

## 1 SENATE BILL NO. 280

2 INTRODUCED BY C. GLIMM, K. BOGNER, B. BROWN, J. ELLSWORTH, C. FRIEDEL, G. HERTZ, S.  
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6

7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING VITAL STATISTICS LAWS REGARDING THE  
8 AMENDMENT OF BIRTH CERTIFICATE SEX DESIGNATIONS AND THE ISSUANCE OF REPLACEMENT  
9 BIRTH CERTIFICATES; PROVIDING THAT THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN  
10 SERVICES MAY AMEND A BIRTH CERTIFICATE SEX DESIGNATION ONLY ON RECEIPT OF A COURT  
11 ORDER INDICATING THAT THE SEX OF A PERSON HAS BEEN CHANGED BY SURGICAL PROCEDURE;  
12 DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO AMEND ADMINISTRATIVE  
13 RULES IN CONFORMITY WITH THIS ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN  
14 APPLICABILITY DATE."  
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16 WHEREAS, in December 2017, the Department of Public Health and Human Services (DPHHS)  
17 adopted MAR Notice No. 37-807, which amended ARM 37.8.102 and 37.8.311 to allow an individual to correct  
18 the gender designation on the individual's birth certificate by providing to DPHHS a correction affidavit  
19 accompanied by: (1) a completed gender designation form certifying that the individual has undergone gender  
20 transition or has an intersex condition; (2) a government-issued identification displaying the correct gender  
21 designation; or (3) a certified copy of a court order indicating that the gender of the individual born in Montana  
22 has been changed; and

23 WHEREAS, prior to the adoption of MAR Notice No. 37-807, the sex designation on a birth certificate  
24 could only be amended if DPHHS received a certified copy of an order from a court indicating that the sex of an  
25 individual born in Montana had been changed by surgical procedure; and

26 WHEREAS, accurate vital statistics play an important role in society, and the rulemaking adopted in  
27 MAR Notice No. 37-807 should have been contemplated in the Legislature rather than through DPHHS  
28 rulemaking; and

1 WHEREAS, the Legislature intends to repeal the rulemaking adopted in MAR Notice No. 37-807 and  
2 enact into law the substance of the administrative rule existing prior to the adoption of MAR Notice No. 37-807.

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

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6 **NEW SECTION. Section 1. Sex change designation on birth certificate.** (1) The sex of a person  
7 designated on a birth certificate may be amended only if the department receives a certified copy of an order  
8 from a court with appropriate jurisdiction indicating that the sex of the person born in Montana has been  
9 changed by surgical procedure.

10 (2) The order must contain sufficient information for the department to locate the original birth  
11 certificate. If the person's name is to be changed, the order must indicate the person's full name as it appears  
12 on the original birth certificate and the full name to which it is to be amended.

13 (3) If the order directs the issuance of a new birth certificate that does not show amendments, the  
14 new birth certificate may not indicate on its face that it was amended.

15 (4) This section does not apply if the sex of a person was designated incorrectly on the original birth  
16 certificate due to a data entry error.

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18 **NEW SECTION. Section 2. Direction to department of public health and human services.** The  
19 department of public health and human services shall amend ARM 37.8.102 and 37.8.311 in conformity with  
20 this act.

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22 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
23 integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, part 2, apply to [section 1].

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25 **NEW SECTION. Section 4. Effective date -- applicability.** [This act] is effective on passage and  
26 approval and applies to amendments to sex designations in birth certificates that are received by the  
27 department of public health and human services on or after [the effective date of this act].

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