

SB BILL NO. **385**

INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE FILING BY A MOTHER OF A CLAIM OF PATERNITY OR NOTICE OF INTENT TO SEEK SOLE CUSTODY; PROVIDING THAT FAILURE BY THE PUTATIVE FATHER TO RESPOND TO THE NOTICE OR CLAIM WAIVES THE RIGHT OF THE PUTATIVE FATHER TO CUSTODY AND VISITATION OR WAIVES THE PUTATIVE FATHER'S PARENTAL RIGHTS; PROVIDING THAT THE NAME OF THE HUSBAND OF THE MOTHER OF A CHILD WITH RESPECT TO WHOM THE PUTATIVE FATHER HAS WAIVED PARENTAL RIGHTS MAY BE ADDED TO THE CHILD'S BIRTH CERTIFICATE AS THE FATHER; AND AMENDING SECTION 50-15-221, MCA."

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

NEW SECTION. Section 1. Waiver of custody and parental rights by putative father -- filing of notice and response -- effect of waiver upon other law. (1) If a putative father, having been notified pursuant to subsection (3) of a mother's claim of paternity, fails to respond to the notice in the manner provided by subsection (5) within 30 days of service of the notice, the putative father waives the right to custody of the child, and the mother is entitled to sole custody of the child to the same extent as if a court had determined pursuant to 40-4-217 that the mother is entitled to sole custody because visitation by the father would endanger the child's physical, mental, moral, or emotional health. A proceeding begun, pursuant to 40-6-223 or other law, by the mother of the child for exclusive control of the child before the waiver by the father pursuant to this section of the right to custody of the child must be vacated upon waiver as provided in this subsection.

(2) A putative father who has waived the right to custody pursuant to subsection (1), has been notified pursuant to section (3) of a mother's intent to apply to the district court to terminate the parental rights of the father, and has failed to respond to the notice in the manner provided in subsection (5) within 6 months after service of the notice, waives parental rights with regard to the child to the same extent and to the same effect as if those rights had been terminated by the order of a court.

(3) A mother intending to make a claim of paternity pursuant to subsection (1) or give notice pursuant to subsection (2) shall sign, under oath, a verified claim of paternity for the purposes of subsection

1 (1) or a verified notice of intent to apply to a court for sole custody of a child for the purposes of
2 subsection (2). The claim or notice may be filed by the mother with the district court of any county in the
3 state, must be served upon the putative father in the manner provided by the Montana Rules of Civil
4 Procedure for the service of a complaint in a civil action, and must be served upon the department of public
5 health and human services in the manner provided by the Montana Rules of Civil Procedure for the service
6 of documents, other than the complaint, in a civil action.

7 (4) If the mother of a child with respect to whom the putative father has waived parental rights
8 pursuant to subsections (2) and (3) marries an individual other than the putative father of the child after
9 the birth of the child, the name of the husband of the mother may, with the mother's consent, be entered
10 on the child's birth certificate as the father of the child.

11 (5) Any one of the following is a response to the notice or claim provided for in subsections (1)
12 through (3):

13 (a) marriage of the mother to the putative father; or

14 (b) initiation by the putative father of:

15 (i) a proceeding for a determination of paternity;

16 (ii) adoption of the child; or

17 (iii) a proceeding for relinquishment of parental rights in another manner provided by law.

18 (6) Failure of a putative father to respond to a notice or claim as provided for in subsection (5) and
19 the resulting loss of the putative father's parental rights pursuant to this section does not affect the father's
20 obligation for support or the applicability of the state's remedies provided pursuant to Title 40, chapter 5.

21 (7) Failure of a putative father to respond to the notice or claim as provided in subsection (5) and
22 the resulting loss of the putative father's parental rights pursuant to this section is effective for all purposes
23 and terminates the rights and obligations of the putative father for all purposes except as provided in this
24 section. Proceedings begun against the putative father for a determination of paternity or for termination
25 of parental rights before the loss of the putative father's parental rights pursuant to this section must be
26 terminated upon the loss of the putative father's parental rights pursuant to this section.

27
28 **Section 2.** Section 50-15-221, MCA, is amended to read:

29 **"50-15-221. Birth registration.** (1) A certificate of birth must be filed as specified in this section
30 with the department for each live birth that occurs in this state. Unless otherwise directed by the

1 department, the certificate must be filed within the time prescribed by the department by rule after the
2 birth. The birth certificate must be registered if it has been completed and filed in accordance with this
3 section and rules adopted to implement this section.

4 (2) If a birth occurs in a health care facility, the birth certificate must be completed and filed by
5 the attending physician or the physician's designee.

6 (3) If a birth occurs in or en route to a health care facility, the person in charge of the facility or
7 the person's authorized designee shall obtain the personal data concerning the newborn child, prepare the
8 certificate, and certify that the child was born alive at the place, at the time, and on the date stated.
9 Certification may be by signature or by an approved electronic process. The person referenced in this
10 subsection shall file the certificate as directed in subsection (1). The physician or other person in attendance
11 at the birth shall provide the medical information required by the certificate within 72 hours after the birth.

12 (4) The department shall, by rule, determine what evidence may be required to establish the facts
13 of birth if the birth occurs at a place other than a health care facility. In accordance with rules promulgated
14 by the department, the certificate must be prepared and filed by one of the following persons in the
15 indicated order of priority in subsections (4)(a) through (4)(e):

16 (a) the physician or the physician's designee or a midwife licensed pursuant to Title 37, chapter
17 27, in attendance at or immediately after the birth;

18 (b) a person in attendance at or immediately after the birth;

19 (c) the father or the mother;

20 (d) in the absence of the father and the inability of the mother, the person in charge of the premises
21 where the birth occurred; or

22 (e) the local registrar, if 50-15-202 applies.

23 (5) When a birth occurs on a moving conveyance within the United States and the newborn child
24 is first removed from the conveyance in this state, the birth must be registered in this state by a person
25 listed in subsection (4) and the place where the child is first removed from the conveyance is considered
26 the place of birth. When a birth occurs on a moving conveyance while in international waters or air space
27 or in a foreign country or its air space and the child is first removed from the conveyance in this state, the
28 birth must be registered by a person listed in subsection (4) in this state, but the certificate must indicate
29 the actual place of birth insofar as the place can be determined.

30 (6) For the purposes of birth registration, the woman who gives birth to the child is considered to

1 be the mother, unless otherwise provided by state law or determined by a court of competent jurisdiction
2 prior to the filing of the birth certificate. Information about the father must be entered as provided in
3 subsection (7).

4 (7) (a) If the mother was married at the time of conception or birth or between conception and
5 birth, the name of the husband must be entered on the certificate as the father of the child, unless:

6 (i) other paternity has been determined by a court of competent jurisdiction;

7 (ii) the mother and the husband execute joint or separate affidavits attesting that the husband is
8 not the father of the child. Affidavits must be notarized, and signatures of the mother and of the husband
9 must be individually notarized on any joint affidavit. If affidavits are filed, information about the father must
10 be omitted from the certificate.

11 (iii) the mother executes an affidavit attesting that the husband is not the father and names a
12 putative father, the putative father executes an affidavit attesting paternity, and the husband executes an
13 affidavit denying paternity. Affidavits may be joint or individual or a combination of joint and individual
14 affidavits. Each signature on an affidavit must be individually notarized. If all affidavits are filed, the putative
15 father must be shown as the father on the certificate.

16 (b) If the mother was not married at the time of conception or birth or between conception and
17 birth, the name of the father may not, except as provided in [section 1], be entered on the certificate
18 without an affidavit of paternity signed by the mother and the person to be named as the father.

19 (c) If paternity of a child is determined by a court of competent jurisdiction, the name of the father
20 and surname of the child must be entered on the certificate of birth in accordance with the finding and
21 order of the court.

22 (d) If the father is not named on the certificate of birth, information about the father may not be
23 entered on the certificate.

24 (e) Affidavits required under this subsection (7) must be filed with the department.

25 (8) Either parent of the child, or another informant, shall verify the accuracy of the personal data
26 to be entered on the certificate in order to permit the filing of the certificate within the time prescribed in
27 subsection (1).

28 (9) A certificate of birth filed after the time prescribed in subsection (1) but within 1 year from the
29 date of birth must be registered by the natural parents, the adoptive parents, or the person having legal
30 custody of the child, on the standard form of live birth certificate in the manner prescribed in this section

1 and by rule. The certificate may not be designated as delayed. The department may require additional
2 evidence in support of the facts of birth."

3
4 **NEW SECTION. Section 3. Coordination instruction -- codification instruction.** (1) If House Bill No.
5 163 is passed and approved, [section 1(5)] must provide as follows:

6 "(5) Any one of the following is a response to the notice or claim provided for in subsections (1)
7 through (3):

8 (a) marriage of the mother to the putative father;

9 (b) registration by the father for the purposes of receiving notice of adoption;

10 (c) appearance of the putative father at a hearing pursuant to [section 76 of House Bill No. 163];

11 or

12 (d) initiation by the putative father of:

13 (i) a proceeding for a determination of paternity;

14 (ii) adoption of the child; or

15 (iii) a proceeding for relinquishment of parental rights in another manner provided by law."

16 (2) If House Bill No. 163 is passed and approved, a new subsection must be added to [sections 74
17 and 75 of House Bill No. 163] to provide as follows:

18 "(3) A waiver of parental rights pursuant to [section 1 of this act] has the same effect as a finding
19 by the court pursuant to subsection (1)."

20 (3) If House Bill No. 163 is passed and approved and if it contains a code commissioner instruction
21 requiring codified sections of that bill to be codified as Title 42, then [section 1] must be codified in Title
22 42.

23 (4) If House Bill No. 163 is not passed and approved then [section 1] must be codified as an integral
24 part of Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [section 1].

25
26 **NEW SECTION. Section 4. Saving clause.** [This act] does not affect rights and duties that
27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
28 act].

29
30 **NEW SECTION. Section 5. Severability.** If a part of [this act] is invalid, all valid parts that are

1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
2 applications, the part remains in effect in all valid applications that are severable from the invalid
3 applications.

4 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0385, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for the filing by a mother of a claim of paternity or notice of intent to seek sole custody; providing that failure by the putative father to respond to the notice or claim waives the right of the putative father to custody and visitation or waives the putative father's parental rights; providing that the name of the husband of the mother of a child with respect to whom the putative father has waived parental rights may be added to the child's birth certificate as the father.

ASSUMPTIONS:

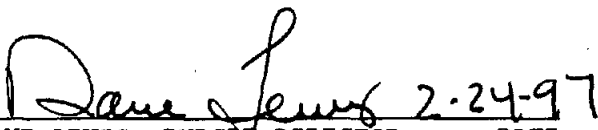
1. The bill removes the putative father's right to custody and visitation if the putative father either waives parental rights or fails to respond to notice. This proposal would affect the potential child support obligation of a putative father of the father's parental rights. All determination of paternity actions must be stopped.
2. The Department of Health and Human Services (DPHHS) Child Support Enforcement Division (CSED) serves approximately 50 families per year where the child has been relinquished. It is estimated that the number of families will increase five-fold if this proposal passes.
3. The average CSED child support order as of March 1996 was \$231. Over the child's first eighteen years, the amount of support would be about \$49,900.
4. CSED collections of support would be reduced by \$693,000 per year (250 families X \$231 per child support order X 12 months).
5. CSED collections for families receiving Temporary Assistance to Needy Families (TANF) (previously known as the Aid to Families with Dependent Children (AFDC)) are about 30% of the total collections. About \$485,100 would be non-TANF/AFDC and \$207,900 would be TANF/AFDC. CSED retains about 40% of in-state TANF/AFDC collections in state special revenue.
6. CSED state special revenue collections would be reduced by \$83,160 per year (\$693,000 x 30% x 40%).

FISCAL IMPACT:

| | <u>FY98</u> | <u>FY99</u> | <u>Total</u> |
|--|-------------------|-------------------|--------------|
| <u>Revenues:</u> | <u>Difference</u> | <u>Difference</u> | |
| State Special Revenue(02) | (\$83,160) | (\$83,160) | (\$166,320) |
| <u>Net Impact on Fund Balance:</u> (Revenue minus expense) | | | |
| State Special Revenue(02) | (\$83,160) | (\$83,160) | (\$166,320) |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Minimal impact on county revenue.


 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

 BARRY STANG, PRIMARY SPONSOR DATE

Fiscal Note for SB0385, as introduced
SB 385