

2011 HOUSE JUDICIARY

HB 1084

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1084
January 5, 2011
12598

☐ Conference Committee

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on HB 1084.

Darin Meschke, State Registrar & Director of Division of Vital Records for ND Dept of Health: (see attached).

Rep. Delmore: Have you always had the three types of death records.

Darin Meschke: That changed in 2008 when we went to electronic death registration. The three types of records that we have now are needed and used because we don't want to redact information here and there depending on the purpose. So depending on your purpose, you either get a complete record, facts of death record or an informational records copy.

Rep. Delmore: So we had two before and now have three? They seem to be set out as three distinct categories, and a follow up to that, in your last change on line 15, you said that it allows them to share information, limited to the need to know. You determine then the need to know, whether the social security and more information is on there. Who determines which of those I get if I ask for one.

Darin Meschke: I think the wording there, for the purposes of completing their official duties, they have to explain to us why they need the information in doing their official duties and then we give them access.

Rep. Klemin: Section 3 has an emergency clause. What is the reason for the emergency clause.

Darin Meschke: The emergency clause is really for the very first change in the marriage wording, adding the space between the last names. That is catching up with current practice.

Rep. Klemin: So maybe the emergency clause should be limited to section 1?

Darin Meschke: It sure could be. The access to the records, though, is also something that I think that the Protection and Advocacy Group would like to start gaining access to

those records as soon as possible as well. So there are bits and pieces that need the emergency clause.

Rep. Koppelman: On the bottom of page 2, where you talked about the certified copy of the facts of the death record that includes the facts of death, etc. would be available to any person that may obtain a certified copy of a complete death record. It seems to me that maybe the facts of the death record and the complete death record are pretty close to the same thing, aren't they. What is the delineation there.

Darin Meschke: The delineation there, is that, anyone who can get a complete copy can get a facts of death copy as well. However, we're adding the line after that which says "to any licensed attorney", is not eligible to get a complete copy, but they are able to get a facts of death copy. It goes on to say there that a certified copy of the facts of death includes the facts of death, and the social security number may be obtained by the person, can obtain a certified copy of a complete death record, or that anyone who can get a complete copy may also get a facts of death copy. So what we're saying there is that if you are eligible to get a complete copy you can also get a facts of death copy. But then we go on to say "or, to a licensed attorney who is not eligible to get a complete copy." We wanted to make sure that we didn't exclude the people who are able to get a complete copy from getting a facts of death copy. They are obviously eligible because it's a less restrictive copy.

Rep. Koppelman: The facts of death copy is basically included in a complete death records.

Darin Meschke: The information, yes. All the information on a facts of death record is included in a complete record. The facts of death copy is really for financial institutions. We've had instances where the full, complete record was being made part of a county record for a land transaction, which made their cause of death a public record and we're trying to change that so that they use this type of record for those instances, so that the cause of death is not disclosed.

Rep. Koppelman: So the purpose of this is mainly to make the facts of death record available to attorneys.

Darin Meschke: That is already in state statute, yes. The purpose of this is to really just distinguish between the three copies and make it more practical as to how we refer to it in our office versus how it's listed in state statute. It's just clean up language for that.

Rep. Onstad: Is it possible that there is a situation where a person who is given up for adoption, and that individual knows who their biological mother is. Currently they are not able to get that person's medical history, unless that biological mother is willing to sign off and release that information. Is it possible that this person can get to the death certificate and cause of death after that biological mother has passed away.

Darin Meschke: I believe that the statute would allow for that.

Rep. Onstad: Would allow for that now?

Darin Meschke: It doesn't allow for it now, but with this change it would allow a physician with a legitimate medical need for that information, they would be able to get it.

Rep. Onstad: They would have to go through a physician to make that request.

Darin Meschke: Absolutely.

Rep. Koppelman: In regard to this last section, you would determine whether it's necessary for someone to get a report. Can you give us some examples, obviously this is in there now because some of these folks, as you indicated, have expressed a desire to have these records. Why do they need them.

Darin Meschke: The Dept of Transportation needs access to some of our information for their fatality information, death information. They do studies on fatality information, motor vehicle accidents, etc. The Protection and Advocacy project needs access to the information for their official duties of investigating the death of children, to see if there is any kind of issue with that death. Other divisions and departments, within the Health Department, we've been exchanging information basically on a need-to-know basis. But our attorney general representative felt that it was important to add that in here as long as we were making changes.

Rep. Koppelman: The reference there though, is to birth and death information, just as a general statement, where you have taken great pains in the other portions of the law here to define the type of death record. This seems to be a wide open permission slip for those folks based upon whatever determination is made by someone in your office. Any kind of death record could be released, for example, if one of these entities requested it and convinced someone in your office that it was needed.

Darin Meschke: That would be true, although it does give us the right to question the agency, when they (Protection and Advocacy) are requesting a death certificate on someone who is 75 years old. We may say "wait a minute, what do you need that information for, how does that fall into your prevue of official duties", and if there is some disagreement between that, we would have the Attorney General, basically give us an assessment of whether that is a needed disclosure or not.

Rep. Koppelman: I would assume that with Protection and Advocacy, there are provisions in law that restrict how they might share confidential information, because you are entrusted with these records. Is a similar provision there to the Dept of Transportation.

Darin Meschke: What will probably happen here, is what happened with the Dept of Human Services, that we have a business associate agreement between the two agencies that says that the redisclosure of this information has to meet with our approval prior to giving the information to someone else or publishing it in any reports.

Chairman DeKrey: Thank you. Further testimony in support.

David Boecks, Protection and Advocacy Project: We are in support of the bill. Just to clarify, the deaths that we investigate are deaths of persons with disabilities. So that would

include somebody who is 75; it's not limited to children. I am sure that the State Registrar, is anxious to work with us to see to it that we get the information we need, and I want to thank him and the Health Department, for moving forward with this bill.

Rep. Klemin: Why is the emergency clause important to your agency.

Mr. Boecks: In case someone dies today, we can find out right away what the cause of death is, instead of waiting until August. I do believe that we have a right under federal law to gain access to this material, but we discussed this some time ago with the Health Department and agreed that it would be much smarter to come here than to go through months of litigation on the issue. We have an arrangement with the Dept of Health, Dept of Human Services, and the federal centers for Medicare and Medicaid services to investigate and be an objective party investigating deaths of persons with disabilities. We're doing that now, we simply are doing it without getting the death information from the department of Health. We have to get the information by other means.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing on HB 1084.

Rep. Maragos: I move a Do Pass.

Rep. Delmore: I second the motion.

Chairman DeKrey: Roll call vote.

DO PASS

14 Yes 0 No 0 Absent

CARRIER: Rep. Maragos

Date: 1/5/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1084

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Maragos

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1084: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1084 was placed on the
Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1084

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1084
3/2/11
Job #14840

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to surname options on marriage applications and disclosure of birth and death records.

Minutes:

There is attached written testimony

Senator Nething – Chairman

Darin Meschke – Director of the Division of Vital Records – See written testimony.

Senator Nething – Asks about the emergency clause.

Meschke – Replies by saying it is basically for the marriage portion of the bill. The space is already current common practice so they would like the law to be in effect as soon as possible to meet up with what the counties are actually doing.

Senator Nething – Asks why he received so much opposition in the House.

Meschke – Said there was one issue on why they were adding a doctor to get a copy. He thinks there was some misinformation; it is just for a single patient. Another was a misunderstanding of the three different types of records they have.

Senator Olafson – Asks if on page two where we are adding on line 29 the facts of death, are we being redundant.

Meschke – Said they trying to make the law meet up with the three types of defined copies that they issue, which are complete facts of death and informational. He says by the change in the language it is more in tune with the copy.

Senator Sitte – Asks if there has always been 3 levels of death certificates.

Meschke – Explains the three types of death certificates have been in existence since we went to electronic death registration in 2008. They were included in the law changes in 2007.

David Boeck – Lawyer for Protection & Advocacy Project – See written testimony.

Senator Nething – Asks about it saying the department discloses information only when you need the information.

Boeck – Responds there is no time they ask for it if they don't need it. This gives them the protection that it is not totally open for P & A to come in at any time and ask for a death record. It would have to be in line with our official duties. He said they would not have access unless the person they are investigating had a disability.

Senator Sitte – Asks about the broadening of the definition of disability. Do you investigate every person with a disability?

Boeck – Says they don't use a broad definition of persons with disabilities for their investigations but their role is determined by federal law and through an agreement with Federal Centers for Medicare and Medicaid services.

Senator Sitte – Asks for examples of investigating the deaths of people with disabilities.

Boeck – Gives an example of a suicide at the State Hospital. He says most of their investigations would be undertaken when someone is living in a facility that provides services to a person with disabilities. He explains what they look for.

Lisa Feldner – Chief Information Technology Officer of ND – Chairman for the Health Information Technology Advisory Committee – She said their committee is responsible for implementing the Health Information Exchange which will allow medical providers to exchange electronic medical records. She asks that the bill be held until she and Mr. Meschke can meet with the Attorney General's office to see if they need an amendment to add the Health Information Exchange to one of the entities on the bill. She said the providers would like the Exchange to alert them when there has been a death certificate issued from one hospital when they have been a patient in other place. That would avoid those sending alerts to the family for the patient being overdue on an exam. Feldner explains more about the Health Information exchange.

Close the hearing 1084

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1084
3/9/11
Job #15183

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to surname options on marriage applications and disclosure of birth and death records.

Minutes:

Senator Nething – Chairman

Senator Olafson moves a do pass
Senator Lyson seconds

Discussion

Committee discusses the using of a space instead of a hyphen on names. They discuss the death certificates going to a relative or a physician and the sharing of information with other departments.

Roll call vote – 6 yes, 0 no

Senator Olafson will carry

Date: 3/9
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1084

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1084: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1084 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1084

**Testimony
House Bill 1084
Judiciary Committee
January 5, 2011; 10:30 a.m.
North Dakota Department of Health**

Good morning, Chairman DeKrey and members of the Judiciary Committee. My name is Darin Meschke, and I am the state registrar and the director of the Division of Vital Records for the North Dakota Department of Health. I am here today to provide testimony in support of House Bill 1084.

The Division of Vital Records is required by state law to register and certify all vital events that occur in the state. These include births, deaths, fetal deaths, marriages, divorces and abortions. During the 2007 legislative session, we made many changes to the Health Statistics Act. House Bill 1084 addresses some cleanup and clarification needs that became apparent after those major changes were made. The bill includes a very minor change to the surname option during the marriage process and a few other minor changes to the disclosure of birth and death records.

The first change we are requesting is on page 1, line 21 and would allow individuals getting married to combine their last names and separate those names with a space. Current state law requires the use of a hyphen exclusively; however, the common practice in most of our counties has been to allow the use of a space. This change in the law would allow individuals a bit more flexibility when combining their names after marriage.

The remaining changes in House Bill 1084 address the clarification of access to the three types of death records issued by Vital Records and the limited access to birth and death information by other Department of Health divisions and programs and other state agencies.

The first of these changes begins on page 2, line 25, and adds the word "complete" to refer to a fully completed death record. A complete death record would include all the demographic information about the decedent, including his or her social security number, as well as all the medical cause-of-death information relating to the death.

The next change begins on line 26 and would allow a licensed physician access to any complete death record for the purposes of researching family medical

history. After the changes made to the Health Statistics Act in 2007, we have come across situations where certain family members cannot access a sibling's death record for the purpose of determining the cause of death. Because our definition of relative does not include a sibling for the purposes of fraud and identity theft, siblings are not able to get the cause of death directly and the addition of a licensed physician would allow this access for a legitimate medical need.

The next change on line 29 adds the words "facts of" to refer to the second type of death record we issue, which will help clarify the type of record referred to in this section of the law. A facts of death record includes a brief demographic description of the decedent but no medical cause-of-death information. It also includes the social security number and is quite often used for financial reasons, including closing bank accounts and land transactions where the cause of death is not necessary.

The next change is on page 3 of the bill and occurs on line 2. This change is a simple grammatical change referring to the third type of death record we issue. The word "informational" is simply moved in the sentence so that the description of all three types of death records is consistent through the law. It does not make any change to the intent of an informational copy, which can be issued to anyone and includes only limited demographic information.

The last change in House Bill 1084 is on page 3 and starts in line 15. The change allows the Department of Health to share information with other divisions and programs in the department, with the Department of Transportation, and with the Protection and Advocacy project. Like the Department of Human Services, which is currently included in this section of law, these agencies and programs need access to our data for the purposes of completing their official duties. The access will, of course, be limited to their need to know and will not allow them full access to the records.

This concludes my testimony. I am happy to answer any questions you may have.

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**Testimony
House Bill 1084
Senate Judiciary Committee
March 2, 2011; 10:45 a.m.
North Dakota Department of Health**

Good morning, Chairman Nething and members of the Judiciary Committee. My name is Darin Meschke, and I am the state registrar and the director of the Division of Vital Records for the North Dakota Department of Health. I am here today to provide testimony in support of House Bill 1084.

The Division of Vital Records is required by state law to register and certify all vital events that occur in the state. These include births, deaths, fetal deaths, marriages, divorces and abortions. During the 2007 legislative session, we made many changes to the Health Statistics Act. House Bill 1084 addresses some cleanup and clarification needs that became apparent after those major changes were made. The bill includes a very minor change to the surname option during the marriage process and a few other minor changes to the disclosure of birth and death records.

The first change we are requesting is on page 1, line 21, and would allow individuals getting married to combine their last names and separate those names with a space. Current state law requires the use of a hyphen exclusively; however, the common practice in most of our counties has been to allow the use of a space. This change in the law would allow individuals a bit more flexibility when combining their names after marriage.

The remaining changes in House Bill 1084 address the clarification of access to the three types of death records issued by Vital Records and the limited access to birth and death information by other Department of Health divisions and programs and other state agencies.

The first of these changes begins on page 2, line 25, and adds the word "complete" to refer to a fully completed death record. A complete death record would include all the demographic information about the decedent, including his or her social security number, as well as all the medical cause-of-death information relating to the death.

The next change begins on line 26 and would allow a licensed physician access to any complete death record for the purposes of researching family medical history. After the changes made to the Health Statistics Act in 2007, we have

come across situations where certain family members cannot access a sibling's death record for the purpose of determining the cause of death. Because our definition of relative does not include a sibling because of fraud and identity theft related issues, siblings are not able to get the cause of death directly and the addition of a licensed physician would allow this access for a legitimate medical need. Again, this access is not for medical research studies, but only for family history medical research as it pertains to their patient.

The next change on line 29 adds the words "facts of" to refer to the second type of death record we issue, which will help clarify the type of record referred to in this section of the law. A facts of death record includes a brief demographic description of the decedent but no medical cause-of-death information. It also includes the social security number and is quite often used for financial reasons, including closing bank accounts and land transactions where the cause of death is not necessary.

The next change is on page 3 of the bill and occurs on line 2. This change is a simple grammatical change referring to the third type of death record we issue. The word "informational" is simply moved in the sentence so that the description of all three types of death records is consistent through the law. It does not make any change to the intent of an informational copy, which can be issued to anyone and includes only limited demographic information.

The last change in House Bill 1084 is on page 3 and starts in line 15. First, this change will allow the Department of Health to share information with other divisions and programs within the department. The Attorney General's office recommended this change be included in the law, even though we already allow certain programs access for the purposes of completing their official duties. Second, the Department of Transportation and the Protection and Advocacy Project are being added as two additional external agencies that need access to our data. Like the Department of Human Services, which is currently included in this section of law, these agencies need access to our data for the purposes of completing their official duties. The access will, of course, be limited to their need to know and will not allow them full access to all of our records. The Department of Transportation needs death information from our office to complete their traffic fatality review work and the Protection and Advocacy Project will need similar access to death information when they need to investigate the death of any individual they are responsible for.

This concludes my testimony. I would be happy to answer any questions you may have.

Senate Judiciary Committee
Sixty-Second Legislative Assembly of North Dakota
House Bill No. 1084
March 2, 2011

Good morning, Chairman Nething and Members of the Senate Judiciary Committee: I am David Boeck, a state employee and lawyer for the Protection & Advocacy Project. The Protection & Advocacy Project (P&A) is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

I want to thank the State Registrar and the Department of Health for writing and supporting this bill.

As part of its official duties, the P&A investigates deaths of individuals with disabilities. This bill would enable the Department of Health to provide to the P&A information about the death of a person with a disability. The Department would disclose this information only when P&A needs the information to fulfill its official duties. This would make the P&A investigatory process more timely and efficient.

The emergency clause applies to section 2 of the bill so P&A can more efficiently use death record information to investigate the death of individuals with disabilities between now and August 1, when the bill would otherwise take effect.

Thank you. Please let me know whether you wish additional information.