

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2998

By Delegates C. Pritt, Chiarelli, and Kirby

[Introduced January 24, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §16-5-10 of the Code of West Virginia, 1931, as amended, relating to
2 listing of genders on birth certificates and prohibiting the use of "non-binary" as a gender
3 description on birth certificates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. VITAL STATISTICS.

§16-5-10. Birth registration acknowledgment and rescission of paternity.

1 (a) A certificate of birth for each live birth which occurs in this state shall be filed with the
2 section of vital statistics, or as otherwise directed by the state Registrar, within seven days after
3 the birth and shall be registered if it has been completed and filed in accordance with this section.

4 (b) When a birth occurs in transit to or in an institution, the person in charge of the
5 institution or his or her authorized designee shall obtain all data required by the certificate, prepare
6 the certificate, certify either by signature or by an approved electronic process that the child was
7 born alive at the place and time and on the date stated, and file the certificate as directed in
8 subsection (a) of this section. The physician or other person in attendance, or any person
9 providing prenatal care shall provide the medical information required by the certificate within
10 seventy-two hours after the birth.

11 (c) When a birth occurs other than in transit to or in an institution, the certificate shall be
12 prepared and filed by one of the following persons in the indicated order of priority in accordance
13 with legislative rule:

- 14 (1) The physician in attendance at or immediately after the birth;
- 15 (2) Any other person in attendance at or immediately after the birth;
- 16 (3) The father or the mother, or, in the absence of the father and the inability of the mother,
17 the person in charge of the premises where the birth occurred; or
- 18 (4) Any other person qualified by the department by rule to establish the facts of birth.

19 (d) When a birth occurs on a moving conveyance within the United States and the child is
20 first removed from the conveyance in this state, the birth shall be registered in this state, and the

21 place where it is first removed shall be considered the place of birth. When a birth occurs on a
22 moving conveyance while in international waters or air space or in a foreign country or its air space
23 and the child is first removed from the conveyance in this state, the birth shall be registered in this
24 state, but the certificate shall show the actual place of birth insofar as can be determined.

25 (e) For the purposes of birth registration, the woman who gives birth to the child is
26 presumed to be the mother, unless otherwise specifically provided by state law or determined by a
27 court of competent jurisdiction prior to the filing of the certificate of birth.

28 (f) If the mother was married at the time of either conception or birth, or between
29 conception and birth, the name of the most recent husband shall be entered on the certificate as
30 the father of the child, unless:

31 (1) Paternity has been determined otherwise by a court of competent jurisdiction pursuant
32 to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, in
33 which case the name of the father as determined by the court shall be entered on the certificate; or

34 (2) Genetic testing shows that the alleged father is the biological father of the child
35 pursuant to the following guidelines:

36 (A) The tests show that the inherited characteristics including, but not limited to, blood
37 types, have been determined by appropriate testing procedures at a hospital, independent
38 medical institution or independent medical laboratory duly licensed under the laws of this state, or
39 any other state, and an expert qualified as an examiner of genetic markers has analyzed,
40 interpreted and reported on the results; and

41 (B) The blood or tissue or other genetic test results show a statistical probability of paternity
42 of more than ninety-eight percent; or

43 (3) The mother, her husband, and an alleged father acknowledge that the husband is not
44 the biological father and that the alleged father is the true biological father: *Provided*, That the
45 conditions set forth in paragraphs (A) through (D) are met:

46 (A) The mother executes an affidavit of nonpaternity attesting that her husband is not the

47 biological father of the child and that another man is the biological father; and

48 (B) The man named as the alleged biological father executes an affidavit of paternity
49 attesting that he is the biological father; and

50 (C) The husband executes an affidavit of nonpaternity attesting that he is not the biological
51 father; and

52 (D) Affidavits executed pursuant to the provisions of this subdivision may be joint or
53 individual or a combination thereof, and each signature shall be individually notarized. If one of the
54 parties is an unemancipated minor, his or her parent or legal guardian must also sign the
55 respective affidavit.

56 (4) If the affidavits are executed as specified in subdivision (3) of this section, or genetic
57 tests as specified in subdivision (2) of this section verify that the alleged father is the biological
58 father, the alleged father shall be shown as the father on the certificate of live birth. Paternity
59 established pursuant to subdivision (2) or (3) of this section establishes the father for all legal
60 purposes including, but not limited to, the establishment and enforcement of child support orders,
61 and may be rescinded only by court order upon a showing of fraud, duress or material mistake of
62 fact.

63 (5) Paternity may be established pursuant to subdivision (2) or (3) of this section only when
64 the husband's name does not appear as the father of a child on a registered and filed certificate of
65 live birth and the affidavits or genetic tests are completed and submitted to the section of vital
66 statistics within one year of the date of birth of the child.

67 (g) If the mother was not married at the time of either conception or birth, or between
68 conception and birth, the name of the father shall not be entered on the certificate of birth without
69 an affidavit of paternity signed by the mother and the person to be named as the father. The
70 affidavit may be joint or individual and each signature shall be individually notarized.

71 (h) A notarized affidavit of paternity, signed by the mother and the man to be named as the
72 father, acknowledging that the man is the father of the child, legally establishes the man as the

73 father of the child for all purposes, and child support may be established pursuant to the provisions
74 of chapter forty-eight of this code.

75 (1) The notarized affidavit of paternity shall include filing instructions, the parties' social
76 security number and addresses and a statement that parties were given notice of the alternatives
77 to, the legal consequences of, and the rights and obligations of acknowledging paternity, including,
78 but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall
79 include an explanation of any rights that may be afforded due to the minority status.

80 (2) The failure or refusal to include all information required by subdivision (1) of this
81 subsection shall not affect the validity of the affidavit of paternity, in the absence of a finding by a
82 court of competent jurisdiction that it was obtained by fraud, duress or material mistake of fact, as
83 provided in subdivision (4) of this subsection.

84 (3) The original notarized affidavit of paternity shall be filed with the state Registrar. If a
85 certificate of birth for the child has been previously issued which is incorrect or incomplete, a new
86 certificate of birth will be created and placed on file. The new certificate of birth will not be marked
87 "Amended".

88 (4) Upon receipt of any notarized affidavit of paternity executed pursuant to this section,
89 the state Registrar shall forward a copy to the Bureau for Child Support Enforcement.

90 (5) An acknowledgment executed under the provisions of this subsection may be
91 rescinded as follows:

92 (A) The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit
93 court of the county in which the child resides a verified complaint stating the name of the child, the
94 name of the other parent, the date of the birth of the child, the date of the signing of the affidavit of
95 paternity, and a statement that he or she wishes to rescind the acknowledgment of the paternity. If
96 the complaint is filed more than sixty days from the date of execution of the affidavit of paternity or
97 the date of an administrative or judicial proceeding relating to the child in which the signatory of the
98 affidavit of paternity is a party, the complaint shall include specific allegations concerning the

99 elements of fraud, duress or material mistake of fact.

100 (B) The complaint shall be served upon the other parent as provided in Rule 4 of the West
101 Virginia Rules of Civil Procedure.

102 (C) The family court judge shall hold a hearing within sixty days of the service of process
103 upon the other parent.

104 (D) If the complaint was filed within sixty days of the date the affidavit of paternity was
105 executed, the court shall order the acknowledgment to be rescinded without any requirement of a
106 showing of fraud, duress, or material mistake of fact.

107 (E) If the complaint was filed more than sixty days from the date of execution of the affidavit
108 of paternity or the date of an administrative or judicial proceeding relating to the child in which the
109 signatory of the affidavit of paternity is a party, the court may set aside the acknowledgment only
110 upon a finding, by clear and convincing evidence, that the affidavit of paternity was executed under
111 circumstances of fraud, duress or material mistake of fact.

112 (F) The circuit clerk shall forward a copy of any order entered pursuant to this proceeding
113 to the state Registrar by certified mail. The order shall state all changes to be made, if any, to the
114 certificate of birth. The certificate of birth may not be marked "Amended."

115 (i) In any case in which paternity of a child is determined by a court of competent
116 jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other
117 applicable law, the name of the father and surname of the child shall be entered on the certificate
118 of birth in accordance with the finding and order of the court.

119 (j) If the father is not named on the certificate of birth, no other information about the father
120 may be entered on the certificate.

121 (k) In order to permit the filing of the certificate of birth within the seven days prescribed in
122 subsection (a) of this section, one of the parents of the child must verify the accuracy of the
123 personal data to be entered on the certificate. Certificates of birth filed after seven days, but within
124 one year from the date of birth, will be registered on the standard form of the certificate of birth and

125 will not be marked "Delayed." The State Registrar may require additional evidence in support of
126 the facts of birth for certificates filed after seven days from the date of birth.

127 (l) In addition to the personal data furnished for the certificate of birth issued for a live birth
128 in accordance with the provisions of this section, a person whose name is to appear on the
129 certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing
130 the certificate of birth the social security number or numbers issued to the parent. A record of the
131 social security number or numbers shall be filed with the local registrar of the district in which the
132 birth occurs within seven days after the birth, and the local registrar shall transmit the number or
133 numbers to the state Registrar in the same manner as other personal data is transmitted to the
134 state Registrar.

135 (m) The local registrar shall transmit by mail or an approved electronic process each month
136 to the county clerk of each county the copies of the certificates of all births occurring in the county
137 or the data extracted therefrom, from which copies the clerk shall compile records of the births and
138 shall create an index to the birth records that shall be a matter of public record. The State Registrar
139 shall prescribe the form of the index of births.

140 (n) The birth certificate shall list the child's gender at birth as male or female, and may not
141 use the term "non-binary."

NOTE: The purpose of this bill is to require birth certificates issued in this state to include the gender of the child at birth and prohibit use of the term "non-binary" on birth certificates.

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