SENATE DOCKET, NO. FILED ON: 1/13/2009

**SENATE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Thomas P. Kennedy**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to birth, marriage and death records.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Thomas P. Kennedy | Second Plymouth and Bristol |

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to birth, marriage and death records.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

 **SECTION 1**. Section 4 of chapter 17 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-­

There shall also be in the department a registry of vital records and statistics which may be located within such bureau as the commissioner deems to be appropriate. The commissioner shall appoint a state registrar, subject to approval of the public health council. The registrar shall be subject to chapter 31 and shall, under the supervision of the commissioner, enforce all laws relative to the registry and return of births, marriages, deaths and adjudications and may prosecute in the name of the commonwealth any violations thereof. The special vital records and statistics committee established under section 31 of chapter 46, shall promulgate rules and regulations relative to the registry and return of birth, marriages and deaths including but not limited to the operation of the registry of vital statistics and to insure the historical access to the records. A public hearing must be held for each regulation proposed and the public must be notified at least 21 days prior to any public hearing pursuant to section 2 of chapter 30A by publishing such notice at least twice in major newspapers throughout the Commonwealth. In addition to compliance with section 2 of chapter 30A, the commissioner shall send notice of such hearing to all city and town clerks; the Secretary of the Commonwealth; the Archivist of the Commonwealth; the executive director of the New England Historic Genealogical Society; the Director of the Massachusetts Historical Society; the directors of the Massachusetts Hospital Association, the Massachusetts Medical Society, the Massachusetts Funeral Directors Association, the Director of Civil Records for the Massachusetts Genealogical Council; and the Executive Director of the Massachusetts Newspaper Publishers Association.

 **SECTION 2**. Section lE, of said chapter 46 as so appearing, is hereby amended by inserting after the word "births", in line 4, the following words "or deaths".

**SECTION 3**. Section 1E of said chapter 46, as so appearing, is hereby further amended by inserting the following eight subsections:-­

(j) "Town" an incorporated city or town in the commonwealth.

(k) "System of vital records and statistics", the registration, collection, preservation, reproduction, examination, amendment, storage, issuance, and certification of vital records; the collection of other reports required by this chapter; and activities related thereto including the tabulation , analysis, publication and dissemination of vital statistics.

(1) "Vital records" means certificates of birth, death, marriage, and acknowledgements and adjudications of paternity and data related thereto.

(m) "Vital reports" means reports of fetal death, divorce, dissolution of marriage or annulment, and data related thereto.

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

(o) "Delayed registration" is the registration of a birth, death, or marriage more than 365 days after the event.

(p) "Certified copy" is a certified copy issued as prescribed by section 2A, subsection (3) for legal purposes including, but not limited to, obtaining a passport, entering school, or proof of age for state, federal, or local entitlement or benefit programs.

(q) "Informational copy" is a copy issued for general information purposes, as prescribed by section 2A, subsection (3) rather than for legal purposes. Such purposes may include, but are not limited to, professional, personal or genealogical research. Such copies shall not be suitable for legal purposes described in subsection (p) of this section. An informational copy shall be clearly labeled that it is not to be used for legal purposes. The base charge for informational copies issued by the town clerks or state registrar shall be one dollar.

**SECTION 4**. Said chapter 46 is hereby amended by striking out section 2, as so appearing, and inserting in place thereof the following section:­

Section 2. To facilitate use, the vital records and statistics system shall incorporate an index. The state registrar and town clerks shall be responsible for preparing an index of the records under their jurisdiction. If vital records are automated into a data base, said data base will fulfill the requirements of such an index. The state registrar shall make such automated data base available to the custodians of vital records as defined by subsection (c) of section lE, and consistent with restrictions expressed in subsection (2) and section 2A and in section 13. At least semiannually, an updated paper copy of an index on archival paper will be prepared from the automated data base by the town clerks and state registrar. The most recent version of the paper index shall replace all previous versions.

Custodians are authorized to reproduce vital records, returns and reports required under this chapter fortransmission to other custodians, and further for the purpose of preserving the original copies of vital records and reports. Such reproductions may be prepared in a typewritten, photographic, micrographic or electronic media or digital media consistent with the regulations of the supervisor of public records. Any automated database system for electronic storage, reproduction or examination of vital records must also be approved by the special vital records and statistics committee and meet any additional regulations of the supervisor of public records and any regulations promulgated pursuant to section 4 of chapter 17. Such reproductions shall have the full force of the original records. The paper recordsfrom which such reproductions have been made shall be retained as permanent records by the custodian required to maintain such vital records.

Certified and informational copies, as defined by section one E, subsections (p) and (q) may be issued from such reproductions of the vital records and reports. Such certification shall be denoted by the seal authorized for the use of the custodian. Such certification may occur from a centralized, automated data base of vital records, including optical imaging, that has been prepared and managed in accordance with the regulations of the supervisor of public records. The fee for a certified copy issued by any custodian from the centralized, automated data base for a record not in his or her physical custody, will be established by the secretary of administration and finance. Any such automated data base shall contain management controls which insure the authenticity and the integrity of the information that the original records contain. The records in the custody of the archives of the commonwealth may be issued in a format other than certified or informational copies.

**SECTION 5**. Said chapter 46 is hereby amended by striking out section 2A, as so appearing, and inserting in place thereof the following section:-

Section 2A.(a) On January 1, 2009, and upon mutual arrangement by the archivist of the commonwealth and the state registrar for an orderly transfer within three years, all records and adjudications of paternity and indices pertaining to births through December 31, 1930, any amendments to births with indices filed prior to December 31, 1930, records and indices of marriages and deaths filed prior to December 31, 1965, and any amendments including indices to marriages and deaths filed prior to December 31, 1965, then in the custody of the state registrar, shall be transferred to the custody of the archives of the commonwealth. Until such time as the physical transfer occurs, these records and indices remaining at the state registry shall be public records. Subsequently, all records, indices, and amendments of births, adjudications of paternity, marriages and deaths shall be transferred from the state registry to the archives on the basis of five year increments, consistent with chapter 374 acts of 1983, commencing with January 1, 2011. Funds shall be appropriated from the general fund yearly for the state archives to pay the associated costs of proper accession, care and preservation of the transferred records.

Prior to transfer, all records, returns and indices will be micro­filmed and the permanent paper records to be transferred shall be made subject to appropriate preservation protocols by the state registry of vital records and statistics. Those protocols shall include microfilm and shall be subject to qualitative standards promulgated by the archivist of the commonwealth through regulations. Prior to public hearing, all such regulations proposed by the archivist will be reviewed by the special vital records and statistics committee, established under SECTION 17, subsection 31.

At least 21 days prior to any public hearing held pursuant to section 2 of chapter 30A, the archivist of the commonwealth shall send notice of such hearing to all city and town clerks, the New England Historic Genealogical Society, The Massachusetts Genealogical Council, the Massachusetts Historical Society, and the state registrar. Said notice shall be published at least twice, at least 21 days prior to said public hearing in the major newspapers throughout the commonwealth. Notwithstanding any other provision of this or any other act, all vital records and indices eligible for transfer to the archives of the commonwealth and parallel records maintained by other custodians shall be available for public examination and abstraction of information as public records.

(b) Custodians, upon receipt of a written request, shall allow the public examination of vital records and their indices, and the abstraction of information from vital records and their indices. Indices are not to be excluded from examination. Such examination may be from an automated data base. Custodians, upon the receipt of a written request, shall issue to any person an informational copy. Excluded from such examination and issuance of informational copies are records and returns of births of abnormal sex, and fetal deaths for a gestational period of at least twenty weeks, regardless of the custodian issuing or allowing such examination. It shall be unlawful for any custodian to permit inspection of, or to disclose information contained in such excluded records or to copy or issue a copy of all or any part of such record except upon receipt of a proper judicial order issued by a Massachusetts court. The restrictions on the examination and issuance of copies of records contained in this chapter shall not apply to those records eligible for transfer to the archives of the commonwealth, as defined by subsection (a) and parallel records maintained by other custodians.

(c) The federal agency responsible for national vital statistics may be furnished such copies of data from the system of vital records and statistics as it may require for national statistics, provided such agency share in the cost of collecting, processing, and transmitting such data, and provided further that such data shall not be used for any other than the statistical or research purposes provided for in the agreement between the federal agency and the state agency. Any additional uses of the data must be approved by the process as described in section 24B of chapter 111.

(d) The state registrar may, by agreement, transmit copies of records and other reports required by this chapter to offices of vital statistics outside this state when such records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement shall specify the statistical and administrative purpose for which such records may be used and the agreement shall further provide instructions for the proper retention and disposition of such copies. Copies received by the state registry from vital statistics offices in other states shall be handled in the same manner as prescribed in this section. In no circumstances may such records received by the state registry be available for public examination, included in indices, or used for the purpose of issuing certified or informational copies. Further, any such records transmitted by the state registrar to vital statistics offices outside this state may not be available for public examination, included in indices, or used for the purpose of issuing certified copies by the office receiving such records.

(e) All forms and procedures used in the issuance of certified and informational copies of vital records in the state shall be uniform and shall be provided by the state registrar. All such certified copies issued shall have security features that deter the document from being altered, counterfeited, duplicated or simulated without ready detection. Each such copy issued shall show the date of registration and registration number. Copies issued from records that have been amended shall include that date unless prohibited by section 13 and a certificate of out of the commonwealth birth, marriage or death shall clearly state that the event did not occur in the commonwealth.

(f) An individual requesting a certified copy or informational copy of a death record may specify that it not contain information relating to the cause of death. It is the duty of the custodian to comply with such request. No one shall be denied access to death records or cause of death information.

(g) A certified copy of a vital record, as defined by subsection (p) of section lE or any part thereof issued in accordance with this section shall have the same force as the original and shall be prima facie evidence of the facts stated therein, provided that the evidentiary value of a delayed record of a vital event, or a record which has been amended, or a certificate of out of commonwealth birth, marriage or death shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(h) Nothing in this section shall be construed to permit disclosure of information from the "Confidential information" form submitted to the commissioner of public health pursuant to the provisions of section 24B of chapter 111 or information contained in a statistical record of divorce prepared pursuant to the provisions of section 6B of chapter 208.

(i) No person, including a notary public, shall prepare or issue any certificate which purports to be an original, certified or informational copy, except as authorized in this chapter or regulations promulgated pursuant to section 4 of chapter 17. No person shall alter a certified copy or record referred to in sections 2, 2A and 19 or use or reproduce such altered record. Whoever violates the provisions of this section shall be punished by a fine of not more than $500.

**SECTION 6**. Said chapter 46 is hereby further amended by striking out section 7, as so appearing, and inserting in place thereof the following section:­

Section 7. The master or other commanding officer of a vessel shall give notice, with the facts required for record, of every birth or death occurring among the persons under his charge. The certificate of a birth shall be given to the clerk of the town at which his vessel first arrives after such birth. The notice of a death and the completed certificate of death shall be filed with the board of health or, if the selectmen constitute such board, to the clerk of the town at which his vessel first arrives after such death.

Notice of the death shall be given to the office of the chief medical examiner who shall be responsible for completion OF the certificate of death.

**SECTION 7**. Section 7A of said chapter 46, as so appearing, is hereby amended by striking out the last sentence.

**SECTION 8**. Section 12 of said chapter 46 as so appearing, is hereby amended by adding the following paragraph:-­

Effective with the completion of the automation of current records as determined by the special vital records and statistics committee but no sooner than 1 January 2011, the transmitting of so-called resident copies of birth and death records, as provided in this section shall cease. Thereafter, the state registrar will transmit at least quarterly to town clerks in the commonwealth a list of their resident births, deaths and burials that have occurred in the commonwealth. The information to be included in said lists will be specified by regulations promulgated pursuant to section 4 of chapter 17.

**SECTION 9**. Section 14 of said chapter 46, as so appearing is hereby amended by striking out, in line 2 the words "fifty dollars" and inserting in place thereof the following words $5,000.

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**SECTION 10**. Said chapter 46 is hereby amended by striking out section 16, as so appearing, and inserting in place thereof the following section:-­

Section 16. The state registrar shall prepare and furnish to the clerks and boards of health of towns, physicians, hospitals, probate and district courts, and others involved in the preparation and registration of vital records, forms for returns, a paper of uniform size, and any necessary instructions and explanations. Such forms used for permanent records shall meet any regulations of the Supervisor of Public Records. Any forms for returns and other materials not supplied by the state registrar must be approved by the state registrar and the special vital records and statistics committee and be subject to any applicable regulations of the supervisor of public records. Any electronic program for the preparation, collection, storage or issuance of vital records, not part of the statewide system, must be approved by the state registrar and the special vital records and statistics committee and shall be subject to any applicable regulations of the Supervisor of Public Records.

**SECTION 11**. Section 17D of Chapter 46 as appearing in the 1998 edition, is amended by striking out in lines 5 to 11, as appearing in the 1998 edition, the second and third sentences and inserting in place thereof the following sentences:­

If a delayed record of birth or death or other return of birth or death is recorded by the state registry, the state registrar shall transmit a certified copy of the record of birth or death to the clerk in the town where the birth or death occurred.

If a delayed record of marriage or other record of marriage is recorded by the state registry, the state registrar shall transmit a certified copy of a delayed record of marriage or other record to the town clerk where the original intention of marriage is filed.

**SECTION 12**. Said chapter 46 is hereby amended by striking out sections 18 and 19 and inserting in place thereof the following two sections:-­

Section 18. Copies transmitted or retained under sections 17 to 17D, inclusive, shall be typewritten or reproduced in actual size by photographic or micrographic process or approved electronic process. Any forms and formats reproduced must have prior approval of the state registrar and meet any standards established by the supervisor of public records and regulations promulgated by the department.

Section 19. The record of the custodian relative to a birth, marriage or death shall be prima facie evidence of the facts recorded, but nothing contained in the record of a death which has reference to the question of liability for causing the death shall be admissible in evidence. Upon the written request of a person to whom the record relates or of either of his parents, the custodian shall issue a certified copy of a birth record containing no reference to the color of said person or his parents *or* the name of the parent or parents.

**SECTION 13**. Said chapter 46 is hereby further amended by striking out 27, and inserting in place thereof the following section:­

Section 27. A custodian refusing or neglecting to perform any duty required of him under this chapter shall be punished by a fine of not less than one hundred or not more than one thousand dollars per violation. Fines recovered for violation of this section shall be deposited into the state archives trust fund (0511-1100) and be specifically designated for the automation, preservation and modernization of vital records administered by the archives.

**SECTION 14**. Section 28 of said chapter 46 as so appearing, is hereby amended by inserting after the word "oath", in line 1, the following words" or affirmation" .

**SECTION 15**. Section 30 of said chapter 46 as so appearing is hereby amended by inserting after the word "clerk" in line 5, the following words:- "state -registrar"

**SECTION 16**. Section 30 of said chapter 46, as so appearing, is hereby further amended by striking out in line 1, the word "hundred" and inserting in place thereof the following number: --$1000.

**SECTION 17**. Said chapter 46 is hereby further amended by adding the following three sections:-

Section 31. There will be a permanent special vital records and statistics committee to oversee the overall improvement including preservation and automation of the vital records and statistics system in the commonwealth, and shall be established no later than January 1, 2009. Physical preservation of the records shall constitute an integral part of any system-wide improvement plan. The permanent special vital records and statistics committee shall oversee and approve expenditures of any funds to pay for improvement. The committee shall consist of 19 members including the State Registrar who shall serve as chairman, the Archivist of the Commonwealth and the Supervisor of Public Records; all other members shall serve for three-year terms, with two reappointment terms only. The committee shall include two town clerks selected by the Massachusetts Town Clerks' Association, at least one of whom shall be from a town with a hospital having a maternity unit; two city clerks or a city clerk and a registrar elected by the Massachusetts City Clerks' Association, at least one of whom shall be from a city with a hospital having a maternity unit; one member each selected by the New England Historic Genealogical Society, the Massachusetts Genealogical Council, the Massachusetts Historical Society, the Massachusetts Newspaper Publishers Association, the Massachusetts Medical Society, the Massachusetts Hospital Association, the Massachusetts Public Health Association, and the Massachusetts Funeral Directors Association. The commissioner of public health shall appoint four additional members, including a lawyer practicing family law and three members with expertise from each of the following areas: medical research, epidemiology, and electronic data collection and management. The reasonable travel expenses of members of the committee shall be paid out of department of health funds. The special vital records and statistics committee shall meet at least quarterly and twelve members shall constitute a quorum for the purpose of conducting business. This committee shall be required to develop an overall plan for the automation, improvement, and preservation of the statewide vital records and statistics system throughout the commonwealth. Such plan shall posit one, three, five and ten year goals and objectives for the automation, improvement and preservation of the system. All such plans for the automation of the system must concurrently consider the need for the preservation of the records so automated. Routine administration of expenditures from any fund related to such automation will be directed by a five-person executive subcommittee of the special vital records and statistics committee. The executive subcommittee shall be composed of the State Registrar, the Archivist of the Commonwealth, the Supervisor of Public Records, one town clerk and one city clerk or registrar. The town clerk or city clerk or registrar on the executive subcommittee shall be rotated annually between the representatives of the city and town clerk association representatives on the special vital records and statistics committee. The special vital records and statistics committee shall be required to authorize all expenditures over the sum of $1000.

All funds generated by the archives of the commonwealth or funds designated by the special vital records and statistics committee for the activities at the archives shall be segregated and deposited into the state archives trust fund (0511-1100) and be specifically designated for the automation, preservation and modernization of vital records administered by the state archives.

Section 32. To protect the integrity of vital records and to prevent fraudulent use of birth certificates of deceased persons, the state registry is hereby authorized to match birth and death certificates, and if the state registrar is satisfied that the death certificate and the birth certificate refer to the same person, he shall make note of the facts of death on the birth certificate. After such matching, the state registrar shall provide appropriate information to the town clerks who shall mark the records in their custody and similarly mark records issued by them.

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Section 33. Notwithstanding any provisions of law to the contrary, provisions for town clerks to forward subsequent original records of birth, death and marriage to the state registry shall not commence until the state registry's arrangements for the storage and maintenance of vital records in a state owned building, including the environmental and physical security needs and provisions for access by researchers to the original documents in a state owned building, meets the require­ments of the Supervisor of Public Records relating to storage and maintenance of permanent public records and has been approved by the Supervisor of Public Records.

 Section 34.There is hereby created through fees collected by custodians under this section a fund to be known as the special state and local vital records and statistics fund. Any custodian who issues a certified copy of a vital record shall collect from the requester of the certified record, in addition to any other fee, an additional fee of two dollars for each such certified copy requested. Such additional fees shall be deposited in the special state and local records and statistics fund. Fees collected pursuant to this section shall be used to improve to all extent practicable all aspects of the statewide system of vital records and statistics. Such improvement is to include a statewide automated system of vital records with proceeds from the special fund providing such improvement services for both state and local custodians. Physical preservation of the original paper records shall constitute an integral part of any system-wide improvement plan. The special state and local vital records and statistics fund shall not supplant funding necessary for maintaining the daily operation of the current system to vital records and statistics.

Custodians shall on a quarterly basis make payments into the special state and local vital records and statistics fund of 95% of the additional fees collected under this section; custodians may retain five per cent of funds collected for managing the collection of these fees. Fees deposited in the special state and local vital records and statistics fund in one fiscal year shall be available for expenditure in a subsequent fiscal year as directed by the special vital records and statistics committee established in section 31.

**SECTION 18**. The second paragraph of section 2 of chapter 111 of the General Laws, as appearing in the 1999 Official Edition, is hereby amended by striking out the fourth sentence of the second paragraph and replacing it with the following sentence:­

The commissioner shall, as soon as is reasonably practicable, create an index to the records and maintain the birth, death and marriage records in a manner appropriate for permanent, public records with indexes thereto and shall retain their custody until records and indexes are sent to the state archives.