

Articles by Helen A. Shaw, CGsm for the Spring (vol. 7 no. 2) issue, *Old Broad Bay Family History Association Newsletter*.

LD 1781: Will it affect your research?

LD 1781: *An Act to Allow Electronic Filing of Vital Records and Closing Records To Guard Against Fraud and Make Other Changes to the Vital Records Laws*. On March 31 LD 1781 was passed by the state legislature as amended. The Health and Human Services Committee was the committee of review for the bill and amended it per input from persons present at a March 3rd public hearing in Augusta. However, this poorly named bill had no input from genealogists during the public hearing simply because no genealogist even knew the bill existed, much less that a public hearing was in the offing.

Some background: The bill came out of the governor's office as a special bill in mid-February. It apparently had its origins in the Maine Center for Disease Control which has jurisdiction over the Office of Vital Records. Phone calls to the Governor's office to find out why the bill was submitted went unanswered. Given the wording in the title (*and Closing Records to Guard Against Fraud*), one can only presume that someone believed fraud occurs because the public has access to vital records. This could not be further from the truth. Links to the Massachusetts Genealogical Council's extensively documented White Paper and the Association of Professional Genealogists' Position Paper on the issue were sent to members of the Health and Human Services Committee and many other legislators, as well as policy analysts and members of the governor's staff. The aforementioned wording also caused confusion given legislators' and policy analysts' insistence that LD 1781 opened vital records.

The APG position paper on *The Case for Open Public Records* (5 pages) is available at <http://www.apgen.org/publications/press/APG-KGROW.pdf>

The *Massachusetts Genealogical Council White Paper* (19 pages) is available at www.massgencouncil.org (look at the left of their home page for the link)

A request to have the bill reconsidered by the Health and Human Services Committee was ignored and attempts to have the Judiciary Committee weigh in on how the bill affected public access were not successful. Pam Eagleson, CGsm and Helen Shaw, CGsm of the Association of Professional Genealogists, in concert with Jan Meisels Allen of the International Association of Jewish Genealogical Societies, offered four changes for the bill via e-mail to members of the Health and Human Services Committee and the policy analyst revising the bill. These were ignored in favor of an amendment that potentially makes access even more difficult and costly for genealogists. Since March 3rd numerous genealogists have contacted their state legislators to let them know of problems they saw in the bill. All were ignored.

The CDC and legislators were convinced LD 1781 opens records to more people and if you read the original law regarding vital records access, that appears to be the case. However, the issue has been confused for many years, especially since 1974 when the state's attorney general issued an

opinion that vital records were open records which basically meant anyone who asked could see them.

The opening paragraph of the law [Sec. 12. 22 MRSA 2706.Disclosure of vital records] states that *Custodians of certificates and records of birth, marriage and death **may** permit inspection of records, or issue certified copies of certificates or records, or any parts thereof, when satisfied that the applicant therefor has a **direct and legitimate interest** in the matter recorded, the decision of the state registrar or the clerk of a municipality being subject to review by the Superior Court, under the limitations of this section.* [emphasis added]

The *direct and legitimate interest* wording is what has been used to allow genealogists and others access to vital records despite wording in paragraph 5 of MRSA 2706 which states access is only allowed to the person named on the vital record or his/her designated attorney or agent. LD 1781 adds spouse, registered domestic partner, descendants, and parents or guardians to the list of persons with unrestricted access. These additions, however, do not take into account the fact genealogists are often collateral relatives of the persons whose vital records they seek. And we won't even get into the issue of historians, cemetery researchers, sociologists, anthropologists, geneticists, and land title researchers who have a legitimate interest in accessing vital records.

LD 1781 added a new paragraph to MRSA 2706: paragraph 7. *Public records.* which states *After 100 years from the date of birth for birth certificates, after 100 years from the date of death for fetal death certificates and death certificates, after 100 years from the date of marriage for marriage certificates and after 100 years from the registration of domestic partnerships, any person may obtain informational copies of these vital records in accordance with the department's rules.*

The questions genealogists raised with legislators were: What about vital records within that 100 year window which are already available on microfilm at the Maine State Archives and other repositories around the country? What about the on-line indexes to Maine vital records which are within the 100 year window? Will those records remain open to the public? No answers have been forthcoming though the policy analyst for the Judiciary Committee admitted that LD 1781 could be read as closing those records.

After concern about access by genealogists were raised by a non-genealogist at the public hearing, an amendment was prepared by the Health and Human Services Committee's policy analyst and was later accepted by the Committee as paragraph 8. *Genealogical research.* *Custodians of certificates and records of birth, marriage, and death may permit inspection of records by and issue noncertified genealogical copies to researchers who hold researcher identification cards who are engaged in genealogical research, as specified by rule adopted by the department. Rules adopted by the department pursuant to this subsection are routine rules as defined by Title 4, chapter 375, subchapter 2-A.*

This seems tame enough. However, an e-mail from the policy analyst for the Health and Human Services Committee which told of this amendment stated that the *researcher identification card* mentioned in the paragraph is the one that has been available from the Office of Vital Statistics

since 1982 to allow on-sight inspection of vital records. It costs \$50 per year and you must go to Augusta to get it. The question is, will town clerks now require researchers to have this Office of Vital Records researcher identification card? We do not know and a recent e-mail from the state registrar states *The rules for access need to be updated to comply with the new law. Among the issues that will now need to be addressed are identification requirements to verify that the person requesting a copy of a record is who they say they are, whether they order by mail or in person.*

The Maine CDC will be forming a workgroup to determine how to implement the law by writing the rules for documenting who has a *direct and legitimate interest* in accessing vital records within the 100 year closure period. It is through this group that Pam and Helen hope to have the following changes incorporated into department policy: add collateral heirs as persons with unrestricted access and change the researcher identification card requirement to one of being a member of any recognized genealogical or lineage society. The availability of non-certified genealogical copies of vital records is allowed after 100 years by Paragraph 8, but we would like to see that option available for all time periods. If the rules for enforcing the new law do not include these suggestions and/or there are many reports of problems accessing records, there is a legislator who has told us he will submit a bill to make the changes during the next legislative session. [This assumes he is re-elected in November.]

So what will this new law mean for your research into Maine's vital records? We have been assured by Maine CDC officials that nothing will change and that those vital records presently available at the Maine State Archives and other repositories will remain open and accessible. That said, genealogists need to keep track of instances where access is denied, currently available records are pulled off the shelf, or the Office of Vital Records researcher identification card is required for access. Please report all such occurrences to Helen Shaw at obbeditor@earthlink.net or to her at 77 Pascal Ave, Rockport ME 04856. Please give the date, location, repository, records sought, who denied access, and other details of the event.

LD 1781 goes into effect on Monday, July 12th, ninety days after the adjournment of the legislature on Monday, April 12th.

LD 1592 and LD 1648

The state legislature heard two other bills this session which affect vital records. One was signed into law and one was indefinitely postponed.

LD 1592 *An Act to Update the Laws Affecting the Maine Center for Disease Control and Prevention* was an omnibus bill that included a wide variety of issues, several of which affect vital records. It was signed into law by Governor Baldacci on April 1st and will go into effect on July 12th.

This bill increased the cost for a copy of a corrected record of birth, marriage, or death sold to the applicant from \$10 to \$15 for the first copy and from \$5 to \$6 for each additional copy. The same

increase was made for issuing to the applicant an amended birth record where an affidavit legitimating the birth was submitted.

The cost to record a marriage intention and issuing a marriage license was increased from \$30 to \$40 except where the law requires two licenses in which case the fee increased from \$15 to \$20 each.

Of primary interest to genealogists is the change which could increase the cost of vital record copies at municipal offices. Clerks may now charge up to \$15 for the first copy and will charge \$6 for each additional copy of a birth, marriage, or death certificate.

LD 1648 *Resolve, To Repeal the Fee Increase for Copies of Vital Records* which would have changed the fee charged by the Office of Vital Records from \$60 back to \$15 was voted by the Senate (on motion by Senator Brannigan, co-chair of the HHS Committee) and by the House (on motion by Representative Perry, co-chair of the HHS Committee) to be indefinitely postponed. This effectively kills the bill. Fortunately, most genealogists in Maine know where to go to get these records at a lower cost.