

JAN 27 2016

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# A BILL FOR AN ACT

RELATING TO AMENDING IDENTITY OF REGISTRANT'S PARENT ON A BIRTH  
CERTIFICATE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 338-15, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3           "**§338-15 Late or altered certificates.** A person born in  
4 the State may file or amend a certificate after the time  
5 prescribed, upon submitting proof as required by rules adopted  
6 by the department of health. Certificates registered after the  
7 time prescribed for filing by the rules of the department of  
8 health shall be registered subject to any evidentiary  
9 requirements that the department adopts by rule to substantiate  
10 the alleged facts of birth. The department may amend a birth  
11 certificate to change or establish the identity of a  
12 registrant's parent only pursuant to a court order from a court  
13 of appropriate jurisdiction or pursuant to a legal establishment  
14 of parenthood pursuant to chapter 584. Amendments that change  
15 or establish the identity of a registrant's parent that are made  
16 in accordance with this section shall not be considered  
17 corrections of personal records pursuant to chapter 92F."

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SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: 

BY REQUEST

# S.B. NO. 2883

**Report Title:**

Amendments to Birth Certificates, Establishment of Parenthood

**Description:**

Clarifies that amendments to birth records that change parenthood shall not be conducted through the Uniform Information Practices Act procedures to correct personal records, but must be pursuant to a court order of appropriate jurisdiction or other legal establishment of parenthood.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

## JUSTIFICATION SHEET

DEPARTMENT: HEALTH

TITLE: A BILL FOR AN ACT RELATING TO AMENDING IDENTITY OF REGISTRANT'S PARENT ON A BIRTH CERTIFICATE.

PURPOSE: To clarify that amendments to birth certificates, specifically those amendments that change or establish the identity of a registrant's parent, can be made by the department only when the department is authorized by a court of appropriate jurisdiction or where the requirements of the Uniform Parentage Act, chapter 584, Hawaii Revised Statutes (HRS), are met. Changing or establishing parenthood requires affording due process rights to all affected persons, and such rights are not protected by section 92F-24, HRS, part of the Uniform Information Practices Act (UIPA), which is only intended to correct mistakes in records.

MEANS: Amend section 338-15, HRS.

JUSTIFICATION: Birth certificates document parenthood, which entails legal, moral, and social rights, obligations, and liabilities. Changing or establishing parenthood administratively, without affording due process to people who are either being added or being removed as parents, amounts to an unconstitutional deprivation of rights.

Amending parenthood administratively pursuant to the UIPA, without the affected person's knowledge or consent, or even over the affected person's objections, can amount to an unconstitutional deprivation of due process and equal protection. Thus, this bill is designed to clarify that the department is explicitly not authorized to

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amend or establish parenthood unless the requirements of chapter 584 are met or unless there is a court order.

When information is collected for the creation of a Hawaii birth certificate, the parents declare that the information is true and the record is created. Some plaintiffs have sued the department pursuant to chapter 92F to change the information that was entered on the original birth record. They wanted to change the original information on their birth records to establish parenthood by someone other than their listed parents so they could qualify for benefits based on the racial ancestry of the parents they were proposing. Many of these cases were brought more than fifty years after the birth occurred. The department has never been qualified to establish parenthood, but some of these plaintiffs have had limited success in the courts, and then pursuant to chapter 92F have been awarded attorney's fees against the department. The department has no expertise to evaluate anecdotal or genetic evidence of parenthood, and unlike a court, the department has no means to afford due process to existing parents whose rights would effectively be terminated by an amendment that changes a parent on a birth certificate. This bill would ensure that those people who wish to change the identity of parents on birth certificates would have to follow established procedures to establish parenthood. It would prevent plaintiffs from circumventing the due process rights of people who have been listed as parents on birth certificates since birth and may not want to be removed, and it would also prevent plaintiffs from naming a person as a parent on a birth certificate without notice to that person.

Allowing or requiring the DOH to amend the identity of parents on birth certificates without the protections of a judicial determination or the requirements of chapter

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584, HRS, would amount to a denial of the due process rights of parents who are not notified but whose names are removed from birth certificates. One foreseeable and nightmarish consequence of allowing this interpretation could occur in cases of married couples who conceive their child with donated genetic material. Although under chapter 584 they are presumed parents of a child born to them during their marriage, one or both of them could lose their rights without a hearing, and even without notice, if the child demanded a correction to the birth certificate based on test results that matched the child's DNA to the DNA of the donor of the genetic material. Another scenario would allow a child to add a father to the birth certificate where one was never listed before, without giving the man whose name was to be added an opportunity to contest the paternity.

Neither the Attorney General nor the DOH subscribe to this interpretation of section 338-15, HRS, but some courts do, and thus, section 338-15, HRS, needs the important amendment proposed by this bill.

Impact on the public: Clarifies existing law so that individuals seeking to change or establish the identity of the parents listed on birth records understand that they must follow established procedures in chapter 584 or obtain a court order establishing or rebutting parenthood instead of seeking to correct the record pursuant to the UIPA.

Impact on the department and other agencies: Clarifies that the authority to amend parenthood on a birth certificate does not rest in the Department of Health or the Office of Information Practices, but rather comes from chapter 584 or an order from a court of appropriate jurisdiction.

GENERAL FUND: None.

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OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HTH 760.

OTHER AFFECTED  
AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.