

SENATE BILL 92

Introduced by Meyer

1/10	Introduced
1/10	Referred to Judiciary
1/17	Hearing
	Died in Committee

1 *Amended* BILL NO. 92  
2 INTRODUCED BY *Don Meyer*  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW AN ADOPTED  
5 PERSON TO HAVE ACCESS TO HIS ORIGINAL BIRTH RECORDS UPON  
6 DEMAND; AND AMENDING SECTIONS 2-6-104, 40-6-120, 40-6-123,  
7 40-8-126, 50-15-112, 50-15-114, 50-15-206, 50-15-207,  
8 50-15-304, 53-4-306, AND 53-4-404, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 **Section 1.** Section 2-6-104, MCA, is amended to read:

12 "2-6-104. Records of officers open to public  
13 inspection. Except as provided in 40-8-126, 50-15-304, and  
14 27-18-111, the public records and other matters in the  
15 office of any officer are at all times during office hours  
16 open to the inspection of any person."

17 **Section 2.** Section 40-6-120, MCA, is amended to read:

18 "40-6-120. Hearings and records -- confidentiality.  
19 Notwithstanding any other law concerning public hearings and  
20 records, any hearing or trial held under this part shall be  
21 held in closed court without admittance of any person other  
22 than those necessary to the action or proceeding. All  
23 papers and records, other than the final judgment,  
24 pertaining to the action or proceeding, whether part of the  
25 permanent record of the court or of a file in any agency of

1 the state or of any political subdivision or elsewhere, are  
2 subject to inspection only:

3 (1) upon consent of the court and all interested  
4 persons or in exceptional cases only upon an order of the  
5 court for good cause shown; or

6 (2) as provided in 50-15-304."

7 **Section 3.** Section 40-6-123, MCA, is amended to read:

8 "40-6-123. Birth records. (1) Upon order of a court of  
9 this state or upon request of a court of another state, the  
10 department of health and environmental sciences shall  
11 prepare a substitute certificate of birth consistent with  
12 the findings of the court and shall substitute the new  
13 certificate for the original certificate of birth.

14 (2) The fact that the father and child relationship  
15 was declared after the child's birth shall not be  
16 ascertainable from the new certificate but the actual place  
17 and date of birth shall be shown.

18 (3) The evidence upon which the new certificate was  
19 made and the original birth certificate shall be kept in a  
20 sealed and confidential file and shall be subject to  
21 inspection only:

22 (a) upon consent of the court and all interested  
23 persons or in exceptional cases only upon an order of the  
24 court for good cause shown; or

25 (b) as provided in 50-15-304."

**Section 4.** Section 40-8-126, MCA, is amended to read:

**"40-8-126. Confidentiality of record and proceedings.**

(1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206 and 50-15-304.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206 and 50-15-304."

**Section 5.** Section 50-15-112, MCA, is amended to read:

**"50-15-112. Inspection of records and issuance of copies limited.** (1) The department may not permit inspection of the records or issue copies of a certificate except as provided in 50-15-304 or unless it is satisfied that the

applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) "Tangible interest" includes but is not limited to the interests of the persons described in 50-15-206 for the purposes of custody actions, social security eligibility determinations, or Indian tribal enrollment determinations."

**Section 6.** Section 50-15-114, MCA, is amended to read:

**"50-15-114. Unlawful acts and penalties.** (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder except as provided in 50-15-304 or unless disclosure is otherwise authorized by law and approved by the department.

(2) A person shall be fined not more than \$1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a

certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than \$25 or more than \$100, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law."

**Section 7.** Section 50-15-206, MCA, is amended to read:

"50-15-206. Permissible disclosure of illegitimate birth. (1) Disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained may be made only:

(a) upon demand of an adopted person for his personal sealed adoption file, as provided in 50-15-304;

~~(a)(b)~~ upon an order of a court to determine personal or property rights; ~~An adopted person of legal age may apply to the court for such an order;~~

~~(b)(c)~~ upon request of the department of social and rehabilitation services, the department of family services, or a licensed adoption agency for purposes of custody action, social security eligibility determinations, or Indian tribal enrollment determinations; or

~~(c)(d)~~ upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose."

**Section 8.** Section 50-15-207, MCA, is amended to read:

"50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only as provided in 50-15-304 or upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption."

**Section 9.** Section 50-15-304, MCA, is amended to read:

"50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on demand of the adopted person if of legal age or on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify

1 the local registrar and county clerk and recorder."

2 **Section 10.** Section 53-4-306, MCA, is amended to read:

3 "53-4-306. Records to be confidential. All records  
4 regarding subsidized adoption shall be confidential and may  
5 be disclosed only in accordance with the provisions of  
6 40-8-122 40-8-126 and 50-15-304."

7 **Section 11.** Section 53-4-404, MCA, is amended to read:

8 "53-4-404. Requirements for licensure. The department  
9 must issue licenses to agencies meeting the following  
10 minimum requirements:

11 (1) The chief function of the agency must be the care  
12 and placement of minor children.

13 (2) The agency must operate on a nonprofit basis and  
14 be financially responsible in and for its operation.

15 (3) The directing or managing personnel of the agency  
16 must be qualified both on the basis of professional  
17 education and personality.

18 (4) Complete records must be kept of both the minor  
19 children and adopting parents with which the agency deals,  
20 and--such. Such records must be confidential and may be  
21 disclosed only in accordance with the provisions of 40-8-126  
22 and 50-15-304.

23 (5) The agency must follow the practice of verifying  
24 that the child is legally available for adoption and of not  
25 completing the adoption until the child has been in the

1 proposed adoptive home for a trial period.

2 (6) The agency must have and use facilities for making  
3 a social study of the child and proposed adoptive parents  
4 before placement of the child, particularly with regard to:

5 (a) the physical and mental health, emotional  
6 stability, and personal integrity of the adopting parents  
7 and their ability to promote the child's welfare; and

8 (b) the physical and mental condition of the child and  
9 its family background.

10 (7) The agency must agree to cooperate with courts  
11 having jurisdiction in adoptive matters and with other  
12 public agencies having to deal with the welfare of minor  
13 children.

14 (8) Any such agency must annually submit a full,  
15 complete, and true financial statement to the department,  
16 and such statement shall contain a full accounting of the  
17 operations of such agency during the preceding year."

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