

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Thomas P. Kennedy**

*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:

NAME:

Thomas P. Kennedy

DISTRICT/ADDRESS:

Second Plymouth and Bristol

# The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand and Nine  
\_\_\_\_\_

## 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:*

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

5  
6 There shall also be in the department a registry of vital records and  
7 statistics which may be located within such bureau as the commissioner deems  
8 to be appropriate. The commissioner shall appoint a state registrar, subject  
9 to approval of the public health council. The registrar shall be subject to  
10 chapter 31 and shall, under the supervision of the commissioner, enforce all  
11 laws relative to the registry and return of births, marriages, deaths and  
12 adjudications and may prosecute in the name of the commonwealth any  
13 violations thereof. The special vital records and statistics committee  
14 established under section 31 of chapter 46, shall promulgate rules and  
15 regulations relative to the registry and return of birth, marriages and  
16 deaths including but not limited to the operation of the registry of vital  
17 statistics and to insure the historical access to the records. A public  
18 hearing must be held for each regulation proposed and the public must be  
19 notified at least 21 days prior to any public hearing pursuant to section 2

20 of chapter 30A by publishing such notice at least twice in major newspapers  
21 throughout the Commonwealth. In addition to compliance with section 2 of  
22 chapter 30A, the commissioner shall send notice of such hearing to all city  
23 and town clerks; the Secretary of the Commonwealth; the Archivist of the  
24 Commonwealth; the executive director of the New England Historic  
25 Genealogical Society; the Director of the Massachusetts Historical Society;  
26 the directors of the Massachusetts Hospital Association, the Massachusetts  
27 Medical Society, the Massachusetts Funeral Directors Association, the  
28 Director of Civil Records for the Massachusetts Genealogical Council; and  
29 the Executive Director of the Massachusetts Newspaper Publishers  
30 Association.

31 **SECTION 2.** Section 1E, of said chapter 46 as so appearing, is hereby  
32 amended by inserting after the word "births", in line 4, the following words  
33 "or deaths".

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

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

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

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

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

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

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

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

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

66

67 **SECTION 4.** Said chapter 46 is hereby amended by striking out section  
68 2, as so appearing, and inserting in place thereof the following  
69 section:

70

71 Section 2. To facilitate use, the vital records and statistics system  
72 shall incorporate an index. The state registrar and town clerks shall  
73 be responsible for preparing an index of the records under their  
74 jurisdiction. If vital records are automated into a data base, said  
75 data base will fulfill the requirements of such an index. The state  
76 registrar shall make such automated data base available to the  
77 custodians of vital records as defined by subsection (c) of section  
78 1E, and consistent with restrictions expressed in subsection (2) and  
79 section 2A and in section 13. At least semiannually, an updated paper  
80 copy of an index on archival paper will be prepared from the automated  
81 data base by the town clerks and state registrar. The most recent  
82 version of the paper index shall replace all previous versions.

83 Custodians are authorized to reproduce vital records, returns and  
84 reports required under this chapter for transmission to other  
85 custodians, and further for the purpose of preserving the original  
86 copies of vital records and reports. Such reproductions may be  
87 prepared in a typewritten, photographic, micrographic or electronic  
88 media or digital media consistent with the regulations of the  
89 supervisor of public records. Any automated database system for  
90 electronic storage, reproduction or examination of vital records  
91 must also be approved by the special vital records and statistics  
92 committee and meet any additional regulations of the supervisor of  
93 public records and any regulations promulgated pursuant to section  
94 4 of chapter 17. Such reproductions shall have the full force of  
95 the original records. The paper records from which such  
96 reproductions have been made shall be retained as permanent records  
97 by the custodian required to maintain such vital records.

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

114 **SECTION 5.** Said chapter 46 is hereby amended by striking out section  
115 2A, as so appearing, and inserting in place thereof the following  
116 section:-

117 Section 2A.(a) On January 1, 2009, and upon mutual arrangement by the  
118 archivist of the commonwealth and the state registrar for an orderly  
119 transfer within three years, all records and adjudications of  
120 paternity and indices pertaining to births through December 31, 1930,  
121 any amendments to births with indices filed prior to December 31,  
122 1930, records and indices of marriages and deaths filed prior to  
123 December 31, 1965, and any amendments including indices to marriages  
124 and deaths filed prior to December 31, 1965, then in the custody of  
125 the state registrar, shall be transferred to the custody of the  
126 archives of the commonwealth. Until such time as the physical transfer  
127 occurs, these records and indices remaining at the state registry  
128 shall be public records. Subsequently, all records, indices, and  
129 amendments of births, adjudications of paternity, marriages and deaths  
130 shall be transferred from the state registry to the archives on the  
131 basis of five year increments, consistent with chapter 374 acts of  
132 1983, commencing with January 1, 2011. Funds shall be appropriated  
133 from the general fund yearly for the state archives to pay the  
134 associated costs of proper accession, care and preservation of the  
135 transferred records.

136 Prior to transfer, all records, returns and indices will be micro-  
137 filmed and the permanent paper records to be transferred shall be  
138 made subject to appropriate preservation protocols by the state  
139 registry of vital records and statistics. Those protocols shall  
140 include microfilm and shall be subject to qualitative standards  
141 promulgated by the archivist of the commonwealth through regulations.  
142 Prior to public hearing, all such regulations proposed by the  
143 archivist will be reviewed by the special vital records and  
144 statistics committee, established under SECTION 17, subsection 31.

145 At least 21 days prior to any public hearing held pursuant to section  
146 2 of chapter 30A, the archivist of the commonwealth shall send notice  
147 of such hearing to all city and town clerks, the New England Historic

148 Genealogical Society, The Massachusetts Genealogical Council, the  
149 Massachusetts Historical Society, and the state registrar. Said notice  
150 shall be published at least twice, at least 21 days prior to said  
151 public hearing in the major newspapers throughout the commonwealth.  
152 Notwithstanding any other provision of this or any other act, all  
153 vital records and indices eligible for transfer to the archives of the  
154 commonwealth and parallel records maintained by other custodians shall  
155 be available for public examination and abstraction of information as  
156 public records.

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

175

176 (c) The federal agency responsible for national vital statistics may  
177 be furnished such copies of data from the system of vital records and  
178 statistics as it may require for national statistics, provided such  
179 agency share in the cost of collecting, processing, and transmitting  
180 such data, and provided further that such data shall not be used for

181 any other than the statistical or research purposes provided for in  
182 the agreement between the federal agency and the state agency. Any  
183 additional uses of the data must be approved by the process as  
184 described in section 24B of chapter 111.

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

202 (e) All forms and procedures used in the issuance of certified and  
203 informational copies of vital records in the state shall be uniform  
204 and shall be provided by the state registrar. All such certified  
205 copies issued shall have security features that deter the document  
206 from being altered, counterfeited, duplicated or simulated without  
207 ready detection. Each such copy issued shall show the date of  
208 registration and registration number. Copies issued from records that  
209 have been amended shall include that date unless prohibited by section  
210 13 and a certificate of out of the commonwealth birth, marriage or  
211 death shall clearly state that the event did not occur in the  
212 commonwealth.

213



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

219 (g) A certified copy of a vital record, as defined by subsection (p)  
220 of section 1E or any part thereof issued in accordance with this  
221 section shall have the same force as the original and shall be prima  
222 facie evidence of the facts stated therein, provided that the  
223 evidentiary value of a delayed record of a vital event, or a record  
224 which has been amended, or a certificate of out of commonwealth birth,  
225 marriage or death shall be determined by the judicial or  
226 administrative body or official before whom the certificate is offered  
227 as evidence.

228

229 (h) Nothing in this section shall be construed to permit disclosure of  
230 information from the "Confidential information" form submitted to the  
231 commissioner of public health pursuant to the provisions of section  
232 24B of chapter 111 or information contained in a statistical record of  
233 divorce prepared pursuant to the provisions of section 6B of chapter  
234 208.

235

236 (i) No person, including a notary public, shall prepare or issue any  
237 certificate which purports to be an original, certified or  
238 informational copy, except as authorized in this chapter or  
239 regulations promulgated pursuant to section 4 of chapter 17. No  
240 person shall alter a certified copy or record referred to in sections  
241 2, 2A and 19 or use or reproduce such altered record. Whoever  
242 violates the provisions of this section shall be punished by a fine  
243 of not more than \$500.

244

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

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

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

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

261

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

264

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

274

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

278

279 **SECTION 10.** Said chapter 46 is hereby amended by striking out section  
280 16, as so appearing, and inserting in place thereof the following  
281 section:-

282

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

298

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

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

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

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

314

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

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

329

330 **SECTION 13.** Said chapter 46 is hereby further amended by striking out  
331 27, and inserting in place thereof the following section:

332

333 Section 27. A custodian refusing or neglecting to perform any duty  
334 required of him under this chapter shall be punished by a fine of not  
335 less than one hundred or not more than one thousand dollars per  
336 violation. Fines recovered for violation of this section shall be  
337 deposited into the state archives trust fund (0511-1100) and be

338 specifically designated for the automation, preservation and  
339 modernization of vital records administered by the archives.

340

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

344

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

348

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

352

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

355 Section 31. There will be a permanent special vital records and  
356 statistics committee to oversee the overall improvement including  
357 preservation and automation of the vital records and statistics  
358 system in the commonwealth, and shall be established no later than  
359 January 1, 2009. Physical preservation of the records shall  
360 constitute an integral part of any system-wide improvement plan.  
361 The permanent special vital records and statistics committee shall  
362 oversee and approve expenditures of any funds to pay for  
363 improvement. The committee shall consist of 19 members including  
364 the State Registrar who shall serve as chairman, the Archivist of  
365 the Commonwealth and the Supervisor of Public Records; all other  
366 members shall serve for three-year terms, with two reappointment  
367 terms only. The committee shall include two town clerks selected by

368 the Massachusetts Town Clerks' Association, at least one of whom  
369 shall be from a town with a hospital having a maternity unit; two  
370 city clerks or a city clerk and a registrar elected by the  
371 Massachusetts City Clerks' Association, at least one of whom shall  
372 be from a city with a hospital having a maternity unit; one member  
373 each selected by the New England Historic Genealogical Society, the  
374 Massachusetts Genealogical Council, the Massachusetts Historical  
375 Society, the Massachusetts Newspaper Publishers Association, the  
376 Massachusetts Medical Society, the Massachusetts Hospital  
377 Association, the Massachusetts Public Health Association, and the  
378 Massachusetts Funeral Directors Association. The commissioner of  
379 public health shall appoint four additional members, including a  
380 lawyer practicing family law and three members with expertise from  
381 each of the following areas: medical research, epidemiology, and  
382 electronic data collection and management. The reasonable travel  
383 expenses of members of the committee shall be paid out of  
384 department of health funds. The special vital records and  
385 statistics committee shall meet at least quarterly and twelve  
386 members shall constitute a quorum for the purpose of conducting  
387 business. This committee shall be required to develop an overall  
388 plan for the automation, improvement, and preservation of the  
389 statewide vital records and statistics system throughout the  
390 commonwealth. Such plan shall posit one, three, five and ten year  
391 goals and objectives for the automation, improvement and  
392 preservation of the system. All such plans for the automation of  
393 the system must concurrently consider the need for the preservation  
394 of the records so automated. Routine administration of expenditures  
395 from any fund related to such automation will be directed by a  
396 five-person executive subcommittee of the special vital records and  
397 statistics committee. The executive subcommittee shall be composed  
398 of the State Registrar, the Archivist of the Commonwealth, the  
399 Supervisor of Public Records, one town clerk and one city clerk or  
400 registrar. The town clerk or city clerk or registrar on the  
401 executive subcommittee shall be rotated annually between the  
402 representatives of the city and town clerk association

403 representatives on the special vital records and statistics  
404 committee. The special vital records and statistics committee shall  
405 be required to authorize all expenditures over the sum of \$1000.

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

412

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

422

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

433

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

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

459

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

464

465 The commissioner shall, as soon as is reasonably practicable, create  
466 an index to the records and maintain the birth, death and marriage



467 records in a manner appropriate for permanent, public records with  
468 indexes thereto and shall retain their custody until records and  
469 indexes are sent to the state archives.