STATE OF NEW YORK

5465--D

2021-2022 Regular Sessions

IN ASSEMBLY

February 17, 2021

Introduced by M. of A. O'DONNELL, BRONSON, GLICK, GONZALEZ-ROJAS, TAYLOR, SIMON, QUART, EPSTEIN, SEAWRIGHT, LAVINE, GOTTFRIED, LUPARDO, FERNANDEZ, DINOWITZ, HYNDMAN, BURDICK, GALLAGHER, OTIS, HEVESI, REYES, JACKSON, DAVILA, LUNSFORD, FORREST, CRUZ, DE LA ROSA, PERRY, THIELE, SILLITTI, DICKENS, ZINERMAN, ENGLEBRIGHT, STECK, MAMDANI, FAHY, KELLES -- 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 -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Ways and Means -- 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:

Section 1. Short title. This act shall be known and may be cited as the "Gender Recognition Act".

§ 2. Section 62 of the civil rights law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. Except as provided in subdivisions one and two of this section, the court shall not require any other pre-hearing notice. The court shall not condition the entry of an order on notice to any other party or to any city, state or federal agency except by written order detailing the court's reasoning for requiring such notice and showing cause why such notice should be served. Under no circumstances shall the court require

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

LBD05588-09-1

notice to United States immigration and customs enforcement, United States customs and border protection, United States citizenship and immigration services, or any successor agencies, or any agencies having similar duties.

4. The court shall not request or require consent from any party other than the petitioner, or in the case of a petitioner who does not have capacity to consent, their legal representative, as a condition of granting the name change or obtaining certified copies of the name change order.

§ 3. Section 63 of the civil rights law, as amended by chapter 253 of the laws of 2014, is amended to read as follows:

§ 63. Order. If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed, and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, the court shall make an order authorizing the petitioner to assume the name proposed. The order shall further recite the date and place of birth of the applicant and, if the applicant was born in the state of New York, such order shall set forth the number of [~~his~~] the applicant's birth certificate or that no birth certificate is available. The order shall be directed to be entered and the papers on which it was granted to be filed [~~prior to the publication hereinafter directed~~] in the clerk's office of the county in which the petitioner resides if [~~he be~~] they are an individual, or in the office of the clerk of the civil court of the city of New York if the order be made by that court. [~~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 .....~~]

§ 4. 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. 1. 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~~] 2. (a) If 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~~] (b) if the petition states that the petitioner is responsible for spousal support or child support obligations pursuant to court order, upon review of the petitioner's application for name change and subsequent inquiry, the court may, in its discretion, order the petitioner to 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 court's minutes of the proceeding.

3. A name change order or other documentation of name change shall be sufficient to change the petitioner's name on any document or record issued or maintained by the state of New York or any subdivision thereof, or any private entity, including but not limited to, all school records for current and past students, archival records and marriage certificates. Failure of a public or private entity to comply with such a request may constitute a violation of section two hundred ninety-six of the executive law, section forty-c of this chapter and any applicable local non-discrimination law and may be the basis for a complaint to the New York state division of human rights and any other applicable enforcement entity.

§ 5. 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 soley on the basis that the applicant lacks specific instances of or a personal history of threat to personal safety. The~~], the court shall, at the request of the applicant or sua sponte, 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. The court shall not deny such sealing request solely on the basis that the applicant lacks specific instances of or a personal history of threat to personal safety.

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.

§ 6. 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. Order.

67-b. 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 sex designation 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. When an individual petitions the court to recognize their gender identity or to amend the sex designation on an identity document, the court shall issue such an order upon receipt of an affidavit from such individual attesting to their gender identity or reason for the change. No additional medical evidence shall be required to grant such request. No such order shall be required to amend an identity document issued within New York state. No such order shall be required to otherwise recognize the gender of an individual and treat them consistent with their gender identity within New York state or under New York state law. No fee shall be charged for a request for judicial intervention associated with a petition to change sex designation.

3. 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.

§ 67-a. Order. If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of sex designation proposed, and if the petition be to change the sex designation of an infant, that the interests of the infant will be substantially promoted by the change, the court shall make an order authorizing the petitioner to assume the sex designation proposed.

§ 67-b. Sealing change of sex designation papers. 1. Upon request of the applicant or sua sponte, the court shall order the records of such change of sex designation proceeding to be sealed, to be opened only by order of the court for good cause shown or at the request of the applicant.

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, sex designation, proposed new sex designation, 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.

§ 7. Subdivision 2 of section 490 of the vehicle and traffic law, as amended by chapter 465 of the laws of 2012, the third undesignated paragraph as amended by chapter 248 of the laws of 2016, is amended to read as follows:

2. Application. **(a)** Any person to whom a driver's license or learner's permit has not been issued by the commissioner, or whose driver's license or learner's permit is expired, suspended, revoked or surrendered, may make application to the commissioner for the issuance of an identification card. The commissioner shall ensure that space is provided on the application so that the applicant shall register or decline registration in the donate life registry for organ and tissue donations pursuant to section forty-three hundred ten of the public health law and that the following is 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.

(b) The identification card shall display the sex designation of M, F, or X as certified by the applicant, with no additional documentation required. The applicant may amend the sex designation of their identification card upon request.

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

§ 9. Subdivision 1 of section 502 of the vehicle and traffic law, as amended by chapter 37 of the laws of 2019, is amended to read as follows:

1. Application for license. Application for a driver's license shall be made to the commissioner. The fee prescribed by law may be submitted with such application. The applicant shall furnish such proof of identity, age, and fitness as may be required by the commissioner. With respect to a non-commercial driver's license or learner's permit which does not meet federal standards for identification, in addition to the acceptable proofs of age and identity approved by the commissioner as of January first, two thousand nineteen, acceptable proof of identity shall also include, but not be limited to, a valid, unexpired foreign passport issued by the applicant's country of citizenship (which shall also be eligible as proof of age), a valid, unexpired consular identification document issued by a consulate from the applicant's country of citizenship, or a valid foreign driver's license that includes a photo image of the applicant and which is unexpired or expired for less than twenty-

four months of its date of expiration, as primary forms of such proof. Nothing contained in this subdivision shall be deemed to preclude the commissioner from approving additional proofs of identity and age. **The license shall display the sex designation of M, F, or X as certified by the applicant, with no additional documentation required. The applicant may amend the sex designation of their driver's license upon request. Upon amendment of the sex designation, the change shall be made consistent through all affiliated records within the control of the department.** 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 or, in lieu thereof, with respect to an application for a non-commercial driver's license or learner's permit which does not meet federal standards for identification, an affidavit signed by such applicant that they have not been issued a social security number. The commissioner also shall provide **space on the application so that the applicant may request a notation upon such license that such applicant is a veteran of the United States armed forces, and** 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.

§ 10. Section 4132 of the public health law is amended by adding a new subdivision 5 to read as follows:

5. Each parent of the child may choose to be designated on the original certificate of birth or by amendment as "father" or "mother" or "parent".

§ 11. The section heading and paragraph (e) of subdivision 1 of section 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 section 9 of part L of chapter 56 of the laws of 2020, are amended and a new paragraph (f) is added to subdivision 1 to read as follows:

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

(e) the certificate of birth of a child born out of wedlock as defined in paragraph (b) of subdivision one of section four thousand one hundred thirty-five of this article has been filed without entry of the name of the signatory other than the person who gave birth and the commissioner thereafter receives the acknowledgment of parentage pursuant to section one hundred eleven-k of the social services law or section four thousand one hundred thirty-five-b of this article executed by the person who gave birth and the other signatory which authorizes the entry of the name of such other signatory, and which may also authorize a conforming change in the surname of the child[~~.~~]**; or**

(f) any person born in New York state who submits an application to change the gender on the birth certificate and an affidavit attesting under penalty of perjury that the request for a change of gender to (female, male, or X) is to conform the person's documents and records to the person's gender identity and is not made for any fraudulent purpose. A sex designation of X shall not be a required sex designation of any individual. Upon receipt of the documentation, the commissioner shall establish a new birth certificate reflecting the gender stated in the application and any change in name, if accompanied by a court order for a change of name. If such application is made on behalf of a person younger than seventeen, such affidavit shall be signed by the person's parent, legal guardian, mental health or medical provider, or social services provider.

§ 12. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.