

STATE OF NEW YORK

3457--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. ORTIZ, D'URSO, JAFFEE, ARROYO, TAYLOR, SIMOTAS, SIMON, QUART, EPSTEIN, SEAWRIGHT, LAVINE, BRONSON, GOTTFRIED, GLICK -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil rights law, the vehicle and traffic law and the public health law, in relation to enacting the "Gender Recognition Act"; and to repeal subdivision 1 of section 502 of the vehicle and traffic law relating to driver's licenses

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Gender Recognition Act".
3 § 2. Section 63 of the civil rights law, as amended by chapter 253 of
4 the laws of 2014, is amended to read as follows:
5 § 63. Order. If the court to which the petition is presented is satis-
6 fied thereby, or by the affidavit and certificate presented therewith,
7 that the petition is true, and that there is no reasonable objection to
8 the change of name proposed, and if the petition be to change the name
9 of an infant, that the interests of the infant will be substantially
10 promoted by the change, the court shall make an order authorizing the
11 petitioner to assume the name proposed. The order shall further recite
12 the date and place of birth of the applicant and, if the applicant was
13 born in the state of New York, such order shall set forth the number of
14 ~~[his]~~ such infant's birth certificate or that no birth certificate is
15 available. The order shall be directed to be entered and the papers on
16 which it was granted to be filed ~~[prior to the publication hereinafter~~
17 ~~directed]~~ in the clerk's office of the county in which the petitioner
18 resides if he be an individual, or in the office of the clerk of the
19 civil court of the city of New York if the order be made by that court.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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~~[Such order shall also direct the publication, at least once, within sixty days after the making of the order, in a designated newspaper in the county in which the order is directed to be entered and if the petition is made by a person subject to the provisions of subdivision two of section sixty-two of this article, in a designated newspaper in any county wherein such person was convicted if different from the county in which the order is otherwise directed to be entered, of a notice in substantially the following form: Notice is hereby given that an order entered by the court, county, on the day of, bearing Index Number, a copy of which may be examined at the office of the clerk, located at, in room number, grants me the right to assume the name of The city and state of my present address are; the month and year of my birth are; the place of my birth is; my present name is]~~

§ 2-a. Section 64 of the civil rights law, as amended by chapter 258 of the laws of 2006, and the closing paragraph as separately amended by chapters 258, 320 and 481 of the laws of 2006, is amended to read as follows:

§ 64. Effect. If the order ~~[shall be fully complied with, and within ninety days after the making of the order, an affidavit of the publication thereof shall be filed in the office in which the order]~~ is entered, the petitioner shall be known by the name which is thereby authorized to be assumed. If the surname of a parent be changed as provided in this article, any minor child of such parent at the time of such change may thereafter assume such changed surname.

~~[Upon compliance with the order and the filing of the affidavit of the publication, as provided in this section, the clerk of the court in which the order has been entered shall certify that the order has been complied with; and, if]~~ If the petition states that the petitioner stands convicted of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law or any of the following provisions of such law sections 130.25, 130.30, 130.40, 130.45, 255.25, 255.26, 255.27, article two hundred sixty-three, 135.10, 135.25, 230.05, 230.06, subdivision two of section 230.30 or 230.32, ~~[such]~~ the clerk of the court in which the order has been entered (1) shall deliver, by first class mail, a copy of such certified order to the division of criminal justice services at its office in the county of Albany and (2) upon the clerk of the court reviewing the petitioner's application for name change and subsequent in-court inquiry, may, in the clerk's discretion, deliver, by first class mail, the petitioner's new name with such certified order to the court of competent jurisdiction which imposed the orders of support. Such certification shall appear on the original order and on any certified copy thereof and shall be entered in the clerk's minutes of the proceeding.

§ 2-b. Section 64-a of the civil rights law, as amended by chapter 241 of the laws of 2015, is amended to read as follows:

§ 64-a. ~~[Exemption from publication requirements]~~ Sealing name change papers. 1. If the court shall find that ~~[the publication]~~ open record of an applicant's change of name would jeopardize such applicant's personal safety, based on totality of the circumstances ~~[the provisions of sections sixty-three and sixty-four of this article requiring publication shall be waived and shall be inapplicable. Provided, however, the court shall not deny such waiver solely on the basis that the applicant]~~

~~lacks specific instances of or a personal history of threat to personal safety. The~~], the court shall order the records of such change of name proceeding ~~to~~ be sealed, to be opened only by order of the court for good cause shown or at the request of the applicant. For the purposes of this section, "totality of the circumstances" shall include, but not be limited to, a consideration of the risk of violence or discrimination against the applicant, including such applicant's status as transgender or as the subject of domestic violence.

2. Notwithstanding any other provision of law, pending such a finding in subdivision one of this section where an applicant seeks relief under this section, the court shall immediately order the applicant's current name, proposed new name, residential and business addresses, telephone numbers, and any other information contained in any pleadings or papers submitted to the court to be safeguarded and sealed in order to prevent their inadvertent or unauthorized use or disclosure while the matter is pending.

§ 2-c. The civil rights law is amended by adding a new article 6-A to read as follows:

ARTICLE 6-A

CHANGE OF SEX DESIGNATION

Section 67. Petition to change of sex designation.

67-a. Contents.

67-b. Notice.

67-c. Order.

67-d. Effect.

67-e. Sealing change of sex designation papers.

§ 67. Petition to change of sex designation. 1. A petition for leave to change sex designation may be made by a resident of the state to the county court of the county or the supreme court in the county in which such resident resides, or, if such resident resides in the city of New York, either to the supreme court or to any branch of the civil court of the city of New York, in any county of the city of New York. The petition to change the name of an infant may be made by the infant through either of such infant's parents, or by such infant's general guardian or by the guardian of such infant's person.

2. Such request may be made simultaneously with a petition for change of name pursuant to section sixty or sixty-five of this chapter or on its own, the record to be sealed upon good cause shown.

§ 67-a. Contents. 1. The petition shall be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and shall specify the grounds of the application, the name, date of birth, place of birth, age and residence of the individual whose sex designation is proposed to be changed and the sex designation which such petitioner proposes to assume.

2. Upon all applications for change of name by persons born in the state of New York, there shall be annexed to such petition either a birth certificate or a certified transcript thereof or a certificate of the commissioner or local board of health that none is available.

§ 67-b. Notice. 1. If the petition be to change the sex designation of an infant, notice of the time and place when and where the petition will be presented must be served, in like manner as a notice of a motion upon an attorney in an action, upon (a) both parents of the infant, if they be living, unless the petition be made by one of the parents, in which case notice must be served upon the other, if he or she be living, and (b) the general guardian or guardian of the person, if there be one. But if any of the persons, required to be given notice by this section,

1 reside without the state, then the notice required by this section must
2 be sent by registered mail to the last known address of the person to be
3 served. If it appears to the satisfaction of the court that a person
4 required to be given notice by this section cannot be located with due
5 diligence within the state, and that such person has no known address
6 without the state, then the court may dispense with notice or require
7 notice to be given to such persons and in such manner as the court
8 thinks proper.

9 § 67-c. Order. If the court to which the petition is presented is
10 satisfied thereby, or by the affidavit and certificate presented there-
11 with, that the petition is true, and that there is no reasonable
12 objection to the change of name proposed, and if the petition be to
13 change the name of an infant, that the interests of the infant will be
14 substantially promoted by the change, the court shall make an order
15 authorizing the petitioner to assume the name proposed. The order shall
16 further recite the date and place of birth of the applicant and, if the
17 applicant was born in the state of New York, such order shall set forth
18 the number of such infant's birth certificate or that no birth certif-
19 icate is available. The order shall be directed to be entered and the
20 papers on which it was granted to be filed in the clerk's office of the
21 county in which the petitioner resides if he be an individual, or in the
22 office of the clerk of the civil court of the city of New York if the
23 order be made by that court.

24 § 67-d. Effect. If the order is entered, the petitioner shall be known
25 by the name which is thereby authorized to be assumed. If the surname of
26 a parent be changed as provided in this article, any minor child of such
27 parent at the time of such change may thereafter assume such changed
28 surname.

29 § 67-e. Sealing change of sex designation papers. 1. If the court
30 shall find that open record of an applicant's change of sex designation
31 would jeopardize such applicant's personal safety, based on totality of
32 the circumstances, the court shall order the records of such change of
33 sex designation proceeding to be sealed, to be opened only by order of
34 the court for good cause shown or at the request of the applicant. For
35 the purposes of this section, "totality of the circumstances" shall
36 include, but not be limited to, a consideration of the risk of violence
37 or discrimination against the applicant, including such applicant's
38 status as transgender or as the subject of domestic violence.

39 2. Notwithstanding any other provision of law, pending such a finding
40 in subdivision one of this section where an applicant seeks relief under
41 this section, the court shall immediately order the applicant's current
42 name, sex designation, proposed new sex designation, residential and
43 business addresses, telephone numbers, and any other information
44 contained in any pleadings or papers submitted to the court to be safe-
45 guarded and sealed in order to prevent their inadvertent or unauthorized
46 use or disclosure while the matter is pending.

47 § 3. Subdivision 1 of section 502 of the vehicle and traffic law, as
48 amended by chapter 487 of the laws of 2012, is REPEALED.

49 § 4. Subdivision 1 of section 502 of the vehicle and traffic law, as
50 amended by chapter 465 of the laws of 2012, the third undesignated para-
51 graph as amended by chapter 248 of the laws of 2016, is amended to read
52 as follows:

53 1. Application for license. Application for a driver's license shall
54 be made to the commissioner. The fee prescribed by law may be submitted
55 with such application. The applicant shall furnish such proof of identi-
56 ty, age, and fitness as may be required by the commissioner. The appli-

cant shall indicate their sex designation of male, female, or x, which can indicate nonbinary, intersex, undesignated, or other, and the commissioner shall not require documentation for an original driver's license applicant's initial indication of a sex designation or a licensed applicant's request for an amendment other than the following: the applicant's self-certification of their sex; or documentation required by this chapter as necessary to establish that an applicant is lawfully entitled to a license. The commissioner may also provide that

the application procedure shall include the taking of a photo image or images of the applicant in accordance with rules and regulations prescribed by the commissioner. In addition, the commissioner also shall require that the applicant provide ~~[his or her]~~ such applicant's social security number, shall provide space so that the applicant may request a notation upon such license that the applicant is a veteran of the United States armed forces, and shall provide space on the application so that the applicant may register in the New York state organ and tissue donor registry under section forty-three hundred ten of the public health law with the following stated on the application in clear and conspicuous type:

"You must fill out the following section: Would you like to be added to the Donate Life Registry? Check box for 'yes' or 'skip this question'."

The commissioner of health shall not maintain records of any person who checks "skip this question". Except where the application is made in person or electronically, failure to check a box shall not impair the validity of an application, and failure to check "yes" or checking "skip this question" shall not be construed to imply a wish not to donate. In the case of an applicant under eighteen years of age, checking "yes" shall not constitute consent to make an anatomical gift or registration in the donate life registry, except as otherwise provided pursuant to the provisions of paragraph (b) of subdivision one of section forty-three hundred one of the public health law. Where an applicant has previously consented to make an anatomical gift or registered in the donate life registry, checking "skip this question" or failing to check a box shall not impair that consent or registration. In addition, an applicant for a commercial driver's license who will operate a commercial motor vehicle in interstate commerce shall certify that such applicant meets the requirements to operate a commercial motor vehicle, as set forth in public law 99-570, title XII, and title 49 of the code of federal regulations, and all regulations promulgated by the United States secretary of transportation under the hazardous materials transportation act. In addition, an applicant for a commercial driver's license shall submit a medical certificate at such intervals as required by the federal motor carrier safety improvement act of 1999 and Part 383.71(h) of title 49 of the code of federal regulations relating to medical certification and in a manner prescribed by the commissioner. For purposes of this section and sections five hundred three, five hundred ten-a, and five hundred ten-aa of this title, the terms "medical certificate" and "medical certification" shall mean a form substantially in compliance with the form set forth in Part 391.43(h) of title 49 of the code of federal regulations. Upon a determination that the holder of a commercial driver's license has made any false statement, with respect to the application for such license, the commissioner shall revoke such license.

§ 5. The section heading and paragraph (e) of subdivision 1 of section 4138 of the public health law, the section heading as amended by chapter

1 201 of the laws of 1972 and paragraph (e) of subdivision 1 as amended by
2 chapter 214 of the laws of 1998, are amended and a new subdivision 8 is
3 added to read as follows:

4 Birth certificate; new certificate in case of subsequent marriage of
5 unwed parents; adoption; adjudication of parentage; change of name of
6 registrant or parent; gender transition of registrant or parent.

7 (e) the certificate of birth of a child born out of wedlock as defined
8 in paragraph (b) of subdivision one of section four thousand one hundred
9 thirty-five of this article has been filed without entry of the name of
10 the father and the commissioner thereafter receives the acknowledgment
11 of paternity pursuant to section one hundred eleven-k of the social
12 services law or section four thousand one hundred thirty-five-b of this
13 article executed by the putative father and mother which authorizes the
14 entry of the name of such father, and which may also authorize a
15 conforming change in the surname of the child; or,

16 (f) proper proof is submitted to the commissioner from or by the clerk
17 of a court of a competent jurisdiction to reflect a change of gender to
18 female, male, or nonbinary pursuant to subdivision eight of this
19 section.

20 8. The commissioner shall require that a petition pursuant to para-
21 graph (f) of subdivision one of this section be accompanied by an affi-
22 davit attesting under penalty of perjury that the request for a change
23 of gender to female, male, or nonbinary is to conform the person's legal
24 gender to the person's gender identity and is not made for any fraudu-
25 lent purpose.

26 § 6. This act shall take effect on the one hundred eightieth day after
27 it shall have become a law. Effective immediately, the addition, amend-
28 ment and/or repeal of any rule or regulation necessary for the implemen-
29 tation of this act on its effective date are authorized to be made and
30 completed on or before such effective date.