

SENATE BILL REPORT

ESSB 5332

As Passed Senate, March 4, 2019

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: Law & Justice: 1/31/19, 2/07/19 [DPS-WM, w/oRec].

Ways & Means: 2/19/19, 2/25/19 [DPS (LAW), w/oRec].

Floor Activity:

Passed Senate: 3/04/19, 33-15.

Brief Summary of Engrossed First Substitute Bill

- 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 them to the state archives.
- Updates references and definitions to reflect the Uniform Parentage Act and electronic registration.
- Allows the state archives to recover costs through its central services billing model.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5332 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

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: Melissa Burke-Cain (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Honeyford, Assistant Ranking Member, Capital; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wilson, L..

Minority Report: That it be referred without recommendation.

Signed by Senators Brown, Assistant Ranking Member, Operating; Bailey, Becker and Schoesler.

Staff: Julie Murray (786-7711)

Background: History of Recording Vital Statistics. Before 1900, maintaining vital records was a state and local responsibility. Before 1900, the United States Census Bureau developed the first standardized reporting form for vital statistics, known as the U.S. standard certificate of death. The census bureau recommended all local vital records registrars to adopt the form by 1900. By 1902, federal legislation directed the Census Bureau to collect copies of records filed in vital statistics offices of those states and cities having adequate death registration systems.

Beginning in 1891, Washington State's laws required each county to keep vital records. In 1907, the state assumed responsibility for collecting birth and death records. In 1968, the state assumed responsibility for collecting marriage and divorce records. Depending on the date of a vital record, the records may be located in different places. The Washington State Library, under the Office of the Secretary of State, maintains a web page to assist persons searching for genealogical records.

Current Vital Statistics Program at the Department of Health. Washington's Department of Health (DOH) collects and stores all reports of specific vital life events in the state. These vital life events are births, deaths, fetal deaths, marriages, marriage and domestic partnership dissolutions, marriage and domestic partnership annulments, and legal separations. Under current law, DOH retains permanent custody of all vital records in its statewide vital records system.

The state registrar of vital statistics oversees the system and is responsible for the system's operations and integrity. The state registrar also develops uniform vital statistics reporting requirements and forms for local registrars across the state.

Access to Birth and Death Records. Washington's vital records certificates contain all the information required by the federal Centers for Disease Control and Prevention's National Center for Health Statistics (NCHS), including social security numbers. Under Washington's current vital statistics law, the state Board of Health may require additional information in a confidential section of the birth certificate. The confidential section is not publicly available unless (1) a member of the public obtains a court order, or (2) the person who is the birth

certificate's subject, where it is limited to the information about the child, but not the child's parents. The state has both a long form and a short form death certificate. The short form death certificate and informational copies of death certificates are not publicly available.

DOH releases the long form death certificate to anyone who has the decedent's name, date and county of death. The long form includes such information as the decedent's social security number, residence and address, marital status and spouse, cause and manner of death. DOH sends a monthly death index to the state archives. The death index contains the decedent's full name, county of death, county of residence, sex, age, and date of death. DOH sends its vital statistics data to NCHS. Contracts between NCHS and each jurisdiction's vital records office set mutual responsibilities, uniform standards and procedures for reporting vital statistics.

Centers for Disease Control and Prevention Model Vital Statistics Act. NCHS operates and maintains the national vital statistics system as the official source for national vital statistics data. NCHS compiles, analyzes, and disseminates vital statistics from all 50 states, New York City, the District of Columbia, and five United States territories. 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.

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 federal government developed its first model act in 1907 and produced revised versions in 1941, 1959, 1977, and 1992. NCHS proposed its most recent version in 2011. The National Association for Public Health Statistics and Information Systems endorsed the 2011 model act. NCHS's purpose in developing its 2011 version is to address system security, the electronic information environment, continuity of operations planning, data confidentiality and disclosure, and changes to the scope of vital statistics data, for example assisted reproduction and same-sex marriage. The 2011 NCHS model state vital statistics law provided the framework for this proposed vital statistics bill.

Summary of Engrossed First Substitute Bill: DOH may only release a certified death certificate to a qualified applicant. Qualified applicants include 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 with a notarized statement from a qualified applicant, next of kin, funeral director within 12 months of the date of death, or a government agency or court for its official duties. A short form death certificate does not display information related to cause and manner of death. The DOH may release a short form certificate to a qualified applicant. Additionally, DOH may release a short form certificate to a title insurer or title insurance agent handling a real property transaction involving the decedent, or a person who shows the short form is necessary for a determination related to the death or the protection of a personal or property right related to the death.

DOH may only release a birth certificate 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 or authorized representative, or a government agency or court for official duties.

Informational copies of vital records are available to the public. Informational copies only contain the information allowed by rule. Informational copies are derived from the original document but cannot be used for legal purposes.

Access to vital records is not governed by the Public Records Act, but is governed under this vital records chapter in the RCW. DOH is authorized to investigate fraud including periodic testing and auditing of the vital records system to detect fraud. The DOH will provide adjudicative proceedings for certain adverse actions.

The state registrar must transfer custody of records to the state archives. The transfer applies to:

- birth records, 100 years after the birth date;
- death records, 25 years after the death date; and
- marriage, divorce, dissolution of marriage or domestic partnership, declaration of invalidity of marriage or domestic partnership, or legal separation, 25 years after the event.

The state archives may provide noncertified copies of original vital records in its custody to the public. The state archives may charge for the cost of operating the state archives through the central services billing model. Sealed records must remain sealed and in DOH custody. DOH may retain records for the purpose of providing certified copies.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Law & Justice): *The committee recommended a different version of the bill than what was heard.* PRO: The coroners need this bill because it provides a fee increase for death investigation accounts. Because of the limited funding we have for training medical examiners, coroners, and their staff the forensic investigation council has not been able to update its training curriculum since the 1990s. The training no longer meets national accreditation standards. The autopsy costs and laboratory fees including those for toxicology laboratories are all increasing. The coroners' and medical examiners' want to achieve the goal that all the work is done by qualified, accredited professionals. The fee increase is important for rural counties. Our investigators must have regular continuing education to maintain their accreditations. Right now only 40 percent of staff attend the continuing education training. The state association and counties have a limited capacity for training. The fee increase will allow more staff members to become certified or retain certification. We need to update the training so that the staff members we train are qualified to go out on death investigations on their own. No one is ready to go out alone after they finish the training now. Because our work is not always part of a criminal

investigation our laboratory specimens are sent to the state toxicology lab. In one case our office has been waiting a long time for toxicology results. Because of the delayed results the surviving family cannot go forward to obtain the death benefits the family is entitled to receive. This bill modernizes the state law. The state vital records system is fully electronic. The bill gives DOH authority to support a fully electronic system including fraud protection activities. Fraud prevention includes limiting certified records to persons who have legal relationships with the record's subject. The bill allows for informational copies of birth records and death records to remain publicly available as they are now, except for the cause of death. The purpose of the change is to protect certified copies from misuse. DOH will still provide annual indices to the archives, and to private institutions and other agencies. We intend to provide informational copies of death, marriage and divorce records. DOH has worked on this bill for four to five years. The rulemaking authority is broad, but necessary because there is a lot of detail that goes into rule. DOH will follow the public rulemaking requirements. From the counties' viewpoint this update to the law is long overdue. King County is the busiest local vital records office in the state. Even though records may be obtained on line there is still a strong demand for in-person, same day certified copies so that persons may apply for social security, enroll in school, or obtain passports. The vital records, such as the certified birth certificate, are still the base document for proving identity. The local fee increase in the bill will improve service delivery and help monitor drug overdose deaths in real time. This bill is the result of longstanding stakeholder discussions. The bill provides for bifurcation of certified versus informational copies; this change is long overdue. With the certified copies people can, and do, create false identities. From the media's perspective we understand the family sensitivity to having the cause of death publicly available. As media, we would prefer it if the cause of death would be available, but a balance needs to be made between privacy and availability and we understand that.

CON: I have taken classes on genealogical research. As a member of the genealogical societies, I am able to put the skills to use right away while working on family genealogy because everyone has a family. We need access to death records to better understand our family's story. The bill does not address on line access to records. I have family in Oklahoma who want to work on our genealogy. Online access is very important and should be available at remote sites; not everyone is able to travel to Olympia to research family genealogy. Genetic genealogists have an important role in identifying genetic issues in families. Families want to know about these potential issues so that they are able to identify medical investigations that may prevent a disease or allow someone to recognize a disease at an early time.

OTHER: On behalf of the many professional and hobby genealogists across the state, access to vital records is very important to our genealogy work. Our organization supports open records, but we understand the bill attempts to address the genealogists' needs. Our concern is that the definition of qualified applicant in the bill is too narrow. We would like to see other relatives included who are not direct line family members such as step children, half children, and first cousins. The problem we see with the informational copy of the death certificate is without the cause of death information, the certificate is not as useful for forensic and genetic genealogists. I hope that we can work to resolve these concerns.

Persons Testifying (Law & Justice): PRO: Senator Jamie Pedersen, Prime Sponsor; Dr. Timothy Davidson, Cowlitz County Coroner and Washington Association of Coroners and

Medical Examiners (WACME) President; Warren McLeod, Lewis County Coroner; Dan Blasdel, WACME; Tesia Forbes, King County; Jean Remsbecker, DOH/State Registrar; Rowland Thompson, Allied Daily Newspapers of Washington.

CON: Diane Huckabay, citizen.

OTHER: Virginia Majewski, Washington State Genealogical Society.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: We largely resolved the concerns from the genealogy community in the substitute bill, but there are still some with concerns. The basic purpose of the bill is to modernize the vital records statute. It has been many years since it was updated; things have gotten badly out of date and out of sync with other statutes, particularly family law. People will still have access to birth and death information. However, not everyone with a name, day of death, and county of death will not be able to access certified copies of death certificates. They will get access the informational copies, which carry a significant amount of information, but not a certified copy for legal purposes. Unrestricted access to certified copies creates a greater possibility that someone could steal your identity.

I support section 24 to include a \$3 fee increase, which is much needed by the county coroners and medical examiner's offices statewide. Basic training for coroners has not been updated since the early 1990's and no longer meets the national accreditation standards. We need more persons trained; we need to use expensive private labs due to the backlog. Timely death investigations are crucial to surviving family members awaiting the results of investigations to access to insurance funds or other survivor benefits.

Persons Testifying (Ways & Means): PRO: Senator Jamie Pedersen, Prime Sponsor; Warren McLeod, Lewis County Coroner and Washington Association of Coroners and Medical Examiners.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.