

STATE OF NEW YORK

56--A

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- 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.
20 ~~[Such order shall also direct the publication, at least once, within~~

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

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~~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~~

1 ~~safety. The~~, the court shall order the records of such change of name
2 proceeding [~~to~~] be sealed, to be opened only by order of the court for
3 good cause shown or at the request of the applicant. For the purposes
4 of this section, "totality of the circumstances" shall include, but not
5 be limited to, a consideration of the risk of violence or discrimination
6 against the applicant, including such applicant's status as transgender
7 or as the subject of domestic violence.

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

16 § 2-c. The civil rights law is amended by adding a new article 6-A to
17 read as follows:

18 ARTICLE 6-A

19 CHANGE OF SEX DESIGNATION

20 Section 67. Petition to change of sex designation.

21 67-a. Contents.

22 67-b. Notice.

23 67-c. Order.

24 67-d. Effect.

25 67-e. Sealing change of sex designation papers.

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

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

38 § 67-a. Contents. 1. The petition shall be in writing, signed by the
39 petitioner and verified in like manner as a pleading in a court of
40 record, and shall specify the grounds of the application, the name, date
41 of birth, place of birth, age and residence of the individual whose sex
42 designation is proposed to be changed and the sex designation which such
43 petitioner proposes to assume.

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

48 § 67-b. Notice. 1. If the petition be to change the sex designation of
49 an infant, notice of the time and place when and where the petition will
50 be presented must be served, in like manner as a notice of a motion upon
51 an attorney in an action, upon (a) both parents of the infant, if they
52 be living, unless the petition be made by one of the parents, in which
53 case notice must be served upon the other, if he or she be living, and
54 (b) the general guardian or guardian of the person, if there be one. But
55 if any of the persons, required to be given notice by this section,
56 reside without the state, then the notice required by this section must

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

8 § 67-c. Order. If the court to which the petition is presented is
9 satisfied thereby, or by the affidavit and certificate presented there-
10 with, that the petition is true, and that there is no reasonable
11 objection to the change of name proposed, and if the petition be to
12 change the name of an infant, that the interests of the infant will be
13 substantially promoted by the change, the court shall make an order
14 authorizing the petitioner to assume the name proposed. The order shall
15 further recite the date and place of birth of the applicant and, if the
16 applicant was born in the state of New York, such order shall set forth
17 the number of such infant's birth certificate or that no birth certifi-
18 cate is available. The order shall be directed to be entered and the
19 papers on which it was granted to be filed in the clerk's office of the
20 county in which the petitioner resides if he be an individual, or in the
21 office of the clerk of the civil court of the city of New York if the
22 order be made by that court.

23 § 67-d. Effect. If the order is entered, the petitioner shall be known
24 by the name which is thereby authorized to be assumed. If the surname of
25 a parent be changed as provided in this article, any minor child of such
26 parent at the time of such change may thereafter assume such changed
27 surname.

28 § 67-e. Sealing change of sex designation papers. 1. If the court
29 shall find that open record of an applicant's change of sex designation
30 would jeopardize such applicant's personal safety, based on totality of
31 the circumstances, the court shall order the records of such change of
32 sex designation proceeding to be sealed, to be opened only by order of
33 the court for good cause shown or at the request of the applicant. For
34 the purposes of this section, "totality of the circumstances" shall
35 include, but not be limited to, a consideration of the risk of violence
36 or discrimination against the applicant, including such applicant's
37 status as transgender or as the subject of domestic violence.

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

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

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

52 1. Application for license. Application for a driver's license shall
53 be made to the commissioner. The fee prescribed by law may be submitted
54 with such application. The applicant shall furnish such proof of identi-
55 ty, age, and fitness as may be required by the commissioner. The appli-
56 cant shall indicate their sex designation of male, female, or x, which

1 can indicate nonbinary, intersex, undesignated, or other, and the
2 commissioner shall not require documentation for an original driver's
3 license applicant's initial indication of a sex designation or a
4 licensed applicant's request for an amendment other than the following:
5 the applicant's self-certification of their sex; or documentation
6 required by this chapter as necessary to establish that an applicant is
7 lawfully entitled to a license.

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

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

23 The commissioner of health shall not maintain records of any person
24 who checks "skip this question". Except where the application is made in
25 person or electronically, failure to check a box shall not impair the
26 validity of an application, and failure to check "yes" or checking "skip
27 this question" shall not be construed to imply a wish not to donate. In
28 the case of an applicant under eighteen years of age, checking "yes"
29 shall not constitute consent to make an anatomical gift or registration
30 in the donate life registry, except as otherwise provided pursuant to
31 the provisions of paragraph (b) of subdivision one of section forty-
32 three hundred one of the public health law. Where an applicant has
33 previously consented to make an anatomical gift or registered in the
34 donate life registry, checking "skip this question" or failing to check
35 a box shall not impair that consent or registration. In addition, an
36 applicant for a commercial driver's license who will operate a commer-
37 cial motor vehicle in interstate commerce shall certify that such appli-
38 cant meets the requirements to operate a commercial motor vehicle, as
39 set forth in public law 99-570, title XII, and title 49 of the code of
40 federal regulations, and all regulations promulgated by the United
41 States secretary of transportation under the hazardous materials trans-
42 portation act. In addition, an applicant for a commercial driver's
43 license shall submit a medical certificate at such intervals as required
44 by the federal motor carrier safety improvement act of 1999 and Part
45 383.71(h) of title 49 of the code of federal regulations relating to
46 medical certification and in a manner prescribed by the commissioner.
47 For purposes of this section and sections five hundred three, five
48 hundred ten-a, and five hundred ten-aa of this title, the terms "medical
49 certificate" and "medical certification" shall mean a form substantially
50 in compliance with the form set forth in Part 391.43(h) of title 49 of
51 the code of federal regulations. Upon a determination that the holder of
52 a commercial driver's license has made any false statement, with respect
53 to the application for such license, the commissioner shall revoke such
54 license.

55 § 5. The section heading and paragraph (e) of subdivision 1 of section
56 4138 of the public health law, the section heading as amended by chapter
201 of the laws of 1972 and paragraph (e) of subdivision 1 as amended by

1 chapter 214 of the laws of 1998, are amended and a new subdivision 8 is
2 added to read as follows:

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

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

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

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

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