

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman William E. Farrell, on February 16, 1989, at 10:00 a.m., Room 413, Capitol

ROLL CALL

Members Present: Senator Hubert Abrams, Senator John Anderson, Jr., Senator Esther Bengtson, Senator William E. Farrell, Senator Ethel Harding, Senator Sam Hofman, Senator Paul Rapp-Svrcek, Senator Tom Rasmussen, Senator Eleanor Vaughn

Members Excused: None

Members Absent: None

Staff Present: Eddy McClure

HEARING ON SB 398

Presentation and Opening Statement by Sponsor:

Senator Dick Pinsoneault stated SB398 was precipitated by request of the funeral directors in his area regarding preparation and procurement of death certificates. He stated there have been several directives from the Department of Health and Environmental Sciences, noting he has read several letters from Mr. Sperry, who heads that department, and is confused as to who issues, prepares, and certifies death certificates. He indicated that, if there is a proscription on their issuing or preparing a death certificate, it hampers their ability to do what they are required, under law, to do. He noted the proponents could explain this further.

List of Testifying Proponents and What Group they Represent:

Bonnie Tippy, Executive Director, Montana Funeral Directors Association
Tom Davis, Past President, Montana Funeral Directors Association
Dennis Dolan, Montana Funeral Directors Association, and Montana State Board of Morticians
William Lloyd Linden, Montana Funeral Directors Association

Testimony:

Ms. Tippy distributed copies of letters issued to clerks and recorders from Mr. Sperry's office, the bureau chief for vital statistics, copies of which are attached as Exhibits 2, 3 and 4. She noted that, on January 3 of this year, he issued his first letter, which was instructions to county clerks and recorders substantially changing current practices regarding the issuance of birth and death certificates. She stated the letter indicated that funeral directors could no longer obtain certified copies of death certificates for their clients. She indicated the department's instructions were questioned by funeral directors and clerks and recorders from all over the state, and a letter of clarification was sent on January 9th, noting the letter of clarification was worse than the original letter. She pointed out the January 9th letter explicitly stated that funeral directors could no longer receive certified copies of death certificates.

Ms. Tippy reported that their Association contacted the Department of Health, asking why the department had not gone through rule-making procedures on this instruction. She noted she was sorry she was not able to appear before the committee to talk about rule-making, indicating she is sure the committee heard about the good and the bad, adding that they did not hear about the ugly, and that the ugly is when departments do whatever they want, without going through the rule-making procedure. She indicated that, under the Administrative Procedures Act, Title 2, chapter 4 of the Montana Code, rules are defined as "Any agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedures or practice requirements of an agency." She noted that, if the committee will look at the letters from Mr. Sperry, they will see, plainly, this was a process that should have gone through rule-making. She reported that, after talking with department attorneys regarding this issue, indicating they might have to go to court for a declaratory judgement on this, the department issued another letter. She indicated the January 30th letter stated they might go through formal rule-making, that they were thinking about it, but, in the meantime, the funeral directors would have to fill out a lot of forms to get death certificates for the families they work with. Ms. Tippy noted this is well and good, but that, sometimes, people who are indigent die, who have no immediate family, adding that some are veterans, and the Veterans Administration is real sticky.

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Ms. Tippy stated that some of the things people need death certificates for are probate, insurance, and a whole host of things, adding that actual certified copies of the death certificate is required. She noted that funeral directors in Montana have, historically, always provided certified copies of death certificates for their families. She pointed out that, sometimes, people come from out of state to bury their mom or dad, and, after they go back, they call the funeral home indicating they need 5 more copies of the death certificate because of other insurance policies, etc., noting that the funeral home gets it for them, and it is a very important service. She stated she thinks what they are seeing now is a whole move towards how important confidentiality is, but noted that argument does not wash in this case because, under Montana law, the one profession that is bottom-line responsible for filling out death certificates, and filing them, are funeral directors. She pointed out that they see the death certificates, they see what the cause of death was, and all this is doing is preventing them from getting the certified copies, once they are filed, and it is the certified copies that people need in order to take care of the many legal matters.

Ms. Tippy reported another bill has been introduced in the House by the Department of Health, HB668, which has very serious consequences. She referred to the Montana Health Care Information Act, passed last session, which had to do with clinics and doctors, and the kinds of information released on patients. She indicated this act has to do with what the Department of Health can issue, but the problem is that they have expanded the definition of health care information to include the deceased, noting it is another way for them to get at the death certificates. Ms. Tippy stated she has not heard any convincing documentation that funeral directors have abused this privilege, and indicated that this bill simply clarifies, in statute, once and for all, that funeral directors can receive certified copies of death certificates, when in the service of the families. She noted that one of the arguments she heard, when she mentioned this to someone at the Department of Health, is that this will prevent someone from saying they are a funeral director, when they are not, and fraudulently obtaining a death certificate. She pointed out this will not prevent someone from presenting themselves as a family member, and fraudulently getting a death certificate, or a birth certificate. She stated she would also argue that this is a small, rural state, and does not need to adopt New York City standards, adding that the most funeral homes in any city in Montana is the 3 in Billings, and that she would argue that the clerks and recorders know every one of the funeral

directors that work in those funeral homes in Billings, let alone in Fort Benton, or Malta. She added they know who these people are, and they are not going to fraudulently get death certificates. Ms. Tippy urged a do pass recommendation on SB398.

Testimony:

Mr. Davis stated he has been a licensed funeral director for 16 years, thanked the committee for the opportunity to testify, and indicated he thinks SB398 is a good bill, and worthy of their support.

Mr. Davis reported that, some time ago, he was privileged to visit with Mr. Sperry, from the Department of Health and Environmental Sciences, bureau chief for vital statistics, concerning another matter about death certificates, which has since been resolved. He noted that, at that time, they expressed their concern that they would like to be involved in decisions that affect funeral directors in relation to the filing and completion of death certificates, particularly since they are required, by statute, to see that those death certificates are completed, in full, and filed within the 3 day time limit, as required by law. He indicated that, at that time, Mr. Sperry assured him that the department would work with them in good faith on any future changes anticipated affecting the operation of the department, or their profession. Mr. Davis noted that, obviously, that good faith has gone by the wayside, because all of the instructions issued to the clerks and recorders, previous to this bill being offered, were done so without their knowledge.

Mr. Davis stated that the recently issued instructions to the clerks and recorders in the various counties in Montana seriously hinders their ability to serve the public, noting that Ms. Tippy has pointed out to the committee some of the areas in which they can serve families by offering to obtain death certificates on their behalf. He added that some of the areas are insurance companies, veterans affairs officers, financial institutions, public administrators, retirement boards, attorneys, funeral trusts, noting that other funeral homes, either in or out of the state, and many other areas, often call on the funeral home that handled the death of particular individual, asking them to obtain death certificates on their behalf. Mr. Davis indicated they are currently regulated as morticians or funeral directors by the State Board of Morticians, and that they do not represent any threat to confidentiality because most of the information they place on death certificates, in completing them, is in their

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records, in one place or another, adding it is not a matter of them trying to obtain something surreptitiously, which they do not have; it is information they already have in their records. He stated they are the most logical and practical channel for people to go through in order to obtain death certificates. He noted that, although they can go directly to the clerk and recorder, many people do not know where to write, or how to contact those individuals, and it is a lot simpler for them to call the funeral director, or write them, and ask the funeral director to do it on their behalf. Mr. Davis stated that, because they are regulated, and are known to the clerks and recorders in their counties, and because they represent a profession whose integrity is their badge of honor, which, if blemished, they are soon out of business, they feel they are probably one of the best channels to represent the public's interests in this respect.

Mr. Davis indicated that access should not be restricted, noting he has heard there may be an attempt to amend this bill to indicate that only the funeral director who signs the death certificate would be allowed to obtain a certified copy of it. He stated that would be fine, except that, if the funeral director who signed a death certificate either is gone on vacation, or is deceased, it would be impossible to obtain a death certificate under those circumstances. He indicated they are often asked to obtain a death certificate for a person who died 20 years ago, noting that, on an insurance policy where the recently deceased has his pre-deceased wife as a beneficiary, the insurance company needs a certified copy of her death certificate, as well, to prove that she is, indeed, dead.

Mr. Davis stated they have enjoyed, over the years, a very good working relationship with the clerks and recorders in virtually all the counties in Montana, and indicated that, as a testimony to that relationship, there are, in some areas, funeral directors who are appointed as deputy clerks and recorders or registrars, to assist in the responsibilities and, sometimes, ease the burden of those officers in public service. He concluded by indicating they feel this bill is worthy of the committee's support, it clarifies the funeral directors' responsibility, keeps paperwork to a minimum for them, and the clerks and recorders, it costs the consumer and the taxpayer nothing, and protects the public's interests, so they strongly urge the committee's support of this bill.

Testimony:

Mr. Dolan indicated he is appearing at the request of Mr. Guy Miser, Chairman, Montana State Board of Morticians, to go on record in support of this bill. He pointed out that, in the State of Montana, there is a Crime Victims Act and, if they were not able to obtain those certificates, there is no way the Crime Victims Act could be mandated for payment to the families for wrongful death. He stated this is a very important area throughout the state, and they ask for the committee's support.

Testimony:

Mr. Linden indicated there is nothing more he can say, that has not already been said, and asked for the committee's thoughtfulness, cooperation, and a do pass on this bill.

List of Testifying Opponents and What Group They Represent:

None.

Questions From Committee Members:

- Q. Senator Hofman referred to the letter dated January 3, second page, third paragraph, regarding statute 50-15-114, the portion of the last sentence which states "and approved by the department", and asked Ms. Tippy what the department has to do with this. Senator Hofman further asked if they can request by telephone, or if it has to be a written request.
- A. Ms. Tippy referred Senator Hofman to a letter that the Health Department received from an attorney in Blain County, which states that telephone calls will not be accepted, that it must be written, and must come to Helena. She indicated it will take a lot more time, to get these things, than just being able to go down to the county clerk and recorder. She added it creates a huge bureaucracy, as she stated earlier, like New York State, not Montana.

Closing by Sponsor:

Senator Pinsoneault stated that, if there was great opposition to the bill, he would suspect they would be here opposing it. He suggested that the need for certified copies is not always for a stamped, certified copy, noting that the funeral director can make a copy of his certified copy, which is

probably what bothers them, that perhaps it is a revenue loss. He noted that, as a service to the people who need those documents, sometimes the banks will accept other than a certified copy, and they do that as a courtesy to the people. Senator Pinsonneault indicated that, when people are bereaving the loss of a loved one, they do not need to be bugged by bureaucracy to fill out a lot of forms to get a copy of the death certificate, that it is ludicrous. He stated he thinks it is a good bill, it is serving public policy, he thinks the people of Montana need it, and urged the committee's support.

Chairman Farrell announced the hearing on SB398 as closed.

DISPOSITION OF SB 398

Discussion:

Senator Harding offered a motion that SB398 do pass.

Recommendation and Vote:

Motion passed by the committee that SB398 do pass.

OTHER BUSINESS

Discussion: SB 395

Chairman Farrell indicated the amendments which have been proposed to SB395 have been distributed to the committee, a copy of which is attached as Exhibit 8, noting this is to change the references to "governments", in the bill, to "associations". Senator Bengtson offered a motion to adopt the amendments to SB395.

Senator Bengtson offered a motion that SB395, as amended, do pass.

Recommendation and Vote:

Motion passed by the committee to adopt the amendments to SB395.

Motion passed by the committee that SB395 do pass as amended.

Discussion: SB 381

Senator Hofman offered a motion that SB381 do pass. Chairman Farrell indicated there is an improved fiscal note on this bill, from the last bill he introduced on this issue, that there were 2,442 attorneys in the state 2 years ago, and there are now 2,716 attorneys in the state, noting this will be over \$.5 million, per year. There was discussion regarding the fiscal note, and the proposed fee versus what was proposed 2 years ago. Senator Harding asked if the purpose of this increase is to pay the salaries of the Supreme Court Justices. Chairman Farrell responded it is dedicated to the Supreme Court and district court justices to pay their salaries. Senator Harding asked if that was ear-marking, and Chairman Farrell responded it is. Senator Rapp-Svrcek informed Senator Harding that there are those who feel this may be unconstitutional, because it moves the legislative branch into what has traditionally been under the control of the judicial branch.

Recommendation and Vote:

Motion passed by the committee that SB381 do pass, with Senators Abrams and Rasmussen opposed.

Discussion: SB 362

Senator Rasmussen offered a motion that SB362 do not pass. He indicated he thinks the case was made that things are working pretty well as is, that only one instance seemed to be a problem, and it seems to him that is not enough of a reason to make this dramatic change. Senator Hofman stated they seem to have a problem with one department not knowing about verification from the other department, and asked if anyone knew if that could be handled through the computer. Senator Abrams indicated he did not know, and Senator Bengtson stated she did not hear the bill, and did not know. Chairman Farrell indicated he agrees with Senator Rasmussen, noting there was some real compelling testimony by the Department of Administration that the general accounting functions go along with the bond sales and bond investment, and noted he is not sure they are not separating something out where they compare notes, adding that he did not see a real compelling argument to move that function.

Senator Abrams suggested that, rather than have it killed, he would offer a substitute motion that it be placed on the table.

Recommendation and Vote:

Motion passed by the committee that SB362 be tabled.

HEARING ON SB 412

Presentation and Opening Statement by Sponsor:

Senator Fred Van Valkenburg stated that SB412 would transfer criminal investigators, who work for the Department of Justice, from the PERS system to a law enforcement retirement system, which the state presently has for highway patrol officers. He indicated, first of all, this is at the request of the Attorney General and, secondly, over the course of the last decade, they have begun to expand the role and scope of the work that individuals in the criminal investigations bureau do. He referred to the drug enforcement activities of that agency, which he discussed on the floor of the Senate recently. Senator Van Valkenburg stated these individuals are, for all practical purposes, no different than any other law enforcement officer in the State of Montana. He indicated that he thinks they continue to attract very competent and qualified individuals and that, to treat them equally with police officers, deputy sheriffs and highway patrol officers, given the unique nature of their work, it would be appropriate to put them under this system. He stated there will be some costs associated with doing this, but he thinks that, in the long run, we will all be much better off, and it is a matter of recognizing this at the outset, and telling the agency that they have to build these costs into their budget. Senator Van Valkenburg indicated the Attorney General and the administrator of the division will speak on the bill.

List of Testifying Proponents and What Group they Represent:

Gary J. Carrell, Acting Administrator, Montana Department of Justice
Marc Racicot, Attorney General

Testimony:

Mr. Carrell stated he is one of the people covered by this bill, adding that there are 16 agents that will be covered by this bill, located in Billings and Helena, and around the state. He indicated the agents are required to have a minimum of 5 years previous experience in law enforcement before they can come to work with them, adding they need more experience if they do not have a college degree. He stated every one of

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the people they have hired has come from a law enforcement background, and almost all are from Montana.

Mr. Carrell indicated the bureau was originally created as a centralized pool for local law enforcement, although they also assist federal law enforcement agencies from time to time, where specialized experienced law enforcement investigators can be contacted and are available to sheriffs or chiefs in particular situations. He noted that a small county may not have had a homicide for 15 years and, even if they have been trained, they are not really experienced in that particular aspect of investigations, and can call them to send an investigator. He added that other types of cases they work on are fraud, corruption, sexual assaults, etc., indicating he would be glad to go in to detail, if the committee has questions about their duties. He noted they do act as law enforcement officers, they carry weapons, and make arrests, just as other peace officers in the state do.

Mr. Carrell indicated that, as Senator Van Valkenburg mentioned, these people have come from other law enforcement agencies, all of which have a law enforcement retirement system, and they are well aware of the fact they do not have one here. He stated that, in addition to the fact they can not retire as early, 19-3-1002, MCA, which is part of the PERS statute, states that they must complete 5 years credible service to be eligible for a disability retirement. He indicated that an undercover officer is in a dangerous situation, on a daily basis, where he is trying to convince someone else he is a criminal, without committing a criminal act, he could get shot, hurt, or disabled and, until he has worked there for 5 years, he is not covered like another law enforcement officer would be. Mr. Carrell noted he is still covered by Workers Comp, and anything else PERS is covered by, but he is not covered like another law enforcement officer.

Mr. Carrell indicated that the changes in the bill change the wording from "highway patrol" or "highway patrolman" to "member" of the system. He noted that subsection (2), at the top of page 7, on line 7, deals with the actuarial cost of the members' contribution, and the purpose is to show there is a difference between what the member pays, under the PERS, and what a highway patrolman member currently pays. He noted they think it is appropriate that the membership reimburse the account, himself. He indicated the next section relates to transferring what the employer has paid for an agent, during his time of service already with the state, should he wish to qualify the time that he has already served. He noted this section refers to time which could be qualified, that he has

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already worked for the state, not time that he may have worked for another law enforcement agency. He referred to (b), indicating this transfers the employer's contribution which has already been made to the account, and subsection (c) transfers the difference, noting it is a substantial difference. Mr. Carrell noted that Mr. Nachtsheim could probably give the committee the actual percentages, indicating the difference is roughly 7%, that, currently, the employer contribution for highway patrol retirement is 26 3/4%, and this transfers the remainder, which would be about 19%, for those years he wishes to qualify. He noted they could elect to buy their time, and qualify for the time they have already served as an agent of the Department of Justice, or they would, from here on, be covered as a highway patrolman. He indicated the purpose of the bill is definitely not to negatively affect the highway patrolmen's account, that there is no intent to do that, and they do not think it will. He added that some of the people would probably transfer their time. Mr. Carrell reported they have had 9 people leave since 1981, and almost all of them were for higher paying jobs in other states, or with the federal government. He noted that salaries is a relative thing, indicating they make more than some people, and less than others. He stated they work side-by-side with federal agencies that make substantially more than they do, that they do the same thing, and work with them. He noted they are at about the mean with other states, indicating Wyoming and Colorado pay a little higher, and North Dakota and Idaho pay a little lower. Mr. Carrell urged the committee's support of the bill, adding he will be available for any questions.

Testimony:

Mr. Racicot requested the committee do pass this bill out of committee, indicating he thinks it is simply the right thing to do. He stated he has had the experience of working with these agents over the last 12 years and, initially, not having had any exposure to that process, he would not have had the insights he has into this process after having gone through that experience. He indicated they are involved in virtually every serious criminal offense that you read about in the newspapers throughout the State of Montana. He noted he has personally, on some 300 criminal cases, worked with them on the majority of those cases, and has seen the difference they make through their experience and professionalism, and their experience at the local level, as well as at the state level. Mr. Racicot stated he knows the kind of work they do is exactly equal, if not greater than, that which is performed by the Federal Bureau of Investigation drug enforcement

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agents. He indicated the people who serve in undercover capacities on a daily basis, noting there are 12 in Missoula and Billings, are out there by themselves, working odd hours and under tremendous stress and pressure, they are involved in dangerous drug investigations and stolen property investigations, and are serving a substantial need to the State of Montana. He stated they put in a lot of overtime which they do not get paid for, adding they lose comp time every year, and there is no moaning and groaning, or whimpering about it, and there are no threats involved in this process.

Mr. Racicot indicated he thinks it boils down to a matter of simple fairness. He stated that law enforcement officers, sheriffs and municipal law enforcement agencies, as well as the highway patrol, are involved in a law enforcement retirement system that recognizes they have a life span of only so long and, because they do not receive exorbitant wages, they are allowed some benefit in the form of retirement. He indicated these officers should have been in that system, first, when comparing the amount of dangerousness associated with their occupation, and the kinds of stress and difficulties they face every single day of the week. He stated he realizes there is a start-up expense involved, and an on-going expense thereafter, but it seems to him it is a matter of simple fairness that these people, who are on the cutting edge of the law enforcement activities in the State of Montana, be treated the same as other law enforcement officers are treated, and that we acknowledge they are, in fact, legitimately involved in the whole law enforcement process, and will be treated equally. Mr. Racicot reiterated that, to him, it boils down to a matter of simple fairness, and indicated he can not urge the committee strongly enough to look at this bill favorably, and pass it out.

He noted he realizes there are difficulties with any request that associates with it some funding increase, indicating he believes there are some avenues than can be explored in that respect, and that we can ultimately come up with some solution to secure some relief on the general fund, if the committee looks at this with a do pass recommendation. Mr. Racicot added, although he realizes the committee is faced with that responsibility, he does not think that should be the sole criteria, and indicated they are not requesting a number of extraneous or unnecessary expenses to carry on the duties of that department, and that he places this particular request before the legislature very high on their list of priorities because it is a matter of taking care of the people who are taking care of us. He strongly urged the committee to look at this with a do pass recommendation.

List of Testifying Opponents and What Group They Represent:

Larry Nachtsheim, Administrator, Public Employees Retirement Division

Testimony:

Mr. Nachtsheim's written testimony is attached as Exhibit 12.

Questions From Committee Members:

Q. Senator Harding asked if there was a fiscal note on the bill.

Chairman Farrell indicated there is not a fiscal note, yet, and asked Senator Van Valkenburg if he has signed one yet.

A. Senator Van Valkenburg responded he has not signed one, indicating he could not remember if the bill had the stamp on it, noting a fiscal note may be required, but that he did not think there was that stamp on the bill.

Chairman Farrell reported he received an indication there is one required.

Q. Senator Harding indicated the committee does not know, according to the testimony, how much this bill is going to cost, noting the percentages were made available.

Chairman Farrell asked Mr. Nachtsheim if he has provided the worksheet to the fiscal analyst's office, and asked him to give the committee an idea of the costs.

A. Mr. Nachtsheim responded they anticipate that, in 1990, for the highway patrol officers under current law, they would collect \$1,415,000 in employer contributions to the highway patrol system. He indicated that, for the PERS, for the 16 agents, they would collect 16% of salary, which would be \$28,000, and this law would change the contribution for the Justice agents from \$28,000 to \$116,849, for a total of \$88,818 increase. He noted that, in addition, there is a proviso that the agency will retroactively make contributions for these agents to pick up their service back to 1985, they estimate 6 out of the 16 agents will take advantage in the next biennium, and the average cost is about \$58,500 in each year for that buy-back. He added that, in the second

year of the biennium, the increased cost for justices, for the employer contribution to the highway patrol system, is \$90,595, which is up a little less than \$2,000 over the 1990 cost.

- Q. Senator Rasmussen indicated Mr. Nachtsheim mentioned he did not feel this was the vehicle to do this, and asked him, in general, what would his thoughts be, or suggestions, as to which direction to go.
- A. Mr. Nachtsheim responded he thinks, possibly, a resolution for a study, looking at possibly combining the game wardens, or sheriffs, because, in both of those systems, all the people have Social Security coverage. He stated Social Security coverage is a big item, and the problem is putting two groups together who do not operate from the same basis, for a retirement issue, and that it does not serve either one of them, necessarily. He indicated that, because there are 187 highway patrolmen, when it comes time to introduce legislation, their interests may not be the same as the 15 justice agents, who have Social Security coverage, and the 15 justice agents, in their retirement system, may not have the same interests as the 187 highway patrolmen. He stated it was not made for them, and it does not fit together.
- Q. Chairman Farrell indicated Mr. Nachtsheim stated, if this bill passes, it will be about 49.36%, and that highway patrolmen are at about 36% of their salary, and asked if he is saying Social Security is about a 13% benefit.
- A. Mr. Nachtsheim responded that they calculated the total cost of the system. He stated highway patrolmen, without Medicare, is 34.34%, that Social Security cost 7.51% of salary, or 15.02% and, if you add that 34.34%, this is the value of the retirement package that the investigator would have. He added the value of the highway patrolmen's package is 34.34%, plus the 2.9% the state pays for Medicare, making a total of 37.34%, which is about 12% difference.
- Q. Senator Rasmussen stated this does seem a little unusual, and asked Mr. Racicot if he has a comment on that.
- A. Mr. Racicot responded they have Social Security because they are required to, adding that, if they could equalize that by disassociating the agents out of the Social Security system, that would be fine, but they can't. He added that, in his mind, having them have the second best

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retirement system is no reason to defeat it, noting he thinks they should have the first best retirement system, because they do the kind of work that deserves that kind of recognition. He indicated he is sure that, with the ingenuity of mankind brought to bear on the legislative process, they can figure out some way to address those hypothetical problems they are trying to address now. He stated these people are not similar to fish and game agents, noting he does not demean their work in any way whatsoever, but that we are talking about extremely sophisticated, dangerous kinds of work being done by very competent, professional people, who are under daily stress and strain, and their work should be realized.

Mr. Racicot stated those reasons do not amount to much, as far as he is concerned, for detracting from the reasons for passage, noting he recognizes it is their responsibility to present those reasons, adding he thinks they have to be considered, but he feels very strongly about the issue because he has been involved, on a first hand basis, and he does not think any of those reasons should deter us from moving forward with what appears to be the best possible solution under the circumstances which presently present themselves. Mr. Racicot stated he does not think another state law enforcement agency can be found that equates in the nature of work, or professionalism, to the criminal investigation bureau agents, and he does not think having the second best retirement should be something to deter us from doing what he believes is the right thing.

- Q. Senator Vaughn asked if there has been any comments from the highway patrol regarding this, in opposition to it.
- A. Mr. Racicot responded this has been discussed with the highway patrol, and they have no opposition.

Closing by Sponsor:

Chairman Farrell announced Senator Van Valkenburg had to go to a meeting, and that he asked permission for the Attorney General to close for him.

Mr. Racicot indicated that, because he has already spoken, he would not have anything further to add.

Chairman Farrell announced the hearing on SB412 as closed.

HEARING ON SB 427

Presentation and Opening Statement by Sponsor:

Senator Rasmussen indicated that SB427 is a compromise on the sunrise legislation, noting that sunrise has created a lot of problems in this session, that there are bills which are hung up on that, and will die. He stated he thinks this needs to be addressed and, hopefully, will result in a workable form, adding that he thinks we will stay with some form of sunrise legislation. Senator Rasmussen indicated this bill would leave sunrise intact, but remove the \$6,500 fee, which is part of the current legislation, and noted that, as it is now, a group that wants to be licensed would have to make a presentation to the Legislative Audit Committee, going through the proposal that is already in the statute, as far as the criteria they have to answer, noting page 3 contains the questions that are asked, that they would have to answer these questions as to why their profession should be licensed. He indicated the Legislative Audit Committee would receive this, and would hold a public hearing, where the public is invited to comment. He noted the Legislative Audit Committee would make a determination, from the public hearing, and from their evaluation of the report, as to whether they think the process should go on to the legislature. Senator Rasmussen indicated it will probably involve the Legislative Audit Committee having to meet a couple more times.

List of Testifying Proponents and What Group they Represent:

Jo Brunner, representing herself
Gene Huntington, Dietetic Association

Testimony:

Ms. Brunner indicated she is a lobbyist representing several principles and that, this session, she represented a group that "ran afoul" of the sunrise provision. She reported that she lobbied for the Montana Veterinarians Medical Association, and it was their intent to introduce a bill to tighten up the Board of Veterinarian rules and regulations. Ms. Brunner stated that, shortly before the session began, not long enough that they would be able to appear before the auditing committee, it came to their attention that there would be another bill introduced that would lessen the veterinarians regulation practice, and would actually open it wide up. She reported that the sponsor of the 2 bills, the veterinarians, the technicians that would be affected, the cattle and the sheep growers, who would use the services of the veterinarians and

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the technicians, and the Board of Veterinarians got together and proposed a compromise bill, SB111, that would extend the licensing authority of the Board of Veterinarians, through a committee appointed by that board. She noted that, to begin with, the bill was in committee for 5 weeks while they worked out this compromise, they had a tremendous amount of meetings, and a compromise was finally reached. She then indicated the Senate Ag Committee passed out SB111, as agreed by everyone, and the day it was to go on the floor, they were informed it was illegal because of the sunrise law.

Ms. Brunner stated that, because they operated in good faith, they now have 2 bills, neither adequate to accomplish the compromise and, in the interim, they will undoubtedly have to comply with the existing law in order to enter a bill to accomplish what they should have been able to do on this bill. She indicated they will be back in, again, to do what this compromise would have had them do now. She referred to page 1, Section 1, indicating that subsection (b) states "add to the duties of an existing licensing board responsibility for licensing another occupation or profession", and stated they felt that not even that covered them, because the people who would be licensed would be doing the same things as already in existence for the Board of Veterinarians, but that they were told it did come under this provision.

Ms. Brunner stated they would like the committee to pass this bill, get it over to the House, and get this done, so they can go through with SB111 they way they would like to, and not have to bug the legislature next session.

Testimony:

Mr. Huntington indicated they were opposed to the repeal, that they thought the bill could be amended, and it appears this takes care of most of the objections people had, without repealing the bill. He stated they support the bill.

Questions From Committee Members:

- Q. Senator Rapp-Svrcek indicated he thought that, at the time the committee talked about putting this bill together, a time limit of 180 days would be put in, and asked if that has been included in the bill.
- A. Ms. McClure responded it has, and referred Senator Rapp-Svrcek to line 24, page 1.

- Q. Chairman Farrell asked, if this bill goes through, will the effective date be October.
- A. Senator Rasmussen responded that is correct, noting they talked about whether this bill could help all the bills that are hung up, but that it can not because of transmittal, and there is no way of helping those bills, now.

Senator Harding noted "upon passage" could not be amended in, but Senator Rasmussen indicated it could, but that it is too late for transmittal.

Ms. Brunner indicated they have the 2 bills separated so that they will pass to the House with the portion they want, but they had hoped this committee would be able to get this through so that, when it got to the House, they could re-insert the one portion into the SB111, and make it one bill, and also include various portions that are necessary so they would not have to come back next session.

Chairman Farrell indicated that, if the bill is amended to include "upon passage and approval", it will be in violation of the 180 day time limit that has been written into the bill.

- Q. Senator Rasmussen pointed out, to Ms. Brunner, that they have not actually complied with sunrise, and asked her if they have appeared before the Audit Committee.
- A. Ms. Brunner responded they have not, and Senator Rasmussen stated they would have to, even under the provisions of this bill.
- Q. Senator Vaughn asked if a fiscal note was available.
- A. Chairman Farrell responded that a fiscal note has been requested, and asked Senator Rasmussen if he has seen one.

Ms. McClure indicated she met with Senator Jacobson, who is on the Legislative Audit Committee, regarding how many more meetings they thought they might have, and noted they can not issue an official report unless they do it at a meeting, and that they would try to incorporate these hearings into their regular meetings. She indicated they need to decide how many more meetings they would have to have.

SENATE COMMITTEE ON STATE ADMINISTRATION

February 16, 1989

Page 19 of 21

Senator Rasmussen indicated it is just a guess, depending on how many bills are presented this session. Ms. McClure noted it would depend on how many groups came before them asking for a hearing, and that it would be hypothetical to guess.

Ms. Brunner stated that a portion of the Board of Veterinarians are regulated by federal law, that any prescriptions needed to carry out the practice of any veterinarian is regulated by federal law. She noted that is the reason they felt they did not have to go through the sunrise laws.

Q. Senator Rasmussen indicated the rules committee should be able to rule they are exempt.

A. Ms. Brunner indicated, if this goes through, they will be able to do that. Senator Rasmussen stated this would not affect it. Ms. Brunner responded that they are not allowed to use that exemption, and Senator Rasmussen reiterated this would not change that, noting they are either exempt or they are not exempt from sunrise.

Ms. McClure indicated Ms. Brunner may be referring to page 2, which states the provisions of this part do not apply to an agency, profession, or occupation that is required to be licensed or regulated by federal law. Senator Rasmussen stated that is not present language. Ms. McClure agreed, noting that she does not know what the rules committee would say and, if this went through, they may have to look at this, adding that she does not know what their ruling would be. Senator Rasmussen indicated the problem is that it could be weeks before this gets to the Governor.

Q. Chairman Farrell asked Mr. Huntington to comment.

A. Mr. Huntington responded the Health Department has been watching this, and he noticed that the Health Department's bill for retroactive exemption for anything federally mandated, dealing with the asbestos license, is on the Senate board for second reading today.

DISPOSITION OF SB 427

Discussion:

Senator Rasmussen offered a motion that SB427 do pass.

Recommendation and Vote:

Motion passed by the committee that SB427 do pass.

OTHER BUSINESS

Discussion: SB 352

Senator Rasmussen asked Chairman Farrell if Ms. McClure could speak to the amendment on SB352, a copy of which is attached as Exhibit 14.

Ms. McClure indicated that, after talking with Leslie Taylor, and in the hearing, what people seem to want is to be able to have a fee, but have the ability to waive the fee, if needed, for certain types of children. She stated that, on page 2, two sentences will be inserted, which will state "The department may adopt rules concerning fees, or the waiver of fees, for adoption services necessary to carry out the purposes of this act.", which is infant adoption, and "Any required fee will be based on a sliding scale determined by the prospective adoptive parent's ability to pay." Ms. McClure indicated that there is not an upper limit, which could cause a problem when a family comes in who has a tremendous ability to pay, but, in talking with Senator Rasmussen, it was her understanding he wanted to let the department set a rate, or scale, and hope they would not be unreasonable.

Chairman Farrell asked Senator Rasmussen if that would have to go through the administrative rules procedure, providing for public comment. Senator Rasmussen stated he would be watching this and, if something gets out of line, he will be in next session. Chairman Farrell noted there will be public comment on a sliding scale type of deal, and Senator Rasmussen indicated that would be a case-by-case basis. After discussion, Senator Rasmussen indicated he would like to leave it that way, for now, and, if it needs to be changed in 2 years, they can do that then.

Senator Rasmussen offered a motion to adopt the amendments to SB352.

Senator Rasmussen offered a motion to adopt the amended bill.

Chairman Farrell asked, regarding line 24, subsection (e), if there was discussion regarding "infant adoption", and if it

SENATE COMMITTEE ON STATE ADMINISTRATION

February 16, 1989

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was needed. Senator Rasmussen responded that is probably not necessary.

Recommendation and Vote:

Motion passed by the committee to adopt the amendments to SB352.

Motion passed by the committee that SB352, as amended, do pass.

Discussion: SB 239

Chairman Farrell announced to the committee, regarding SB239, that the university, the printers, and the administration, are trying to work out some kind of administrative rule agreement, and that the university has asked him to hold off executive action on this bill. He asked Senator Rapp-Svrcek about the amendments he was working on, and Senator Rapp-Svrcek responded he asked them to look at some amendments, but they have not gotten back to him. Chairman Farrell reported the printers' bill was killed in committee.

ADJOURNMENT

Adjournment At: 11:30 a.m.


WILLIAM E. FARRELL, Chairman

WEF/mhu
SB398.216

ROLL CALL

STATE ADMINISTRATION COMMITTEE

51ST LEGISLATIVE SESSION

DATE: February 16, 1989

NAME	PRESENT	ABSENT	EXCUSED
HUBERT ABRAMS	✓		
JOHN ANDERSON, JR.	✓		
ESTHER BENGTSON	✓		
WILLIAM E. FARRELL	✓		
ETHEL HARDING	✓		
SAM HOFMAN	✓		
PAUL RAPP-SVRCEK	✓		
TOM RASMUSSEN	✓		
ELEANOR VAUGHN	✓		

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 398 (first reading copy -- white), respectfully report that SB 398 do pass.

DO PASS

Signed: *William E. Farrell*
William E. Farrell, Chairman

W.C.
2/16/89
12:50
P.M.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 395 (first reading copy -- white), respectfully report that SB 395 be amended and as so amended do pass:

1. Title, line 5.
Following: line 4
Strike: "GOVERNMENTS"
Insert: "ASSOCIATIONS"

2. Page 2, line 12.
Following: "student"
Strike: "governments"
Insert: "associations"

3. Page 3, line 4.
Strike: "governments"
Insert: "associations"

4. Page 3, line 6.
Following: "student"
Strike: "governments"
Insert: "associations"

AND AS AMENDED DO PASS

Signed: William E. Farrell
William E. Farrell, Chairman

W.E.
2/16/89
1:54 p.m.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 381 (first reading copy -- white), respectfully report that SB 381 do pass.

DO PASS

Signed: Farrell
William E. Farrell, Chairman

W. C. 89
2/16/89
12:20 p.m.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 427 (first reading copy -- white), respectfully report that SB 427 do pass.

DO PASS

Signed: Farrell
William E. Farrell, Chairman

W. E. Farrell
2/16/89
12:15 p.m.

SENATE STANDING COMMITTEE REPORT

February 16, 1989

MR. PRESIDENT:

We, your committee on State Administration, having had under consideration SB 352 (first reading copy -- white), respectfully report that SB 352 be amended and as so amended do pass:

1. Title, line 6.

Following: "PROGRAM;"

Insert: "AUTHORIZING THE DEPARTMENT TO ADOPT RULES RELATING TO FEES CHARGED PROSPECTIVE ADOPTIVE PARENTS;"

2. Page 2, line 25.

Following: "age"

Strike: ";"

Insert: ". The department may adopt rules concerning fees or the waiver of fees for adoptive services necessary to carry out the purposes of [this act]. Any required fee will be based on a sliding scale determined by the prospective adoptive parents' ability to pay.

AND AS AMENDED DO PASS

Signed: William E. Farrell
William E. Farrell, Chairman

EXHIBIT NO. 1

DATE 2/16/89

BILL NO. SB395

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Bennie L. Tippy DATE: 2-16-89

Address: P.O. Box 6276
Helena MT 59601

Phone: 449-7244

Representing whom? Montana Funeral Directors

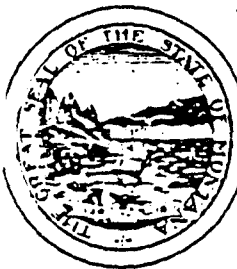
Appearing on which proposal?

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

January 3, 1989

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 2/16/89

BILL NO. SB398 ps 1

TO : ALL MONTANA COUNTY CLERKS AND RECORDER

FROM : BUREAU OF RECORDS AND STATISTICS

Dear Clerk and Recorder:

For the past year, this department has been reviewing its statutory responsibility regarding the issuance of certified copies of birth, death and fetal death certificates. This review was necessary for several reasons, but was prompted, in particular, by the increasing legal use of birth certificates throughout the United States, the serious concerns of the federal government surrounding the fraudulent use of birth certificates, and by the increasing pressure of society to protect the cause of death certification on death certificates as well as the increasing legal use of the cause of death certification.

This review has forced the Bureau of Records and Statistics to develop written, detailed policy, guidelines and procedures regarding who may have copies of certificates, under what conditions this information can be released and what information is to be held confidential by government.

Development of policy in this regard has not been easy because this department is as concerned about public service to the people of Montana as, I am sure, all of you are also. It has become clear to me during this year that "public service" is a two-edged sword. You, as elected officials, and I, as a salaried public servant, know that the protection of an individual's privacy is as much a public service as is the providing of reasonable access to government information. On the surface, with respect to birth and death certificates in Montana, this seems to be an example of the classic difficulty of a democratic society: the right to privacy versus the right to know. However, I would remind us all that birth and death records in Montana are not public documents and are, therefore, not subject to the freedom of information act of the United States.

As the state registrar for birth and death registration in Montana and as the individual responsible for the legal operation of the vital statistics system of Montana, I have prepared a position paper on the issues discussed in

January 3, 1989

Montana County Clerks and Recorder

this letter. A copy of this paper is available to you, on request, should you feel it might be useful to you in implementing the directions of the department contained in the remainder of this letter.

50-15-112 MCA prohibits the department from permitting inspection of or issuing certified copies of certificates unless the department is satisfied that the requestor meets statutory requirements.

50-15-114 MCA states that it is unlawful for anyone to disclose data in the vital statistics records of county clerk and recorders unless the disclosure is authorized by law and approved by the department.

It is the intent of this letter to clarify these two statutes regarding the handling of the state's vital records that are in the physical possession of your offices. Should you have any questions concerning these directions, please contact me immediately so that we can together resolve any potential misunderstandings.

1. A county Clerk and Recorder may issue a certified copy of that part of the Montana death certificate labeled DECEDENT information only. This applies to deaths occurring after 1949. For deaths occurring prior to 1950, Clerks may issue certified copies of death certificates in the manner currently employed.
2. A county Clerk and Recorder may NOT give out non-certified copies of any data from the Montana death certificate, regardless of the year of death.
3. A county Clerk and Recorder may NOT permit public inspection of indexes or filed certificates under any conditions.
4. A county Clerk and Recorder is under NO statutory obligation to provide copies of vital statistics data or inspection of vital statistics records to any agency of Montana State Government or the federal government. All inquiries from these various agencies should be referred to the department.

Even in dealing with local government, please be reminded that the vital statistics records in your offices are the property of the State of Montana and are subject to the control of the Department of Health and Environmental Sciences.

5. Each county Clerk and Recorder should establish a system whereby they can gain some assurance that certified copies of birth certificates are issued only to those persons who can justify a personal interest in the certificate. The bureau has recently instituted a written application process whereby requestors for certified copies of birth certificates must provide us with enough information to determine whether they have personal

January 3, 1989

Montana County Clerks and Recorder

knowledge of the data on the certificate. We have decided that relationship of the requestor to the person named on the certificate is also of importance.

We require that a person requesting a certified copy of a birth certificate KNOW:

1. Full name of the individual named on the certificate.
2. Date of birth.
3. Place of birth (city, town, county, etc.)
4. Full name of father.
5. Full maiden name of mother.

This information given must match the information as recorded on the certificate or we will not issue a certified copy.

Furthermore, we ask for the requestor's relationship to the individual named on the certificate. The requestor MUST be one of the following:

1. The individual named on the certificate (i.e. self.)
 2. The mother of the individual named on the certificate, provided the named individual is less than 18 years old.
 3. The father of the individual named on the certificate, provided the father's name is on the certificate AND the named individual is less than 18 years old.
 4. A legal guardian (proof required) of the individual named on the certificate provided the named individual is less than 18 years old.
 5. If, in items 2, 3, and 4, above, the named individual is 18 years old or older, we require some explanation as to why the individual named cannot apply for the certificate themselves.
6. The "short form" of a certified copy of a birth certificate is adequate for most legal needs a person has for a birth certificate, however, there are some instances in which some federal agencies require the "long form". Therefore, it is helpful to ask people the purpose they intend to use the certified copy for. There is nothing wrong in issuing "short forms" as a matter of course, should you choose to do so.

YOU ARE REMINDED THAT NONE OF US CAN DIVULGE ANY INFORMATION FROM THE BIRTH CERTIFICATE THAT WOULD PERMIT SOMEONE TO INFER THAT THE BIRTH WAS OUT-OF-WEDLOCK. THIS MEANS THAT WE CANNOT ISSUE A "LONG FORM" CERTIFIED COPY IF WE KNOW THAT THE BIRTH IS ILLEGITIMATE ... FLAGGED RECORD, FATHER'S NAME MISSING, ETC. AND WE MAY NOT TELL ANYONE WHY WE CANNOT ISSUE THE "LONG FORM". HOWEVER, YOU CAN SUGGEST THE MOTHER OF AN ILLEGITIMATE CHILD WRITE FOR A COPY FROM US IF YOU CANNOT ACCOMMODATE LONG-FORM AFFIDAVITS.

7. Please keep in mind that the Local Registrar in each county is an agent of the department, regardless of where they are employed or of

January 3, 1989

Montana County Clerks and Recorder

what other positions they may hold in local government. The files of the Local Registrar and any information in those files are for the Local Registrar's eyes only. No other individual may have access to these files under any conditions. Local Registrars are prohibited from divulging any information from their files and from using that information in any manner.

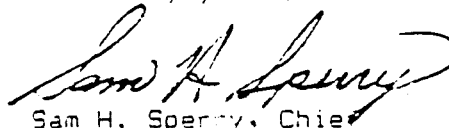
Furthermore, Local Registrars are, under 50-15-106 MCA, required to report any and all violations of vital statistics law to the department. This would include any illegal use or non-approved use of the vital records under Clerk and Recorder supervision.

I realize that the implementation of these directions may, in some instances, create a clerical burden on your offices regarding the "masking" of photocopies, the necessity of "cutting" photocopies, the screening of requestors, etc., but it must be done as long as Montana law requires us to protect these documents and as long as birth and death certificates continue to be the source of significant fraudulent use in the United States.

If the bureau can be of any assistance to you in either providing explanations for you to give to the public or in clarifying for you and your staff these directions, please contact either me or Beverly Roberts at 444-4228 in Helena or write to either of us.

Thank you for your prompt implementation of these guidelines and for your continued cooperation in the important tasks of keeping Montana's vital registration system operating smoothly and legally.

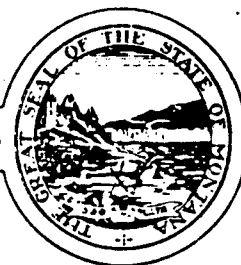
Sincerely yours,



Sam H. Sperry, Chief
Bureau of Records and Statistics

cc: Local Registrars

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

January 9, 1989

SENATE STATE ADMIN.

EXHIBIT NO. 3

DATE 2/16/89

BILL NO. SB398 pg 1

Dear Clerk and Recorder:

I am writing in reference to my letter to you of January 3, 1989 regarding the issuance of certified copies of birth and death certificates.

I want to thank those of you who have called to bring to our attention the need, often immediate, of surviving family members for a complete copy of the death certificate for a recent death in the family. Provisions for this situation have been made in our policy here in Helena and omission of this in my letter to you was simply an oversight. Please consider this letter as an amendment to my January 3 letter.

THE OFFICE OF THE COUNTY CLERK AND RECORDER MAY ISSUE A CERTIFIED COPY OF THE COMPLETE DEATH CERTIFICATE TO A SURVIVING SPOUSE OR A SURVIVING NEXT-OF-KIN PROVIDED THE CLERK AND RECORDER IS SATISFIED THAT THE STATED RELATIONSHIP OF THE REQUESTOR TO THE DECEDENT IS FACTUAL.

Sometimes it is easier to state exclusions rather than inclusions. In that vein, the intent of this policy is to exclude funeral directors, attorneys, insurance companies, etc. from obtaining cause-of-death and other protected information from government files inappropriately. There are always extenuating circumstances and in these instances the requestors should make application, in writing, to this office.

Thank you once again for calling and keeping us on our toes and, again, thank you for your cooperation in these matters.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Sam H. Sperry".

Sam H. Sperry, Chief
Bureau of Records and Statistics

APPLICATION FOR A CERTIFIED COPY OF A DEATH CERTIFICATE STATE STATE ADMIN.

Department of Health and Environmental Sciences
Bureau of Records and Statistics
Logswell Building, Room C-118
Helena, Montana 59620

EXHIBIT NO. 3
DATE 2/16/89
BILL NO. SB 398 p. 2

I am related to the decedent as:
(spouse, parent, other relative or interested party/specify)

The purpose for which this record is needed:

Signature of Applicant
Applicant's name typed or printed
Street Address
Applicant's phone number
City or Town State Zip

The following information is necessary to verify a personal or property right to the certificate, to locate the proper record, and to verify the information on the record.

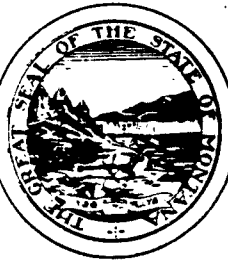
NAME OF DECEDENT:
DATE OF DEATH:
SPOUSE NAME:
AGE OF DECEDENT AT DEATH:
DATE AND PLACE OF BIRTH OF DECEDENT:
DECEDENT'S OCCUPATION:
PARENT'S NAMES:

FOR STATE USE ONLY:

Application approved Yes No
By:
Date:

Amount enclosed or attached \$ (Fee is \$5.00 per copy)
(NOTE: The fee will be refunded in the event this application is not approved.)

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

January 30, 1989

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 2/16/89

BILL NO. SB398 ps1

TO : MONTANA COUNTY CLERKS AND RECORDER
FROM: BUREAU OF RECORDS AND STATISTICS

I am writing to you in reference to my letters of January 3 and January 9. Some of you have called to ask for additional clarification of some aspects of these letters and the guidelines that were presented in them. In addition to your questions, we have received questions from some attorneys and funeral directors as well. Given the increasing number of, and the sensitivity of, issues of common concern to both those of us who administer vital records and those of us who use vital records, we are considering the initiation of formal rule making to address such issues as standardization of terminology and justification for access to vital records.

In the interim, the vital statistics system must continue to function and the remainder of this letter is devoted to clarification and reiteration of the guidelines presented in the letters of January 3 and January 9.

Item 4 and Item 5 in my January 3 letter seem to be the major areas of confusion. The intent of the statement in Item 4 was to advise you that your offices are not under obligation to provide copies of birth and death certificates to federal or state agencies or to other offices of local government under conditions different from those we require of any other applicant. Governmental agencies are expected to pay established fees and are expected to provide signed releases or authorizations or other acceptable evidence that they have secured the permission of the individual on whose behalf they are acting.

The intent of Item 5 was to encourage Clerks to establish written procedures that will be used to delineate who may receive copies of birth certificates when making application on the basis of personal need. The list of five "acceptable" individuals and the list of five data items were presented as examples of operational policy in the department of health. You should establish criteria that works best for your county. The important point is to obtain reasonable assurance that people are who they say they are and that they have detailed, personal knowledge about the individual named on the certificate.

Item 6 should not require clarification. The statement below is just another way of saying it:

UNDER MONTANA LAW, NEITHER THE DEPARTMENT NOR COUNTY CLERKS AND RECORDER CAN ISSUE FULL COPIES OF A BIRTH CERTIFICATE IF THE BIRTH IS OUT-OF-WEDLOCK NOR CAN YOU DIVULGE THE FACT OF AN ILLEGITIMATE BIRTH. IF YOU DO NOT KNOW HOW TO ASCERTAIN AN OUT-OF-WEDLOCK BIRTH FROM THE BIRTH CERTIFICATE FILED IN YOUR OFFICES, CONTACT THE DEPARTMENT.

The following statements are presented to summarize, and in some instances clarify, the remainder of the January 3 letter and all of the January 9 letter. I hope this clarification will be of help to you in implementing these guidelines. Should you still have questions, please do not hesitate to contact the department and give us the opportunity to talk with you individually.

1. If any information from a birth or death certificate is released, it should be as a certified copy only.
2. 50-15-110 MCA provides the authority to issue parts of certificates as certified copies.
3. Your attention is directed to 7-4-2631 (1)(m) MCA, which states that County Clerks must charge for each certified copy of a birth or death certificate.
4. For operational purposes, 50-15-112 MCA is interpreted to mean that copies of birth certificates can be issued to individuals who can demonstrate a "personal" need for the information. Refer to the discussion of Item 5 on the preceding page.
5. There are instances in which individuals choose to relinquish control of their birth certificate information to governmental agencies, attorneys and, possibly, others. You may issue certified copies of birth certificates to others provided their request is accompanied by a signed release from the individual named on the certificate or from a parent (whose name is on the certificate) or a legal guardian or legal custodian if the individual named on the certificate has not reached the age of majority. Guardianship or custodianship is to be verified to the certifying official. OUT-OF-WEDLOCK RESTRICTIONS STILL APPLY IN THESE SITUATIONS.
6. The words "cause of death" refer to the item on the Montana death certificate that is labeled MANNER OF DEATH. Appropriate responses to the question "What is the cause of death?" are: natural causes, suicide, homicide, accident, pending investigation, and undetermined.
7. The items labeled PART I and PART II, along with the block of items labeled (in the margin) CERTIFIER, on the Montana death certificate are referred to as the "medical certification of cause of death." As such, these items are primarily for statistical and research use and should not be thought of as "public information."

SENATE STATE ADMIN.

EXHIBIT NO. 4

DATE 2/16/89

BILL NO. SB 398 pg 2

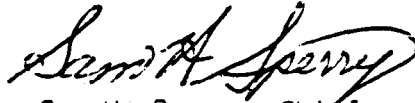
8. The following parts of the Montana death certificate may be issued as certified copies ON DEMAND:
1. The part labeled DECEDENT (in the margin) plus the item labeled MANNER OF DEATH for deaths occurring from 1968 through the present.
 2. All items through item 17 plus item 21a (1950-56) and all through 17 plus 20a (1957-67).
 3. Full copies of death certificates for deaths occurring prior to 1950 can be issued on demand.
9. Full copies of death certificates can be issued on "personal" demand to the following applicants:
- (a) a surviving spouse
 - (b) a surviving next-of-kin
 - (c) an individual holding written authorization to act on behalf of a surviving spouse or an immediate next-of-kin
 - (d) an individual holding written authorization to act on behalf of the estate of a decedent in matters of probate, estate settlement and other property right determinations.
10. Genealogical access to death certificates should not be accommodated unless the date of death precedes the date of request for access by at least twenty years. Certified copies issued to genealogists may display all information on the Montana death certificate except for the information described under Item 7 on the preceding page. Copies of birth certificates may be issued in response to genealogical requests only when the applicant can present verification that the person named on the birth certificate is deceased and that the death occurred at least thirty years prior to the date of application.
11. A county coroner may be issued a certified copy of the entire death certificate provided the coroner making the request is the one who signed the certification statement for the "certification of the cause of death" portion of the death certificate.
12. All persons making application for access to vital records based on the following purposes should refer their requests, in writing, to the address given below.
- (a) research
 - (b) heir location
 - (c) mineral rights determination
 - (d) medical or genetic tracking

Bureau of Records and Statistics
Montana Department of Health and Environmental Sciences
Cogswell Building C-118
Helena, Montana 59620

SENATE STATE ADMIN.
EXHIBIT NO. 4
DATE 2/16/89
BILL NO. SB 398 123

On a final note, please be advised that copies of my letters, such as this one, providing instructions to Clerks and Recorders are not themselves confidential merely because they pertain to confidential records. Any request for copies of such letters should be honored.

Sincerely yours,



Sam H. Sperry, Chief
Bureau of Records and Statistics

SENATE STATE ADMIN.
EXHIBIT NO. 4
DATE 2/16/89
BILL NO. SB 398 pg 4

SENATE STATE ADMIN.

EXHIBIT NO. 5

DATE 2/16/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB398

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

Tom Davis

2-16-89

Address:

118 No 3rd St
Livingston, MT

Phone:

222-2531

Representing whom?

Montana Funeral Directors Ass'n

Appearing on which proposal?

SB 398

Do you:

SUPPORT?

AMEND?

OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 6

DATE 2/16/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB398

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

Dennis Dolan

2-16-89

Address:

PO BOX 765

BUTTE MT

Phone:

78 723-3239

Representing whom?

MONTANA FUNERAL DIRECTORS & MONT STATE BOARD OF MORTUARY

Appearing on which proposal?

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 7

DATE 2/16/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB398

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: WILLIAM LLOYD LINDEN DATE: FEB. 16, 1989

Address: 314 NORTH RODNEY
HELENA, MONTANA

Phone: 442-1234

Representing whom? MONTANA FUNERAL DIRECTORS

Appearing on which proposal?
SENATE BILL 398

Do you: SUPPORT? XXX AMEND? OPPOSE?

Comments:
PLEASE DO PASS

William Lloyd Linden

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Amendments to Senate Bill No. 395
First Reading Copy

For the Committee on Senate State Administration

Prepared by Eddy McClure
February 15, 1989

1. Title, line 5.
Following: line 4
Strike: "GOVERNMENTS"
Insert: "ASSOCIATIONS"

2. Page 2, line 12.
Following: "student"
Strike: "governments"
Insert: "associations"

3. Page 3, line 4.
Following: line 3
Strike: "governments"
Insert: "associations"

4. Page 3, line 6.
Following: "student"
Strike: "governments"
Insert: "associations"

SENATE STATE ADMIN.

EXHIBIT NO. 9

DATE 2/16/89

BILL NO. SB412

STATE ADMINISTRATION COMMITTEE

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

DATE:

GARY J. CARRELL

FEB. 16, 1989

Address:

1495 VALLEY FORGE

HELENA, MT. 59601

Phone:

443-0532

Representing whom?

MT. DEPT. OF JUSTICE

Appearing on which proposal?

SB 412

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 10

DATE 2/16/89

BILL NO. SB412

STATE ADMINISTRATION COMMITTEE

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME:

MARC RACIOT

DATE:

2-16-89

Address:

215 N. SANDERS

HELENA, MT 59620

Phone:

444-2026

Representing whom?

ATTORNEY GENERAL

Appearing on which proposal?

SB 412

Do you:

SUPPORT?

X

AMEND?

OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 11

DATE 2/16/89

STATE ADMINISTRATION COMMITTEE

BILL NO. SB 412
WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: Larry Nachtblum

DATE: 2/16/89

Address: PERD

Phone: 444 - 3154

Representing whom? BOARD

Appearing on which proposal? SB 412

Do you: SUPPORT? AMEND? OPPOSE?

Comments: see Exhibit #12

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

TESTIMONY

SENATE STATE ADMIN.

EXHIBIT NO. 12

DATE 2/16/89

BILL NO. SB 412 pg 1

SENATE BILL 412

Larry Nachtsheim Administrator
Linda King, Assistant Administrator
Public Employees' Retirement Div.

On July 1, 1985 the Highway Patrol Retirement System was restructured by the Legislature. It took approximately 10 months in advance to design a system that served the needs of both the active and retired members of that system.

Some of the changes made during the 1985 Legislature were:

1. Provided for a statutorily defined beneficiary (spouse or dependent children) with a continuation of benefits upon the death of the member. This was a great improvement over the previous benefit -- "actuarial remainder"-- which in many cases was -0-.

2. Required new hires to have both reached age 50 and 20 years of service as a highway patrol officer in order to be eligible for full retirement (previously retirement was available after 20 years of service at any age).

3. All service earned 2% of FAS each year (previously service after 25 years only earned 1% of FAS each year).

To fund these provisions, the employee contribution rate was increased to 7.59% of salary from 6.5% and the state's contribution increased from 16.57% to 26.75%; a combined rate of 34.34% of salaries.

The design of this retirement system recognized the fact that patrol officers have no social security coverage. While this has been modified slightly by the federally mandated universal Medicare coverage for all new hires after April 1, 1986, the members of this system do not earn Social Security benefits for their service as Highway Patrol Officers. With the addition of Medicare coverage for members hired after 4/1/86 at a cost of 1.45% of salary to both the employer and the employee, this will eventually provide a total benefit package to Highway Patrol officers costing 37.34% of salary.

The system was also designed around the salary structure of the Highway Patrol, with the vast majority of the members beginning in their 20's as probationary officers at \$18,084 per year and a certain number moving through promotion to the high supervisory salaries of about \$30,000 to \$38,500.

The proposal before you today to add 16 Justice Department Agents to the Highway Patrol Retirement System is a proposal which the retirement division learned about in late December. There are several problems with the proposal.

First, Justice Agents are covered by Social Security and will not lose that coverage if they move into the HWPRS. This means the total cost of their benefit package next year will be 49.36% of salary (which will increase to over 50% of salary when Social Security contribution rates increase on January 1, 1990), providing retirement benefits second only to the Judges' Retirement System -- and significantly higher than the benefits provided to any other law enforcement officers in the State of Montana. Justice Agents will retire with pensions equal to 2% of their FAS for each year of service plus an additional 1.5% or more of their salaries in Social Security benefits. These benefits are substantially higher than those intended for highway patrol officers.

Secondly, the average salaries of Justice Agents are \$3,000/year higher than Highway Patrol officers. A disproportionately higher percentage of the assets of this system will go to pay the benefits of these 16 members.

The additional cost to the General Fund for transferring the 16 current Justice Department Agents into the HWPRS will be an additional \$147,368 in FY 90 and \$149,145 in FY 91. These costs will not disappear in the future.

The Public Employees' Retirement Board does not disagree with the idea that a retirement system should be developed, not only for Justice Agents, but for other higher risk occupations such as parole officers and prison guards -- all of whom are also covered by Social Security. Perhaps a more likely model for such a system would be found in the Game Warden's Retirement System, which provides higher benefits than does PERS, but also considers the fact that Game Wardens receive Social Security benefits.

Since the board learned of the Justice Department's interest less than 2 months ago, there has not been time to do the actuarial, legal and administrative planning which must be done in order to design a new retirement system which both meets the needs of its membership and provides equitable benefits at an affordable cost to the state. This is a task which could be completed prior to the next Legislature and the board would be willing to work with all interested parties to design an appropriate and actuarially sound system.

On behalf of the Public Employees' Retirement Board, I respectfully request that you do not pass this bill to include Justice Agents into the current Highway Patrol Retirement System because this is not the proper system for these people. If you agree that we should work to develop another system for state law enforcement officers who also have Social Security coverage, we would be pleased to do so and present you with a well thought-out proposal during the next Legislature.

Thank you.

SENATE STATE ADMIN.
EXHIBIT NO. 12
DATE 2/16/89
BILL NO. SB412 092

SENATE STATE ADMIN.

EXHIBIT NO. 13

DATE 2/16/89

BILL NO. SB 427

STATE ADMINISTRATION COMMITTEE

WITNESS STATEMENT

To be filled out by a person testifying or a person who would not like to stand up and speak but wants their testimony entered into the record.

NAME: J. Brumm DATE: 2/17

Address: 1912 Iron Plau

Phone: 442 - 7109

Representing whom? self

Appearing on which proposal? SB 427

Do you: SUPPORT? AMEND? OPPOSE?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE STATE ADMIN.

EXHIBIT NO. 14

DATE 2/16/89

BILL NO. SB352

Amendments to Senate Bill No. 352
First Reading Copy

Requested by Senator Rasmussen
For the Committee on Senate State Administration

Prepared by Eddy McClure
February 13, 1989

1. Title, line 6.

Following: "PROGRAM;"

Insert: "AUTHORIZING THE DEPARTMENT TO ADOPT RULES RELATING TO
FEES CHARGED PROSPECTIVE ADOPTIVE PARENTS;"

2. Page 2, line 25.

Following: "age"

Strike: ";"

Insert: ". The department may adopt rules concerning fees or the
waiver of fees for adoptive services necessary to carry out the
purposes of [this act]. Any required fee will be based on a
sliding scale determined by the prospective adoptive parents'
ability to pay.

DATE Feb 16, 1989

COMMITTEE ON State Admin.

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppo
Tom Davis	Mt. Funeral Directors	398	✓	
Dennis Dulau	" " "	398	✓	
Judy Davis	" " "	398	✓	
Gary Caprell	Dept. of Justice	412	✓	
Alfred Raulen	MT Funeral Directors	398	✓	
LINDA KING	Public Employees Ret. Div	412		✓
Geannie Tipp	Mt Funeral Directors	398	✓	
Jim Nelson	Legislative Auditor	427		
Al Berman	Attorney	412	✓	
Mike RACICOTY	AG	412	✓	
Larry Nicholson	PER D	412		X
Carol Huntington	Dietetic Assc. Helena	427	✓	