

HOUSE BILL REPORT

ESSB 5332

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to vital statistics.

Brief Description: Concerning vital statistics.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Pedersen, Rivers, Wilson, C., Walsh, Randall, Cleveland and Liias; by request of Department of Health).

Brief History:

Committee Activity:

Health Care & Wellness: 3/22/19, 4/2/19 [DP].

Brief Summary of Engrossed Substitute Bill

- Establishes a new vital records chapter in Title 70.
- Limits access to certified copies of birth and death records to qualified applicants.
- Authorizes the Department of Health to amend specified vital records and transfer custody of the records to the state archives.
- Increases the fee for certified copies of vital records and the amount of the fee transferred to the State Death Investigations Account.
- Repeals the existing vital records chapter 70.58 RCW.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 11 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Davis, Jinkins, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Without recommendation. Signed by 2 members: Representatives Chambers and Harris.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Kim Weidenaar (786-7120).

Background:

Current Vital Statistics Program at the Department of Health.

Washington's Department of Health (Department) collects and stores all reports of specific vital life events in the state. These vital life events include births, deaths, fetal deaths, marriages, marriage and domestic partnership dissolutions, marriage and domestic partnership annulments, and legal separations. The Department retains permanent custody of all vital records in its statewide vital records system. The state registrar of vital statistics oversees the system, is responsible for the system's operations and integrity, develops uniform vital statistics reporting requirements and forms for local registrars across the state, and examines all certificates received from local registrars, county auditors, and clerks of the court.

Local registrars, subject to the approval of the state registrar, must appoint deputy registrars to administer the laws relating to vital statistics. Local registrars must supply forms of certificates as needed, and must examine each birth, death, and fetal birth certificate to ensure the certificates are complete and accurate. The local registrar must make a record of each birth, death, and fetal death certificate registered as required by the state registrar and must transmit the original record to the state registrar. Local registrars must be paid \$1 for each birth, death, or fetal death certificate registered in the local registrar's district, except for local health officers that are required by statute to serve as local registrars. The Department may authorize local registrars to access the statewide birth or death database and to issue certified copies from the databases.

To promote and maintain nationwide unity for vital statistics, certifications must include, at a minimum, the items recommended by the federal agency responsible for national vital statistics, including social security numbers. All vital records must contain all required information in order to be correct and complete.

Birth Certificates.

All births that occur in Washington must be immediately registered in the district where the birth occurred. Within 10 days of the birth of any child, the attending physician, midwife, or his or her agent must fill out a certificate of birth and file it together with the parent's Social Security numbers with the state registrar. The state registrar must make birth certificates, the parent's Social Security numbers, and acknowledgements of paternity available to the Department of Social and Health Services, Division of Child Support. When no alleged father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she desires and the father must be listed as "none named."

The State Board of Health may require additional information relevant to birth, which must be placed in the confidential section of the birth certificate and not used for certification. Information in the confidential section of a birth certificate or fetal death certificate may only be included in a certified copy to a member of the public pursuant to a court order or to the individual who is the subject of the birth certificate. Confidential information provided to the individual who is subject to the birth certificate must be limited to the individual and not

include confidential information about the parents. The issuer of a certified birth certificate must include information about the advisability and process for setting up a security freeze.

To obtain a certified copy of a birth certificate a person must pay the required fee and provide the child's full name, date of birth, place of birth, father's full name, and the mother's full maiden name.

If an adoption decree has been entered for a child born in state, a certified copy of the decree of adoption must be recorded and, upon request, a certificate of birth with the new name and adoptive parents must be issued without reference to the adoption. The original birth certificate must be retained as part of the record. If an adoption decree has been entered for a child born outside of the United States and its territories, a certified copy of the decree and evidence of the child's birth date and place must be recorded. A certificate of birth must be issued upon request with the child's new name and adoptive parents. The birth certificate may not have reference to the adoption, and unless a court orders otherwise, the birth certificate must have the same appearance as if the child was born in state.

Department rules allow an adult to apply to change the sex designation on a birth certificate. A parent or guardian may apply to change the sex designation on the minor's birth certificate if a health care provider submits a signed attestation that the change is consistent with the minor's identity. The sex designation may be non-binary.

Death Certificates.

A certificate of every death or fetal death must be filed with the local registrar of the district where the death occurred within three business days after the occurrence is known, or if the place of death is not known, then within one business day of the human remains being found. A certificate must be filed before the interment or other disposition of human remains. The funeral director or person having the right to control the disposition of human remains must file the certificate of death or fetal death. He or she must present the certificate to the health care provider last in attendance of the deceased, or to the health officer, medical examiner, coroner, or prosecuting attorney if there was no medical assistance, who must certify the cause of death and approve the certificate within two business days. A person may not inter, deposit, cremate, or otherwise dispose of, or disinter or remove from one district to another, or hold for more than three business days after death, the human remains of any person, without obtaining a permit for the burial, disinterment, or removal of the human remains.

Death certificates must include domestic partnership status and the surviving partner's information to the same extent the information is recorded for marital status and a surviving spouse.

A county coroner, medical examiner, or prosecuting attorney may file a certificate of presumed death when there is sufficient circumstantial evidence to indicate that a person has in fact died in the county and that it is unlikely the body will be recovered.

Release of Copies.

The Department must adopt rules providing for the release of paper or electronic copies of vital requests that include adequate standards for security and confidentiality and prevent fraudulent use of records. The Department may disclose information that may identify any

person named in any birth certificate for research purposes if subject to a confidentiality agreement and other requirements.

Fees.

The Department and local registrars must charge a fee of \$20 for certified copies and for copies or information provided for research, statistical, or administrative purposes and \$8 for a search if no copy is made. Eight dollars of each fee imposed for certified copies must be held by the State Treasurer in the Death Investigations Account.

Enforcement.

Local registrars are charged with the strict and thorough enforcement of the vital statistics chapter in their districts. Local registrars must immediately report any violations to the state registrar. The state registrar has authority to investigate cases of irregularity or violation of law, which upon request, local registrars must assist in.

Every person who violates or willfully fails, neglects, or refuses to comply with the provisions of the vital records chapter is guilty of a misdemeanor. Second offenses must be punished by a fine of not less than \$25, and for a third and each subsequent offense a fine of not less than \$50 or more than \$250 or by imprisonment of not more than 90 days or both the fine and imprisonment. Every person who willfully furnishes false information or who makes a false statement to establish a vital record or obtain a certification is guilty of a gross misdemeanor.

Centers for Disease Control and Prevention Model Vital Statistics Act.

The federal Centers for Disease Control and Prevention's National Center for Health Statistics (NCHS) operates and maintains the national vital statistics system as the official source for national vital statistics data. The NCHS compiles, analyzes, and disseminates vital statistics from all 50 states, New York City, the District of Columbia, and five United States territories. The NCHS provides data on health indicators to support public health policy work at the national, state, and local levels. For example, the system provides data on risk factors for adverse pregnancy outcomes, life expectancy, and leading causes of death. The NCHS develops a model state vital statistics law and regulations to promote uniformity among the states in the definitions, registration practices, data disclosure, and other functions of state vital statistics systems. The NCHS proposed its most recent version in 2011, with the goal of addressing system security, the electronic information environment, continuity of operations planning, data confidentiality and disclosure, and changes to the scope of vital statistics data.

Summary of Bill:

Vital Records System.

A new vital records chapter in Title 70 is created, which follows the framework of the 2011 Centers for Disease Control and Prevention's National Center for Health Statistics model state vital statistics law.

The State Register.

The Secretary of Health (Secretary) is in charge of the state vital records and must adopt rules to ensure implementation of the vital records system. The Secretary may adopt rules to set fees for services related to the vital records system. The State Board of Health (Board) may adopt, amend, or repeal rules requiring statistical information related to birth and manner of delivery.

The Secretary must appoint the state registrar. The state registrar is responsible for administering and enforcing the provisions of the vital records chapter created by the act.

The state register must:

- administer the operation and maintenance of the vital records system to preserve the security, integrity, and confidentiality of the state vital records and statistics;
- prescribe the forms and information needed for vital records, reports, and certifications;
- prescribe the means for data transmission;
- review reports to determine if additional information is necessary to register the report and require submission of any missing information;
- deny or revoke registration of any report or application for reasons allowed under the act;
- prepare and publish vital statistics;
- prepare a plan to provide the continuity of operations of the vital records systems in the event of emergency;
- take measures to prevent the fraudulent use of vital records; and
- perform data quality assurance and record matching activities.

The state registrar may:

- authorize users of the vital records system to access specific components of the system based on their official duties;
- require authorized users to acknowledge having read and understood security procedures and penalties;
- revoke user access to the system if the user no longer needs access or violates security procedures;
- ensure state birth records are marked as deceased upon receipt of death records;
- validate data provided in reports filed for registration; and
- periodically test and audit the vital records system to detect fraud.

If fraud is suspected, the state registrar may provide copies of the evidence to the appropriate authorities for further investigation.

Forms prescribed by the state registrar must be used in reporting, registering, and issuing certifications and informational copies and preserving vital records. Reports must contain all data required for registration. A report is not complete and correct if required information is not supplied or satisfactorily accounted for the omission of required items. A person may not prepare or issue any vital record that purports to be an original, certification of, or copy of a vital record except as authorized. All certifications of vital records must include security features to deter alteration, counterfeit, or simulation without ready detection. All informational copies must indicate that they cannot be used for legal purposes on their face.

The state registrar may appoint a deputy state registrar who has the same authority as that granted to the state registrar. The state registrar may also delegate functions and duties to the employees of the Department of Health (Department).

The local health officer of each health jurisdiction must serve as the local registrar under the direction and control of the state registrar. Subject to the approval of the state registrar, each local registrar must appoint deputy registrars. The state registrar must approve or deny the appointment in writing prior to the deputy registrar's assumption of duties. The Board may remove the local health officer as local registrar upon finding evidence of neglect of duties.

The local registrar must, on a monthly basis, submit to the state registrar a summary of the number of certifications and informational copies issued, an accounting of fees, and a log of all paper certifications issued and destroyed.

Registration of Live Births.

A facility representative or midwife must prepare and submit a report of birth for each live birth attended to the Department within 10 days. The facility representative or midwife must include all data and evidence required to establish the facts of a live birth, including all parentage information and all statistical information; ensure the accuracy of the data; and attest the child was born alive at the date, time, and place stated on the report.

If a live birth occurs outside a facility and not en route to a facility, the report must be filed by the health care provider in attendance of the live birth or the facility representative where the individual who gave birth and child are examined, if the exam happens within 10 days of the birth. The report of live birth must be completed and signed by a person with knowledge of the facts of the birth other than the individual who gave birth to the child. The affidavit attesting to the facts of the birth must be completed and signed by the individual who gave birth, other parent, or other person with knowledge of the facts of the birth. The report and affidavit may not be signed by the same person.

If a live birth occurs on a moving conveyance within the United States, and the child is first removed from the conveyance in state, that place must be registered as the place of live birth. If a live birth occurs on a moving conveyance while in international waters or airspace, or in a foreign country or its airspace, and the child is first removed from the conveyance in state, the live birth must be registered in the state, but the report should state the actual place of live birth if determined.

The facility representative or midwife must provide information and required forms provided by the Department of Social and Health Services and the state registrar to the parents of a child about establishing parentage.

If a child is found for whom there is no known record of live birth on file, the birth must be reported within ten days of the child being found. If the child is identified at a later date and another live birth record is found, the second record must be voided.

An individual requesting a delayed report of live birth must submit a completed and signed delayed report of live birth. The report must include documentary evidence establishing the facts of the live birth, any applicable fees, be signed and sworn under penalty of perjury by

the individual whose live birth is to be registered if the individual is an adult, or by the parent or legal guardian if the individual is not an adult. An individual requiring the delayed report of a live birth of an individual under 12 years of age must establish the facts concerning full name, date, and place of live birth. For an individual 12 years of age or older the full name prior to first marriage of the individual who gave birth must also be established, and each piece of documentary evidence must have been established at least five years before the application date.

Each piece of documentary evidence must come from a unique source and be an original record or exact copy. The state registrar may verify the authenticity and accuracy of the documentary evidence provided. Upon approval of the delayed report, the state registrar must register the live birth and include a description of the evidence used to establish the delayed birth record.

If the state registrar denies a delayed report, the individual requesting the delayed report may petition a court of competent jurisdiction for an order establishing a record of the name, date, place, and parentage of the individual whose live birth is to be registered. If the court finds by clear and convincing evidence that the individual seeking a delayed report of live birth was born in state, the court must issue an order requiring the state registrar to establish a delayed record of live birth.

Registration of Death.

For each death in Washington, a complete report of death must be filed with the local registrar in the local health jurisdiction where the death occurred. The report must be filed within five days after the death or finding the remains and before final disposition of the human remains. An approximate date of death may be used if unknown, however, if a date cannot be approximated, the date of death must be the date the remains were found.

If a report of death is completed and filed in accordance with the requirements, the local registrar must issue a burial-transit permit or disinterment permit. A person may not provide for final disposition of human remains until the report of death has been registered and a burial-transit permit has been obtained. The funeral director, funeral establishment, or person having the right to control the disposition of remains must deliver the burial-transit permit to the person in charge of the funeral establishment, crematory, or cemetery, or attach the permit to the container holding the remains when shipped by transportation company. A person may not bring into, or transport within, Washington; inter, deposit in a vault, grave, or tomb; or cremate or otherwise dispose of the human remains of any person whose death occurred outside this state, unless the human remains are accompanied by a burial-transit permit or other document issued in accordance with the laws in force where the death occurred.

Registration of Marriage.

The state registrar must register reports of marriage received from a state county auditor. The state registrar must register reports of legal separation, dissolution of marriage, dissolution of domestic partnership, declaration of invalidity of marriage, and declaration of invalidity of domestic partnership from the clerk of each state superior court.

Adoption.

The state registrar must amend the birth record of a child born in state to reflect an adoption decree upon receiving an application to register an adoption, a certified copy of the adoption decree, and applicable fees. The state registrar must amend the live birth record of a child born in state to reflect an adoption report from another other state or territory of the United States or the District of Columbia upon receiving a certified copy of the adoption report and applicable fees. The state registrar must register the birth of a child born outside the United States and its territories and adopted January 1, 1985, in a Washington State court of competent jurisdiction. If the child was adopted before January 1, 1985, documentary evidence as to the child's birthdate and birthplace must be provided. The state registrar must retain and seal the original birth record. The sealed record is not subject to public inspection or copying pursuant to the public disclosure act and may only be released as allowed by RCW 26.33.345, which provides for the release of limited information regarding an adopted child's birth parents in certain situations.

Amending Vital Records.

The state registrar may amend certification items on state vital records. The state registrar may amend a birth record to change the name of a person born in state:

- upon receipt of a complete and signed amendment application with applicable fees and a certified copy of a court order including the name at birth and the new name to be listed on the amended birth record; or
- as authorized under the federal Witness Relocation and Protection Act.

The state register must seal the original birth record for birth records amended pursuant to the federal Witness Relocation and Protection Act.

The state may amend a vital record to change the sex designation of the subject of a record, and the state registrar must include a non-binary option for sex designation on the record.

State Archives.

The state registrar must develop and implement a preservation management policy for the vital records system for permanent preservation while in the custody of the state registrar.

The state registrar must transfer custody of vital records to the state archives once:

- 100 years have elapsed after the date of live birth or fetal death;
- 25 years have elapsed after the date of death; and
- 25 years have elapsed after the date of marriage; divorce; dissolution of marriage or domestic partnership; declaration of invalidity of marriage or domestic partnership; or legal separation.

The state archives may provide noncertified copies of original vital records in the custody of the state archives to the public. The state archives may not charge the department fee or pass along costs to transfer or maintain vital records to state archives, other than those charged through the central services billing model for the cost of operating the state archives, or alter, amend, or delete certification items on the vital records. Sealed records must remain sealed and in the custody of the Department.

Disclosure.

The Department may release vital records to government agencies with the state registrar's approval and through a signed data-sharing agreement that prohibits redisclosure.

Government agencies may access records electronically. The use of records must be limited to the information needed for official business. The Department must make available to the Department of Social and Health Services, Division of Child Support, the social security numbers of parents listed on birth records as required for establishing child support. The Department may release vital records to the National Center for Health Statistic and may release copies of vital records through an inter-jurisdictional exchange agreement to offices of vital records in other states, territories, the District of Columbia, New York City, or neighboring countries for individuals connected to those jurisdictions.

The Department may release birth and fetal death record data that includes direct identifiers for research with approval of the state Institutional Review Board and a signed confidentiality agreement and for non-research public health purposes to a government agency with a signed data-sharing agreement. The Department may release birth and fetal death data that contains only indirect identifiers and death record data to anyone upon receipt of a signed data-sharing agreement. The data sharing agreements for birth and fetal death data must prohibit redisclosure of any identifiers without explicit permission, and must prohibit the recipient of any data from contacting or attempting to contact any person or person's family included in the data set without explicit permission from the department.

Vital records, reports, supporting documentation, vital statistics, and data are not subject to public inspection and copying under the Public Records Act. The county coroner, medical examiner, or prosecuting attorney having jurisdiction may release information contained in a report of death to the media and general public.

Certifications and Informational Copies.

A certification is considered for all purposes the same as the original vital record and is prima facie evidence of the facts stated therein, but an informational copy does not.

Registrars must issue certifications registered in the vital records system upon a qualified applicant submitting all required information and documentation. A person requesting a certification of birth, death, or fetal death, must submit an application, identity documentation, evidence of eligibility, and the applicable fee. A registrar may only release the certification of birth to:

- the subject of the record or the subject's spouse or domestic partner, child, parent, stepparent, stepchild, sibling, grandparent, great grandparent, grandchild, legal guardian, legal representative, or authorized representative; or
- a government agency or court.

If a certification of birth that was delayed in registration, the certification must be marked as delayed and include a description of the evidence or court order number used to establish the record. If a certification of a birth record for a person adopted is issued, the certification must not include reference to the adoption.

A registrar may only release the certification of death to:

- the decedent's spouse or domestic partner, child, parent, stepparent, stepchild, sibling, grandparent, great grandparent, grandchild, legal guardian immediately prior to death, legal representative, authorized representative, or next of kin;

- a funeral director, funeral establishment, or the person having the right to control disposition of the human remains, within 12 months of the date of death; or
- a government agency or court.

A registrar may issue a short form death certificate that does not display information relating the cause and manner of death to those listed above as well as: a title insurer or title insurance agent handling a transaction involving real property in which the decedent held some right, title, or interest; or a person that demonstrates that the certified copy is necessary for the determination related to the death or the protection of personal property right related to the death. The registrar must review the identity documentation and evidence of eligibility to determine if the person requesting the certification is a qualified applicant.

A certification of birth or fetal death that includes information from the confidential section of the record, may not be issued, unless it is released to the individual who is the subject of the record or to a member of the public pursuant to a court order.

A person requesting a certification of marriage, or dissolution of marriage or domestic partnership must submit an application and pay the applicable fee.

Information copies must contain only the information allowed by rule and must be issued to anyone who has submitted an application and paid the applicable fee. "Informational copy" is defined as a birth or death record issued from the vital records system, containing all or part of the information contained in the original vital record from which the information is derived, and indicating it cannot be used for legal purposes on its face.

The Department may issue verifications of information contained on birth or death records when a verification is requested by a government agency, insurance company, hospital, or any other organization in the conduct of its official duties for fraud prevention and good governance purposes as determined by the Department.

Adjudication.

The Department must give written notice to an applicant when it denies or revokes registration of a report or application or withholds issuance of a certification. The notice must state the reason for the action and be served on the applicant. An applicant has the right to an adjudicative proceeding, which is governed by the Administrative Procedure Act.

Fees.

The Department and local registrars must charge a fee of \$25 for a certification or informational copy of a vital record or for a search for which no record was identified. A fee may not be charged for certification of a vital record for use in a claim for compensation or pension pending before the Veterans Administration, the death of a sex offender, for use by law enforcement, or the death of any offender, requested by a county clerk or court in the state for purposes of extinguishing the offender's legal financial obligation. The Department may not charge a fee for issuing a birth certification for a homeless person.

A portion of the \$25 fee must be transmitted to the state treasurer on a monthly basis. For each fee turned over to the state treasurer, the state treasurer must:

- pay the Department \$2 of each fee for birth certifications and informational copies and first copies of death certifications and informational copies;
- pay the Department \$9 of each fee for additional death certificates and informational copies; and
- hold \$11 of each fee in the death investigations account.

Enforcement.

Local registrars are charged with the strict and thorough enforcement of the requirements in their health jurisdictions. Local registrars must immediately report observed and suspected violations to the state registrar and aid the state registrar in investigations. The state registrar may investigate cases of irregularities or violations of the requirements, and may report violations to the appropriate prosecuting attorney.

Every person who violates or willfully fails, neglects, or refuses to comply with the provisions of the act is guilty of a misdemeanor. Every person who willfully furnishes false information or who makes a false statement to establish a vital record or obtain a certification is guilty of a gross misdemeanor.

Applicability.

The provisions of the act apply to all causes of action commenced on or after the effective date of the act regardless of when the cause of action arose. The requirements of the act apply to all records covered by the act that are held by the Department or state registrar, regardless of when the record was created or modified.

The Secretary and the Board may adopt rules as authorized by the act to ensure that the sections in the Act are implemented on their effective dates.

The existing vital records chapter 70.58 RCW is repealed. Terms are updated and references are corrected throughout related statutes.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect January 1, 2021, except for sections 3 and 43, relating to rulemaking authority for the Secretary of Health and the State Board of Health, which take effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill arose because of frustration with the 1950s vital records statutes that continue to require parentage information from mothers and fathers, because not all families look that way today. This bill matches the vital records language with the Uniform Parentage Act, and through work with the Department of Health (DOH) updates the whole Vital Records chapter. One of the most important changes in the bill is the bifurcation creating both certified copies of vital records and information copies.

This bill is intended to modernize the state vital records system. Some of the provisions are more than 100 years old, are out of date, and cannot support the fully electronic system. This bill is long overdue and updates severely outdated language. The framework of the bill is based upon a model law. It creates a short form that does not display cause and manner of death, and informational copies that support vital records research. The DOH routinely receives requests to limit access to the cause and manner of death. This bill provides reasonable and prudent access to vital records information.

There are many times a death certificate is needed during probate. Under House Bill 1799 the decedent's parents would not be listed, but that can be incredibly important as the parents may need to be found and so this version is supported.

There had been some concern from genealogists and other about access to informational copies and other information, but some changes have been made to address these concerns. Newspapers often provide birth and death notices, but they need to be able to verify people did exist and so access to vital records is necessary. Medical genealogists help people answer medical questions and need to access these records. The changes made to the bill support this access.

This bill increases the fee that will be deposited into the death investigations account, which will help with autopsy reimbursement. This will free up funds to allow counties to outsource toxicology, which can speed up results drastically providing law enforcement and families with information and answers much quicker. Part of the fee increase will go toward training for coroners. The plan is to create a forensic academy for coroners and increase the training from 40 hours to over 200 hours, which will allow the coroners to become certified death investigators.

Local health jurisdictions provide many vital records certificates through same day service as there are many reasons the public may need to obtain a birth or death certificate. Local health jurisdictions have not seen an increase in fees in 15 years and the existing fees do not cover the costs. The increase will help close the budget gap.

(Opposed) None.

Persons Testifying: Senator Pedersen, prime sponsor; Tim Davidson and Dan Blasdel, Washington Association of Coroners and Medical Examiners; Stuart Halsan, Washington Land Title Association; Jean Remsbecker, Department of Health; Jaime Bodden, Washington Association of Local Public Health Officials; Robbie Gaskin, Public Health Seattle King County; and Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.