

SENATE No. 822

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 adoption of the accompanying bill:

An Act relative to birth, marriage and death records..

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Thomas P. Kennedy

Michael D. Brady

9th Plymouth

SENATE No. 822

[Pin Slip]

The Commonwealth of Massachusetts

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

15 Commonwealth. In addition to compliance with section 2 of chapter 30A, the commissioner shall
16 send notice of such hearing to all city and town clerks; the Secretary of the Commonwealth; the
17 Archivist of the Commonwealth; the executive director of the New England Historic
18 Genealogical Society; the Director of the Massachusetts Historical Society; the directors of the
19 Massachusetts Hospital Association, the Massachusetts Medical Society, the Massachusetts
20 Funeral Directors Association, the Director of Civil Records for the Massachusetts Genealogical
21 Council; and the Executive Director of the Massachusetts Newspaper Publishers Association.

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

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

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

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

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

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

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

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

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

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

48 SECTION 4. Said chapter 46 is hereby amended by striking out section 2, as so
49 appearing, and inserting in place thereof the following section: Section 2. To facilitate use, the
50 vital records and statistics system shall incorporate an index. The state registrar and town clerks
51 shall be responsible for preparing an index of the records under their jurisdiction. If vital records
52 are automated into a data base, said data base will fulfill the requirements of such an index. The
53 state registrar shall make such automated data base available to the custodians of vital records as
54 defined by subsection (c) of section 1E, and consistent with restrictions expressed in subsection
55 (2) and section 2A and in section 13. At least semiannually, an updated paper copy of an index

56 on archival paper will be prepared from the automated data base by the town clerks and state
57 registrar. The most recent version of the paper index shall replace all previous versions.

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

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

78 contain. The records in the custody of the archives of the commonwealth may be issued in a
79 format other than certified or informational copies.

80 SECTION 5. Said chapter 46 is hereby amended by striking out section 2A, as so
81 appearing, and inserting in place thereof the following section:- Section 2A.(a) On January 1,
82 2009, and upon mutual arrangement by the archivist of the commonwealth and the state registrar
83 for an orderly transfer within three years, all records and adjudications of paternity and indices
84 pertaining to births through December 31, 1930, any amendments to births with indices filed
85 prior to December 31, 1930, records and indices of marriages and deaths filed prior to December
86 31, 1965, and any amendments including indices to marriages and deaths filed prior to December
87 31, 1965, then in the custody of the state registrar, shall be transferred to the custody of the
88 archives of the commonwealth. Until such time as the physical transfer occurs, these records and
89 indices remaining at the state registry shall be public records. Subsequently, all records, indices,
90 and amendments of births, adjudications of paternity, marriages and deaths shall be transferred
91 from the state registry to the archives on the basis of five year increments, consistent with
92 chapter 374 acts of 1983, commencing with January 1, 2011. Funds shall be appropriated from
93 the general fund yearly for the state archives to pay the associated costs of proper accession,
94 care and preservation of the transferred records.

95 Prior to transfer, all records, returns and indices will be microfilmed and the permanent
96 paper records to be transferred shall be made subject to appropriate preservation protocols by the
97 state registry of vital records and statistics. Those protocols shall include microfilm and shall be
98 subject to qualitative standards promulgated by the archivist of the commonwealth through
99 regulations. Prior to public hearing, all such regulations proposed by the archivist will be

100 reviewed by the special vital records and statistics committee, established under SECTION 17,
101 subsection 31.

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

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

122 eligible for transfer to the archives of the commonwealth, as defined by subsection (a) and
123 parallel records maintained by other custodians.

124 (c) The federal agency responsible for national vital statistics may be furnished such
125 copies of data from the system of vital records and statistics as it may require for national
126 statistics, provided such agency share in the cost of collecting, processing, and transmitting such
127 data, and provided further that such data shall not be used for any other than the statistical or
128 research purposes provided for in the agreement between the federal agency and the state
129 agency. Any additional uses of the data must be approved by the process as described in section
130 24B of chapter 111.

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

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

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

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

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

165 (i) No person, including a notary public, shall prepare or issue any certificate which
166 purports to be an original, certified or informational copy, except as authorized in this chapter or
167 regulations promulgated pursuant to section 4 of chapter 17. No person shall alter a certified
168 copy or record referred to in sections 2, 2A and 19 or use or reproduce such altered record.
169 Whoever violates the provisions of this section shall be punished by a fine of not more than
170 \$500.

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

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

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

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

183 SECTION 8. Section 12 of said chapter 46 as so appearing, is hereby amended by adding
184 the following paragraph:- Effective with the completion of the automation of current records as
185 determined by the special vital records and statistics committee but no sooner than 1 January
186 2011, the transmitting of so-called resident copies of birth and death records, as provided in this

187 section shall cease. Thereafter, the state registrar will transmit at least quarterly to town clerks in
188 the commonwealth a list of their resident births, deaths and burials that have occurred in the
189 commonwealth. The information to be included in said lists will be specified by regulations
190 promulgated pursuant to section 4 of chapter 17.

191 SECTION 9. Section 14 of said chapter 46, as so appearing is hereby amended by
192 striking out, in line 2 the words "fifty dollars" and inserting in place thereof the following words
193 \$5,000.

194 SECTION 10. Said chapter 46 is hereby amended by striking out section 16, as so
195 appearing, and inserting in place thereof the following section:- Section 16. The state registrar
196 shall prepare and furnish to the clerks and boards of health of towns, physicians, hospitals,
197 probate and district courts, and others involved in the preparation and registration of vital
198 records, forms for returns, a paper of uniform size, and any necessary instructions and
199 explanations. Such forms used for permanent records shall meet any regulations of the
200 Supervisor of Public Records. Any forms for returns and other materials not supplied by the state
201 registrar must be approved by the state registrar and the special vital records and statistics
202 committee and be subject to any applicable regulations of the supervisor of public records. Any
203 electronic program for the preparation, collection, storage or issuance of vital records, not part of
204 the statewide system, must be approved by the state registrar and the special vital records and
205 statistics committee and shall be subject to any applicable regulations of the Supervisor of Public
206 Records.

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

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

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

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

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

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

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

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

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

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

240 SECTION 16. Section 30 of said chapter 46, as so appearing, is hereby further amended
241 by striking out in line 1, the word "hundred" and inserting in place thereof the following number:
242 --\$1000.

243 SECTION 17. Said chapter 46 is hereby further amended by adding the following three
244 sections:- Section 31. There will be a permanent special vital records and statistics committee to
245 oversee the overall improvement including preservation and automation of the vital records and
246 statistics system in the commonwealth, and shall be established no later than January 1, 2009.
247 Physical preservation of the records shall constitute an integral part of any system-wide
248 improvement plan. The permanent special vital records and statistics committee shall oversee
249 and approve expenditures of any funds to pay for improvement. The committee shall consist of
250 19 members including the State Registrar who shall serve as chairman, the Archivist of the

251 Commonwealth and the Supervisor of Public Records; all other members shall serve for three-
252 year terms, with two reappointment terms only. The committee shall include two town clerks
253 selected by the Massachusetts Town Clerks' Association, at least one of whom shall be from a
254 town with a hospital having a maternity unit; two city clerks or a city clerk and a registrar elected
255 by the Massachusetts City Clerks' Association, at least one of whom shall be from a city with a
256 hospital having a maternity unit; one member each selected by the New England Historic
257 Genealogical Society, the Massachusetts Genealogical Council, the Massachusetts Historical
258 Society, the Massachusetts Newspaper Publishers Association, the Massachusetts Medical
259 Society, the Massachusetts Hospital Association, the Massachusetts Public Health Association,
260 and the Massachusetts Funeral Directors Association. The commissioner of public health shall
261 appoint four additional members, including a lawyer practicing family law and three members
262 with expertise from each of the following areas: medical research, epidemiology, and electronic
263 data collection and management. The reasonable travel expenses of members of the committee
264 shall be paid out of department of health funds. The special vital records and statistics committee
265 shall meet at least quarterly and twelve members shall constitute a quorum for the purpose of
266 conducting business. This committee shall be required to develop an overall plan for the
267 automation, improvement, and preservation of the statewide vital records and statistics system
268 throughout the commonwealth. Such plan shall posit one, three, five and ten year goals and
269 objectives for the automation, improvement and preservation of the system. All such plans for
270 the automation of the system must concurrently consider the need for the preservation of the
271 records so automated. Routine administration of expenditures from any fund related to such
272 automation will be directed by a five-person executive subcommittee of the special vital records
273 and statistics committee. The executive subcommittee shall be composed of the State Registrar,

274 the Archivist of the Commonwealth, the Supervisor of Public Records, one town clerk and one
275 city clerk or registrar. The town clerk or city clerk or registrar on the executive subcommittee
276 shall be rotated annually between the representatives of the city and town clerk association
277 representatives on the special vital records and statistics committee. The special vital records and
278 statistics committee shall be required to authorize all expenditures over the sum of \$1000.

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

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

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

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

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

315 SECTION 18. The second paragraph of section 2 of chapter 111 of the General Laws, as
316 appearing in the 1999 Official Edition, is hereby amended by striking out the fourth sentence of
317 the second paragraph and replacing it with the following sentence: The commissioner shall, as
318 soon as is reasonably practicable, create an index to the records and maintain the birth, death and

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