

KATE BROWN
SECRETARY OF STATE
BRIAN SHIPLEY
DEPUTY SECRETARY OF STATE



SECRETARY OF STATE
136 STATE CAPITOL
SALEM, OREGON 97310-0722
Phone 503-986-1523 & Fax 503-986-1616
oregon.sos@state.or.us

TO: House Health Care Committee
FROM: Mary Beth Herkert, Oregon State Archivist
RE: House Bill 2093
DATE: February 25, 2013

My name is Mary Beth Herkert and I am the director of the Secretary of State's Archives Division. I am writing this today to testify on the proposed changes in HB2093 that relate to vital records.

Oregon vital records were first recorded by the state in 1903, to have a way to measure the number of births and deaths occurring in Oregon. However, some local governments collected this information on an ad-hoc basis prior to 1903. A formal effort to record birth and death information was first seen in 1882, when the City of Portland passed a City Ordinance to record this information. Vital records are some of the most sought after records created by government, especially by the genealogy community, due to the amount of family information contained in them. Current access restrictions (100 years for births and 50 years for deaths, marriages and divorces) make these records available only from 1903-1962 (deaths, marriages and divorces) and from 1903-1912 for births. Despite these restrictions, the Archives Division, during the current biennium alone, has received more than 16,000 requests for these public records. Because of the importance to and high activity rate of these records by Oregonians, I would like to raise the following concerns about the proposed changes found primarily in Section 32 of this bill.

Our first concern that we have is the proposed language that the State Registrar "shall develop and implement a preservation management program to preserve vital record(s)." In effect, this is a function that the State Archives provides to all state and local governments. We would like to see language that includes consultation with the State Archives so that we can ensure that these records are in a format that will allow for access in perpetuity. In addition, we would like to see the language changed in the statement that currently is proposed "Historic vital records may be transferred to the State Archives..." to "Historic vital records shall be transferred..." Again, one of the many Archives functions is to preserve and provide access to the permanently valuable public records of Oregon. We have a state of the art facility with all of the proper environmental controls in place and a professionally trained staff that not only is very efficient and effective in providing access to public records but can make decisions about access according to the State Registrar's laws and rules. The Archives Division does not have an issue with access and custody of the vital records being with the State Registrar while the records are restricted but because of their informational value and high use rate these records should be at the State Archives once those restrictions have been met.

The next issue that we would like to address is lengthening the amount of time that these records will be exempt from disclosure. The current restrictions of 100 years for births and 50 years for deaths,

marriages and divorces are right in line with the majority of other states responsible for recording this information. In January of this year, we surveyed all 50 states and found that thirty-seven other states either have shorter or the same restriction times as Oregon, 10 are longer and 3 did not respond.

Increasing these times, for birth and deaths an additional 25 years and for marriages and divorces 50 additional years not only withholds valuable information from the public but also becomes problematic especially as it relates death certificates which has been publically available for the past 59 years (i.e. all death certificates are available from 1903-1962). As technology has improved, more and more of these records have been scanned by our patrons and made publically available on websites. Trying to locate all of these records and block their viewing would be virtually impossible.

Our final area of concern relates to the requirement to redact certain medical information, in light of recent changes in federal protections under the Health Insurance Portability and Accountability Act (HIPAA) Privacy, Security, and Enforcement Rules. The language in the bill requires that the State Registrar, "Prior to transferring records of live birth and death, ...shall redact all information identified as having only a medical or health purpose..." The rules, as found in the Code of Federal Regulations (45 CFR 160 and 45 CFR 164) relating to HIPAA and the disclosure of medical information have been amended to allow access to an individual's medical information, 50 years after date of death. These rules take effect on March 26, 2013. This information has proven to be very valuable to the genealogical community and family members doing research on their family members to see what they died from and is the condition something that may indicate a genetic predisposition. Other researchers are looking at medical information from a statistical perspective such as how many Oregonians may have died from an influenza outbreak in a particular year.

In conclusion, I want to reiterate that the State Archives is more than willing to work with the State Registrar to come up with a resolution to these issues. We think this particular group of public records has great historical and informational value that should be accessible to Oregonians.

Thank you for your time and I am happy to answer any questions that you may have.