

**SENATE . . . . . No. 822**

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**The Commonwealth of Massachusetts**

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:

NAME:	DISTRICT/ADDRESS:
Thomas P. Kennedy	Second Plymouth and Bristol
Michael Brady	9th Plymouth

# 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, as appearing in the 2004 Official  
2 Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the  
3 following paragraph:- There shall also be in the department a registry of vital records and statistics which  
4 may be located within such bureau as the commissioner deems to be appropriate. The commissioner shall  
5 appoint a state registrar, subject to approval of the public health council. The registrar shall be subject to  
6 chapter 31 and shall, under the supervision of the commissioner, enforce all laws relative to the registry  
7 and return of births, marriages, deaths and adjudications and may prosecute in the name of the  
8 commonwealth any violations thereof. The special vital records and statistics committee established  
9 under section 31 of chapter 46, shall promulgate rules and regulations relative to the registry and return  
10 of birth, marriages and deaths including but not limited to the operation of the registry of vital statistics  
11 and to insure the historical access to the records. A public hearing must be held for each regulation  
12 proposed and the public must be notified at least 21 days prior to any public hearing pursuant to section 2  
13 of chapter 30A by publishing such notice at least twice in major newspapers throughout the  
14 Commonwealth. In addition to compliance with section 2 of chapter 30A, the commissioner shall send  
15 notice of such hearing to all city and town clerks; the Secretary of the Commonwealth; the Archivist of  
16 the Commonwealth; the executive director of the New England Historic Genealogical Society; the

17 Director of the Massachusetts Historical Society; the directors of the Massachusetts Hospital  
18 Association, the Massachusetts Medical Society, the Massachusetts Funeral Directors Association, the  
19 Director of Civil Records for the Massachusetts Genealogical Council; and the Executive Director of the  
20 Massachusetts Newspaper Publishers Association.

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

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

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

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

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

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

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

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

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

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

47 SECTION 4. Said chapter 46 is hereby amended by striking out section 2, as so appearing, and  
48 inserting in place thereof the following section: Section 2. To facilitate use, the vital records and  
49 statistics system shall incorporate an index. The state registrar and town clerks shall be responsible for  
50 preparing an index of the records under their jurisdiction. If vital records are automated into a data  
51 base, said data base will fulfill the requirements of such an index. The state registrar shall make such  
52 automated data base available to the custodians of vital records as defined by subsection (c) of section  
53 IE, and consistent with restrictions expressed in subsection (2) and section 2A and in section 13. At  
54 least semiannually, an updated paper copy of an index on archival paper will be prepared from the  
55 automated data base by the town clerks and state registrar. The most recent version of the paper index  
56 shall replace all previous versions.

57 Custodians are authorized to reproduce vital records, returns and reports required under this chapter  
58 for transmission to other custodians, and further for the purpose of preserving the original copies of  
59 vital records and reports. Such reproductions may be prepared in a typewritten, photographic,  
60 micrographic or electronic media or digital media consistent with the regulations of the supervisor  
61 of public records. Any automated database system for electronic storage, reproduction or

62 examination of vital records must also be approved by the special vital records and statistics  
63 committee and meet any additional regulations of the supervisor of public records and any  
64 regulations promulgated pursuant to section 4 of chapter 17. Such reproductions shall have the full  
65 force of the original records. The paper records from which such reproductions have been made  
66 shall be retained as permanent records by the custodian required to maintain such vital records.

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

78 SECTION 5. Said chapter 46 is hereby amended by striking out section 2A, as so appearing,  
79 and inserting in place thereof the following section:- Section 2A.(a) On January 1, 2009, and upon  
80 mutual arrangement by the archivist of the commonwealth and the state registrar for an orderly transfer  
81 within three years, all records and adjudications of paternity and indices pertaining to births through  
82 December 31, 1930, any amendments to births with indices filed prior to December 31, 1930, records  
83 and indices of marriages and deaths filed prior to December 31, 1965, and any amendments including  
84 indices to marriages and deaths filed prior to December 31, 1965, then in the custody of the state  
85 registrar, shall be transferred to the custody of the archives of the commonwealth. Until such time as

86 the physical transfer occurs, these records and indices remaining at the state registry shall be public  
87 records. Subsequently, all records, indices, and amendments of births, adjudications of paternity,  
88 marriages and deaths shall be transferred from the state registry to the archives on the basis of five year  
89 increments, consistent with chapter 374 acts of 1983, commencing with January 1, 2011. Funds shall  
90 be appropriated from the general fund yearly for the state archives to pay the associated costs of  
91 proper accession, care and preservation of the transferred records.

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

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

106 (b) Custodians, upon receipt of a written request, shall allow the public examination of vital records and  
107 their indices, and the abstraction of information from vital records and their indices. Indices are not to be  
108 excluded from examination. Such examination may be from an automated data base. Custodians, upon the  
109 receipt of a written request, shall issue to any person an informational copy. Excluded from such

110 examination and issuance of informational copies are records and returns of births of abnormal sex, and  
111 fetal deaths for a gestational period of at least twenty weeks, regardless of the custodian issuing or  
112 allowing such examination. It shall be unlawful for any custodian to permit inspection of, or to disclose  
113 information contained in such excluded records or to copy or issue a copy of all or any part of such record  
114 except upon receipt of a proper judicial order issued by a Massachusetts court. The restrictions on the  
115 examination and issuance of copies of records contained in this chapter shall not apply to those records  
116 eligible for transfer to the archives of the commonwealth, as defined by subsection (a) and parallel  
117 records maintained by other custodians.

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

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

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

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

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

151 (h) Nothing in this section shall be construed to permit disclosure of information from the "Confidential  
152 information" form submitted to the commissioner of public health pursuant to the provisions of section  
153 24B of chapter 111 or information contained in a statistical record of divorce prepared pursuant to the  
154 provisions of section 6B of chapter 208.

155 (i) No person, including a notary public, shall prepare or issue any certificate which purports to be an  
156 original, certified or informational copy, except as authorized in this chapter or regulations promulgated  
157 pursuant to section 4 of chapter 17. No person shall alter a certified copy or record referred to in



158 sections 2, 2A and 19 or use or reproduce such altered record. Whoever violates the provisions of this  
159 section shall be punished by a fine of not more than \$500.

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

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

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

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

172 SECTION 8. Section 12 of said chapter 46 as so appearing, is hereby amended by adding the  
173 following paragraph:- Effective with the completion of the automation of current records as  
174 determined by the special vital records and statistics committee but no sooner than 1 January 2011,  
175 the transmitting of so-called resident copies of birth and death records, as provided in this section  
176 shall cease. Thereafter, the state registrar will transmit at least quarterly to town clerks in the  
177 commonwealth a list of their resident births, deaths and burials that have occurred in the  
178 commonwealth. The information to be included in said lists will be specified by regulations  
179 promulgated pursuant to section 4 of chapter 17.

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

182 SECTION 10. Said chapter 46 is hereby amended by striking out section 16, as so appearing,  
183 and inserting in place thereof the following section:- Section 16. The state registrar shall prepare and  
184 furnish to the clerks and boards of health of towns, physicians, hospitals, probate and district courts,  
185 and others involved in the preparation and registration of vital records, forms for returns, a paper of  
186 uniform size, and any necessary instructions and explanations. Such forms used for permanent records  
187 shall meet any regulations of the Supervisor of Public Records. Any forms for returns and other  
188 materials not supplied by the state registrar must be approved by the state registrar and the special vital  
189 records and statistics committee and be subject to any applicable regulations of the supervisor of public  
190 records. Any electronic program for the preparation, collection, storage or issuance of vital records, not  
191 part of the statewide system, must be approved by the state registrar and the special vital records and  
192 statistics committee and shall be subject to any applicable regulations of the Supervisor of Public  
193 Records.

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

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

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

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

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

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

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

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

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

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

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

228 SECTION 17. Said chapter 46 is hereby further amended by adding the following three  
229 sections:- Section 31. There will be a permanent special vital records and statistics committee to  
230 oversee the overall improvement including preservation and automation of the vital records and  
231 statistics system in the commonwealth, and shall be established no later than January 1, 2009.  
232 Physical preservation of the records shall constitute an integral part of any system-wide  
233 improvement plan. The permanent special vital records and statistics committee shall oversee and  
234 approve expenditures of any funds to pay for improvement. The committee shall consist of 19  
235 members including the State Registrar who shall serve as chairman, the Archivist of the  
236 Commonwealth and the Supervisor of Public Records; all other members shall serve for three-year  
237 terms, with two reappointment terms only. The committee shall include two town clerks selected by  
238 the Massachusetts Town Clerks' Association, at least one of whom shall be from a town with a  
239 hospital having a maternity unit; two city clerks or a city clerk and a registrar elected by the  
240 Massachusetts City Clerks' Association, at least one of whom shall be from a city with a hospital  
241 having a maternity unit; one member each selected by the New England Historic Genealogical  
242 Society, the Massachusetts Genealogical Council, the Massachusetts Historical Society, the  
243 Massachusetts Newspaper Publishers Association, the Massachusetts Medical Society, the  
244 Massachusetts Hospital Association, the Massachusetts Public Health Association, and the  
245 Massachusetts Funeral Directors Association. The commissioner of public health shall appoint four  
246 additional members, including a lawyer practicing family law and three members with expertise  
247 from each of the following areas: medical research, epidemiology, and electronic data collection and  
248 management. The reasonable travel expenses of members of the committee shall be paid out of  
249 department of health funds. The special vital records and statistics committee shall meet at least  
250 quarterly and twelve members shall constitute a quorum for the purpose of conducting business.

251 This committee shall be required to develop an overall plan for the automation, improvement, and  
252 preservation of the statewide vital records and statistics system throughout the commonwealth.  
253 Such plan shall posit one, three, five and ten year goals and objectives for the automation,  
254 improvement and preservation of the system. All such plans for the automation of the system must  
255 concurrently consider the need for the preservation of the records so automated. Routine  
256 administration of expenditures from any fund related to such automation will be directed by a five-  
257 person executive subcommittee of the special vital records and statistics committee. The executive  
258 subcommittee shall be composed of the State Registrar, the Archivist of the Commonwealth, the  
259 Supervisor of Public Records, one town clerk and one city clerk or registrar. The town clerk or city  
260 clerk or registrar on the executive subcommittee shall be rotated annually between the  
261 representatives of the city and town clerk association representatives on the special vital records and  
262 statistics committee. The special vital records and statistics committee shall be required to authorize  
263 all expenditures over the sum of \$1000.

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

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

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

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

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

297           SECTION 18. The second paragraph of section 2 of chapter 111 of the General Laws, as  
298 appearing in the 1999 Official Edition, is hereby amended by striking out the fourth sentence of the  
299 second paragraph and replacing it with the following sentence: The commissioner shall, as soon as is  
300 reasonably practicable, create an index to the records and maintain the birth, death and marriage records  
301 in a manner appropriate for permanent, public records with indexes thereto and shall retain their custody  
302 until records and indexes are sent to the state archives.