

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 509

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO VITAL STATISTICS; AMENDING SECTION 39-240, IDAHO CODE, TO PROVIDE LEGISLATIVE FINDINGS AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 2, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-245A, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING CERTAIN FACTS INCLUDED IN AND AMENDMENTS TO BIRTH CERTIFICATES; AND AMENDING CHAPTER 2, TITLE 39, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 39-279, IDAHO CODE, TO PROVIDE SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-240, Idaho Code, be, and the same is hereby amended to read as follows:

39-240. SHORT TITLE -- LEGISLATIVE FINDINGS. (1) This act shall be known and may be cited as the "Idaho Vital Statistics Act."

(2) The legislature finds:

(a) As early as 1632, government officials began tracking vital statistics, specifically births, deaths, and marriages;

(b) Today, state and local vital records offices record over eleven million (11,000,000) vital events annually in the United States;

(c) Material facts included in vital records include the date of birth, the individual's sex, the location of birth, the parents' identities, and the date of death;

(d) The purpose of documenting factual information on vital records is to help the government fulfill one of its most basic duties: protecting the health and safety of its citizens;

(e) Numerous courts have recognized that the purpose of vital records is to maintain an accurate database of factual information regarding births, deaths, and other vital events in a given jurisdiction. See Sea v. U.S. Citizenship & Immigration Servs., 2015 WL 5092509, at \*4 (D. Minn. Aug. 28, 2015) ("The public does have an interest in having accurate records on vital statistics..."); Ampadu v. U.S. Citizenship & Immigration Servs., Dist. Dir., 944 F. Supp. 2d 648, 655 (C.D. Ill. 2013) (acknowledging "the public's interest in having accurate records on vital statistics"); Boiko v. Holder, 2013 WL 709047, at \*2 (D. Colo. Feb. 26, 2013) ("[T]he government, and the public at large, would appear to benefit from having the most accurate vital statistics records possible."); J.R. v. Utah, 261 F. Supp. 2d 1268, 1294 (D. Utah 2002) ("The State also has a significant interest in the accuracy of the records it keeps, particularly vital records like birth certificates.");

(f) According to the national research council committee on national statistics, factual information contained in vital records is used to help diagnose and solve problems that impact national health, including tracking and diagnosing disparities in mortality rates based on age and

1 sex, identifying factors that account for the significant differences  
 2 in life expectancy between males and females, measuring and seeking so-  
 3 lutions to socioeconomic inequalities in health based on sex and age,  
 4 and studying infant death rates based on sex, location, birth weight,  
 5 and other information collected from vital records;

6 (g) Factual information from vital records is also necessary for na-  
 7 tional security. It is used to identify potential disease epidemics,  
 8 such as the zika virus, that may disproportionately impact one sex over  
 9 the other; expose covert bioterrorist attacks, such as determining  
 10 whether a sudden increase in certain symptoms in a population is due to  
 11 random chance or should be further investigated; and identify criminals  
 12 and terrorists, where vital records can be used to uncover fraudulently  
 13 obtained driver's licenses or passports; and

14 (h) Allowing individuals to alter their vital records, including birth  
 15 certificates, based upon subjective feelings or experiences undermines  
 16 the government's interest in having accurate vital records.

17 SECTION 2. That Chapter 2, Title 39, Idaho Code, be, and the same is  
 18 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 19 ignated as Section 39-245A, Idaho Code, and to read as follows:

20 39-245A. CERTIFICATES OF BIRTH -- MATERIAL FACTS INCLUDED -- AMEND-  
 21 MENTS.

22 (1) (a) The legislature finds that:

23 (i) There is a compelling interest in maintaining accurate, quan-  
 24 titative, biology-based material facts on Idaho certificates of  
 25 birth that provide material facts fundamental to the performance  
 26 of government functions that secure the public health and safety,  
 27 including but not limited to identifying public health trends,  
 28 assessing risks, conducting criminal investigations, and helping  
 29 individuals determine their biological lineage, citizenship, or  
 30 susceptibility to genetic disorders;

31 (ii) The equal protection clause of the fourteenth amendment to  
 32 the United States constitution prohibits purposeful discrimina-  
 33 tion, not facially neutral laws of general applicability, such as  
 34 a biology-based definition of sex that has been consistently ap-  
 35 plied since our nation's founding;

36 (iii) Decades of court opinion have upheld the argument that bio-  
 37 logical distinctions between male and female are a matter of sci-  
 38 entific fact, and biological sex is an objectively defined cate-  
 39 gory that has obvious, immutable, and distinguishable character-  
 40 istics;

41 (iv) Identification of biological sex on a birth certificate im-  
 42 pacts the health and safety of all individuals. For example, the  
 43 society for evidence based gender medicine has declared that the  
 44 conflation of sex and gender in health care is alarming, subjects  
 45 hundreds of thousands of individuals to the risk of unintended  
 46 medical harm, and will greatly impede medical research;

47 (v) Vital statistics are defined in section 39-241(21), Idaho  
 48 Code, as data, being the plural of datum, which is a known fact;

1 (vi) Idaho certificates of birth are of an evidentiary character  
2 and prima facie evidence of the facts recited therein, according  
3 to section 39-274, Idaho Code;

4 (vii) Age and sex, unlike the names of natural parents whose rights  
5 have been terminated, are legally applicable facts fundamental to  
6 the performance of public and private policies and contracts;

7 (viii) The failure to maintain accurate, quantitative vital sta-  
8 tistics and legal definitions upon which the government and others  
9 may with confidence rely constitutes a breach of the public trust;  
10 and

11 (ix) The government has a compelling interest in maintaining the  
12 public trust and confidence and a duty to fulfill, to the best of  
13 its ability, those functions that rely on accurate vital statis-  
14 tics.

15 (b) Based on the findings in paragraph (a) of this subsection, the leg-  
16 islature directs that an Idaho certificate of birth shall document spe-  
17 cific quantitative, material facts at the time of birth, as provided in  
18 subsection (2) of this section.

19 (2) Any certificate of birth issued under the provisions of this chap-  
20 ter shall include the following quantitative statistics and material facts  
21 specific to that birth: time of birth, date of birth, sex, birth weight,  
22 birth length, and place of birth.

23 (3) For purposes of this chapter, "sex" means the immutable biological  
24 and physiological characteristics, specifically the chromosomes and inter-  
25 nal and external reproductive anatomy, genetically determined at conception  
26 and generally recognizable at birth, that define an individual as male or fe-  
27 male.

28 (4) The quantitative statistics and material facts identified in sub-  
29 section (2) of this section may be amended within one (1) year of the filing  
30 of the certificate by submitting to the registrar a notarized affidavit of  
31 correction that:

32 (a) Is on a form prescribed by the registrar;

33 (b) Is signed by:

34 (i) The parents identified on the certificate of birth; or

35 (ii) The child's legal guardian;

36 (c) Is signed by the physician or other person in attendance who pro-  
37 vided the medical information and certified to the facts of birth; and

38 (d) Declares that the information contained on the certificate of birth  
39 incorrectly represents a material fact at the time of birth.

40 After one (1) year, the quantitative statistics and material facts  
41 identified in subsection (2) of this section may be challenged in court only  
42 on the basis of fraud, duress, or material mistake of fact, with the burden of  
43 proof upon the party challenging the acknowledgment.

44 (5) In those instances in which an individual suffers from a physiolog-  
45 ical disorder of sexual development and the individual's biological sex can-  
46 not be recognized at birth as male or female based upon externally observable  
47 reproductive anatomy, the physician shall make a presumptive determination  
48 of the individual's sex, which may thereafter be amended based on the appro-  
49 priate combination of genetic analysis and evaluation of the individual's

1 naturally occurring internal and external reproductive anatomy as provided  
2 in section (4) of this section.

3 (6) Notwithstanding any provision of this section to the contrary, a  
4 hospital may correct a birth certificate for a clerical or data entry error  
5 at any time by submitting a notarized affidavit on a form specified by the  
6 registrar with any appropriate supporting documentation.

7 SECTION 3. That Chapter 2, Title 39, Idaho Code, be, and the same is  
8 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
9 ignated as Section 39-279, Idaho Code, and to read as follows:

10 39-279. SEVERABILITY. The provisions of this chapter are hereby de-  
11 clared to be severable, and if any provision of this chapter or the applica-  
12 tion of such provision to any person or circumstance is declared invalid for  
13 any reason, such declaration shall not affect the validity of the remaining  
14 portions of this chapter.