

CHAPTER 338
VITAL STATISTICS

Part I. State Public Health Statistics Act

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"PART I. STATE PUBLIC HEALTH STATISTICS ACT

§338-1 Definitions of terms. As used in this part unless the context otherwise indicates:

"Dead body" means lifeless human body, or such parts of the human body, or the bones thereof, from the state of which it reasonably may be concluded that death recently occurred.

"Fetal death" is death prior to the complete expulsion or extraction from its mother of a product of conception, irrespective of the duration of pregnancy, that did not, after complete separation from the mother, breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or movement of voluntary muscle.

"Live birth" is the complete expulsion or extraction from its mother of a product of conception that did, after complete expulsion or extraction from the mother, breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or movement of voluntary muscle, whether or not the umbilical cord was cut or the placenta attached.

"Person in charge of disposition of the body" means any person who places, or causes to be placed, a stillborn child, or dead body, or ashes, after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes thereof.

"Physician" means a person licensed to practice medicine or osteopathic medicine under part I of chapter 453 or a practitioner of medicine, osteopathic medicine, or surgery excepted from licensure by section 453-2(b)(3).

"Public health statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, morbidity, marital status, and data incidental thereto. [L 1949, c 327, §2; am L 1951, c 92, §1; RL 1955, §57-1; HRS §338-1; am L 1973, c 17, §5; am L 1975, c 66, §2(1); am L 1982, c 112, §2; gen ch 1985; am L 1987, c 100, §1; am L 1993, c 131, §1; am L 2009, c 11, §44]

" §338-2 Authority and duties of the department of health.

The department of health, herein referred to as the department, shall:

- (1) Establish a central bureau of public health statistics with suitable offices properly equipped for the safety and preservation of all its official records;

- (2) Install a statewide system of public health statistics;
- (3) Make and amend, after notice and hearing, necessary regulations, give instructions and prescribe forms for collecting, transcribing, compiling, and preserving public health statistics; and
- (4) Enforce this part and the regulations made pursuant thereto. [L 1949, c 327, §3; RL 1955, §57-2; am L Sp 1959 2d, c 1, §19; HRS §338-2]

" **§338-3 Registration districts.** The department of health shall divide the State from time to time into public health statistics registration districts, which shall conform to political subdivisions, or combinations thereof, or such other subdivision as the department may deem advisable. [L 1949, c 327, §5; RL 1955, §57-4; am L Sp 1959 2d, c 1, §19; HRS §338-3]

" **§338-4 Deaths reported to county clerks.** The department of health shall within six weeks after the end of each month deliver, or forward by mail, to the county clerk of each county a list of the names of all citizens of voting age or over whose deaths have been recorded in the department during each month. The list shall set forth such portion of the information contained in the death record of each citizen whose death is so reported as will be of assistance to the county clerk in identification. [L 1949, c 327, §7; RL 1955, §57-6; am L 1959, c 138, §1; am L Sp 1959 2d, c 1, §19; HRS §338-4; am L 1981, c 113, §1]

" **[§338-4.5] Deaths reported to state agencies.** *[Section repealed July 1, 2018. L 2016, c 85, §3.]* (a) Notwithstanding section 338-18, the department of health, within six weeks after the end of each quarter or other agreed upon period, shall deliver to a state agency a list of the names of all persons whose deaths have been recorded by the department during that period; provided that this section shall only apply to a state agency that:

- (1) Maintains official lists of persons in the ordinary course of the agency's activities and is prohibited by federal law from sharing information from the lists; and
- (2) Has requested the information from the department pursuant to a written agreement.

The list shall set forth the full name of the decedent, the dates of the decedent's birth and death, and the last four digits of the decedent's social security number, if known. The department and the requesting agency shall determine by

agreement the form and format of providing the information to the agency.

(b) In response to an agency's first request pursuant to subsection (a), the department of health may provide a list of the persons whose deaths were recorded by the department during an agreed upon period in the past. The department may charge a reasonable fee to cover its cost of providing the list. If a state agency requires further information, the department may provide a certified copy of the death certificate to that state agency, subject to the fees required under section 338-14.5.

(c) Any state agency that obtains, pursuant to this section, a list of the names of persons whose deaths have been recorded by the department of health shall use the list only for the purposes for which it was obtained and shall not further disclose any information on the list.

(d) The department of health may develop and implement or assist with the development and implementation of a systems interface to electronically provide the information required pursuant to subsection (a) to a state agency. [L 2014, c 27, §§2, 4; am L 2016, c 85, §2]

" **§338-5 Compulsory registration of births.** Within the time prescribed by the department of health, a certificate of every birth shall be substantially completed and filed with the local agent of the department in the district in which the birth occurred, by the administrator or designated representative of the birthing facility, or physician, or midwife, or other legally authorized person in attendance at the birth; or if not so attended, by one of the parents.

The birth facility shall make available to the department appropriate medical records for the purpose of monitoring compliance with the provisions of this chapter. [L 1949, c 327, §9; RL 1955, §57-8; am L Sp 1959 2d, c 1, §19; HRS §338-5; am L 1988, c 149, §1]

Case Notes

Compulsory reporting not objectionable. 466 F. Supp. 714.

" **§338-6 Local agent to prepare birth certificate.** (a) If neither parent of the newborn child whose birth is unattended as provided in section 338-5 is able to prepare a birth certificate, the local agent of the department of health shall secure the necessary information from any person having knowledge of the birth and prepare and file the certificate.

(b) The department shall prescribe the time within which a supplementary report furnishing information omitted on the

original certificate may be returned for the purpose of completing the certificate. Certificates of birth completed by a supplementary report shall not be considered as "delayed" or "altered". [L 1949, c 327, §10; RL 1955, §57-9; am L Sp 1959 2d, c 1, §19; HRS §338-6]

" **§338-7 Registration of foundlings; foundling report.** (a) Whoever assumes the custody of a living child of unknown parentage shall immediately report, on a form to be approved by the department of health, to the local agent of the department the following:

- (1) Date and place of finding or assumption of custody;
- (2) Sex;
- (3) Color or race;
- (4) Approximate age of child;
- (5) Name and address of the person or institution with whom the child has been placed for care;
- (6) Name given to the child by the finder or custodian.

(b) The place where the child was found or custody assumed shall be known as the place of birth, and the date of birth shall be determined by approximation.

(c) The foundling report shall constitute the certificate of birth.

(d) If a foundling child is identified and a regular certificate of birth is found or obtained, the report shall be sealed and filed and may be opened only upon order of a court of competent jurisdiction. [L 1949, c 327, §11; RL 1955, §57-10; am L Sp 1959 2d, c 1, §19; HRS §338-7]

" **§338-8 Compulsory registration of deaths and fetal deaths.** A certificate of every death or fetal death shall be filed with the department of health in Honolulu or with the local agent of the department of health in the district in which the death or fetal death occurred or a dead body was found within three days after the death or fetal death occurred or the dead body was found. In every instance, a certificate shall be filed prior to interment or other disposition of the body. [L 1949, c 327, §12; am L 1951, c 92, §2; RL 1955, §57-11; am L Sp 1959 2d, c 1, §19; HRS §338-8; am L 1981, c 113, §2]

" **§338-9 Filing and preparation of death and fetal death certificates.** (a) The person in charge of the disposition of the body shall file with the department of health in Honolulu or with the local agent of the department of health in the district in which the death or fetal death occurred, or a dead body was found, a certificate of death or fetal death within three days after the occurrence, except that reports of intentional

terminations of pregnancy performed in accordance with section 453-16 may be deferred for up to one month.

(b) In preparing a certificate of death or fetal death the person in charge of the disposition of the body shall:

- (1) Obtain and enter on the certificate the personal data and other information pertaining to the deceased person required by the department from the person best qualified to supply them;
- (2) Present the certificate of death to the physician or advanced practice registered nurse last in attendance upon the deceased, or to the coroner's physician, who shall thereupon certify the cause of death to the physician's or advanced practice registered nurse's best knowledge and belief, or present the certificate of fetal death to the physician, advanced practice registered nurse, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as can be furnished; provided that fetal deaths of less than twenty-four weeks or intentional terminations of pregnancy performed in accordance with section 453-16 may be certified by a nurse or other employee based upon the physician's records; and
- (3) Notify immediately the appropriate local agent, if the death occurred without medical attendance, or if the physician or advanced practice registered nurse last in attendance fails to sign the death certificate. In such event the local agent shall inform the local health officer, and refer the case to the local health officer for immediate investigation and certification of the cause of death prior to issuing a permit for burial, or other disposition of the body. When the local health officer is not a physician or when there is no such officer, the local agent may complete the certificate on the basis of information received from relatives of the deceased or others having knowledge of the facts.

If the circumstances of the case suggest that the death or fetal death was caused by other than natural causes, the local agent shall refer the case to the coroner for investigation and certification.

(c) A death certificate may be filed by the next of kin and accepted by the local agent without meeting the requirements set forth above when there has been a judicial finding and declaration by a court of record that a person is dead; provided that the certificate is in a form approved by the department and has been certified by the clerk of court. [L 1949, c 327, §13;

am L 1951, c 92, §3; RL 1955, §57-12; am L Sp 1959 2d, c 1, §19; am L 1965, c 113, §1; HRS §338-9; am L 1973, c 17, §6; am L 1975, c 74, §1; am L 1978, c 86, §1; am L 1981, c 113, §3; am L 2016, c 183, §4]

" **§338-10 Late determination of the cause of death.** If the cause of death cannot be determined within three days, the certification of its cause may be filed after the prescribed period, but the attending physician, advanced practice registered nurse, or coroner's physician shall notify in writing the local agent of the department of health of the district in which the death occurred of the reason for late filing, in order that a permit for the disposition of the body may be issued.

As used in this section, "late" means more than three days after the date of death. [L 1949, c 327, §14; RL 1955, §57-13; am L Sp 1959 2d, c 1, §19; HRS §338-10; am L 1973, c 17, §7; am L 1997, c 305, §1; am L 2016, c 183, §5]

" **§338-11 Form of certificates.** The forms of certificates shall include as a minimum the items required by the respective standard certificates as recommended by the Public Health Service, National Center for Health Statistics, subject to approval of and modification by the department of health. In addition, the forms of death certificates shall require the individual's social security number. The form and use of the certificates shall be subject to sections 338-16 to 338-18. [L 1949, c 327, §15; RL 1955, §57-14; am L Sp 1959 2d, c 1, §19; HRS §338-11; am L 1997, c 293, §17]

" **§338-12 Evidentiary character of certificates.** Certificates filed within thirty days after the time prescribed therefor shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child is prima facie evidence if:

- (1) The alleged father is:
 - (A) The husband of the mother; or
 - (B) The acknowledged father of the child; or
- (2) The father and child relationship has been established under chapter 584. Data pertaining to the alleged father acknowledging paternity of the child is admissible as evidence of paternity in any family court proceeding, including proceedings under chapter 584. [L 1949, c 327, §16; RL 1955, §57-15; HRS §338-12; am L 1975, c 66, §2(2); am L 1994, c 23, §1]

" **§338-13 Certified copies.** (a) Subject to the requirements of sections 338-16, 338-17, and 338-18, the

department of health shall, upon request, furnish to any applicant a certified copy of any certificate, or the contents of any certificate, or any part thereof.

(b) Copies of the contents of any certificate on file in the department, certified by the department shall be considered for all purposes the same as the original, subject to the requirements of sections 338-16, 338-17, and 338-18.

(c) Copies may be made by photography, dry copy reproduction, typing, computer printout or other process approved by the director of health. [L 1949, c 327, §17; RL 1955, §57-16; am L Sp 1959 2d, c 1, §19; HRS §338-13; am L 1978, c 49, §1]

" §338-14 Fees for certified copies and searches; transcripts or other statistical summaries of vital records for National Center for Health Statistics; certified copies for veterans and others; and corrections on vital statistics certificates.

(a) The department of health shall establish reasonable fees to be paid for certified copies of certificates; provided that the department shall furnish, free of charge, a certified copy of any of the records, or a certification of birth, to any veteran of the armed forces of the United States, the veteran's wife, any member of the immediate family of a veteran or the next of kin of a deceased veteran, when required for use in connection with a claim based on service in the armed forces of the United States. Subject to sections 338-16, 338-17, and 338-18, the National Center for Health Statistics may obtain transcripts and statistical summaries on computer tapes of certificates or, without payment of fees, certified copies; provided the State is put to no expense in connection therewith.

A reasonable fee shall be charged for any correction in the items on a vital statistics certificate initiated by the registrant or the registrant's parent or representative if the registrant is a minor.

(b) The department may prescribe reasonable fees for searches of files and records not involving the issuance of certified copies.

(c) The department shall keep an account of all fees collected and shall deposit them to the general fund of the State except as provided in sections 321-1.3, 338-14.5, 338-14.6, 346-7.5, and 601-3.6.

(d) Any fee established by the department pursuant to this section shall be adopted in accordance with chapter 91. In establishing a fee, the amount shall be sufficient to cover the expenses involved in searching for, cost of a copy of, or correction of the certificate, file, or record, as the case may be. The department may raise the fees up to ten per cent per

year without being subject to the provisions of chapter 91. [L 1949, c 327, §18; am L Sp 1949, c 34, §1; RL 1955, §57-17; am L 1957, c 202, §1 and c 316, §2; am L Sp 1959 2d, c 1, §19; am L 1967, c 30, §1; HRS §338-14; am L 1974, c 32, §1; am L 1979, c 159, §1; gen ch 1985; am L 1997, c 216, §§5, 13; am L 1999, c 194, §1]

" **§338-14.3 Verification in lieu of a certified copy.** (a) Subject to the requirements of section 338-18, the department of health, upon request, shall furnish to any applicant, in lieu of the issuance of a certified copy, a verification of the existence of a certificate and any other information that the applicant provides to be verified relating to the vital event that pertains to the certificate.

(b) A verification shall be considered for all purposes certification that the vital event did occur and that the facts of the event are as stated by the applicant.

(c) Verification may be made in written, electronic, or other form approved by the director of health.

(d) The fee for a verification in lieu of a certified copy shall be a maximum of one half of the fee established in section 338-14.5 for the first certified copy of a certificate issued.

(e) Fees received for verifications in lieu of certified copies shall be remitted, and one half of the fee shall be deposited to the credit of the vital statistics improvement special fund in section 338-14.6 and the remainder of the fee shall be deposited to the credit of the state general fund. [L 2001, c 246, §1; am L 2010, c 55, §1]

" **§338-14.5 Copies of certificate; fees.** The fees for certified copies of birth, marriage, divorce, or death certificates issued by the department of health shall consist of \$10 for the first copy issued and \$4 for each copy issued thereafter. These fees shall be collected for each single request for certified copies. All fees received for the issuance of certified copies of birth, marriage, divorce, or death certificates shall be remitted to the director of health. Upon the receipt of remittances under this section, the director of health shall deposit:

- (1) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 346-7.5;
- (2) \$1 for each certified copy to the credit of the spouse and child abuse special account established under section 601-3.6;

- (3) \$1 for each certified copy to the credit of the domestic violence and sexual assault special fund established under section 321-1.3;
- (4) \$1 for each certified copy to the credit of the vital statistics improvement special fund established under section 338-14.6; and
- (5) The remainder of the fee for each certified copy to the credit of the state general fund. [L 1994, c 232, §1; am L 1997, c 216, §§6, 13; am L 1998, c 311, §7; am L 1999, c 194, §1; am L 2005, c 142, §3]

Note

Distribution of revenues derived from fees; department of health to submit study to legislature and governor no later than November 1, 2016. L 2016, c 43, §§10, 11.

" **§338-14.6 Vital statistics improvement special fund.** (a) There is established within the state treasury a special fund to be known as the vital statistics improvement special fund. The fund shall be administered and expended by the department of health.

(b) Moneys in the fund shall be used by the department of health for the modernization and automation of the vital statistics system in this State. Moneys in the fund may be used to assist in offsetting costs for the daily operations of the system of vital statistics.

(c) The fund shall consist of fees remitted pursuant to section 338-14.5. All realizations of the fund shall be subject to the conditions specified in subsection (b). [L 1997, c 216, §§2, 13; am L 1999, c 194, §1; am L 2010, c 55, §2]

" **§338-15 Late or altered certificates.** A person born in the State may file or amend a certificate after the time prescribed, upon submitting proof as required by rules adopted by the department of health. Certificates registered after the time prescribed for filing by the rules of the department of health shall be registered subject to any evidentiary requirements that the department adopts by rule to substantiate the alleged facts of birth. The department may amend a birth certificate to change or establish the identity of a registrant's parent only pursuant to a court order from a court of appropriate jurisdiction or pursuant to a legal establishment of parenthood pursuant to chapter 584. Amendments that change or establish the identity of a registrant's parent that are made in accordance with this section shall not be considered corrections of personal records pursuant to chapter 92F. [L

1949, c 327, §19; RL 1955, §57-18; am L Sp 1959 2d, c 1, §19; HRS §338-15; am L 1972, c 66, §1(1); am L 1997, c 305, §2; am L 2016, c 26, §1]

Attorney General Opinions

Section provides for the alteration of only birth certificates. Att. Gen. Op. 84-14.

" **§338-16 Procedure concerning late and altered birth certificates.** (a) Birth certificates registered one year or more after the date of birth, and certificates which have been altered after being filed with the department of health, shall contain the date of the late filing and the date of the alteration and be marked distinctly "late" or "altered".

(b) A summary statement of the evidence submitted in support of the acceptance for late filing or the alteration shall be endorsed on the certificates.

(c) Such evidence shall be kept in a special permanent file.

(d) When an applicant does not submit the minimum documentation required by the rules for late registration or when the state registrar finds reasons to question the validity or adequacy of the certificate or the documentary evidence, the state registrar shall not register the late certificate and shall advise the applicant of the reason for this action.

The department of health may by rule provide for the dismissal of an application which is not actively prosecuted.

(e) As used in this section, "late" means one year or more after the date of birth. [L 1949, c 327, §20; RL 1955, §57-19; am L Sp 1959 2d, c 1, §19; HRS §338-16; am L 1972, c 66, §1(2); am L 1997, c 305, §3]

" **§338-17 Late or altered certificate as evidence.** The probative value of a "late" or "altered" certificate shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence. [L 1949, c 327, §21; RL 1955, §57-20; HRS §338-17; am L 1997, c 305, §4]

" **§338-17.5 Judicial procedure to establish facts of birth.**

(a) If a delayed certificate of birth is rejected under section 338-16, a petition may be filed with the circuit court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

(b) The petition shall be accompanied by a statement of the registration official made in accordance with section 338-

16(d) and all documentary evidence which was submitted to the registration official in support of such registration.

(c) The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner's delayed certificate of birth fifteen days' notice of said hearing. Such official, or the official's authorized representative, may appear and testify in the proceeding.

(d) If the court from the evidence presented finds that the person for whom a delayed certificate of birth is sought was born in this State, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order to establish a record of birth.

(e) The clerk of the court shall forward a copy of the order to the state registrar of vital statistics not later than the 10th day of the calendar month following the month in which it was entered. Such order shall be registered by the state registrar of vital statistics in accordance with section 338-13. [L 1972, c 66, pt of §1(3); gen ch 1985; am L 1986, c 339, §45]

" **§338-17.7 Establishment of new certificates of birth, when.** (a) The department of health shall establish, in the following circumstances, a new certificate of birth for a person born in this State who already has a birth certificate filed with the department and who is referred to below as the "birth registrant":

- (1) Upon receipt of an affidavit of paternity, a court order establishing paternity, or a certificate of marriage establishing the marriage of the natural parents to each other, together with a request from the birth registrant, or the birth registrant's parent or other person having legal custody of the birth registrant, that a new birth certificate be prepared because previously recorded information has been altered pursuant to law;
- (2) Upon receipt of a certified copy of a final order, judgment, or decree of a court of competent jurisdiction that determined the nonexistence of a parent and child relationship between a person identified as a parent on the birth certificate on file and the birth registrant;
- (3) Upon receipt of a certified copy of a final adoption decree, or of an abstract of the decree, pursuant to sections 338-20 and 578-14;
- (4) Upon receipt of an affidavit from a United States licensed physician attesting that:

- (A) The physician has a bona fide physician-patient relationship with the birth registrant;
 - (B) The physician has treated and evaluated the birth registrant and has reviewed and evaluated the birth registrant's medical history;
 - (C) The birth registrant has had appropriate clinical treatment for gender transition to the new gender and has completed the transition to the new gender; and
 - (D) The new gender does not align with the sex designation on the birth registrant's birth certificate; or
- (5) Upon request of a law enforcement agency certifying that a new birth certificate showing different information would provide for the safety of the birth registrant; provided that the new birth certificate shall contain information requested by the law enforcement agency, shall be assigned a new number and filed accordingly, and shall not substitute for the birth registrant's original birth certificate, which shall remain in place.

(b) When a new certificate of birth is established under this section, it shall be substituted for the original certificate of birth. The new certificate shall not be marked as amended and shall in no way reveal the original language changed by any amendment. Thereafter, the original certificate and the evidence supporting the preparation of the new certificate shall be sealed and filed. The sealed documents shall be opened only by an order of a court of record or, for those documents amended pursuant to subsection (a) (4), by request of the birth registrant.

(c) If a new certificate of birth is established under subsection (a) (4), it shall reflect, or shall be reissued to reflect, any legal name change made before, simultaneously, or after the change in sex designation; provided appropriate documentation of the name change is submitted.

(d) If a new certificate of birth is established under subsection (a) (4), the department shall not require any additional medical information or records other than those required by subsection (a) (4). [L 1973, c 39, §1; am L 1975, c 66, §2(3); am L 1979, c 130, §1 and c 203, §1; am L 1982, c 4, §1; am L 1983, c 65, §1; am L 1984, c 167, §1; am L 1993, c 131, §2; am L 2015, c 226, §1]

Rules of Court

Adoption, new birth certificate, see HFCR rule 112.

" **[§338-17.8] Certificates for children born out of State.**

(a) Upon application of an adult or the legal parents of a minor child, the director of health shall issue a birth certificate for such adult or minor, provided that proof has been submitted to the director of health that the legal parents of such individual while living without the Territory or State of Hawaii had declared the Territory or State of Hawaii as their legal residence for at least one year immediately preceding the birth or adoption of such child.

(b) Proof of legal residency shall be submitted to the director of health in any manner that the director shall deem appropriate. The director of health may also adopt any rules pursuant to chapter 91 that he or she may deem necessary or proper to prevent fraudulent applications for birth certificates and to require any further information or proof of events necessary for completion of a birth certificate.

(c) The fee for each application for registration shall be established by rule adopted pursuant to chapter 91. [L 1982, c 182, §1]

" **§338-18 Disclosure of records.** (a) To protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system, it shall be unlawful for any person to permit inspection of, or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of any such record, except as authorized by this part or by rules adopted by the department of health.

(b) The department shall not permit inspection of public health statistics records, or issue a certified copy of any such record or part thereof, unless it is satisfied that the applicant has a direct and tangible interest in the record. The following persons shall be considered to have a direct and tangible interest in a public health statistics record:

- (1) The registrant;
- (2) The spouse of the registrant;
- (3) A parent of the registrant;
- (4) A descendant of the registrant;
- (5) A person having a common ancestor with the registrant;
- (6) A legal guardian of the registrant;
- (7) A person or agency acting on behalf of the registrant;
- (8) A personal representative of the registrant's estate;
- (9) A person whose right to inspect or obtain a certified copy of the record is established by an order of a court of competent jurisdiction;

- (10) Adoptive parents who have filed a petition for adoption and who need to determine the death of one or more of the prospective adopted child's natural or legal parents;
- (11) A person who needs to determine the marital status of a former spouse in order to determine the payment of alimony;
- (12) A person who needs to determine the death of a nonrelated co-owner of property purchased under a joint tenancy agreement; and
- (13) A person who needs a death certificate for the determination of payments under a credit insurance policy.

(c) The department may permit the use [of] the data contained in public health statistical records for research purposes only, but no identifying use thereof shall be made.

(d) Index data consisting of name and sex of the registrant, type of vital event, and such other data as the director may authorize shall be made available to the public.

(e) The department may permit persons working on genealogy projects access to microfilm or other copies of vital records of events that occurred more than seventy-five years prior to the current year.

(f) Subject to this section, the department may direct its local agents to make a return upon filing of birth, death, and fetal death certificates with them, of certain data shown to federal, state, territorial, county, or municipal agencies. Payment by these agencies for these services may be made as the department shall direct.

(g) The department shall not issue a verification in lieu of a certified copy of any such record, or any part thereof, unless it is satisfied that the applicant requesting a verification is:

- (1) A person who has a direct and tangible interest in the record but requests a verification in lieu of a certified copy;
- (2) A governmental agency that, for a legitimate government purpose, maintains and needs to update official lists of persons in the ordinary course of the agency's activities. Notwithstanding other provisions of this section, upon request from a governmental agency of the State of Hawaii or its political subdivisions, the department may further disclose to that governmental agency the date of the vital event that has been verified;
- (3) A governmental agency, or private, social, or educational agency or organization that seeks

confirmation of a certified copy of any such record submitted in support of or information provided about a vital event relating to any such record and contained in an official application made in the ordinary course of the agency's or organization's activities by an individual seeking employment with, entrance to, or the services or products of the agency or organization;

- (4) A private or government attorney who seeks to confirm information about a vital event relating to any such record that was acquired during the course of or for purposes of legal proceedings; or
- (5) An individual employed, endorsed, or sponsored by a governmental agency, or private, social, or educational agency or organization who seeks to confirm information about a vital event relating to preparation of reports or publications by the agency or organization for research or educational purposes. [L 1949, c 327, §22; RL 1955, §57-21; am L Sp 1959 2d, c 1, §19; am L 1967, c 30, §2; HRS §338-18; am L 1977, c 118, §1; am L 1991, c 190, §1; am L 1997, c 305, §5; am L 2001, c 246, §2; am L 2012, c 86, §2]

Cross References

Rulemaking, see chapter 91.

" **§338-19 Photostatic or typewritten copies of records.** The department of health is authorized to prepare typewritten, photostatic, or microphotographic copies of any records and files in its office, which by reason of age, usage, or otherwise are in such condition that they can no longer be conveniently consulted or used without danger of serious injury or destruction thereof, and to certify to the correctness of such copies. The typewritten, photostatic, or microphotographic copies shall be competent evidence in all courts of the State with like force and effect as the original. [L 1949, c 327, §23; RL 1955, §57-22; am L 1957, c 8, §1; am L Sp 1959 2d, c 1, §19; HRS §338-19]

" **§338-20 Adoption.** (a) In case of the adoption of any person born in the State, the department of health, upon receipt of a properly certified copy of the adoption decree, or certified abstract thereof on a form approved by the department, shall prepare a supplementary certificate in the name of the adopted person, as fixed or changed by the decree, and seal and

file the original certificate of birth with the certified copy attached thereto.

(b) The registrar of births shall show on the supplemental birth certificate the names of parents as stated in the adoption decree pursuant to section 578-14.

(c) Any certified copy of final decree of adoption, or abstract thereof, of persons born in the State, rendered by courts of other states and territories subject to the jurisdiction of the United States, or courts of a foreign country, shall be considered properly certified when attested by the clerk of the court in which it was rendered with the seal of the court annexed, if there be a seal, together with a certificate of the presiding judge, chancellor, or magistrate that the attestation is in due form.

(d) If no original certificate of birth shall be on file with the department, the department may require such evidence as it deems necessary to establish the facts of birth before preparing a supplementary certificate in the new name of the adopted person; provided that no such certificate shall be filed unless it shall be satisfactorily established that the adopted person was born in the State.

(e) The sealed documents may be opened by the department only by an order of a court of record or when requested in accordance with section 578-14.5 or 578-15. Upon receipt of a certified copy of a court order setting aside a decree of adoption, the department shall restore the original certificate to its original place in the files. [L 1949, c 327, §24; RL 1955, §57-23; am L Sp 1959 2d, c 1, §19; HRS §338-20; am L 1978, c 50, §1; am L 1979, c 203, §2; am L 1980, c 153, §6 and c 232, §18; am L 1988, c 274, §2; am L 1990, c 338, §2]

" **§338-20.5 Adoption; foreign born persons.** (a) The department of health shall establish a Hawaii certificate of birth for a person born in a foreign country and for whom a final decree of adoption has been entered in a court of competent jurisdiction in Hawaii, when it receives the following:

- (1) A properly certified copy of the adoption decree, or certified abstract thereof on a form approved by the department; and
- (2) A copy of any investigatory report and recommendation which may have been prepared by the [director of human services]; and
- (3) A report on a form to be approved by the department of health setting forth the following:
 - (A) Date of assumption of custody;
 - (B) Sex;

- (C) Color or race;
- (D) Approximate age of child;
- (E) Name and address of the person or persons adopting said child;
- (F) Name given to child by adoptive parent or parents;
- (G) True or probable country of birth.

The true or probable country of birth shall be known as the place of birth, and the date of birth shall be determined by approximation. This report shall constitute an original certificate of birth; and

- (4) A request that a new certificate of birth be established.

(b) After preparation of the new certificate of birth in the new name of the adopted person, the department of health shall seal and file the certified copy of the adoptive decree, the investigatory report and recommendation of the director of human services if any, the report constituting the original certificate of birth, and the request for a new certificate of birth. The sealed documents may be opened by the department only by an order of a court of record or when requested in accordance with section 578-14.5 or 578-15. The new certificate of birth shall show the true or probable foreign country of birth, and that the certificate is not evidence of United States citizenship for the child for whom it is issued or for the adoptive parents. [L 1979, c 203, §3; am L 1990, c 338, §3]

" **§338-21 Children born to parents not married to each other.** (a) All children born to parents not married to each other, irrespective of the marriage of either natural parent to another, (1) on the marriage of the natural parents with each other, (2) on the voluntary, written acknowledgments of paternity under oath signed by the natural father and the natural mother, or (3) on establishment of the parent and child relationship under chapter 584, are entitled to the same rights as those born to parents married to each other and shall take the name so stipulated by their parents or, if the parents do not agree on the name, shall take the name specified by a court of competent jurisdiction to be the name that is in the best interests of the child. The original certificate of birth shall contain the name so stipulated. The child or children or the parents thereof may petition the department of health to issue a new original certificate of birth, and not a duplicate of the original certificate that has been amended, altered, or modified, in the new name of the child, and the department shall issue the new original certificate of birth. As used in this

section "name" includes the first name, middle name, or last name.

(b) The evidence upon which the new original certificate is made, and the superseded original certificate shall be sealed and filed and may be opened only upon order of a court of record.

(c) If the child's natural parents marry each other and desire to change the child's name, the child's name may be changed and a new original certificate of birth prepared.

(d) Nothing in this section shall be construed to limit the power of the courts to order the department to prepare new certificates of birth under section 584-23. [L 1949, c 327, §25; RL 1955, §57-24; am L Sp 1959 2d, c 1, §19; am L 1967, c 6, §2; HRS §338-21; am L 1975, c 66, §2(4); am L 1980, c 153, §5; am L 1983, c 65, §2; am L 1986, c 287, §1; am L 1987, c 100, §2; am L 1988, c 141, §27; am L 1993, c 131, §3]

Attorney General Opinions

Department of health's preparation of a new birth certificate pursuant to paternity orders. Att. Gen. Op. 87-6.

Case Notes

Legitimacy or illegitimacy fixed at birth and cannot be changed by subsequent legislation. 3 H. 459; 4 H. 548. Prior to amendment of Act 71, L 1907, children of adulterous intercourse not legitimated by subsequent marriage of parents. 4 H. 292; 17 H. 45, 415, aff'd 210 U.S. 149.

Child begotten and born out of wedlock even though legitimated by statute on marriage of parents, is not "lawfully begotten child" within meaning of will. 14 H. 271.

Legitimation by subsequent marriage. 29 H. 258, aff'd 16 F.2d 273.

Presumption of legitimacy is not conclusive, but rebuttable. 30 H. 574. Evidence to rebut presumption. 49 H. 273, 414 P.2d 925.

Effect of legitimation on necessity of father's consent to adoption of child. 52 H. 395, 477 P.2d 780.

" **§338-22 Other persons required to make records.** Persons in charge of institutions for care or correction or for treatment of disease, injury, or childbirth shall record and report all statistical data required by this part relating to their inmates or patients. [L 1949, c 327, §26; RL 1955, §57-25; HRS §338-22]

" **§338-23 Permit for removal, burial, or other disposition of body.** When a death or fetal death occurs or a dead body is found, the body shall not be disposed of or removed from the registration district until a written permit has been issued by the local agent of the department of health, except that if the dead fetus is less than twenty-four weeks of gestation, no permit shall be required and except that if the death occurred as a result of an accident or other casualty occurrence, the local agent of the department of health may orally authorize the dead bodies to be removed from a registration district and airlifted or otherwise directly transported to the Honolulu registration district for the preparation and filing of death certificates and the issuance of written permits for further disposition. [L 1949, c 327, §27; am L 1951, c 92, §4; RL 1955, §57-26; am L Sp 1959 2d, c 1, §19; HRS §338-23; am L 1981, c 113, §4]

" **§338-24 Foreign permit for removal, burial, or other disposition of body.** When the death or fetal death occurs outside this State and the body is accompanied by a permit for burial, removal, or other disposition issued in accordance with the law and regulations in force where the death or fetal death occurred, the permit shall authorize the transportation of the body into or through this State, but before the burial, cremation, or other disposal of the body within this State, the permit shall be endorsed by the local agent of the department of health who shall keep a record thereof. [L 1949, c 327, §28; am L 1951, c 92, §5; RL 1955, §57-27; am L Sp 1959 2d, c 1, §19; HRS §338-24]

" **§338-25 Prerequisite for permit.** No permit under section 338-23 shall be issued until a certificate of death or fetal death, as far as it can be completed under the circumstances of the case, has been filed and until all the regulations of the department of health in respect to the issuance of such permit have been complied with. [L 1949, c 327, §29; am L 1951, c 92, §5; RL 1955, §57-28; am L Sp 1959 2d, c 1, §19; HRS §338-25]

" **§338-25.5 Disinterment of human bodies.** (a) No corpse, nor the remains of any dead human body, exclusive of ashes, shall be exposed, disturbed, or removed from its place of burial, nor shall the receptacle, container, or coffin holding the remains or corpse be opened, removed, or disturbed after due interment, except upon written application made to the director of health for a permit therefor and upon the issuance and according to the terms of a permit granted therefor by the

director. After any removal or disturbance the grave shall be filled at once and restored to its former condition.

(b) Notwithstanding the provisions of subsection (a), the department of land and natural resources pursuant to sections 6E-43 and 6E-43.6 may authorize exposure, removal, disinterment, or any other act without obtaining a permit from the department of health. [L 1921, c 111, §1; RL 1925, §4493; RL 1935, §5800; am L 1937, c 195, §1; RL 1945, §11200; RL 1955, §276-1; am L Sp 1959 2d, c 1, §19; HRS §734-1; ren L 1972, c 9, pt of §1; am L 1990, c 306, §14]

" **[§338-25.6] Fee.** A fee of \$5 shall be charged by the director of health for the issuing of such permit, the fee to be paid and accounted for to the treasury of the State, provided that subject to the provisions of section 338-25.5 the director shall issue a permit, free of charge, to any county, state or federal officer, acting in the officer's official capacity, or to representatives of the consular corps, or to any domestic or foreign corporation, association, or organization not operated for profit which engages in public charity. [L 1921, c 111, §2; RL 1925, §4494; RL 1935, §5801; am L 1937, c 195, §2; RL 1945, §11201; RL 1955, §276-2; am L Sp 1959 2d, c 1, §19; HRS §734-2; ren L 1972, c 9, pt of §1; gen ch 1985]

Cross References

Modification of fee, see §92-28.

" **§§338-26, 27 REPEALED.** L 1974, c 31, §§4, 5.

" **§338-28 Transmittal of certificates to department.** Local agents of the department of health shall transmit all certificates filed with them to the department in accordance with regulations of the department. [L 1949, c 327, §32; RL 1955, §57-31; am L Sp 1959 2d, c 1, §19; HRS §338-28]

" **§338-29 REPEALED.** L 2002, c 51, §1.

" **§338-29.5 Late registration of death, fetal death, marriage, and divorce.** (a) When a death, fetal death, marriage, or divorce occurring in this State has not been registered, a certificate may be filed in accordance with rules adopted by the department of health. The certificate shall be registered subject to any evidentiary requirements that the department adopts by rule to substantiate the alleged facts of death, fetal death, marriage, or divorce.

(b) Certificates of death, fetal death, marriage, or divorce registered one year or more after the date of occurrence shall be marked "late" and shall show on the face the date of the late registration.

(c) As used in this section, "late" means one year or more after the date of the death, fetal death, marriage, or divorce. [L 1972, c 66, pt of §1(3); am L 1997, c 305, §6]

" **§338-30 Penalties.** (a) Except where a different penalty is provided in this part, any person who violates this part, or neglects or refuses to perform any of the duties imposed upon the person by this part, shall be fined not more than \$100.

(b) Any person who wilfully makes or alters any certificate or certified copy thereof provided for in this part except in accordance with this part, shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

(c) Any person, who knowingly transports, or accepts for transportation, interment, or other disposition, a dead body without an accompanying permit issued in accordance with this part, shall be fined not more than \$500.

(d) Any person who presents false information in order to obtain access to or a certified copy of a vital record for which the person is not eligible is guilty of a misdemeanor and shall be fined not more than \$1,000. [L 1949, c 327, §33; RL 1955, §57-33; HRS §338-30; am L 1977, c 118, §2; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

"PART II. CERTIFICATES OF HAWAIIAN BIRTH

§338-41 Issuance; procedure. (a) The department of health may make regulations respecting the form of Hawaiian birth certificates and certified copies of such certificates and other matters relating to Hawaii birth certificates as appear necessary and the regulations, when approved and made in accordance with chapter 91, shall have the force of law. The department shall furnish the form of the certificates and copies made therefrom.

(b) Any certificate of Hawaiian birth issued heretofore under or by virtue of any law of the Territory of Hawaii or the State, shall be prima facie evidence of the facts therein stated. [L 1911, c 96, §1; am L 1923, c 246, §1; RL 1925, §196; am L 1927, c 202, §1; RL 1935, §7610; RL 1945, §12910; am L 1951, c 132, §1; RL 1955, §57-40; am L Sp 1959 2d, c 1, §9; am L

1965, c 96, §39; HRS §338-41; am L 1970, c 11, §1; am L 1972, c 66, §1(4)]

Case Notes

Prima facie evidence overcome by competent evidence of nonidentification. 4 U.S.D.C. Haw. 258.

Certificate not controlling upon U.S. immigration officials re admission of Chinese. 217 F. 48; 35 Op. U.S. Att. Gen. 69.

" **§338-42 REPEALED.** L 1997, c 216, §§9, 13; L 1999, c 194, §1.

" **§338-43 [OLD] REPEALED.** L 1972, c 66, §1(6).

§338-43 Perjury. Any applicant or any person who gives or offers any false testimony, oral or written, under oath, in support or respect of any application for a certificate under section 338-41, shall be deemed guilty of perjury and shall be punishable accordingly. [L 1911, c 96, §2; RL 1925, §197; RL 1935, §7611; RL 1945, §12911; RL 1955, §57-44; HRS §338-44; ren L 1972, c 66, §1(6)]

Cross References

Perjury and related offenses under the Penal Code, see §§710-1060 to 710-1069.5.

" **§338-44 Renumbered as §338-43.**

"[PART III. GENERAL PROVISIONS]

[\$338-51] Administration of oaths. Regular employees in the research and statistics office of the department of health may be appointed by the director of health to administer the oaths required by this chapter to be taken when registering vital events on a delayed basis and when correcting items on vital records registered under this chapter. [L 1975, c 62, §1]

" **[\$338-55] Disposition of body; armed forces service members.** The person designated by the decedent as authorized to direct disposition on a United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, may arrange for the final disposition of the decedent's body, including cremation, if the decedent:

- (1) Died while serving in any branch of the United States armed forces, United States reserve forces, or National Guard; and
- (2) Executed the United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form. [L 2011, c 71, §1]