

SENATE BILL NO. 150

INTRODUCED BY

*Waterman*

*Christman*

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAW REGARDING THE PROVISION OF ADOPTION INFORMATION; ALLOWING LIMITED DISCLOSURE OF NONIDENTIFYING ADOPTION INFORMATION; PROVIDING FOR COURT APPOINTMENT OF A CONFIDENTIAL INTERMEDIARY TO ASSIST IN A SEARCH FOR INFORMATION FOR CERTAIN PERSONS INVOLVED IN AN ADOPTION; DEFINING APPLICABLE TERMS; AND AMENDING SECTIONS 40-8-103 AND 40-8-126, MCA."

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

**Section 1.** Section 40-8-103, MCA, is amended to read:

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

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

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

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

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

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

(6) "Confidential intermediary" means a staff person of a nonprofit agency who has expertise in adoption.

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

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

~~(8)(9)~~ "Extended family member" means an adult who is the child's grandparent, aunt or uncle,

1 or brother or sister.

2 ~~(9)~~(10) "Home study" means the process of assisting the prospective adoptive parent or family to  
3 assess its own readiness to adopt and a determination by the department or a licensed child-placing agency  
4 of the compliance of the parent or family and its residence with applicable standards.

5 ~~(10)~~(11) "Identifying information" means information that reveals or directly indicates the identity  
6 of a person and includes the person's name or address.

7 (12) "Nonidentifying information" means information that does not reveal or directly indicate the  
8 identity of a person, including:

9 (a) medical information and information related to general physical characteristics;

10 (b) family information, including marital status and the existence of siblings;

11 (c) religious affiliation;

12 (d) educational background information that does not reveal specific programs or institutions  
13 attended;

14 (e) general occupation;

15 (f) hobbies; and

16 (g) photographs provided by any of the parties involved.

17 (13) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose  
18 parental rights have not been terminated.

19 ~~(11)~~(14) "Placement for adoption" means the transfer of physical custody of a child with respect  
20 to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person  
21 who intends to adopt the child.

22 ~~(12)~~(15) "Relinquishment" means the informed and voluntary release in writing of all parental rights  
23 with respect to a child by a parent to an agency or individual pursuant to 40-6-135, 40-8-109, or 40-8-117,  
24 whichever is applicable."  
25

26 **Section 2.** Section 40-8-126, MCA, is amended to read:

27 "**40-8-126. Confidentiality and disclosure of record and proceedings -- appointment and duties of**  
28 **confidential intermediary.** (1) Unless the court ~~shall order~~ otherwise ~~order~~, all hearings held in proceedings  
29 under this part ~~shall be~~ are confidential and ~~shall~~ must be held in closed court without admittance of any  
30 person other than interested parties and their counsel.

1 (2) All papers and records pertaining to the adoption ~~shall~~ must be kept as a permanent record of  
2 the court and withheld from inspection. ~~No~~ A person shall may not have access to ~~such~~ the records,  
3 except:

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

6 (b) as provided in subsection (7); or

7 ~~(b)(c)~~ as provided in 50-15-206.

8 (3) All files and records pertaining to ~~said~~ adoption proceedings ~~in the county departments of public~~  
9 ~~welfare, the department of social and rehabilitation services, retained by the department of family services,~~  
10 ~~or any authorized agencies shall be~~ agency are confidential and must be withheld from inspection, ~~except~~  
11 ~~upon order of court for good cause shown or as provided in 50-15-206~~ that the department or authorized  
12 agency may disclose:

13 (a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family  
14 member of an adoptee or biological parent; and

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17 (4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or  
18 an extended family member of the adoptee or biological parent may petition the court for disclosure of the  
19 identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure  
20 must contain the following information:

21 (a) the name, address, and identification of the petitioner;

22 (b) the date of the adoptee's birth;

23 (c) the county and state where the adoption occurred;

24 (d) the date of the adoption; and

25 (e) any information known to the petitioner concerning the biological parents, the adoptive parents,  
26 and the adoptee, that could assist in locating the person being sought.

27 (5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a  
28 confidential intermediary who shall:

29 (a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

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1 ordered to do so by the court; and

2 (c) make a written report of the results of the search to the court not later than 6 months after  
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4 (6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual  
5 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

6 (7) A confidential intermediary may inspect otherwise confidential records of the court, the  
7 department, or an authorized agency for use in the search. The confidential intermediary may not disclose  
8 the contents of the records or any results of a search unless authorized by the court.

9 (8) If a confidential intermediary is unable to locate the person being sought within 6 months of  
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11 warranted and state the reasons for the recommendation. If the court finds that a further search is  
12 warranted, the court may order that the search be continued for a specified time.

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14 made as to whether the located person consents to having that person's present identity disclosed to the  
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20 (11) If the person being sought is found to be deceased, the court may order disclosure of the  
21 identity of the deceased to the petitioner."

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0150, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

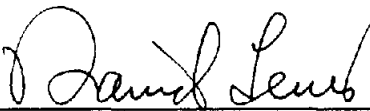
An act revising the law regarding the provision of adoption information; allowing limited disclosure of non-identifying adoption information; providing for court appointment of a confidential intermediary to assist in a search for information for certain persons involved in an adoption; defining applicable terms.

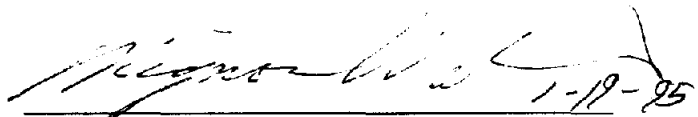
ASSUMPTIONS:

1. The bill does not change the current duties or responsibilities of DFS.
2. If a confidential intermediary is appointed by the court, the petitioner is responsible for the fees and expenses of the intermediary.

FISCAL IMPACT:

None

 1-19-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1-19-95  
MIGNON WATERMAN, PRIMARY SPONSOR DATE

Fiscal Note for SB0150, as introduced

**SB 150**

SENATE BILL NO. 150

INTRODUCED BY

*Waterman*

*Whitman*

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-END-

1

SENATE BILL NO. 150

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INTRODUCED BY

*Waterman**Christman*

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BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

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22

-END-



# HOUSE STANDING COMMITTEE REPORT

March 6, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging report that Senate Bill 150 (third reading copy -- blue) be concurred in as amended.

Signed: *[Signature]*  
*Duane Grimes, Chair*

Carried by: Rep. Ryan

And, that such amendments read:

1. Title, line 9.  
Following: "TERMS;"  
Insert: "PROVIDING A PENALTY;"

2. Page 4.  
Following: line 21  
Insert: "NEW SECTION. Section 3. Penalty for unauthorized disclosure of identifying information. An individual who knowingly discloses identifying information in violation of 40-8-126 is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or by both fine and imprisonment.

NEW SECTION. Section 4. Codification instruction.  
[Section 3] is intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to [section 3]."

- END -

*SB150*

Committee Vote:  
Yes 12, No 3.

HOUSE  
520925SC.Hbk

SENATE BILL NO. 150

INTRODUCED BY WATERMAN, CHRISTIAENS

BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

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3 the court and withheld from inspection. ~~No~~ A person ~~shall~~ may not have access to ~~such~~ the records,  
4 except:

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

7 (b) as provided in subsection (7); or

8 ~~(b)(c)~~ as provided in 50-15-206.

9 (3) All files and records pertaining to ~~said~~ adoption proceedings ~~in the county departments of public~~  
10 ~~welfare, the department of social and rehabilitation services,~~ retained by the department of family services,  
11 ~~or any authorized agencies shall be~~ agency are confidential and must be withheld from inspection, ~~except~~  
12 ~~upon order of court for good cause shown or as provided in 50-15-206~~ that the department or authorized  
13 agency may disclose:

14 (a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family  
15 member of an adoptee or biological parent; and

16 (b) identifying information to a court-appointed confidential intermediary upon order of the court  
17 or as provided in 50-15-206.

18 (4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or  
19 an extended family member of the adoptee or biological parent may petition the court for disclosure of the  
20 identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure  
21 must contain the following information:

22 (a) the name, address, and identification of the petitioner;

23 (b) the date of the adoptee's birth;

24 (c) the county and state where the adoption occurred;

25 (d) the date of the adoption; and

26 (e) any information known to the petitioner concerning the biological parents, the adoptive parents,  
27 and the adoptee, that could assist in locating the person being sought.

28 (5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a  
29 confidential intermediary who shall:

30 (a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

1           (b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless  
2 ordered to do so by the court; and

3           (c) make a written report of the results of the search to the court not later than 6 months after  
4 appointment.

5           (6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual  
6 expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

7           (7) A confidential intermediary may inspect otherwise confidential records of the court, the  
8 department, or an authorized agency for use in the search. The confidential intermediary may not disclose  
9 the contents of the records or any results of a search unless authorized by the court.

10           (8) If a confidential intermediary is unable to locate the person being sought within 6 months of  
11 appointment, the confidential intermediary shall recommend to the court whether a further search is  
12 warranted and state the reasons for the recommendation. If the court finds that a further search is  
13 warranted, the court may order that the search be continued for a specified time.

14           (9) If a confidential intermediary locates the person being sought, a confidential inquiry must be  
15 made as to whether the located person consents to having that person's present identity disclosed to the  
16 petitioner. The court may request that the confidential intermediary assist in arranging contact between the  
17 petitioner and the located person.

18           (10) If a confidential intermediary locates the person being sought and the located person does not  
19 consent to having that person's identify disclosed, identifying information regarding that person may be  
20 disclosed only upon order of the court for good cause shown.

21           (11) If the person being sought is found to be deceased, the court may order disclosure of the  
22 identity of the deceased to the petitioner."

23  
24           **NEW SECTION. SECTION 3. PENALTY FOR UNAUTHORIZED DISCLOSURE OF IDENTIFYING**  
25 **INFORMATION. AN INDIVIDUAL WHO KNOWINGLY DISCLOSES IDENTIFYING INFORMATION IN**  
26 **VIOLATION OF 40-8-126 IS PUNISHABLE BY A FINE OF NOT MORE THAN \$500 OR BY IMPRISONMENT**  
27 **FOR NOT MORE THAN 6 MONTHS, OR BY BOTH FINE AND IMPRISONMENT.**

28  
29           **NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTION 3] IS INTENDED TO BE**  
30 **CODIFIED AS AN INTEGRAL PART OF TITLE 40, CHAPTER 8, PART 1, AND THE PROVISIONS OF TITLE**

1 40, CHAPTER 8, PART 1, APPLY TO [SECTION 3].

2 -END-