

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2101

By Delegate Walker

[Introduced January 11, 2023; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §16-5-18 of the Code of West Virginia, 1931, as amended; to amend
 2 and reenact §17B-2-8 and §17B-2-13 of said code; and to amend said code by adding
 3 thereto a new article, designated §55-22-1, §55-22-2, §55-22-3, §55-22-4, and §55-22-5,
 4 all relating to obtaining an appropriate gender marker for state documents; to providing an
 5 avenue by which persons may petition the courts to change their gender; providing for an
 6 objection process; providing guidelines for when judges may or may not grant the request;
 7 and providing for a joint petition process.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-18. Certificates of birth following adoption, legitimation, gender change, paternity acknowledgment and court determination of paternity.

1 (a) The State Registrar shall establish a new certificate of birth for a person born in West
 2 Virginia when ~~he or she~~ the registrar receives the following:

3 (1) A certificate of adoption as provided in section sixteen of this article or a certificate of
 4 adoption prepared and filed in accordance with the laws of another state, or a certified copy of the
 5 order of adoption, together with the information necessary to identify the original certificate of birth
 6 and to establish a new certificate of birth; ~~or~~

7 (2) A request that a new certificate be established as prescribed by legislative rule, based
 8 upon evidence that:

- 9 (A) The person for whom the certificate is sought has been legitimated;
- 10 (B) A court of competent jurisdiction has determined the paternity of the person; or
- 11 (C) Both parents have acknowledged the paternity of the person; or

12 (3) A request that a new certificate be established based on evidence of gender change.

13 (b) A new certificate of birth shall show the actual city, county and date of birth, if known,

14 and shall be substituted for the original certificate of birth on file. The original certificate of birth and
15 the evidence of adoption, legitimation, court determination of paternity, evidence of gender
16 change, or affidavit of paternity may not be inspected except for the administration of the system of
17 vital statistics or the Bureau for Child Support Enforcement, or upon order of a court of competent
18 jurisdiction, or, in the case of an affidavit of paternity, the signatories to the affidavit or the adult
19 subject of the affidavit, or as provided by legislative rule or as otherwise provided by state law.

20 (c) Upon receipt of a report of an amended order of adoption, the State Registrar shall
21 amend the certificate of birth as provided by legislative rule.

22 (d) Upon receipt of a report or order of annulment of adoption, the State Registrar shall
23 restore the original certificate of birth to its place in the files and the new certificate and evidence
24 may not be inspected except for the administration of the system of vital statistics or Bureau for
25 Child Support Enforcement, or upon order of a court of competent jurisdiction, or as provided by
26 legislative rule or as otherwise provided by state law.

27 (e) Upon receipt of a written request and a sworn affidavit of paternity signed by both
28 parents of a child born out of wedlock, the State Registrar shall place the name of the father on the
29 certificate of birth and, if the child is under the age of 18 and at the request of the parents, change
30 the surname of the child in the manner prescribed by legislative rule.

31 (f) Upon receipt of a written request and an affidavit signed by the individual or the
32 individual's parent or legal guardian indicating the request for a new birth certificate is for the
33 purpose of ensuring the certificate accurately reflects their gender and is not for any fraudulent or
34 other unlawful purpose, the State Registrar shall issue a new certificate with the requested
35 designation of male, female, or X.

36 ~~(f)~~(g) If no certificate of birth is on file for the person for whom a new certificate of birth is to
37 be established under this section, a delayed certificate of birth must be filed with the state
38 Registrar as provided in section fourteen or fifteen of this article before a new certificate of birth is
39 established, except that when the date and place of birth and parentage have been established by

40 a court of competent jurisdiction, a delayed certificate is not required.

41 ~~(g)~~ (h) When a new certificate of birth is established by the state Registrar, all copies of the
42 original certificate of birth in the custody of any other custodian of vital records in this state shall be
43 sealed from inspection or forwarded to the state Registrar, as he or she shall direct.

44 ~~(h)~~ (i) Upon receipt of the documentation set forth in subdivision (1) of this subsection, the
45 state Registrar shall prepare and register a certificate in this state for a person born in a foreign
46 country who is not a citizen of the United States and who was adopted through a court of
47 competent jurisdiction in this state.

48 (1) The State Registrar shall establish the certificate upon receipt of:

49 (A) A certificate of adoption from the court ordering the adoption;

50 (B) Proof of the date and place of the child's birth; and

51 (C) A request that the certificate be prepared, from the court, the adopting parents, or the
52 adopted person if ~~he or she~~ that person has attained the age of 18 years.

53 (2) The certificate shall be labeled "Certificate of Foreign Birth" and shall show the actual
54 country of birth. The certificate shall include a statement that it is not evidence of United States
55 citizenship for the person for whom it is issued.

56 (3) After registration of the certificate of birth in the new name of the adopted person, the
57 State Registrar shall seal and file the certificate of adoption, which may not be inspected except for
58 the administration of the system of vital statistics, or upon order of a court of competent
59 jurisdiction, or as provided by legislative rule or as otherwise provided by state law.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses; fees.

1 (a) The division shall, upon payment of the required fee, issue to every applicant qualifying
2 therefor a driver's license, which shall indicate the type or general class or classes of vehicle or

3 vehicles the licensee may operate in accordance with this chapter or chapter 17E of this code, or
4 motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the
5 full legal name, to be displayed in a manner selected by the applicant when supported by
6 appropriate documentation and consistent with federal law, this code, and existing system
7 capabilities of the division, date of birth, residence address, a brief description and a color
8 photograph of the licensee, a sex designation of M, F or X as selected by the applicant, and either
9 a facsimile of the signature of the licensee or a space upon which the signature of the licensee is
10 written with pen and ink immediately upon receipt of the license. No license is valid until it has
11 been so signed by the licensee.

12 (b) A driver's license which is valid for operation of a motorcycle shall contain a motorcycle
13 endorsement. A driver's license which is valid for the operation of a commercial motor vehicle shall
14 be issued in accordance with chapter 17E of this code.

15 (c) The division shall use such process or processes in the issuance of licenses that will,
16 insofar as possible, prevent any identity theft, alteration, counterfeiting, duplication, reproduction,
17 forging or modification of, or the superimposition of a photograph on, the license.

18 (d) The fee for the issuance of a Class E driver's license is \$5 per year for each year the
19 license is valid. The Division of Motor Vehicles may adjust this fee every five years on September
20 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer
21 Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee
22 amount in a single year. The fee for issuance of a Class D driver's license is \$6.25 per year for
23 each year the license is valid. An additional fee of 50 cents shall be collected from the applicant at
24 the time of original issuance or each renewal, and the additional fee shall be deposited in the
25 Combined Voter Registration and Driver's Licensing Fund established pursuant to the provisions
26 of §3-2-12 of this code. The additional fee for adding a motorcycle endorsement to a driver's
27 license is \$1 per year for each year the license is issued.

28 (e) The fee for issuance of a motorcycle-only license is \$2.50 for each year for which the

29 motorcycle license is valid. The fees for the motorcycle endorsement or motorcycle-only license
30 shall be paid into a special fund in the State Treasury known as the Motorcycle Safety Fund as
31 established in §17B-1D-7 of this code.

32 (f) The fee for the issuance of either the level one or level two graduated driver's license as
33 prescribed in §17B-2-3a of this code is \$5.

34 (g) The fee for issuance of a federally compliant driver's license or identification card for
35 federal use is \$10 in addition to any other fee required by this chapter. Any fees collected under the
36 provisions of this subsection shall be deposited into the Motor Vehicle Fees Fund established in
37 accordance with §17A-2-21 of this code.

38 (h) The division may use an address on the face of the license other than the applicant's
39 address of residence if:

40 (1) The applicant has a physical address or location that is not recognized by the post
41 office for the purpose of receiving mail;

42 (2) The applicant is enrolled in a state address confidentiality program or the alcohol test
43 and lock program;

44 (3) The applicant's address is entitled to be suppressed under a state or federal law or
45 suppressed by a court order; or

46 (4) At the discretion of the commissioner, the applicant's address may be suppressed to
47 provide security for classes of applicants such as law-enforcement officials, protected witnesses,
48 and members of the state and federal judicial systems.

49 (i) Notwithstanding any provision in this article to the contrary, a valid military identification
50 card with an expiration date issued by the United States Department of Defense for active duty,
51 reserve, or retired military personnel containing a digitized photo and the holder's full legal name
52 may be used to establish current full legal name and legal presence. The commissioner may at his
53 or her discretion expand the use of military identification cards for other uses as permitted under
54 this code or federal rule.

55 (j) The division may accept any document as proof of identity, residency, and lawful
 56 presence that is acceptable under the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (May
 57 11, 2005), 49 U.S.C. §30301 *et seq.*

§17B-2-13. Notice of change of address, gender or name.

1 (a) Whenever any person after applying for or receiving a driver’s license moves from the
 2 address named in the application or in the license issued to the person, or when the name of a
 3 licensee is changed by marriage or otherwise, or when the person has changed their gender the
 4 person shall within 20 days thereafter notify the division in writing of the old and new addresses,
 5 the new sex designation, or of the former and new names and of the number of any license then
 6 held by the person on the forms prescribed by the division.

7 (b) Whenever any person, after applying for or receiving a driver’s license, is assigned a
 8 new address by the United States Postal Service or other legally constituted authority, the person
 9 shall notify the division in writing of the old and new address and of the number of any license held
 10 by the person. The notification of change of address shall be made at least 20 days prior to the
 11 final date on which mail with the old address is deliverable by the United States Postal Service.

12 (c) The provisions of section one, article five of this chapter relating to imprisonment do not
 13 apply to persons who violate the provisions of this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 22. PETITIONS FOR CHANGE OF GENDER.

§55-22-1. Petition to circuit court or family court for change of gender; contents thereof;
notice of application.

1 (a) A person desiring legal recognition of a change of gender may apply to the circuit court
 2 or family court of the county in which the person resides by a verified petition setting forth and
 3 affirming the following:

4 (1) That they have been a bona fide resident of the county for at least six months prior to

5 the filing of the petition or that they are a nonresident of the county who was born in the county and
6 was previously a resident of the county for a period of at least 15 years;

7 (2) The appropriate gender designation of the claimant, which shall include "male",
8 "female", or "x".

9 (3) The legal recognition of gender is not for purposes of avoiding debt or creditors;

10 (4) The legal recognition of gender sought is not for purposes of avoiding any state or
11 federal law;

12 (5) The legal recognition of gender sought is not for any purpose of evading detection,
13 identification or arrest by any local, state or federal law-enforcement agency;

14 (6) The legal recognition of gender sought is not for any improper or illegal purpose;

15 (7) Whether or not the petitioner desires to protect his or her identity for personal safety
16 reasons;

17 (8) That, pursuant to §55-19-3 (b) of the code, if petitioner seeking the legal recognition of
18 gender is registered sex offender pursuant to any state or federal law or is a convicted felon in any
19 jurisdiction, the claimant has notified the appropriate authorities of the petitioner's intent to change
20 their gender designation; and

21 (b) The petitioner shall provide a sworn affidavit indicating the request for legal recognition
22 of their gender is for the purpose of ensuring their documents and records accurately reflect their
23 gender and is not for any fraudulent or other unlawful purpose.

§55-22-2. Objections to change of gender.

1 Any person who knows of any reason why the gender of any such petitioner should not be
2 changed, may appear and shall be heard in opposition to such change.

§55-22-3. When court may or may not order change of gender.

1 (a) Upon the filing of the verified petition and being satisfied that no injury will be done to
2 any person by reason of the change, and upon a finding that the applicant meets all requirements
3 of this article, and that the change is not desired because of any fraudulent or evil intent on the part

4 of the petitioner, the court or judge shall order a change of gender. The court shall not deny a
5 petition based on the appearance or medical history of the petitioner.

6 (b) The court shall require proof of notice of the recognition of the petitioner’s gender to any
7 state official with supervision over the petitioner for any petitioner who:

8 (1) Is required to register with the State Police pursuant to the provisions of §15-12-1 et
9 seq. of this code, during the period that the person is required to register;

10 (2) Has been convicted of first-degree murder in violation of §61-2-1 of this code, for a
11 period of 10 years after the person is discharged from imprisonment or is discharged from parole,
12 whichever occurs later.

13 (3) Has been convicted of violating any provision of §61-2-14a of this code, for a period of
14 10 years after the person is discharged from imprisonment or is discharged from parole, whichever
15 occurs later.

§55-22-4. Recordation of order changing gender.

1 (a) When such an order is made, the petitioner shall forthwith cause a certified copy thereof
2 to be filed in the office of the clerk of the county commission of the county where petitioner resides,
3 and such clerk shall record the same in a book to be kept for the purpose. For such recording and
4 indexing the clerk shall be allowed the same fee as for a deed.

5 (b) The court shall issue no fewer than three certified copies of the order to the petitioner for
6 the purposes of changes pursuant to §16-5-15 and §17B-2-13 of this code.

§55-22-5. Joint petition for name and gender change.

1 A petition made pursuant to this article may be made and considered jointly with a petition
2 pursuant to §48-25-1 et seq. of this code.

NOTE: The purpose of this bill is to remove medical and legal barriers to obtaining an appropriate gender marker on state documents, and provide an appropriate gender marker option for nonbinary, intersex, and other individuals.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.