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HOUSE BILL NO. 213

INTRODUCED BY B. MITCHELL, S. GUNDERSON, J. WINDY BOY, F. ANDERSON, S. KERNS, J. SCHILLINGER, C. KNUDSEN, S. GIST, G. NIKOLAKAKOS, K. ZOLNIKOV, D. FERN, S. ESSMANN, P. FIELDER, L. REKSTEN, T. MOORE, M. BERTOGLIO, L. BREWSTER, R. KNUDSEN, G. FRAZER, J. HINKLE, N. NICOL, M. BINKLEY, B. LER, A. REGIER, K. SEEKINS-CROWE, F. NAVE, R. MARSHALL, E. BUTTREY, L. JONES, D. LOGE, C. HINKLE, J. READ, R. FITZGERALD, M. HOPKINS, J. BERGSTROM, G. PARRY, M. YAKAWICH, B. BROWN, J. FULLER, M. CUFFE, M. LANG, P. GREEN, G. KMETZ, T. FALK, J. FITZPATRICK, C. SPRUNGER, J. ETCHART, R. MINER, W. RUSK, J. TREBAS, J. KASSMIER, B. PHALEN, B. BEARD, L. DEMING, L. HELLEGAARD, T. SMITH, F. MANDEVILLE, Z. WIRTH

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A CERTIFICATE OF NONVIALE BIRTH; ESTABLISHING REQUIREMENTS FOR REQUESTING AND ISSUING A CERTIFICATE; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION; AND AMENDING SECTIONS SECTION 50-15-101 ~~AND 50-15-403~~, MCA."

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

NEW SECTION. **Section 1. Certificate of nonviable birth -- requirements.** (1) The department shall establish a certificate of nonviable birth on a form adopted by the department and meeting the requirements of subsection (4). On request by a parent, a certificate of nonviable birth must be filed ~~in addition to the fetal death certificate provided for in 50-15-403~~ and must be provided to the parent.

(2) ~~In the instance of a nonviable birth, the person authorized to register a fetal death shall~~ THE DEPARTMENT SHALL MAKE AVAILABLE ON ITS WEBSITE INFORMATION TO advise a parent:

- (a) of the manner in which a request for a certificate of nonviable birth may be made; AND
- (b) that the parent must request the certificate within ~~2 weeks~~ 60 DAYS of the nonviable birth; ~~and~~
- (c) ~~(i) that the original certificate of nonviable birth is available as a public record; and~~
 - ~~(ii) that the parentage, marital status of the parent, cause of death of the fetus, and any medical information will not be included as a public record.~~

Amendment - 1st Reading-white - Requested by: Keith Regier - (S) Judiciary

- 2023

68th Legislature 2023

Drafter: Julianne Burkhardt, 406-444-4025

HB0213.003.001

- 1 (3) A request for a certificate of nonviable birth must:
- 2 (a) be made within ~~2 weeks~~ 60 days of the birth on a form prescribed by the department by rule;
- 3 and
- 4 (b) include the date of the nonviable birth and the county in which the birth occurred.
- 5 (4) The certificate of nonviable birth prepared by the department must contain:
- 6 (a) the date of the nonviable birth;
- 7 (b) the county in which the birth occurred;
- 8 (c) the name of the fetus, ~~as provided on the fetal death certificate pursuant to 50-15-403. If a~~
- 9 ~~name does not appear on the original or amended fetal death certificate and the requesting parent does not~~
- 10 ~~wish to provide a name, the department shall fill in the certificate with the name "baby boy", "baby girl", or, if the~~
- 11 ~~sex of the child is unknown, "baby" and the last name of the parent as provided in 50-15-221.~~
- 12 (5) The following statement must appear on the front of the certificate: "This certificate is not proof
- 13 of a live birth".
- 14 (6) A certificate of nonviable birth is a ~~public record, and a copy of the original certificate is~~
- 15 ~~available as a public record. The parentage, marital status of the parent, cause of death of the fetus, and any~~
- 16 ~~medical information may not be included as part of the public record~~ PRIVATE COMMEMORATIVE DOCUMENT AND IS
- 17 NOT A PUBLIC RECORD.
- 18 (7) It is a final agency action, not subject to review under the Montana Administrative Procedure
- 19 Act, for the department to refuse to issue a certificate of nonviable birth to a person who ~~is not a parent named~~
- 20 ~~on the fetal death certificate~~ HAS FAILED TO PROVIDE INFORMATION REQUIRED BY THE DEPARTMENT BY RULE FOR
- 21 ISSUANCE OF THE CERTIFICATE.
- 22 (8) The department may not use a certificate of nonviable birth to calculate live birth statistics.
- 23 (9) This section may not be used to establish, bring, or support:
- 24 (A) a civil cause of action seeking damages against any person or entity for bodily injury, personal
- 25 injury, or wrongful death for a nonviable birth; OR
- 26 (B) A CRIMINAL CAUSE OF ACTION AGAINST ANY PERSON OR ENTITY FOR A NONVIABLE BIRTH.
- 27 (10) The department shall adopt rules as to the form, content, and process for the certificate of
- 28 nonviable birth.

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Section 2. Section 50-15-101, MCA, is amended to read:

"50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Advanced practice registered nurse" means an individual who has been certified as an advanced practice registered nurse as provided in 37-8-202.

(2) "Authorized representative" means a person:

(a) designated by an individual, in a notarized written document, to have access to the individual's vital records;

(b) who has a general power of attorney for an individual; or

(c) appointed by a court to manage the personal or financial affairs of an individual.

(3) "Dead body" means a human body or parts of a human body from which it reasonably may be concluded that death occurred.

(4) "Department" means the department of public health and human services provided for in 2-15-2201.

(5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

(7) "Final disposition" means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(9) "Live birth" means the complete expulsion or extraction from the mother as a product of conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or

1 extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the
2 umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac
3 contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

4 (10) "Local registrar" means a person appointed by the department to act as its agent in
5 administering this chapter in the area set forth in the letter of appointment.

6 (11) "Nonviable birth" means an unintentional, spontaneous fetal demise occurring after a heartbeat
7 is detected but prior to the 20th week of gestation of a pregnancy that has been verified by a health care
8 provider.

9 (14)(12) "Person in charge of disposition of a dead body" means a person who places or causes a
10 dead body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise
11 disposes of the body or fetus and who is a funeral director, an employee acting for a funeral director, or a
12 person who first assumes custody of a dead body or fetus.

13 (12)(13) "Physician" means a person legally authorized to practice medicine in this state.

14 (13)(14) "Registration" means the process by which vital records are completed, filed, and incorporated
15 into the official records of the department.

16 (14)(15) "Research" means a systematic investigation designed primarily to develop or contribute to
17 generalizable knowledge.

18 (15)(16) (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

19 (b) The term does not include an abortion, as defined in 50-20-104.

20 (16)(17) "System of vital statistics" means the registration, collection, preservation, amendment, and
21 certification of vital records. The term includes the collection of reports required by this chapter and related
22 activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

23 (17)(18) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and
24 dissolution of marriage and related reports.

25 (18)(19) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death,
26 induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

27

28 **Section 3.** Section 50-15-403, MCA, is amended to read:

