

HOUSE BILL NO. 26

INTRODUCED BY CODY

IN THE HOUSE

DECEMBER 27, 1990 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

JANUARY 7, 1991 FIRST READING.

JANUARY 21, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 22, 1991 PRINTING REPORT.

JANUARY 23, 1991 SECOND READING, DO PASS.

JANUARY 24, 1991 ENGROSSING REPORT.

JANUARY 25, 1991 THIRD READING, PASSED.
AYES, 97; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

JANUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 7, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

FEBRUARY 9, 1991 SECOND READING, CONCURRED IN.

FEBRUARY 11, 1991 THIRD READING, CONCURRED IN.
AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 9, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

MARCH 11, 1991 ON MOTION, CONFERENCE COMMITTEE

REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 12, 1991

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 19, 1991

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 19, 1991

CONFERENCE COMMITTEE REPORTED.

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

APRIL 20, 1991

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 26
2 INTRODUCED BY CODY
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE,
5 NONAGENCY ADOPTIONS; REQUIRING COUNSELING FOR THE BIRTH
6 MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A
7 PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE,
8 PROSPECTIVE ADOPTIVE PARENT AND HOME; DELETING THE
9 REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR
10 TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE
11 ADOPTIVE HOME; REQUIRING EXECUTION OF RELINQUISHMENT OF
12 PARENTAL RIGHTS BY A BIRTH MOTHER IN AN ADOPTION BY A
13 NONRELATIVE IN THE PRESENCE OF A DISTRICT COURT JUDGE AND
14 THE PROSPECTIVE ADOPTIVE PARENTS; INCREASING THE MAXIMUM
15 PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS
16 FEES FROM \$1,000 TO \$10,000; REQUIRING NONRELATIVE ADOPTIVE
17 PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF
18 AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION
19 PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND
20 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE."
21

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

23 Section 1. Section 40-8-109, MCA, is amended to read:

24 "40-8-109. Placement for adoption by parents parent --
25 adoption by nonrelative -- requirements before

1 ~~relinquishment of parental rights.~~ (1) No A parent may make
2 ~~a placement of who proposes to place~~ a child for adoption
3 with an individual who is not a the child's stepparent or a
4 member of the child's extended family ~~unless--the--parent~~
5 ~~files shall file~~ with the district court for the county in
6 which the prospective adoptive parent or the parent making
7 the placement resides:

8 (a) a notice of parental placement; and

9 (b) a relinquishment of parental rights to the
10 prospective adoptive parents, executed voluntarily and in
11 accordance with ~~40-6-135(2)--through--(4)~~ subsection (8); and

12 (c) the report of agreements and disbursements required
13 under 40-8-136.

14 (2) (a) ~~The---notice--of--parental--placement--and--the~~
15 ~~relinquishment--shall--be--filed--prior--to--a--parent's--placement~~
16 ~~of--the--child--with--an--individual--who--intends--to--adopt--the~~
17 ~~child.~~ The notice of parental placement ~~shall~~ must be signed
18 by the parent making the placement and must contain the
19 following information:

20 (a) (i) the name and address of each birth parent, if
21 known, and if unknown, the steps taken to ascertain the
22 whereabouts of the parent or parents;

23 (b) (ii) the name and address of each prospective
24 adoptive parent;

25 (c) (iii) the name and address or expected date and

1 place of birth of the child; and
 2 ~~(d)~~(iv) the name and address of counsel, guardian ad
 3 litem, or other representative, if any, for each of the
 4 parties listed in ~~(a)~~ through ~~(c)~~ of subsection ~~(2)~~
 5 subsections (2)(a)(i) through (2)(a)(iii).
 6 (b) The district court shall provide a copy of the
 7 notice to the parent making the placement.
 8 (3) Upon receipt of a notice of parental placement and
 9 ~~a~~ ~~relinquishment~~, the court shall require that the
 10 department ~~examine the child and conduct interviews with the~~
 11 ~~birth parents and prospective adoptive parents~~ to conduct an
 12 investigation as required by 40-8-122 and report to the
 13 court within 30 days but not earlier than ~~5~~ days 72 hours
 14 after the birth of the child. The report must state whether
 15 the following requirements for placement have been met:
 16 (a) that the decision to place was voluntarily made by
 17 the birth parents;
 18 (b) that the department has no temporary authority to
 19 investigate or provide protective services to the family
 20 under 41-3-402;
 21 (c) that the birth parents ~~or~~ prospective adoptive
 22 parents, and their representatives have provided the court
 23 with the report required by 40-8-136;
 24 (d) that the prospective adoptive parents have been
 25 provided a medical and social history of the child and birth

1 parents; and
 2 (e) that the requirements of [sections 2 and 3] have
 3 been met; and
 4 ~~(e)~~(f) that the proposed placement is in the child's
 5 best interest.
 6 (4) The department may contract with licensed social
 7 workers and licensed child-placing agencies to conduct the
 8 investigations and prepare the report to the court ordered
 9 pursuant to subsection (3).
 10 (5) The department may charge the prospective adoptive
 11 parents a fee, commensurate with costs, for the
 12 investigation and report.
 13 (6) Within 45 days of filing of the notice of parental
 14 placement ~~and the relinquishment and the report required by~~
 15 40-8-136, the court shall schedule a hearing to consider the
 16 proposed adoptive placement.
 17 (7) (a) At least 5 days' notice of the time and place
 18 of the hearing must be given to the birth parents, the
 19 prospective adoptive parents, any named guardian ad litem,
 20 and the department.
 21 (b) The hearing ~~shall be~~ is closed to all persons
 22 except those persons entitled to notice and their
 23 representatives or counsel.
 24 (8) (a) A parent may not execute a relinquishment of
 25 parental rights to an individual who is not the child's

1 stepparent or a member of the child's extended family until
2 the following criteria have been met:

3 (i) not less than 72 hours has elapsed since the birth
4 of the child, if the person relinquishing parental rights is
5 the child's birth mother;

6 (ii) the investigation or home study required by
7 [section 2] has been performed; and

8 (iii) the parent has received counseling in accordance
9 with [section 3].

10 (b) A relinquishment of parental rights by a birth
11 mother under subsection (8) must be executed in district
12 court in the presence of the district court judge and the
13 prospective adoptive parents. A relinquishment under
14 subsection (8) by any person other than a birth mother may
15 be executed before a notary public. A relinquishment must
16 comply with 40-6-135(3) and (4).

17 ~~(8)~~(9) If the court finds that all requirements for
18 adoptive placement have been met, the court may issue an
19 order or schedule a hearing for the purpose of terminating
20 parental rights and granting temporary custody to the
21 prospective adoptive parents or it may issue a final decree
22 if a petition for adoption has been filed under 40-8-121.
23 The prospective adoptive parents ~~must~~ shall file their
24 petition to adopt within 30 days of the order.

25 ~~(9)~~(10) If the court finds that all requirements for the

1 adoptive placement have not been met, the court may issue
2 any order appropriate to protect the child.

3 (11) The court shall send a copy of the final
4 determination made by the court under this section to the
5 central office of the department."

6 NEW SECTION. Section 2. Placement for adoption by
7 parent -- adoption by nonrelative -- preplacement
8 investigation or home study required of prospective adoptive
9 parent. (1) A prospective adoptive parent who wishes to
10 adopt a child under 46-8-109 shall initiate the nonagency
11 adoption process by requesting an investigation or home
12 study by the department or a licensed child-placing agency.
13 During the investigation or home study process, the
14 department or agency shall provide the prospective adoptive
15 parent information regarding the nonagency adoption process
16 and a copy of [section 3] and this section.

17 (2) The prospective adoptive parent and the home of the
18 prospective adoptive parent must be studied and evaluated
19 according to the department's or child-placing agency's
20 standards for placement of a child.

21 (3) The department or child-placing agency that
22 conducts the investigation or home study shall prepare a
23 written report containing the results of the investigation
24 or home study. The report must be attached to and made a
25 part of the report required by 40-8-109(3).

1 NEW SECTION. Section 3. Placement for adoption by
 2 parent -- adoption by nonrelative -- birth mother counseling
 3 required. (1) In an adoption subject to 46-8-109, counseling
 4 of the birth mother is required. Counseling must also be
 5 offered to the birth father, if he is known and available.
 6 (2) Counseling must be done by a staff person from the
 7 department or a licensed child-placing agency designated to
 8 provide this type of counseling.
 9 (3) Counseling must consist of:
 10 (a) an explanation and consideration of alternatives to
 11 adoption that are available to birth parents to assist them
 12 in determining the best course of action;
 13 (b) detailed information regarding the nonagency
 14 adoption process, including reviewing and providing a copy
 15 of [section 2] and this section;
 16 (c) a thorough explanation and consideration of the
 17 legal and personal impact of terminating parental rights and
 18 of adoption; and
 19 (d) the completion of birth parent social and medical
 20 history forms.
 21 (4) The counselor shall prepare a written report
 22 containing a description of the topics covered and the
 23 results of the counseling, including his opinion indicating
 24 whether or not the birth parent understood all issues and
 25 was capable of informed consent. This report must be

1 completed and filed with the court no later than the date
 2 the relinquishment of parental rights is executed.
 3 (5) The counselor's report must be attached to and made
 4 a part of the report required by 40-8-109(3).
 5 NEW SECTION. Section 4. Placement for adoption by
 6 parent -- adoption by relative -- requirements. A parent may
 7 relinquish parental rights for the purposes of adoption of a
 8 child to the child's stepparent or a member of the child's
 9 extended family. The relinquishment must be executed
 10 voluntarily and in accordance with 40-6-135(2) through (4).
 11 The relinquishment may be executed at any time, except that
 12 a birth mother may not execute a relinquishment before the
 13 child is 72 hours old.
 14 **Section 5.** Section 40-8-135, MCA, is amended to read:
 15 *40-8-135. Adoption Placement for adoption by parent --
 16 adoption by nonrelative -- fees -- violation -- penalty.
 17 (1) Reasonable adoption fees may be charged-by-the-child's
 18 birth--parent,--birth--parents,--or--guardian paid by the
 19 adoptive parent for the actual cost of services documented
 20 in the report required by 40-8-136 and approved by the
 21 court. The cost of services must relate to:
 22 (a) a petition for adoption;
 23 (b) placement of a child;
 24 (c) medical care or services;
 25 (d) prenatal care;

- 1 (e) foster care; or
 2 (f) investigation or home study;
 3 (g) counseling; or
 4 ~~ff~~(h) other reasonable costs.

5 (2) A person who knowingly offers, gives, agrees to
 6 give, solicits, accepts, or agrees to accept from another
 7 person anything of value greater than that allowed under
 8 subsection (1) commits the offense of paying or charging
 9 excessive adoption process fees.

10 (3) A person convicted of the offense of paying or
 11 charging excessive adoption process fees may be fined an
 12 amount not to exceed ~~\$17,000~~ \$10,000."

13 **Section 6.** Section 40-8-136, MCA, is amended to read:

14 "**40-8-136. Report Placement for adoption by parent --**
 15 **adoption by nonrelative -- report of agreements and**
 16 **disbursements.** (1) Prior to a hearing under 40-8-109, the
 17 birth parents ~~or, prospective adoptive parents,~~ and their
 18 representatives shall file with the court a report of
 19 agreements and disbursements, and they shall serve a copy of
 20 the report on the central office of the department.

21 (2) The report must contain:

22 (a) all oral and written agreements between the parties
 23 that relate to the future conduct of a party with respect to
 24 the child. If an oral agreement is reported, the substance
 25 of the agreement must be contained in the report and a copy

1 of the report must be served on each party to the oral
 2 agreement. Copies of all written agreements must be attached
 3 to the report.

4 (b) a full accounting of all disbursements of anything
 5 of value made or agreed to be made by or on behalf of the
 6 identified adoptive parents in connection with proceedings
 7 under this chapter. This accounting must include any
 8 expenses related to:

9 (i) the birth of the child;

10 (ii) placement of the child with the identified adoptive
 11 parents, including an investigation or home study;

12 (iii) counseling or medical or hospital care received by
 13 the birth parent or child prior to or after the child's
 14 birth; and

15 (iv) services relating to the petition for adoption or
 16 the placement of the child that were received by or on
 17 behalf of a birth parent or any other person.

18 (c) a statement by each person furnishing information
 19 contained in the report, attesting to the correctness and
 20 truthfulness of the information furnished by that person."

21 **Section 7.** Section 40-8-103, MCA, is amended to read:

22 "**40-8-103. Definitions.** As used in this chapter, unless
 23 the context otherwise requires the following definitions
 24 apply:

25 (1) "Adoption" means the act of creating the legal

1 relationship between parent and child when it does not exist
2 genetically.

3 (2) "Adoptive parent" means an adult who has become the
4 mother or father of a child through the legal process of
5 adoption.

6 (3) "Agency" means a public or voluntary agency
7 licensed by any jurisdiction within the United States and
8 expressly empowered to place children as a preliminary to a
9 possible adoption.

10 (4) "Birth parent" means the mother or father of
11 genetic origin of a child but does not include a putative
12 father of a child.

13 (5) "Child" means any person under 18 years of age.

14 (6) "Court" means a Montana district court or a tribal
15 court of any Montana Indian reservation.

16 (7) "Department" means the department of family
17 services, as established and provided for in 2-15-2401.

18 (8) "Extended family member" means an adult who is the
19 child's grandparent, aunt or uncle, or brother or sister,
20 ~~niece-or-nephew,-or-first-cousin.~~

21 (9) "Home study" means the process of assisting the
22 prospective adoptive parent or family to assess its own
23 readiness to adopt and a determination by the department or
24 a licensed child-placing agency of the compliance of the
25 parent or family and its residence with applicable

1 standards.

2 ~~†9†~~(10) "Parent" means the birth or adoptive mother or
3 the birth, adoptive, or legal father whose parental rights
4 have not been terminated.

5 ~~†10†~~(11) "Placement for adoption" means the transfer of
6 physical custody of a child with respect to whom all
7 parental rights have been terminated and who is otherwise
8 legally free for adoption to a person who intends to adopt
9 the child.

10 ~~†11†~~(12) "Relinquishment" means the informed and
11 voluntary release in writing of all parental rights with
12 respect to a child by a parent to an agency or individual
13 pursuant to 40-6-135, or 40-8-109, or [section 4], whichever
14 is applicable."

15 NEW SECTION. Section 8. Codification instruction.
16 [Sections 2 through 4] are intended to be codified as an
17 integral part of Title 40, chapter 8, part 1, and the
18 provisions of Title 40, chapter 8, part 1, apply to
19 [sections 2 through 4].

20 NEW SECTION. Section 9. Severability. If a part of
21 [this act] is invalid, all valid parts that are severable
22 from the invalid part remain in effect. If a part of [this
23 act] is invalid in one or more of its applications, the part
24 remains in effect in all valid applications that are
25 severable from the invalid applications.

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1 NEW SECTION. **Section 10.** **Effective date.** [This act] is
2 effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 HOUSE BILL NO. 26

2 INTRODUCED BY CODY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE,
5 NONAGENCY ADOPTIONS; ~~REQUIRING--COUNSELING--FOR--THE--BIRTH~~
6 ~~MOTHER--IN--AN--ADOPTION--BY--A--NONRELATIVE;--REQUIRING--A~~
7 ~~PREPLACEMENT--INVESTIGATION--OR--HOME--STUDY--OF--A--NONRELATIVE,~~
8 ~~PROSPECTIVE--ADOPTIVE--PARENT--AND--HOME; DELETING THE~~
9 REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR
10 TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE
11 ADOPTIVE HOME; ~~REQUIRING--EXECUTION--OF--RELINQUISHMENT--OF~~
12 ~~PARENTAL--RIGHTS--BY--A--BIRTH--MOTHER--IN--AN--ADOPTION--BY--A~~
13 ~~NONRELATIVE--IN--THE--PRESENCE--OF--A--DISTRICT--COURT--JUDGE--AND~~
14 ~~THE--PROSPECTIVE--ADOPTIVE--PARENTS; INCREASING THE MAXIMUM~~
15 PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS
16 FEES FROM \$1,000 TO \$10,000; REQUIRING NONRELATIVE ADOPTIVE
17 PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF
18 AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION
19 PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND
20 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 40-8-109, MCA, is amended to read:

24 "40-8-109. Placement for adoption by parents parent --
25 adoption by nonrelative -- requirements before

1 relinquishment of parental rights. (1) No A parent may make
2 a placement of who proposes to place a child for adoption
3 with an individual who is not a the child's stepparent or a
4 member of the child's extended family ~~unless--the--parent~~
5 files shall file with the district court for the county in
6 which the prospective adoptive parent or the parent making
7 the placement resides:

8 (a) a notice of parental placement; and

9 (b) a relinquishment of parental rights to the
10 prospective adoptive parents, executed voluntarily and in
11 accordance with ~~40-6-135(2)--through--(4)~~ subsection (8); and

12 (c) the report of agreements and disbursements required
13 under 40-8-136.

14 (2) (a) ~~The--notice--of--parental--placement--and--the~~
15 ~~relinquishment--shall--be--filed--prior--to--a--parent's--placement~~
16 ~~of--the--child--with--an--individual--who--intends--to--adopt--the~~
17 ~~child.~~ The notice of parental placement shall must be signed
18 by the parent making the placement and must contain the
19 following information:

20 (a)(i) the name and address of each birth parent, if
21 known, and if unknown, the steps taken to ascertain the
22 whereabouts of the parent or parents;

23 (b)(ii) the name and address of each prospective
24 adoptive parent;

25 (c)(iii) the name and address or expected date and

SECOND READING

1 place of birth of the child; and
 2 ~~(d)(iv)~~ the name and address of counsel, guardian ad
 3 litem, or other representative, if any, for each of the
 4 parties listed in (a) through (c) of subsection (2)
 5 subsections (2)(a)(i) through (2)(a)(iii).
 6 (b) The district court shall provide a copy of the
 7 notice to the parent making the placement.
 8 (3) Upon receipt of a notice of parental placement and
 9 ~~a--relinquishment,~~ the court shall require that the
 10 department ~~examine the child and conduct interviews with the~~
 11 ~~birth parents and prospective adoptive parents~~ to conduct an
 12 investigation as required by 40-8-122 and report to the
 13 court within 30 days but not earlier than ~~5--days~~ 72 hours
 14 after the birth of the child. The report must state WHETHER
 15 COUNSELING FOR THE BIRTH PARENTS IS RECOMMENDED AND whether
 16 the following requirements for placement have been met:
 17 (a) that the decision to place was voluntarily made by
 18 the birth parents;
 19 (b) that the department has no temporary authority to
 20 investigate or provide protective services to the family
 21 under 41-3-402;
 22 (c) that the birth parents or, prospective adoptive
 23 parents, and their representatives have provided the court
 24 with the report required by 40-8-136;
 25 (d) that the prospective adoptive parents have been

1 provided a medical and social history of the child and birth
 2 parents; and AND
 3 ~~(e)--that--the--requirements--of--(sections-2-and-3)--have~~
 4 ~~been met, and~~
 5 ~~(e)(f)(E)~~ that the proposed placement is in the child's
 6 best interest.
 7 (4) The department may contract with licensed social
 8 workers and licensed child-placing agencies to conduct the
 9 investigations and prepare the report to the court ordered
 10 pursuant to subsection (3).
 11 (5) The department may charge the prospective adoptive
 12 parents a fee, commensurate with costs, for the
 13 investigation and report.
 14 (6) Within 45 days of filing of the notice of parental
 15 placement ~~and the relinquishment~~ and the report required by
 16 40-8-136, the court shall schedule a hearing to consider the
 17 proposed adoptive placement.
 18 (7) (a) At least 5 days' notice of the time and place
 19 of the hearing must be given to the birth parents, the
 20 prospective adoptive parents, any named guardian ad litem,
 21 and the department.
 22 (b) The hearing ~~shall--be~~ is closed to all persons
 23 except those persons entitled to notice and their
 24 representatives or counsel.
 25 (8) (a)--A parent may not execute a relinquishment of

1 parental rights to an individual who is not the child's
 2 stepparent or a member of the child's extended family until
 3 the following criteria have been met:

4 {i}(A) not less than 72 hours has elapsed since the
 5 birth of the child, if the person relinquishing parental
 6 rights is the child's birth mother;

7 {ii}(B) the investigation ~~or--home-study~~ required by
 8 {section-2} SUBSECTION (3) has been performed; and

9 {iii}(C) the parent has received ANY counseling in
 10 accordance--with--{section--3} RECOMMENDED BY THE REPORT
 11 REQUIRED BY SUBSECTION (3) AND ORDERED BY THE COURT.

12 ~~{b)--A--relinquishment--of--parental--rights--by--a--birth~~
 13 ~~mother--under--subsection--(8)--must--be--executed--in--district~~
 14 ~~court--in--the--presence--of--the--district--court--judge--and--the~~
 15 ~~prospective--adoptive--parents,--A--relinquishment--under~~
 16 ~~subsection--(8)--by--any--person--other--than--a--birth--mother--may~~
 17 ~~be--executed--before--a--notary--public,--A--relinquishment--must~~
 18 ~~comply--with--40-6-135(3)--and--(4).~~

19 {8}(9) If the court finds that all requirements for
 20 adoptive placement have been met, the court may issue an
 21 order or schedule a hearing for the purpose of terminating
 22 parental rights and granting temporary custody to the
 23 prospective adoptive parents or it may issue a final decree
 24 if a petition for adoption has been filed under 40-8-121.
 25 The prospective adoptive parents must shall file their

1 petition to adopt within 30 days of the order.

2 {9}(10) If the court finds that all requirements for the
 3 adoptive placement have not been met, the court may issue
 4 any order appropriate to protect the child.

5 (11) The court shall send a copy of the final
 6 determination made by the court under this section to the
 7 central office of the department."

8 ~~NEW-SECTION--Section-2--Placement--for--adoption--by~~
 9 ~~parent-----adoption--by--nonrelative-----preplacement~~
 10 ~~investigation--or--home--study--required--of--prospective--adoptive~~
 11 ~~parent,--(1)--A--prospective--adoptive--parent--who--wishes--to~~
 12 ~~adopt--a--child--under--46-8-109--shall--initiate--the--nonagency~~
 13 ~~adoption--process--by--requesting--an--investigation--or--home~~
 14 ~~study--by--the--department--or--a--licensed--child--placing--agency.~~
 15 ~~During--the--investigation--or--home--study--process,--the~~
 16 ~~department--or--agency--shall--provide--the--prospective--adoptive~~
 17 ~~parent--information--regarding--the--nonagency--adoption--process~~
 18 ~~and--a--copy--of--{section-3}--and--this--section.~~

19 ~~{2)--The--prospective--adoptive--parent--and--the--home--of--the~~
 20 ~~prospective--adoptive--parent--must--be--studied--and--evaluated~~
 21 ~~according--to--the--department's--or--child--placing--agency's~~
 22 ~~standards--for--placement--of--a--child.~~

23 ~~{3)--The--department--or--child--placing--agency--that~~
 24 ~~conducts--the--investigation--or--home--study--shall--prepare--a~~
 25 ~~written--report--containing--the--results--of--the--investigation~~

1 or-home-study. The report must be attached to and made a
2 part of the report required by 40-8-109(3).

3 NEW SECTION. Section 3. Placement for adoption by
4 parent -- adoption by nonrelative -- birth-mother counseling
5 required. (1) In an adoption subject to 46-8-109, counseling
6 of the birth-mother is required. Counseling must also be
7 offered to the birth-father, if he is known and available.

8 (2) Counseling must be done by a staff person from the
9 department or a licensed child-placing agency designated to
10 provide this type of counseling.

11 (3) Counseling must consist of:

12 (a) an explanation and consideration of alternatives to
13 adoption that are available to birth-parents to assist them
14 in determining the best course of action;

15 (b) detailed information regarding the nonagency
16 adoption process, including reviewing and providing a copy
17 of [section 2] and this section;

18 (c) a thorough explanation and consideration of the
19 legal and personal impact of terminating parental rights and
20 of adoption; and

21 (d) the completion of birth-parent social and medical
22 history forms.

23 (4) The counselor shall prepare a written report
24 containing a description of the topics covered and the
25 results of the counseling, including his opinion indicating

1 whether or not the birth-parent understood all issues and
2 was capable of informed consent. This report must be
3 completed and filed with the court no later than the date
4 the relinquishment of parental rights is executed.

5 (5) The counselor's report must be attached to and made
6 a part of the report required by 40-8-109(3).

7 NEW SECTION. Section 2. Placement for adoption by
8 parent -- adoption by relative -- requirements. A parent may
9 relinquish parental rights for the purposes of adoption of a
10 child to the child's stepparent or a member of the child's
11 extended family. The relinquishment must be executed
12 voluntarily and in accordance with 40-6-135(2) through (4).
13 The relinquishment may be executed at any time, except that
14 a birth mother may not execute a relinquishment before the
15 child is 72 hours old.

16 Section 3. Section 40-8-135, MCA, is amended to read:

17 "40-8-135. Adoption Placement for adoption by parent --
18 adoption by nonrelative -- fees -- violation -- penalty.

19 (1) Reasonable adoption fees may be charged by the child's
20 birth-parent, birth-parents, or guardian paid by the
21 adoptive parent for the actual cost of services documented
22 in the report required by 40-8-136 and approved by the
23 court. The cost of services must relate to:

- 24 (a) a petition for adoption;
25 (b) placement of a child;

- 1 (c) medical care or services;
- 2 (d) prenatal care;
- 3 (e) foster care; or
- 4 (f) investigation or home-study;
- 5 (g) counseling; or
- 6 ~~(f)~~(h) other reasonable costs.

7 (2) A person who knowingly offers, gives, agrees to
 8 give, solicits, accepts, or agrees to accept from another
 9 person anything of value greater than that allowed under
 10 subsection (1) commits the offense of paying or charging
 11 excessive adoption process fees.

12 (3) A person convicted of the offense of paying or
 13 charging excessive adoption process fees may be fined an
 14 amount not to exceed ~~\$17,000~~ \$10,000."

15 **Section 4.** Section 40-8-136, MCA, is amended to read:

16 "**40-8-136. Report Placement for adoption by parent --**
 17 **adoption by nonrelative -- report of agreements and**
 18 **disbursements.** (1) Prior to a hearing under 40-8-109, the
 19 birth parents or, prospective adoptive parents, and their
 20 representatives shall file with the court a report of
 21 agreements and disbursements, and they shall serve a copy of
 22 the report on the central office of the department.

23 (2) The report must contain:

- 24 (a) all oral and written agreements between the parties
- 25 that relate to the future conduct of a party with respect to

1 the child. If an oral agreement is reported, the substance
 2 of the agreement must be contained in the report and a copy
 3 of the report must be served on each party to the oral
 4 agreement. Copies of all written agreements must be attached
 5 to the report.

6 (b) a full accounting of all disbursements of anything
 7 of value made or agreed to be made by or on behalf of the
 8 identified adoptive parents in connection with proceedings
 9 under this chapter. This accounting must include any
 10 expenses related to:

- 11 (i) the birth of the child;
- 12 (ii) placement of the child with the identified adoptive
 13 parents, including an investigation or home-study;
- 14 (iii) counseling or medical or hospital care received by
 15 the birth parent or child prior to or after the child's
 16 birth; and
- 17 (iv) services relating to the petition for adoption or
 18 the placement of the child that were received by or on
 19 behalf of a birth parent or any other person.

20 (c) a statement by each person furnishing information
 21 contained in the report, attesting to the correctness and
 22 truthfulness of the information furnished by that person."

23 **Section 5.** Section 40-8-103, MCA, is amended to read:

24 "**40-8-103. Definitions.** As used in this chapter, unless
 25 the context otherwise requires the following definitions

1 apply:

2 (1) "Adoption" means the act of creating the legal
3 relationship between parent and child when it does not exist
4 genetically.

5 (2) "Adoptive parent" means an adult who has become the
6 mother or father of a child through the legal process of
7 adoption.

8 (3) "Agency" means a public or voluntary agency
9 licensed by any jurisdiction within the United States and
10 expressly empowered to place children as a preliminary to a
11 possible adoption.

12 (4) "Birth parent" means the mother or father of
13 genetic origin of a child but does not include a putative
14 father of a child.

15 (5) "Child" means any person under 18 years of age.

16 (6) "Court" means a Montana district court or a tribal
17 court of any Montana Indian reservation.

18 (7) "Department" means the department of family
19 services, as established and provided for in 2-15-2401.

20 (8) "Extended family member" means an adult who is the
21 child's grandparent, aunt or uncle, or brother or sister,
22 ~~niece-or-nephew,-or-first-cousin.~~

23 ~~{9}--"Home--study"--means--the--process--of--assisting--the~~
24 ~~prospective-adoptive-parent-or--family--to--assess--its--own~~
25 ~~readiness--to-adopt-and-a-determination-by-the-department-or~~

1 ~~a--licensed-child-placing-agency-of--the--compliance--of--the~~
2 ~~parent---or---family---and---its---residence---with---applicable~~
3 ~~standards.~~

4 {9}{10}(9) "Parent" means the birth or adoptive mother
5 or the birth, adoptive, or legal father whose parental
6 rights have not been terminated.

7 {10}{11}(10) "Placement for adoption" means the transfer
8 of physical custody of a child with respect to whom all
9 parental rights have been terminated and who is otherwise
10 legally free for adoption to a person who intends to adopt
11 the child.

12 {11}{12}(11) "Relinquishment" means the informed and
13 voluntary release in writing of all parental rights with
14 respect to a child by a parent to an agency or individual
15 pursuant to 40-6-135, or 40-8-109, or [section 42],
16 whichever is applicable."

17 NEW SECTION. Section 6. Codification instruction.
18 [Sections SECTION 2 through--4] are IS intended to be
19 codified as an integral part of Title 40, chapter 8, part 1,
20 and the provisions of Title 40, chapter 8, part 1, apply to
21 [sections SECTION 2 through-4].

22 NEW SECTION. Section 7. Severability. If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

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1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. **Section 8.** Effective date. [This act] is
4 effective July 1, 1991.

-End-

1 HOUSE BILL NO. 26

2 INTRODUCED BY CODY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE,
5 NONAGENCY ADOPTIONS; ~~REQUIRING--COUNSELING--FOR--THE--BIRTH~~
6 ~~MOTHER--IN--AN--ADOPTION--BY--A--NONRELATIVE;--REQUIRING--A~~
7 ~~PREPLACEMENT--INVESTIGATION--OR--HOME--STUDY--OF--A--NONRELATIVE;~~
8 ~~PROSPECTIVE--ADOPTIVE--PARENT--AND--HOME; DELETING THE~~
9 REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS PRIOR
10 TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE
11 ADOPTIVE HOME; ~~REQUIRING--EXECUTION--OF--RELINQUISHMENT--OF~~
12 ~~PARENTAL--RIGHTS--BY--A--BIRTH--MOTHER--IN--AN--ADOPTION--BY--A~~
13 ~~NONRELATIVE--IN--THE--PRESENCE--OF--A--DISTRICT--COURT--JUDGE--AND~~
14 ~~THE--PROSPECTIVE--ADOPTIVE--PARENTS; INCREASING THE MAXIMUM~~
15 PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS
16 FEES FROM \$1,000 TO \$10,000; REQUIRING NONRELATIVE ADOPTIVE
17 PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF
18 AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION
19 PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND
20 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 **Section 1.** Section 40-8-109, MCA, is amended to read:

24 "40-8-109. Placement for adoption by parents parent --
25 adoption by nonrelative -- requirements before

1 relinquishment of parental rights. (1) No A parent may make
2 a placement of who proposes to place a child for adoption
3 with an individual who is not a the child's stepparent or a
4 member of the child's extended family unless--the--parent
5 files shall file with the district court for the county in
6 which the prospective adoptive parent or the parent making
7 the placement resides:

8 (a) a notice of parental placement; and

9 (b) a relinquishment of parental rights to the
10 prospective adoptive parents, executed voluntarily and in
11 accordance with ~~40-6-135(2)-through-(4)~~ subsection (8); and

12 (c) the report of agreements and disbursements required
13 under 40-8-136.

14 (2) (a) ~~The--notice--of--parental--placement--and--the~~
15 ~~relinquishment--shall--be--filed--prior--to--a--parent's--placement~~
16 ~~of--the--child--with--an--individual--who--intends--to--adopt--the~~
17 ~~child. The notice of parental placement shall must be signed~~
18 by the parent making the placement and must contain the
19 following information:

20 ~~(a)(i)~~ (i) the name and address of each birth parent, if
21 known, and if unknown, the steps taken to ascertain the
22 whereabouts of the parent or parents;

23 ~~(b)(ii)~~ (ii) the name and address of each prospective
24 adoptive parent;

25 ~~(c)(iii)~~ (iii) the name and address or expected date and

THIRD READING

1 place of birth of the child; and
 2 ~~(d)~~(iv) the name and address of counsel, guardian ad
 3 litem, or other representative, if any, for each of the
 4 parties listed in (a) through (c) of subsection (2)
 5 subsections (2)(a)(i) through (2)(a)(iii).

6 (b) The district court shall provide a copy of the
 7 notice to the parent making the placement.

8 (3) Upon receipt of a notice of parental placement and
 9 ~~a relinquishment~~, the court shall require that the
 10 department ~~examine the child and conduct interviews with the~~
 11 ~~birth parents and prospective adoptive parents~~ to conduct an
 12 investigation as required by 40-8-122 and report to the
 13 court within 30 days but not earlier than ~~5 days~~ 72 hours
 14 after the birth of the child. The report must state WHETHER
 15 COUNSELING FOR THE BIRTH PARENTS IS RECOMMENDED AND whether
 16 the following requirements for placement have been met:

17 (a) that the decision to place was voluntarily made by
 18 the birth parents;

19 (b) that the department has no temporary authority to
 20 investigate or provide protective services to the family
 21 under 41-3-402;

22 (c) that the birth parents ~~or, prospective adoptive~~
 23 parents, and their representatives have provided the court
 24 with the report required by 40-8-136;

25 (d) that the prospective adoptive parents have been

1 provided a medical and social history of the child and birth
 2 parents; and AND

3 ~~(e) that the requirements of sections 2 and 3 have~~
 4 been met, and

5 ~~(e)(f)(E)~~ that the proposed placement is in the child's
 6 best interest.

7 (4) The department may contract with licensed social
 8 workers and licensed child-placing agencies to conduct the
 9 investigations and prepare the report to the court ordered
 10 pursuant to subsection (3).

11 (5) The department may charge the prospective adoptive
 12 parents a fee, commensurate with costs, for the
 13 investigation and report.

14 (6) Within 45 days of filing of the notice of parental
 15 placement ~~and the relinquishment and the report required by~~
 16 40-8-136, the court shall schedule a hearing to consider the
 17 proposed adoptive placement.

18 (7) (a) At least 5 days' notice of the time and place
 19 of the hearing must be given to the birth parents, the
 20 prospective adoptive parents, any named guardian ad litem,
 21 and the department.

22 (b) The hearing ~~shall be~~ is closed to all persons
 23 except those persons entitled to notice and their
 24 representatives or counsel.

25 (8) (a) A parent may not execute a relinquishment of

1 parental rights to an individual who is not the child's
 2 stepparent or a member of the child's extended family until
 3 the following criteria have been met:

4 {i}(A) not less than 72 hours has elapsed since the
 5 birth of the child, if the person relinquishing parental
 6 rights is the child's birth mother;

7 {ii}(B) the investigation or home study required by
 8 {section-2} SUBSECTION (3) has been performed; and

9 {iii}(C) the parent has received ANY counseling in
 10 accordance with {section-3} RECOMMENDED BY THE REPORT
 11 REQUIRED BY SUBSECTION (3) AND ORDERED BY THE COURT.

12 {b}--A--relinquishment--of--parental--rights--by--a--birth
 13 mother--under--subsection--(8)--must--be--executed--in--district
 14 court--in--the--presence--of--the--district--court--judge--and--the
 15 prospective--adoptive--parents.---A--relinquishment---under
 16 subsection--(8)--by--any--person--other--than--a--birth--mother--may
 17 be--executed--before--a--notary--public.---A--relinquishment--must
 18 comply--with--40-6-135(3)--and--(4);

19 {8}(9) If the court finds that all requirements for
 20 adoptive placement have been met, the court may issue an
 21 order or schedule a hearing for the purpose of terminating
 22 parental rights and granting temporary custody to the
 23 prospective adoptive parents or it may issue a final decree
 24 if a petition for adoption has been filed under 40-8-121.
 25 The prospective adoptive parents must shall file their

1 petition to adopt within 30 days of the order.

2 {9}(10) If the court finds that all requirements for the
 3 adoptive placement have not been met, the court may issue
 4 any order appropriate to protect the child.

5 {11) The court shall send a copy of the final
 6 determination made by the court under this section to the
 7 central office of the department."

8 NEW-SECTION:--Section-2.---Placement--for---adoption---by
 9 parent-----adoption---by---nonrelative-----preplacement
 10 investigation-or-home-study-required-of-prospective-adoptive
 11 parent:--(1)-A-prospective--adoptive--parent--who--wishes--to
 12 adopt--a--child--under--46-8-109--shall--initiate--the--nonagency
 13 adoption-process--by--requesting--an--investigation--or--home
 14 study--by--the--department--or--a--licensed--child--placing--agency.
 15 During--the--investigation--or--home--study--process,---the
 16 department--or--agency--shall--provide--the--prospective--adoptive
 17 parent--information--regarding--the--nonagency--adoption--process
 18 and--a--copy--of--{section-3}--and--this--section;

19 {2)--The--prospective--adoptive--parent--and--the--home--of--the
 20 prospective--adoptive--parent--must--be--studied--and--evaluated
 21 according--to--the--department's--or--child--placing--agency's
 22 standards--for--placement--of--a--child;

23 {3)--The---department---or---child--placing--agency--that
 24 conducts--the--investigation--or--home--study--shall--prepare--a
 25 written--report--containing--the--results--of--the--investigation

1 or-home-study. The report must be attached to and made a
2 part of the report required by 48-8-109(3);

3 NEW SECTION. Section 3. Placement for adoption by
4 parent -- adoption by nonrelative -- birth mother counseling
5 required; (1) In an adoption subject to 46-8-109, counseling
6 of the birth mother is required; Counseling must also be
7 offered to the birth father, if he is known and available;

8 (2) Counseling must be done by a staff person from the
9 department or a licensed child-placing agency designated to
10 provide this type of counseling;

11 (3) Counseling must consist of:
12 (a) an explanation and consideration of alternatives to
13 adoption that are available to birth parents to assist them
14 in determining the best course of action;

15 (b) detailed information regarding the nonagency
16 adoption process, including reviewing and providing a copy
17 of {section 2} and this section;

18 (c) a thorough explanation and consideration of the
19 legal and personal impact of terminating parental rights and
20 of adoption; and

21 (d) the completion of birth parent social and medical
22 history forms;

23 (4) The counselor shall prepare a written report
24 containing a description of the topics covered and the
25 results of the counseling, including his opinion indicating

1 whether or not the birth parent understood all issues and
2 was capable of informed consent. This report must be
3 completed and filed with the court no later than the date
4 the relinquishment of parental rights is executed;

5 (5) The counselor's report must be attached to and made
6 a part of the report required by 40-8-109(3);

7 NEW SECTION. Section 2. Placement for adoption by
8 parent -- adoption by relative -- requirements. A parent may
9 relinquish parental rights for the purposes of adoption of a
10 child to the child's stepparent or a member of the child's
11 extended family. The relinquishment must be executed
12 voluntarily and in accordance with 40-6-135(2) through (4).
13 The relinquishment may be executed at any time, except that
14 a birth mother may not execute a relinquishment before the
15 child is 72 hours old.

16 Section 3. Section 40-8-135, MCA, is amended to read:

17 "40-8-135. Adoption Placement for adoption by parent --
18 adoption by nonrelative -- fees -- violation -- penalty.

19 (1) Reasonable adoption fees may be charged by the child's
20 birth parent, birth parents, or guardian paid by the
21 adoptive parent for the actual cost of services documented
22 in the report required by 40-8-136 and approved by the
23 court. The cost of services must relate to:

- 24 (a) a petition for adoption;
- 25 (b) placement of a child;

- 1 (c) medical care or services;
- 2 (d) prenatal care;
- 3 (e) foster care; or
- 4 (f) investigation or-home-study;
- 5 (g) counseling; or
- 6 ~~(f)~~(h) other reasonable costs.

7 (2) A person who knowingly offers, gives, agrees to
 8 give, solicits, accepts, or agrees to accept from another
 9 person anything of value greater than that allowed under
 10 subsection (1) commits the offense of paying or charging
 11 excessive adoption process fees.

12 (3) A person convicted of the offense of paying or
 13 charging excessive adoption process fees may be fined an
 14 amount not to exceed ~~\$17,000~~ \$10,000."

15 **Section 4.** Section 40-8-136, MCA, is amended to read:

16 "**40-8-136. Report Placement for adoption by parent --**
 17 **adoption by nonrelative -- report of agreements and**
 18 **disbursements.** (1) Prior to a hearing under 40-8-109, the
 19 birth parents ~~or, prospective adoptive parents,~~ and their
 20 representatives shall file with the court a report of
 21 agreements and disbursements, and they shall serve a copy of
 22 the report on the central office of the department.

23 (2) The report must contain:

- 24 (a) all oral and written agreements between the parties
- 25 that relate to the future conduct of a party with respect to

1 the child. If an oral agreement is reported, the substance
 2 of the agreement must be contained in the report and a copy
 3 of the report must be served on each party to the oral
 4 agreement. Copies of all written agreements must be attached
 5 to the report.

6 (b) a full accounting of all disbursements of anything
 7 of value made or agreed to be made by or on behalf of the
 8 identified adoptive parents in connection with proceedings
 9 under this chapter. This accounting must include any
 10 expenses related to:

- 11 (i) the birth of the child;
- 12 (ii) placement of the child with the identified adoptive
 13 parents, including an investigation or-home-study;
- 14 (iii) counseling or medical or hospital care received by
 15 the birth parent or child prior to or after the child's
 16 birth; and
- 17 (iv) services relating to the petition for adoption or
 18 the placement of the child that were received by or on
 19 behalf of a birth parent or any other person.

20 (c) a statement by each person furnishing information
 21 contained in the report, attesting to the correctness and
 22 truthfulness of the information furnished by that person."

23 **Section 5.** Section 40-8-103, MCA, is amended to read:

24 "**40-8-103. Definitions.** As used in this chapter, unless
 25 the context otherwise requires the following definitions

1 apply:

2 (1) "Adoption" means the act of creating the legal
3 relationship between parent and child when it does not exist
4 genetically.

5 (2) "Adoptive parent" means an adult who has become the
6 mother or father of a child through the legal process of
7 adoption.

8 (3) "Agency" means a public or voluntary agency
9 licensed by any jurisdiction within the United States and
10 expressly empowered to place children as a preliminary to a
11 possible adoption.

12 (4) "Birth parent" means the mother or father of
13 genetic origin of a child but does not include a putative
14 father of a child.

15 (5) "Child" means any person under 18 years of age.

16 (6) "Court" means a Montana district court or a tribal
17 court of any Montana Indian reservation.

18 (7) "Department" means the department of family
19 services, as established and provided for in 2-15-2401.

20 (8) "Extended family member" means an adult who is the
21 child's grandparent, aunt or uncle, or brother or sister,
22 niece-or-nephew, or first-cousin.

23 ~~{9}--"Home--study"--means--the--process--of--assisting--the~~
24 ~~prospective-adoptive-parent-or--family--to--assess--its--own~~
25 ~~readiness--to-adopt-and-a-determination-by-the-department-or~~

1 ~~a-licensed-child-placing-agency-of--the--compliance--of--the~~
2 ~~parent---or---family---and--its--residence--with--applicable~~
3 ~~standards.~~

4 {9}{10}(9) "Parent" means the birth or adoptive mother
5 or the birth, adoptive, or legal father whose parental
6 rights have not been terminated.

7 {10}{11}(10) "Placement for adoption" means the transfer
8 of physical custody of a child with respect to whom all
9 parental rights have been terminated and who is otherwise
10 legally free for adoption to a person who intends to adopt
11 the child.

12 {11}{12}(11) "Relinquishment" means the informed and
13 voluntary release in writing of all parental rights with
14 respect to a child by a parent to an agency or individual
15 pursuant to 40-6-135, or 40-8-109, or [section 42],
16 whichever is applicable."

17 NEW SECTION. Section 6. Codification instruction.
18 [Sections SECTION 2 through--4] are IS intended to be
19 codified as an integral part of Title 40, chapter 8, part 1,
20 and the provisions of Title 40, chapter 8, part 1, apply to
21 [sections SECTION 2 through-4].

22 NEW SECTION. Section 7. Severability. If a part of
23 [this act] is invalid, all valid parts that are severable
24 from the invalid part remain in effect. If a part of [this
25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
2 severable from the invalid applications.

3 NEW SECTION. **Section 8.** Effective date. [This act] is
4 effective July 1, 1991.

-End-

SENATE STANDING COMMITTEE REPORT

Page 2 of 4
February 6, 1991

Page 1 of 4
February 6, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 26 (first reading copy -- white), respectfully report that House Bill No. 26 be amended and as so amended do pass:

1. Title, line 8.
Following: "~~HOMB~~,"
Insert: "REQUIRING COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME;"

2. Page 3, lines 14 and 15.
Following: "state" on line 14
Strike: remainder of line 14 through "AND" on line 15

3. Page 4, line 2.
Strike: "AND"

4. Page 4, line 4.
Following: "and"
Insert: "(e) that the requirements of [sections 2 and 3] have been met; and"

5. Page 4, line 5.
Strike: "(B)"
Insert: "(f)"

6. Page 5, line 4.
Strike: "(A)"
Insert: "(i)"

7. Page 5, line 7.
Strike: "(B)"
Insert: "(ii)"
Following: "study"
Insert: "or home study"

8. Page 5, line 8.
Strike: "SUBSECTION (3)"
Insert: "[section 2]"

9. Page 5, line 9.
Strike: "(C)"
Insert: "(iii)"
Strike: "ANY"

10. Page 5, lines 10 and 11.
Following: "~~[section 3]~~" on line 10
Strike: remainder of line 10 through "COURT" on line 11
Insert: "in accordance with [section 3]"

11. Page 6, line 4.
Following: "child"
Insert: ", including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121"

12. Page 8, line 7.
Following: line 6
Insert: "NEW SECTION. Section 2. Placement for adoption by parent -- adoption by nonrelative -- preplacement investigation or home study required of prospective adoptive parent. (1) A prospective adoptive parent who wishes to adopt a child under 46-8-109 shall initiate the nonagency adoption process by requesting an investigation or home study by the department or a licensed child-placing agency. During the investigation or home study process, the department or agency shall provide the prospective adoptive parent information regarding the nonagency adoption process and a copy of [section 3] and this section.
(2) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or child-placing agency's standards for placement of a child.
(3) The department or child-placing agency that conducts the investigation or home study shall prepare a written report containing the results of the investigation or home study. The report must be attached to and made a part of the report required by 40-8-109(3).

NEW SECTION. Section 3. Placement for adoption by parent -- adoption by nonrelative -- birth mother counseling required. (1) In an adoption subject to 46-8-109, counseling of the birth mother is required. Counseling must also be offered to the birth father, if he is known and available.

(2) Counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of alternatives to adoption that are available to birth parents to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of [section 2] and this section;

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption; and

(d) the completion of birth parent social and medical history forms.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3)."

Renumber: subsequent sections

13. Page 10, line 13.
Following: "~~study~~"
Insert: "or home study"


14. Page 12, line 4.
Following: line 3
Insert: "(9) 'Home study' means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards."

Renumber: subsequent subsections

15. Page 12, line 15.
Strike: "2"
Insert: "4"

16. Page 12, line 18.
Strike: "~~SECTION~~"
Insert: "Sections"
Following: "4"
Insert: "through 4"
Strike: "~~IS~~"
Insert: "are"

17. Page 12, line 21.
Strike: "~~SECTION~~"
Insert: "sections"
Following: "4"
Insert: "through 4"

Signed: 
Richard Pinsonneault, Chairman

JJA 2-6-91
Ad. Coord.
SB 2-6 4:50
Sec. of Senate

HOUSE BILL NO. 26

INTRODUCED BY CODY

1 HOUSE BILL NO. 26
 2 INTRODUCED BY CODY
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE,
 5 NONAGENCY ADOPTIONS; ~~REQUIRING--COUNSELING--FOR--THE-BIRTH~~
 6 ~~MOTHER--IN--AN--ADOPTION--BY--A--NONRELATIVE;~~~~REQUIRING--A~~
 7 ~~PREPLACEMENT--INVESTIGATION--OR--HOME--STUDY--OF--A--NONRELATIVE;~~
 8 ~~PROSPECTIVE-ADOPTIVE-PARENT-AND-HOME;~~ REQUIRING COUNSELING
 9 FOR THE BIRTH MOTHER IN AN ADOPTION BY A NONRELATIVE;
 10 REQUIRING A PREPLACEMENT INVESTIGATION OR HOME STUDY OF A
 11 NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND HOME; DELETING
 12 THE REQUIREMENT THAT A PARENT RELINQUISH PARENTAL RIGHTS
 13 PRIOR TO PLACEMENT OF A CHILD IN A NONRELATIVE, PROSPECTIVE
 14 ADOPTIVE HOME; ~~REQUIRING--EXECUTION--OF--RELINQUISHMENT--OF~~
 15 ~~PARENTAL--RIGHTS--BY--A--BIRTH--MOTHER--IN--AN--ADOPTION--BY--A~~
 16 ~~NONRELATIVE--IN--THE--PRESENCE--OF--A--DISTRICT--COURT--JUDGE--AND~~
 17 ~~THE--PROSPECTIVE--ADOPTIVE--PARENTS;~~ INCREASING THE MAXIMUM
 18 PENALTY FOR PAYING OR CHARGING EXCESSIVE ADOPTION PROCESS
 19 FEES FROM \$1,000 TO \$10,000; REQUIRING NONRELATIVE ADOPTIVE
 20 PARENTS AND THEIR REPRESENTATIVES TO FILE A REPORT OF
 21 AGREEMENTS AND DISBURSEMENTS RELATED TO THE ADOPTION
 22 PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109, 40-8-135, AND
 23 40-8-136, MCA; AND PROVIDING AN EFFECTIVE DATE."
 24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **Section 1.** Section 40-8-109, MCA, is amended to read:

2 "40-8-109. Placement for adoption by parents parent --
 3 adoption by nonrelative -- requirements before
 4 relinquishment of parental rights. (1) No A parent may--make
 5 a--placement--of who proposes to place a child for adoption
 6 with an individual who is not a the child's stepparent or a
 7 member of the child's extended family unless--the--parent
 8 files shall file with the district court for the county in
 9 which the prospective adoptive parent or the parent making
 10 the placement resides:

11 (a) a notice of parental placement; and
 12 (b) a relinquishment of parental rights to the
 13 prospective adoptive parents, executed voluntarily and in
 14 accordance with ~~40-6-135(2)-through-(4)~~ subsection (8); and
 15 (c) the report of agreements and disbursements required
 16 under 40-8-136.

17 (2) ~~(a) The--notice--of--parental--placement--and--the~~
 18 ~~relinquishment--shall--be--filed--prior--to--a--parent's--placement~~
 19 ~~of--the--child--with--an--individual--who--intends--to--adopt--the~~
 20 ~~child.~~ The notice of parental placement shall must be signed
 21 by the parent making the placement and must contain the
 22 following information:

23 ~~(a)(i)~~ (i) the name and address of each birth parent, if
 24 known, and if unknown, the steps taken to ascertain the
 25 whereabouts of the parent or parents;

REFERENCE BILL

HB 26

AS AMENDED

1 ~~(b)(ii)~~ the name and address of each prospective
2 adoptive parent;

3 ~~(c)(iii)~~ the name and address or expected date and
4 place of birth of the child; and

5 ~~(d)(iv)~~ the name and address of counsel, guardian ad
6 litem, or other representative, if any, for each of the
7 parties listed in ~~(a) through (c) of subsection (2)~~
8 subsections (2)(a)(i) through (2)(a)(iii).

9 (b) The district court shall provide a copy of the
10 notice to the parent making the placement.

11 (3) Upon receipt of a notice of parental placement and
12 ~~a---relinquishment,~~ the court shall require that the
13 department ~~examine the child and conduct interviews with the~~
14 ~~birth parents and prospective adoptive parents~~ to conduct an
15 investigation ~~as required by 40-8-122~~ and report to the
16 court within 30 days but not earlier than ~~5 days~~ 72 hours
17 after the birth of the child. The report must state WHETHER
18 COUNSELING FOR THE BIRTH PARENTS IS RECOMMENDED AND whether
19 the following requirements for placement have been met:

20 (a) that the decision to place was voluntarily made by
21 the birth parents;

22 (b) that the department has no temporary authority to
23 investigate or provide protective services to the family
24 under 41-3-402;

25 (c) that the birth parents ~~or,~~ prospective adoptive

1 parents, and their representatives have provided the court
2 with the report required by 40-8-136;

3 (d) that the prospective adoptive parents have been
4 provided a medical and social history of the child and birth
5 parents; and AND

6 ~~(e) that the requirements of sections 2 and 3 have~~
7 ~~been met; and~~

8 (E) THAT THE REQUIREMENTS OF [SECTIONS 2 AND 3] HAVE
9 BEEN MET; AND

10 ~~(e)(f)(E)(F)~~ that the proposed placement is in the
11 child's best interest.

12 (4) The department may contract with licensed social
13 workers and licensed child-placing agencies to conduct the
14 investigations and prepare the report to the court ordered
15 pursuant to subsection (3).

16 (5) The department may charge the prospective adoptive
17 parents a fee, commensurate with costs, for the
18 investigation and report.

19 (6) Within 45 days of filing of the notice of parental
20 placement ~~and the relinquishment~~ and the report required by
21 40-8-136, the court shall schedule a hearing to consider the
22 proposed adoptive placement.

23 (7) (a) At least 5 days' notice of the time and place
24 of the hearing must be given to the birth parents, the
25 prospective adoptive parents, any named guardian ad litem,

1 and the department.

2 (b) The hearing ~~shall be~~ is closed to all persons
3 except those persons entitled to notice and their
4 representatives or counsel.

5 (8) (a) A parent may not execute a relinquishment of
6 parental rights to an individual who is not the child's
7 stepparent or a member of the child's extended family until
8 the following criteria have been met:

9 (i)(A)(I) not less than 72 hours has elapsed since the
10 birth of the child, if the person relinquishing parental
11 rights is the child's birth mother;

12 (ii)(B)(II) the investigation or home study OR HOME
13 STUDY required by ~~section 2~~ SUBSECTION (3) [SECTION 2] has
14 been performed; and

15 (iii)(C)(III) the parent has received ANY counseling in
16 accordance with ~~section 3~~ RECOMMENDED BY THE REPORT
17 REQUIRED BY SUBSECTION (3) AND ORDERED BY THE COURT IN
18 ACCORDANCE WITH [SECTION 3].

19 (b) A relinquishment of parental rights by a birth
20 mother under subsection (8) must be executed in district
21 court in the presence of the district court judge and the
22 prospective adoptive parents; A relinquishment under
23 subsection (8) by any person other than a birth mother may
24 be executed before a notary public; A relinquishment must
25 comply with 48-6-135(3) and (4);

1 ~~(8)(9)~~ (9) If the court finds that all requirements for
2 adoptive placement have been met, the court may issue an
3 order or schedule a hearing for the purpose of terminating
4 parental rights and granting temporary custody to the
5 prospective adoptive parents or it may issue a final decree
6 if a petition for adoption has been filed under 40-8-121.
7 The prospective adoptive parents must shall file their
8 petition to adopt within 30 days of the order.

9 ~~(9)(10)~~ (10) If the court finds that all requirements for the
10 adoptive placement have not been met, the court may issue
11 any order appropriate to protect the child, INCLUDING
12 GRANTING TEMPORARY CUSTODY TO THE PROSPECTIVE ADOPTIVE
13 PARENTS OR ISSUING A FINAL DECREE IF A PETITION FOR ADOPTION
14 HAS BEEN FILED UNDER 40-8-121.

15 (11) The court shall send a copy of the final
16 determination made by the court under this section to the
17 central office of the department."

18 NEW SECTION: Section 2: Placement for adoption by
19 parent adoption by nonrelative preplacement
20 investigation or home study required of prospective adoptive
21 parent. (i) A prospective adoptive parent who wishes to
22 adopt a child under 46-8-109 shall initiate the nonagency
23 adoption process by requesting an investigation or home
24 study by the department or a licensed child placing agency.
25 During the investigation or home study process, the

1 department-or-agency-shall-provide-the-prospective--adoptive
2 parent--information-regarding-the-nonagency-adoption-process
3 and-a-copy-of-{section-3}-and-this-section;

4 {2}--The-prospective-adoptive-parent-and-the-home-of-the
5 prospective-adoptive-parent-must-be--studied--and--evaluated
6 according--to--the--department's--or--child-placing-agency's
7 standards-for-placement-of-a-child;

8 {3}--The--department--or--child-placing--agency--that
9 conducts--the--investigation--or--home-study-shall-prepare-a
10 written-report-containing-the-results-of--the--investigation
11 or--home--study--The-report-must-be-attached-to-and-made-a
12 part-of-the-report-required-by-40-8-109(3);

13 NEW-SECTION:--Section-3--Placement--for--adoption--by
14 parent---adoption-by-nonrelative---birth-mother-counseling
15 required--(1)-In-an-adoption-subject-to-46-8-109, counseling
16 of--the--birth--mother--is-required--Counseling-must-also-be
17 offered-to-the-birth-father, if-he-is-known-and-available;

18 {2}--Counseling-must-be-done-by-a-staff-person-from-the
19 department--or-a-licensed-child-placing-agency-designated-to
20 provide-this-type-of-counseling;

21 {3}--Counseling-must-consist-of:

22 {a)--an-explanation-and-consideration-of-alternatives-to
23 adoption-that-are-available-to-birth-parents-to-assist--them
24 in-determining-the-best-course-of-action;

25 {b)--detailed---information---regarding---the--nonagency

1 adoption-process, including-reviewing-and-providing--a--copy
2 of-{section-2}-and-this-section;

3 {c)--a--thorough--explanation--and--consideration-of-the
4 legal-and-personal-impact-of-terminating-parental-rights-and
5 of-adoption; and

6 {d)--the-completion-of-birth-parent-social--and--medical
7 history-forms;

8 {4}--The--counselor--shall--prepare--a--written--report
9 containing-a-description--of--the--topics--covered--and--the
10 results--of--the--counseling, including-his-opinion-indicating
11 whether-or-not-the-birth-parent-understood--all--issues--and
12 was--capable--of--informed--consent--This-report--must--be
13 completed--and--filed--with-the-court-no-later-than-the-date
14 the-relinquishment-of-parental-rights-is-executed;

15 {5}--The-counselor's-report-must-be-attached-to-and-made
16 a-part-of-the-report-required-by-40-8-109(3);

17 NEW SECTION. SECTION 2. PLACEMENT FOR ADOPTION BY
18 PARENT -- ADOPTION BY NONRELATIVE -- PREPLACEMENT
19 INVESTIGATION OR HOME STUDY REQUIRED OF PROSPECTIVE ADOPTIVE
20 PARENT. (1) A PROSPECTIVE ADOPTIVE PARENT WHO WISHES TO
21 ADOPT A CHILD UNDER 46-8-109 SHALL INITIATE THE NONAGENCY
22 ADOPTION PROCESS BY REQUESTING AN INVESTIGATION OR HOME
23 STUDY BY THE DEPARTMENT OR A LICENSED CHILD-PLACING AGENCY.
24 DURING THE INVESTIGATION OR HOME STUDY PROCESS, THE
25 DEPARTMENT OR AGENCY SHALL PROVIDE THE PROSPECTIVE ADOPTIVE

1 PARENT INFORMATION REGARDING THE NONAGENCY ADOPTION PROCESS
 2 AND A COPY OF [SECTION 3] AND THIS SECTION.

3 (2) THE PROSPECTIVE ADOPTIVE PARENT AND THE HOME OF THE
 4 PROSPECTIVE ADOPTIVE PARENT MUST BE STUDIED AND EVALUATED
 5 ACCORDING TO THE DEPARTMENT'S OR CHILD-PLACING AGENCY'S
 6 STANDARDS FOR PLACEMENT OF A CHILD.

7 (3) THE DEPARTMENT OR CHILD-PLACING AGENCY THAT
 8 CONDUCTS THE INVESTIGATION OR HOME STUDY SHALL PREPARE A
 9 WRITTEN REPORT CONTAINING THE RESULTS OF THE INVESTIGATION
 10 OR HOME STUDY. THE REPORT MUST BE ATTACHED TO AND MADE A
 11 PART OF THE REPORT REQUIRED BY 40-8-109(3).

12 NEW SECTION. SECTION 3. PLACEMENT FOR ADOPTION BY
 13 PARENT -- ADOPTION BY NONRELATIVE -- BIRTH MOTHER COUNSELING
 14 REQUIRED. (1) IN AN ADOPTION SUBJECT TO 46-8-109, COUNSELING
 15 OF THE BIRTH MOTHER IS REQUIRED. COUNSELING MUST ALSO BE
 16 OFFERED TO THE BIRTH FATHER, IF HE IS KNOWN AND AVAILABLE.

17 (2) COUNSELING MUST BE DONE BY A STAFF PERSON FROM THE
 18 DEPARTMENT OR A LICENSED CHILD-PLACING AGENCY DESIGNATED TO
 19 PROVIDE THIS TYPE OF COUNSELING.

20 (3) COUNSELING MUST CONSIST OF:

21 (A) AN EXPLANATION AND CONSIDERATION OF ALTERNATIVES TO
 22 ADOPTION THAT ARE AVAILABLE TO BIRTH PARENTS TO ASSIST THEM
 23 IN DETERMINING THE BEST COURSE OF ACTION;

24 (B) DETAILED INFORMATION REGARDING THE NONAGENCY
 25 ADOPTION PROCESS, INCLUDING REVIEWING AND PROVIDING A COPY

1 OF [SECTION 2] AND THIS SECTION;

2 (C) A THOROUGH EXPLANATION AND CONSIDERATION OF THE
 3 LEGAL AND PERSONAL IMPACT OF TERMINATING PARENTAL RIGHTS AND
 4 OF ADOPTION; AND

5 (D) THE COMPLETION OF BIRTH PARENT SOCIAL AND MEDICAL
 6 HISTORY FORMS.

7 (4) THE COUNSELOR SHALL PREPARE A WRITTEN REPORT
 8 CONTAINING A DESCRIPTION OF THE TOPICS COVERED AND THE
 9 RESULTS OF THE COUNSELING, INCLUDING HIS OPINION INDICATING
 10 WHETHER OR NOT THE BIRTH PARENT UNDERSTOOD ALL ISSUES AND
 11 WAS CAPABLE OF INFORMED CONSENT. THIS REPORT MUST BE
 12 COMPLETED AND FILED WITH THE COURT NO LATER THAN THE DATE
 13 THE RELINQUISHMENT OF PARENTAL RIGHTS IS EXECUTED.

14 (5) THE COUNSELOR'S REPORT MUST BE ATTACHED TO AND MADE
 15 A PART OF THE REPORT REQUIRED BY 40-8-109(3).

16 NEW SECTION. Section 4. Placement for adoption by
 17 parent -- adoption by relative -- requirements. A parent may
 18 relinquish parental rights for the purposes of adoption of a
 19 child to the child's stepparent or a member of the child's
 20 extended family. The relinquishment must be executed
 21 voluntarily and in accordance with 40-6-135(2) through (4).
 22 The relinquishment may be executed at any time, except that
 23 a birth mother may not execute a relinquishment before the
 24 child is 72 hours old.

25 Section 5. Section 40-8-135, MCA, is amended to read:

1 **"40-8-135. Adoption Placement for adoption by parent --**
 2 **adoption by nonrelative -- fees -- violation -- penalty.**

3 (1) Reasonable adoption fees may be charged by the child's
 4 ~~birth parent, birth parents, or guardian~~ paid by the
 5 adoptive parent for the actual cost of services documented
 6 in the report required by 40-8-136 and approved by the
 7 court. The cost of services must relate to:

- 8 (a) a petition for adoption;
- 9 (b) placement of a child;
- 10 (c) medical care or services;
- 11 (d) prenatal care;
- 12 (e) foster care; or
- 13 (f) investigation or home study;
- 14 (g) counseling; or
- 15 +~~f~~+h) other reasonable costs.

16 (2) A person who knowingly offers, gives, agrees to
 17 give, solicits, accepts, or agrees to accept from another
 18 person anything of value greater than that allowed under
 19 subsection (1) commits the offense of paying or charging
 20 excessive adoption process fees.

21 (3) A person convicted of the offense of paying or
 22 charging excessive adoption process fees may be fined an
 23 amount not to exceed ~~\$17000~~ \$10,000."

24 **Section 6.** Section 40-8-136, MCA, is amended to read:

25 **"40-8-136. Report Placement for adoption by parent --**

1 **adoption by nonrelative -- report of agreements and**
 2 **disbursements.** (1) Prior to a hearing under 40-8-109, the
 3 birth parents ~~or, prospective adoptive parents,~~ and their
 4 representatives shall file with the court a report of
 5 agreements and disbursements, and they shall serve a copy of
 6 the report on the central office of the department.

7 (2) The report must contain:

8 (a) all oral and written agreements between the parties
 9 that relate to the future conduct of a party with respect to
 10 the child. If an oral agreement is reported, the substance
 11 of the agreement must be contained in the report and a copy
 12 of the report must be served on each party to the oral
 13 agreement. Copies of all written agreements must be attached
 14 to the report.

15 (b) a full accounting of all disbursements of anything
 16 of value made or agreed to be made by or on behalf of the
 17 identified adoptive parents in connection with proceedings
 18 under this chapter. This accounting must include any
 19 expenses related to:

- 20 (i) the birth of the child;
- 21 (ii) placement of the child with the identified adoptive
 22 parents, including an investigation or home study OR HOME
 23 STUDY;
- 24 (iii) counseling or medical or hospital care received by
 25 the birth parent or child prior to or after the child's

1 birth; and

2 (iv) services relating to the petition for adoption or
3 the placement of the child that were received by or on
4 behalf of a birth parent or any other person.

5 (c) a statement by each person furnishing information
6 contained in the report, attesting to the correctness and
7 truthfulness of the information furnished by that person."

8 **Section 7.** Section 40-8-103, MCA, is amended to read:

9 **"40-8-103. Definitions.** As used in this chapter, unless
10 the context otherwise requires the following definitions
11 apply:

12 (1) "Adoption" means the act of creating the legal
13 relationship between parent and child when it does not exist
14 genetically.

15 (2) "Adoptive parent" means an adult who has become the
16 mother or father of a child through the legal process of
17 adoption.

18 (3) "Agency" means a public or voluntary agency
19 licensed by any jurisdiction within the United States and
20 expressly empowered to place children as a preliminary to a
21 possible adoption.

22 (4) "Birth parent" means the mother or father of
23 genetic origin of a child but does not include a putative
24 father of a child.

25 (5) "Child" means any person under 18 years of age.

1 (6) "Court" means a Montana district court or a tribal
2 court of any Montana Indian reservation.

3 (7) "Department" means the department of family
4 services, as established and provided for in 2-15-2401.

5 (8) "Extended family member" means an adult who is the
6 child's grandparent, aunt or uncle, or brother or sister,
7 ~~niece-or-nephew-or-first-cousin.~~

8 ~~(9) "Home study" means the process of assisting the
9 prospective adoptive parent or family to assess its own
10 readiness to adopt and a determination by the department or
11 a licensed child-placing agency of the compliance of the
12 parent or family and its residence with applicable
13 standards.~~

14 (9) "HOME STUDY" MEANS THE PROCESS OF ASSISTING THE
15 PROSPECTIVE ADOPTIVE PARENT OR FAMILY TO ASSESS ITS OWN
16 READINESS TO ADOPT AND A DETERMINATION BY THE DEPARTMENT OR
17 A LICENSED CHILD-PLACING AGENCY OF THE COMPLIANCE OF THE
18 PARENT OR FAMILY AND ITS RESIDENCE WITH APPLICABLE
19 STANDARDS.

20 (10) "Parent" means the birth or adoptive
21 mother or the birth, adoptive, or legal father whose
22 parental rights have not been terminated.

23 (11) "Placement for adoption" means the
24 transfer of physical custody of a child with respect to whom
25 all parental rights have been terminated and who is

1 otherwise legally free for adoption to a person who intends
2 to adopt the child.

3 ~~{11}{12}{11}~~(12) "Relinquishment" means the informed and
4 voluntary release in writing of all parental rights with
5 respect to a child by a parent to an agency or individual
6 pursuant to 40-6-135, or 40-8-109, or [section 4 2 4],
7 whichever is applicable."

8 NEW SECTION. Section 8. Codification instruction.
9 [Sections ~~SECTION SECTIONS~~ 2 through-4 THROUGH 4] are IS ARE
10 intended to be codified as an integral part of Title 40,
11 chapter 8, part 1, and the provisions of Title 40, chapter
12 8, part 1, apply to [sections ~~SECTION SECTIONS~~ 2 through--4
13 THROUGH 4].

14 NEW SECTION. Section 9. Severability. If a part of
15 [this act] is invalid, all valid parts that are severable
16 from the invalid part remain in effect. If a part of [this
17 act] is invalid in one or more of its applications, the part
18 remains in effect in all valid applications that are
19 severable from the invalid applications.

20 NEW SECTION. Section 10. Effective date. [This act] is
21 effective July 1, 1991.

-End-

11:45 am
4/19/91
mm

Conference Committee
on House Bill 26
Report No. 1, April 19, 1991

April 19, 1991
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 26 met and considered Senate committee on Judiciary amendments, dated February 6, 1991, and recommend that House Bill 26 (reference copy -- salmon) be amended as follows:

- 1. Title, line 8.
Strike: "REQUIRING"
Insert: "AUTHORIZING"
- 2. Page 3, line 18.
Following: "AND"
Insert: "whether counseling for the birth parents is required and"
- 3. Page 8, line 21.
Strike: "46-8-109"
Insert: "40-8-109"
- 4. Page 9, line 14.
Strike: "46-8-109,"
Insert: "40-8-109, the department shall determine whether"
- 5. Page 9, line 15.
Strike: "MOTHER"
Insert: "parents"
- 6. Page 9, lines 15 and 16.
Following: "." on line 15
Strike: remainder of line 15 through "AVAILABLE." on line 16
- 7. Page 9, line 17.
Following: "(2)"
Strike: "COUNSELING"
Insert: "if required, counseling"
- 8. Page 9, line 21.
Strike: "ALTERNATIVES TO"
- 9. Page 9, line 22.
Following: "ADOPTION"
Insert: "procedures"
Following: "PARENTS"
Insert: "along with the alternative of nonrelinquishment"

10. Page 10, line 1.
Following: ";"
Insert: "and"

11. Page 10, line 4.
Following: "ADOPTION"
Strike: "; AND"
Insert: "."

12. Page 10, lines 5 and 6.
Strike: subsection (D) in its entirety

13. Page 11, line 13.
Following: "study"
Insert: "or home study"

And this Conference Committee report be adopted.

For the House:

For the Senate:

Anthony A. Cody
Rep. Cody, Chair

Edward Doherty
Sen. Doherty, Chair

Sam Brown
Rep. D. Brown

Thomas E. Towe
Sen. Towe

J. Rice
Rep. J. Rice

Grant Grosfield
Sen. Grosfield

ADOPT

REJECT

841057CC.HSF

CC.R. #1
HB 26
841057CC.HSF

1 HOUSE BILL NO. 26

2 INTRODUCED BY CODY

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO PRIVATE,
 5 NONAGENCY ADOPTIONS; ~~REQUIRING--COUNSELING--FOR--THE-BIRTH~~
 6 ~~MOTHER--IN--AN--ADOPTION--BY--A--NONRELATIVE;--REQUIRING--A~~
 7 ~~PREPLACEMENT--INVESTIGATION--OR--HOME--STUDY--OF--A--NONRELATIVE,~~
 8 ~~PROSPECTIVE-ADOPTIVE-PARENT-AND-HOME; REQUIRING AUTHORIZING~~
 9 ~~COUNSELING FOR THE BIRTH MOTHER IN AN ADOPTION BY A~~
 10 ~~NONRELATIVE; REQUIRING A PREPLACEMENT INVESTIGATION OR HOME~~
 11 ~~STUDY OF A NONRELATIVE, PROSPECTIVE ADOPTIVE PARENT AND~~
 12 ~~HOME; DELETING THE REQUIREMENT THAT A PARENT RELINQUISH~~
 13 ~~PARENTAL RIGHTS PRIOR TO PLACEMENT OF A CHILD IN A~~
 14 ~~NONRELATIVE, PROSPECTIVE ADOPTIVE HOME; REQUIRING--EXECUTION~~
 15 ~~OF--RELINQUISHMENT--OF--PARENTAL--RIGHTS--BY--A--BIRTH--MOTHER--IN--AN~~
 16 ~~ADOPTION--BY--A--NONRELATIVE--IN--THE--PRESENCE--OF--A--DISTRICT~~
 17 ~~COURT--JUDGE--AND--THE--PROSPECTIVE--ADOPTIVE--PARENTS; INCREASING~~
 18 THE MAXIMUM PENALTY FOR PAYING OR CHARGING EXCESSIVE
 19 ADOPTION PROCESS FEES FROM \$1,000 TO \$10,000; REQUIRING
 20 NONRELATIVE ADOPTIVE PARENTS AND THEIR REPRESENTATIVES TO
 21 FILE A REPORT OF AGREEMENTS AND DISBURSEMENTS RELATED TO THE
 22 ADOPTION PROCESS; AMENDING SECTIONS 40-8-103, 40-8-109,
 23 40-8-135, AND 40-8-136, MCA; AND PROVIDING AN EFFECTIVE
 24 DATE."
 25

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

2 Section 1. Section 40-8-109, MCA, is amended to read:

3 "40-8-109. Placement for adoption by parents parent --
 4 adoption by nonrelative -- requirements before
 5 relinquishment of parental rights. (1) No A parent may make
 6 a placement of who proposes to place a child for adoption
 7 with an individual who is not a the child's stepparent or a
 8 member of the child's extended family unless ~~the~~ parent
 9 files shall file with the district court for the county in
 10 which the prospective adoptive parent or the parent making
 11 the placement resides:

12 (a) a notice of parental placement; and
 13 (b) a relinquishment of parental rights to the
 14 prospective adoptive parents, executed voluntarily and in
 15 accordance with ~~40-6-135(2)~~ through ~~(4)~~ subsection (8); and
 16 (c) the report of agreements and disbursements required
 17 under 40-8-136.

18 (2) (a) ~~The notice of parental placement and the~~
 19 ~~relinquishment shall be filed prior to a parent's placement~~
 20 ~~of the child with an individual who intends to adopt the~~
 21 ~~child.~~ The notice of parental placement shall must be signed
 22 by the parent making the placement and must contain the
 23 following information:

24 (a)(i) the name and address of each birth parent, if
 25 known, and if unknown, the steps taken to ascertain the

1 whereabouts of the parent or parents;

2 ~~(b)(ii)~~ the name and address of each prospective

3 adoptive parent;

4 ~~(c)(iii)~~ the name and address or expected date and

5 place of birth of the child; and

6 ~~(d)(iv)~~ the name and address of counsel, guardian ad

7 litem, or other representative, if any, for each of the

8 parties listed in ~~(a) through (c) of subsection (2)~~

9 subsections (2)(a)(i) through (2)(a)(iii).

10 (b) The district court shall provide a copy of the

11 notice to the parent making the placement.

12 (3) Upon receipt of a notice of parental placement and

13 ~~a--relinquishment,~~ the court shall require that the

14 department ~~examine the child and conduct interviews with the~~

15 ~~birth parents and prospective adoptive parents~~ to conduct an

16 investigation as required by 40-8-122 and report to the

17 court within 30 days but not earlier than ~~5--days~~ 72 hours

18 after the birth of the child. The report must state WHETHER

19 COUNSELING FOR THE BIRTH PARENTS IS RECOMMENDED AND WHETHER

20 COUNSELING FOR THE BIRTH PARENTS IS REQUIRED AND whether the

21 following requirements for placement have been met:

22 (a) that the decision to place was voluntarily made by

23 the birth parents;

24 (b) that the department has no temporary authority to

25 investigate or provide protective services to the family

1 under 41-3-402;

2 (c) that the birth parents ~~or,~~ prospective adoptive

3 parents, and their representatives have provided the court

4 with the report required by 40-8-136;

5 (d) that the prospective adoptive parents have been

6 provided a medical and social history of the child and birth

7 parents; and AND

8 ~~(e) that the requirements of (sections 2 and 3) have~~

9 ~~been met; and~~

10 (E) THAT THE REQUIREMENTS OF [SECTIONS 2 AND 3] HAVE

11 BEEN MET; AND

12 ~~(f)(F)~~ that the proposed placement is in the

13 child's best interest.

14 (4) The department may contract with licensed social

15 workers and licensed child-placing agencies to conduct the

16 investigations and prepare the report to the court ordered

17 pursuant to subsection (3).

18 (5) The department may charge the prospective adoptive

19 parents a fee, commensurate with costs, for the

20 investigation and report.

21 (6) Within 45 days of filing of the notice of parental

22 placement ~~and the relinquishment and the report required by~~

23 40-8-136, the court shall schedule a hearing to consider the

24 proposed adoptive placement.

25 (7) (a) At least 5 days' notice of the time and place

1 of the hearing must be given to the birth parents, the
 2 prospective adoptive parents, any named guardian ad litem,
 3 and the department.

4 (b) The hearing ~~shall be~~ is closed to all persons
 5 except those persons entitled to notice and their
 6 representatives or counsel.

7 (8) (a) A parent may not execute a relinquishment of
 8 parental rights to an individual who is not the child's
 9 stepparent or a member of the child's extended family until
 10 the following criteria have been met:

11 (i)(A)(I) not less than 72 hours has elapsed since the
 12 birth of the child, if the person relinquishing parental
 13 rights is the child's birth mother;

14 (ii)(B)(II) the investigation ~~or home study~~ OR HOME
 15 STUDY required by ~~section 2~~ SUBSECTION (3) [SECTION 2] has
 16 been performed; and

17 (iii)(C)(III) the parent has received ANY counseling in
 18 accordance with ~~section 3~~ RECOMMENDED BY THE REPORT
 19 REQUIRED BY SUBSECTION (3) AND ORDERED BY THE COURT IN
 20 ACCORDANCE WITH [SECTION 3].

21 (b) A relinquishment of parental rights by a birth
 22 mother under subsection (8) must be executed in district
 23 court in the presence of the district court judge and the
 24 prospective adoptive parents. A relinquishment under
 25 subsection (8) by any person other than a birth mother may

1 ~~be executed before a notary public. A relinquishment must~~
 2 ~~comply with 40-6-135(3) and (4):~~

3 (8)(9) If the court finds that all requirements for
 4 adoptive placement have been met, the court may issue an
 5 order or schedule a hearing for the purpose of terminating
 6 parental rights and granting temporary custody to the
 7 prospective adoptive parents or it may issue a final decree
 8 if a petition for adoption has been filed under 40-8-121.
 9 The prospective adoptive parents ~~must~~ shall file their
 10 petition to adopt within 30 days of the order.

11 (9)(10) If the court finds that all requirements for the
 12 adoptive placement have not been met, the court may issue
 13 any order appropriate to protect the child, INCLUDING
 14 GRANTING TEMPORARY CUSTODY TO THE PROSPECTIVE ADOPTIVE
 15 PARENTS OR ISSUING A FINAL DECREE IF A PETITION FOR ADOPTION
 16 HAS BEEN FILED UNDER 40-8-121.

17 (11) The court shall send a copy of the final
 18 determination made by the court under this section to the
 19 central office of the department."

20 NEW SECTION: Section 2: Placement for adoption by
 21 parent adoption by nonrelative preplacement
 22 investigation or home study required of prospective adoptive
 23 parents: (i) A prospective adoptive parent who wishes to
 24 adopt a child under 46-8-109 shall initiate the nonagency
 25 adoption process by requesting an investigation or home

1 study--by-the-department-or-a-licensed-child-placing-agency-
2 During--the--investigation--or--home--study--process,--the
3 department--or--agency--shall--provide--the--prospective--adoptive
4 parent--information--regarding--the--nonagency--adoption--process
5 and--a--copy--of--section-3--and--this--section:

6 {2}--The--prospective--adoptive--parent--and--the--home--of--the
7 prospective--adoptive--parent--must--be--studied--and--evaluated
8 according--to--the--department's--or--child-placing--agency's
9 standards--for--placement--of--a--child:

10 {3}--The--department--or--child-placing--agency--that
11 conducts--the--investigation--or--home--study--shall--prepare--a
12 written--report--containing--the--results--of--the--investigation
13 or--home--study;--The--report--must--be--attached--to--and--made--a
14 part--of--the--report--required--by--40-8-109{3}:

15 NEW SECTION. SECTION 3. PLACEMENT FOR ADOPTION BY
16 PARENT -- ADOPTION BY NONRELATIVE -- BIRTH MOTHER COUNSELING
17 REQUIRED. (1) In an adoption subject to 46-8-109, counseling
18 of the birth mother is required. Counseling must also be
19 offered to the birth father, if he is known and available:

20 {2}--Counseling--must--be--done--by--a--staff--person--from--the
21 department--or--a--licensed--child--placing--agency--designated--to
22 provide--this--type--of--counseling:

23 {3}--Counseling--must--consist--of:

24 {a)--an--explanation--and--consideration--of--alternatives--to
25 adoption--that--are--available--to--birth--parents--to--assist--them

1 in--determining--the--best--course--of--action;

2 {b)--detailed--information--regarding--the--nonagency
3 adoption--process;--including--reviewing--and--providing--a--copy
4 of--section-2--and--this--section;

5 {c)--a--thorough--explanation--and--consideration--of--the
6 legal--and--personal--impact--of--terminating--parental--rights--and
7 of--adoption;--and

8 {d)--the--completion--of--birth--parent--social--and--medical
9 history--forms:

10 {4}--The--counselor--shall--prepare--a--written--report
11 containing--a--description--of--the--topics--covered--and--the
12 results--of--the--counseling;--including--his--opinion--indicating
13 whether--or--not--the--birth--parent--understood--all--issues--and
14 was--capable--of--informed--consent;--This--report--must--be
15 completed--and--filed--with--the--court--no--later--than--the--date
16 the--relinquishment--of--parental--rights--is--executed:

17 {5}--The--counselor's--report--must--be--attached--to--and--made
18 a--part--of--the--report--required--by--40-8-109{3}:

19 NEW SECTION. SECTION 2. PLACEMENT FOR ADOPTION BY
20 PARENT -- ADOPTION BY NONRELATIVE -- PREPLACEMENT
21 INVESTIGATION OR HOME STUDY REQUIRED OF PROSPECTIVE ADOPTIVE
22 PARENT. (1) A PROSPECTIVE ADOPTIVE PARENT WHO WISHES TO
23 ADOPT A CHILD UNDER 46-8-109 40-8-109 SHALL INITIATE THE
24 NONAGENCY ADOPTION PROCESS BY REQUESTING AN INVESTIGATION OR
25 HOME STUDY BY THE DEPARTMENT OR A LICENSED CHILD-PLACING

1 AGENCY. DURING THE INVESTIGATION OR HOME STUDY PROCESS, THE
 2 DEPARTMENT OR AGENCY SHALL PROVIDE THE PROSPECTIVE ADOPTIVE
 3 PARENT INFORMATION REGARDING THE NONAGENCY ADOPTION PROCESS
 4 AND A COPY OF [SECTION 3] AND THIS SECTION.

5 (2) THE PROSPECTIVE ADOPTIVE PARENT AND THE HOME OF THE
 6 PROSPECTIVE ADOPTIVE PARENT MUST BE STUDIED AND EVALUATED
 7 ACCORDING TO THE DEPARTMENT'S OR CHILD-PLACING AGENCY'S
 8 STANDARDS FOR PLACEMENT OF A CHILD.

9 (3) THE DEPARTMENT OR CHILD-PLACING AGENCY THAT
 10 CONDUCTS THE INVESTIGATION OR HOME STUDY SHALL PREPARE A
 11 WRITTEN REPORT CONTAINING THE RESULTS OF THE INVESTIGATION
 12 OR HOME STUDY. THE REPORT MUST BE ATTACHED TO AND MADE A
 13 PART OF THE REPORT REQUIRED BY 40-8-109(3).

14 NEW SECTION. SECTION 3. PLACEMENT FOR ADOPTION BY
 15 PARENT -- ADOPTION BY NONRELATIVE -- BIRTH MOTHER COUNSELING
 16 REQUIRED. (1) IN AN ADOPTION SUBJECT TO ~~46-8-109~~ 40-8-109,
 17 THE DEPARTMENT SHALL DETERMINE WHETHER COUNSELING OF THE
 18 BIRTH MOTHER PARENTS IS REQUIRED. ~~COUNSELING--MUST--ALSO--BE~~
 19 ~~OFFERED TO THE BIRTH FATHER, IF HE IS KNOWN AND AVAILABLE.~~

20 (2) ~~COUNSELING~~ IF REQUIRED, COUNSELING MUST BE DONE BY
 21 A STAFF PERSON FROM THE DEPARTMENT OR A LICENSED
 22 CHILD-PLACING AGENCY DESIGNATED TO PROVIDE THIS TYPE OF
 23 COUNSELING.

24 (3) COUNSELING MUST CONSIST OF:

25 (A) AN EXPLANATION AND CONSIDERATION OF ~~ALTERNATIVES TO~~

1 ADOPTION PROCEDURES THAT ARE AVAILABLE TO BIRTH PARENTS
 2 ALONG WITH THE ALTERNATIVE OF NONRELINQUISHMENT TO ASSIST
 3 THEM IN DETERMINING THE BEST COURSE OF ACTION;

4 (B) DETAILED INFORMATION REGARDING THE NONAGENCY
 5 ADOPTION PROCESS, INCLUDING REVIEWING AND PROVIDING A COPY
 6 OF [SECTION 2] AND THIS SECTION; AND

7 (C) A THOROUGH EXPLANATION AND CONSIDERATION OF THE
 8 LEGAL AND PERSONAL IMPACT OF TERMINATING PARENTAL RIGHTS AND
 9 OF ADOPTION; ~~AND.~~

10 ~~(D) -- THE -- COMPLETION -- OF -- BIRTH -- PARENT -- SOCIAL -- AND -- MEDICAL~~
 11 ~~HISTORY -- FORMS.~~

12 (4) THE COUNSELOR SHALL PREPARE A WRITTEN REPORT
 13 CONTAINING A DESCRIPTION OF THE TOPICS COVERED AND THE
 14 RESULTS OF THE COUNSELING, INCLUDING HIS OPINION INDICATING
 15 WHETHER OR NOT THE BIRTH PARENT UNDERSTOOD ALL ISSUES AND
 16 WAS CAPABLE OF INFORMED CONSENT. THIS REPORT MUST BE
 17 COMPLETED AND FILED WITH THE COURT NO LATER THAN THE DATE
 18 THE RELINQUISHMENT OF PARENTAL RIGHTS IS EXECUTED.

19 (5) THE COUNSELOR'S REPORT MUST BE ATTACHED TO AND MADE
 20 A PART OF THE REPORT REQUIRED BY 40-8-109(3).

21 NEW SECTION. Section 4. Placement for adoption by
 22 parent -- adoption by relative -- requirements. A parent may
 23 relinquish parental rights for the purposes of adoption of a
 24 child to the child's stepparent or a member of the child's
 25 extended family. The relinquishment must be executed

1 voluntarily and in accordance with 40-6-135(2) through (4).
 2 The relinquishment may be executed at any time, except that
 3 a birth mother may not execute a relinquishment before the
 4 child is 72 hours old.

5 **Section 5.** Section 40-8-135, MCA, is amended to read:

6 "**40-8-135. Adoption Placement for adoption by parent --**
 7 **adoption by nonrelative -- fees -- violation -- penalty.**

8 (1) Reasonable adoption fees may be ~~charged-by--the--child's~~
 9 ~~birth--parent,--birth--parents,--or--guardian~~ paid by the
 10 adoptive parent for the actual cost of services documented
 11 in the report required by 40-8-136 and approved by the
 12 court. The cost of services must relate to:

- 13 (a) a petition for adoption;
- 14 (b) placement of a child;
- 15 (c) medical care or services;
- 16 (d) prenatal care;
- 17 (e) foster care; ~~or~~
- 18 (f) investigation or-home-study OR HOME STUDY;
- 19 (g) counseling; or
- 20 ~~(f)(h)~~ other reasonable costs.

21 (2) A person who knowingly offers, gives, agrees to
 22 give, solicits, accepts, or agrees to accept from another
 23 person anything of value greater than that allowed under
 24 subsection (1) commits the offense of paying or charging
 25 excessive adoption process fees.

1 (3) A person convicted of the offense of paying or
 2 charging excessive adoption process fees may be fined an
 3 amount not to exceed ~~\$17,000~~ \$10,000."

4 **Section 6.** Section 40-8-136, MCA, is amended to read:

5 "**40-8-136. Report Placement for adoption by parent --**
 6 **adoption by nonrelative -- report of agreements and**
 7 **disbursements.** (1) Prior to a hearing under 40-8-109, the
 8 birth parents ~~or, prospective adoptive parents,~~ and their
 9 representatives shall file with the court a report of
 10 agreements and disbursements, and they shall serve a copy of
 11 the report on the central office of the department.

12 (2) The report must contain:

13 (a) all oral and written agreements between the parties
 14 that relate to the future conduct of a party with respect to
 15 the child. If an oral agreement is reported, the substance
 16 of the agreement must be contained in the report and a copy
 17 of the report must be served on each party to the oral
 18 agreement. Copies of all written agreements must be attached
 19 to the report.

20 (b) a full accounting of all disbursements of anything
 21 of value made or agreed to be made by or on behalf of the
 22 identified adoptive parents in connection with proceedings
 23 under this chapter. This accounting must include any
 24 expenses related to:

- 25 (i) the birth of the child;

1 (ii) placement of the child with the identified adoptive
2 parents, including an investigation or home-study OR HOME
3 STUDY;

4 (iii) counseling or medical or hospital care received by
5 the birth parent or child prior to or after the child's
6 birth; and

7 (iv) services relating to the petition for adoption or
8 the placement of the child that were received by or on
9 behalf of a birth parent or any other person.

10 (c) a statement by each person furnishing information
11 contained in the report, attesting to the correctness and
12 truthfulness of the information furnished by that person."

13 **Section 7.** Section 40-8-103, MCA, is amended to read:

14 "40-8-103. Definitions. As used in this chapter, unless
15 the context otherwise requires the following definitions
16 apply:

17 (1) "Adoption" means the act of creating the legal
18 relationship between parent and child when it does not exist
19 genetically.

20 (2) "Adoptive parent" means an adult who has become the
21 mother or father of a child through the legal process of
22 adoption.

23 (3) "Agency" means a public or voluntary agency
24 licensed by any jurisdiction within the United States and
25 expressly empowered to place children as a preliminary to a

1 possible adoption.

2 (4) "Birth parent" means the mother or father of
3 genetic origin of a child but does not include a putative
4 father of a child.

5 (5) "Child" means any person under 18 years of age.

6 (6) "Court" means a Montana district court or a tribal
7 court of any Montana Indian reservation.

8 (7) "Department" means the department of family
9 services, as established and provided for in 2-15-2401.

10 (8) "Extended family member" means an adult who is the
11 child's grandparent, aunt or uncle, or brother or sister,
12 niece-or-nephew-or-first-cousin.

13 ~~(9) "Home study" means the process of assisting the~~
14 ~~prospective adoptive parent or family to assess its own~~
15 ~~readiness to adopt and a determination by the department or~~
16 ~~a licensed child-placing agency of the compliance of the~~
17 ~~parent or family and its residence with applicable~~
18 ~~standards.~~

19 (9) "HOME STUDY" MEANS THE PROCESS OF ASSISTING THE
20 PROSPECTIVE ADOPTIVE PARENT OR FAMILY TO ASSESS ITS OWN
21 READINESS TO ADOPT AND A DETERMINATION BY THE DEPARTMENT OR
22 A LICENSED CHILD-PLACING AGENCY OF THE COMPLIANCE OF THE
23 PARENT OR FAMILY AND ITS RESIDENCE WITH APPLICABLE
24 STANDARDS.

25 ~~(9)(10)~~(10) "Parent" means the birth or adoptive

1 mother or the birth, adoptive, or legal father whose
2 parental rights have not been terminated.

1 effective July 1, 1991.

-End-

3 ~~(10)(11)(10)~~(11) "Placement for adoption" means the
4 transfer of physical custody of a child with respect to whom
5 all parental rights have been terminated and who is
6 otherwise legally free for adoption to a person who intends
7 to adopt the child.

8 ~~(11)(12)(11)~~(12) "Relinquishment" means the informed and
9 voluntary release in writing of all parental rights with
10 respect to a child by a parent to an agency or individual
11 pursuant to 40-6-135, or 40-8-109, or [section 4 2 4],
12 whichever is applicable."

13 NEW SECTION. Section 8. Codification instruction.
14 [~~Sections SECTION SECTIONS 2 through-4 THROUGH 4~~] are IS ARE
15 intended to be codified as an integral part of Title 40,
16 chapter 8, part 1, and the provisions of Title 40, chapter
17 8, part 1, apply to [~~sections SECTION SECTIONS 2 through--4~~
18 THROUGH 4].

19 NEW SECTION. Section 9. Severability. If a part of
20 [this act] is invalid, all valid parts that are severable
21 from the invalid part remain in effect. If a part of [this
22 act] is invalid in one or more of its applications, the part
23 remains in effect in all valid applications that are
24 severable from the invalid applications.

25 NEW SECTION. Section 10. Effective date. [This act] is