless the individual has a favorable preplacement evaluation or a court-ordered waiver of the evaluation.

(3) A person who, as a condition for placement, relinquishment, or consent to the adoption of a child, knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person, either directly or indirectly, anything other than the fees allowed under 42-7-101 commits the offense of paying or charging excessive adoption process fees.

(4) It is illegal to require repayment or reimbursement of anything provided to a birth parent under 42-7-101. All payments by the adoptive parent made on behalf of a birth parent pursuant to this section are

considered a gift to the birth parent.

(5) Nothing in this section prohibits a licensed child-placing agency from maintaining a separate program for the assistance of a biological parent who is in need of postadoptive counseling and support as provided in 42-4-211. Services must be provided based on need and may not be contingent on a placement being made privately, by the department, or by a licensed child-placing agency. A postadoptive counseling and support program may not be used to induce a biological parent to place a child for adoption.

(6) A person convicted of the offense of paying or charging excessive adoption process fees, attempting to recover expenses incurred from an adoption process, or otherwise violating this title may be fined an amount not to exceed \$10,000 in an action brought by the appropriate city or county attorney. The court may also enjoin from further violations any person who violates this title."

Section 2. Section 52-8-103, MCA, is amended to read:

"52-8-103. License required -- exception -- term of license -- no fee charged. (1) ~~Only~~ Except as provided in subsection (2), only an entity holding a current child-placing agency license issued by the department may act as an agency for the purpose of:

- (a) procuring or selecting proposed adoptive or foster homes;
- (b) placing children in proposed adoptive or foster homes;
- (c) soliciting persons to adopt or foster children or arranging for persons to adopt or foster children;
- (d) soliciting persons to relinquish children or place children in potential adoptive or foster homes; or
- (e) engaging in placement activities.

(2) (a) An attorney or health care provider may assist a parent in identifying or locating a person interested in adopting the parent's child or in identifying or locating a child to be adopted, provided that the attorney or health care provider shall also provide an expectant parent and prospective adoptive parent with a list of agencies licensed to assist with adoption support services and counseling. No payment, charge, fee, reimbursement of expense, or exchange of value of any kind may be made to the attorney or health care provider assisting the parent.

(b) An adoption in which an attorney or health care provider assists as allowed under subsection (2)(a) must comply with the provisions of Title 42 and this chapter.

(c) For the purposes of this subsection (2), "health care provider" means a person licensed under Title 37 whose scope of practice includes the provision of obstetrical care.

~~(2)~~(3) Licenses are valid for 1 year after issuance. A fee may not be charged for a license."

Section 3. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 502, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 502

INTRODUCED BY L. SHELDON-GALLOWAY

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