

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5622

By Delegates Williams, Hansen, and Hamilton

[Introduced February 12, 2024; 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; and to
 2 amend and reenact §17B-2-8 and §17B-2-13 of said code; and to further amend said code
 3 by adding thereto a new article, designated §48-25B-101, §48-25B-102, §48-25B-103,
 4 §48-25B-104, and §48-25B-105, all relating to gender change in government documents.

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, 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 State 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 (D) The person has undergone a 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, gender change, or affidavit
 16 of paternity may not be inspected except for the administration of the system of vital statistics or

17 the Bureau for Child Support Enforcement, or upon order of a court of competent jurisdiction, or, in
18 the case of an affidavit of paternity, the signatories to the affidavit or the adult subject of the
19 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 ~~eighteen~~ 18 and at the request of the parents,
30 change the surname of the child in the manner prescribed by legislative rule.

31 (f) Upon receipt of a written request and a sworn 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 §16-5-14 *et seq.* and §16-5-15 *et seq.* of this code before a new certificate
39 of birth is established, except that when the date and place of birth and parentage have been
40 established by 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~~ the individual shall direct.

44 ~~(h)~~(i) Upon receipt of the documentation set forth in §16-5-18(a)(1) of this code, the State
45 Registrar shall prepare and register a certificate in this state for a person born in a foreign country
46 who is not a citizen of the United States and who was adopted through a court of competent
47 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 has~~ that has attained the age of ~~eighteen~~ 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 sex designation of M, F or X as
8 selected by the applicant, a brief description and a color photograph of the licensee, and either a
9 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. The additional fee for adding a motorcycle endorsement to a driver's
24 license is \$1 per year for each year the license is issued.

25 (e) The fee for issuance of a motorcycle-only license is \$2.50 for each year for which the
26 motorcycle license is valid. The fees for the motorcycle endorsement or motorcycle-only license
27 shall be paid into a special fund in the State Treasury known as the Motorcycle Safety Fund as
28 established in §17B-1D-7 of this code.

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

31 (g) The fee for issuance of a federally compliant driver's license or identification card for

32 federal use is \$10 in addition to any other fee required by this chapter. Any fees collected under the
33 provisions of this subsection shall be deposited into the Motor Vehicle Fees Fund established in
34 accordance with §17A-2-21 of this code.

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

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

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

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

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

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

52 (j) The division may accept any document as proof of identity, residency, and lawful
53 presence that is acceptable under the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (May
54 11, 2005), 49 U.S.C. § 30301 *et seq.*

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

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 sex, the person
 4 shall within 20 days thereafter notify the division in writing of ~~the old and new addresses or of the~~
 5 ~~former and new names~~ of the change, and of the number of any license then held by the person
 6 on the forms prescribed by the division. Notwithstanding the provisions of legislative rule 91 CSR
 7 4, the division may renew or reissue a driver’s license or identification card online in accordance
 8 with §17B-2-1 or §17B-2-12a of this code at the request of a person due to a change in the
 9 person’s postal address.

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

15 (c) The provisions of §17B-5-1 of this code relating to imprisonment do not apply to
 16 persons who violate the provisions of this section.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 25B. PETITION FOR CHANGE OF GENDER.

§48-25B-101. 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 they reside by a verified petition setting forth and affirming the
 3 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 ~~fifteen~~ 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; and

17 (8) That, pursuant to §48-104-3 (b) of this code, if petitioner seeking the legal recognition
18 of gender is registered sex offender pursuant to any state or federal law or is a convicted felon in
19 any jurisdiction, the claimant has notified the appropriate authorities of the petitioner's intent to
20 change their gender designation.

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.

§48-25B-102. Objections to change of gender.

1 Any person who believes that petitioner's gender status should not be changed may
2 appear and be heard in opposition to such change.

§48-25B-103. When court may or may not order change of gender.

1 (a) Upon the receipt of a verified petition and upon a finding by the court that the applicant
2 meets all requirements of this article, and that the change is not desired because of any fraudulent
3 or unlawful intent on the of the petitioner, the court shall order a change of gender. The court may
4 not deny a petition based on the appearance or medical history of the petitioner.

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

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

9 (2) Has been convicted of murder pursuant to §61-2-1 of this code for a period of ten 10
10 years after the person is discharged from imprisonment or is discharged from parole, whichever
11 occurs later.

12 (3) Has been convicted of violating any provision of §61-8B-1 et seq., of this code for a
13 period of ten 10 years after the person is discharged from imprisonment or is discharged from
14 parole, whichever occurs later.

§48-25B-104. Recordation of order changing gender.

1 (a) When such order is made the petitioner shall forthwith cause a certified copy thereof to
2 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 few than 3 three certified copies of the order to the petitioner
6 for the purposes of changes pursuant to §16-5-15 and §17B-2-13 of this code.

§48-25B-105. 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 §48-25-101 et seq., of this code.

NOTE: The purpose of this bill is to provide a process to change state issued birth certificate and other documents upon a gender change.

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