

SENATE BILL 743

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5lr2845
CF HB 862

By: **Senators Lee, Guzzone, Kagan, King, Madaleno, Manno, Montgomery, Nathan-Pulliam, Pugh, ~~and Raskin~~ Raskin, Feldman, and Kelley**

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Assigned to: Rules

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2015

CHAPTER _____

1 AN ACT concerning

2 **Vital Records – New Certificates of Birth – Sex Change or Diagnosis of an**
3 **Intersex Condition**

4 FOR the purpose of requiring the Secretary of Health and Mental Hygiene, under certain
5 circumstances, to make a new certificate of birth for an individual whose sex has
6 been changed or who has been diagnosed with an intersex condition; requiring that
7 a certain sex designation and, under certain circumstances, a certain name be on the
8 new certificate of birth; prohibiting a new certificate of birth from having certain
9 markings or showing on its face certain changes; ~~altering the circumstances under~~
10 ~~which a seal on an original certificate of birth and certain records may be broken;~~
11 ~~altering the circumstances under which a copy of an original certificate of birth may~~
12 ~~be issued to an individual for whom a new certificate of birth was made under a~~
13 ~~certain provision of this Act;~~ repealing language rendered obsolete by this Act;
14 making conforming, technical, and clarifying changes; defining a certain term; and
15 generally relating to the issuance of new certificates of birth.

16 BY repealing and reenacting, with amendments,
17 Article – Health – General
18 Section 4–201, 4–211, and 4–214
19 Annotated Code of Maryland
20 (2009 Replacement Volume and 2014 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
2 That the Laws of Maryland read as follows:

3 **Article – Health – General**

4 4–201.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Attending physician” means the physician in charge of the patient’s care for
7 the illness or condition which resulted in death.

8 (c) “County registrar” means the registrar of vital records for a county.

9 (d) (1) “Dead body” means:

10 (i) A dead human body; or

11 (ii) Parts or bones of a human body if, from their condition, an
12 individual reasonably may conclude that death has occurred.

13 (2) “Dead body” does not include an amputated part.

14 (e) “Fetal death” means death of a product of human conception, before its
15 complete expulsion or extraction from the mother, regardless of the duration of the
16 pregnancy, as indicated by the fact that, after the expulsion or extraction, the fetus does
17 not breathe or show any other evidence of life, such as heart beat, pulsation of the umbilical
18 cord, or definite movement of voluntary muscle.

19 (f) “File” means to present for registration any certificate, report, or other record
20 including records transmitted by approved electronic media, including facsimile, of birth,
21 death, fetal death, adoption, marriage, or divorce for which this subtitle provides and to
22 have the Secretary accept the record.

23 (g) “Filing date” means the date a vital record is accepted for registration by the
24 Secretary.

25 (h) “Final disposition” means the burial, cremation, or other final disposition of a
26 body or fetus.

27 (i) “Institution” means any public or private establishment:

28 (1) To which individuals are committed by law; or

29 (2) That provides to 2 or more unrelated individuals:

1 (i) Any inpatient or outpatient medical, surgical, or diagnostic care
2 or treatment; or

3 (ii) Any nursing, custodial, or domiciliary care.

4 **(J) “LICENSED HEALTH CARE PRACTITIONER” MEANS:**

5 **(1) AN INDIVIDUAL WHO IS:**

6 **(I) A PHYSICIAN LICENSED UNDER TITLE 14 OF THE HEALTH**
7 **OCCUPATIONS ARTICLE;**

8 **(II) A PSYCHOLOGIST LICENSED UNDER TITLE 18 OF THE**
9 **HEALTH OCCUPATIONS ARTICLE;**

10 **(III) A REGISTERED NURSE LICENSED AND CERTIFIED TO**
11 **PRACTICE AS A NURSE PRACTITIONER, NURSE PSYCHOTHERAPIST, OR CLINICAL**
12 **NURSE SPECIALIST UNDER TITLE 8 OF THE HEALTH OCCUPATIONS ARTICLE; OR**

13 **(IV) A LICENSED CERTIFIED SOCIAL WORKER–CLINICAL**
14 **LICENSED UNDER TITLE 19 OF THE HEALTH OCCUPATIONS ARTICLE; OR**

15 **(2) AN INDIVIDUAL WHO:**

16 **(I) IS LICENSED TO PRACTICE A PROFESSION LISTED IN ITEM**
17 **(1) OF THIS SUBSECTION IN ANOTHER STATE; AND**

18 **(II) MEETS THE REQUIREMENTS UNDER THE HEALTH**
19 **OCCUPATIONS ARTICLE TO QUALIFY FOR A LICENSE TO PRACTICE THE PROFESSION**
20 **IN THIS STATE.**

21 **[(j)] (K)** “Live birth” means the complete expulsion or extraction of a product of
22 human conception from the mother, regardless of the period of gestation, if, after the
23 expulsion or extraction, it breathes or shows any other evidence of life, such as heart beat,
24 pulsation of the umbilical cord, or definite movement of voluntary muscle, whether or not
25 the umbilical cord is cut or the placenta is attached.

26 **[(k)] (L)** “Mortician” means a funeral director, mortician, or other person who is
27 authorized to make final disposition of a body.

28 **[(l)] (M)** “Physician” means a person authorized or licensed to practice medicine
29 or osteopathy pursuant to the laws of this State.

30 **[(m)] (N)** “Physician assistant” means an individual who is licensed under Title
31 15 of the Health Occupations Article to practice medicine with physician supervision.

1 [(n)] (O) “Registration” means acceptance by the Secretary and incorporation in
2 the records of the Department of any certificate, report, or other record of birth, death, fetal
3 death, adoption, marriage, divorce, or dissolution or annulment of marriage for which this
4 subtitle provides.

5 [(o)] (P) “Vital record” means a certificate or report of birth, death, fetal death,
6 marriage, divorce, dissolution or annulment of marriage, adoption, or adjudication of
7 paternity that is required by law to be filed with the Secretary.

8 [(p)] (Q) “Vital statistics” means the data derived from certificates and reports
9 of birth, death, fetal death, marriage, divorce, dissolution or annulment of marriage, and
10 reports related to any of these certificates and reports.

11 4–211.

12 (a) Except as provided in subsection [(c)] (D) of this section, the Secretary shall
13 make a new certificate of birth for an individual if the Department receives satisfactory
14 proof that:

15 (1) The individual was born in this State; and

16 (2) Regardless of the location, one of the following has occurred:

17 (i) The previously unwed parents of the individual have married
18 each other after the birth of the individual;

19 (ii) A court of competent jurisdiction has entered an order as to the
20 parentage, legitimation, or adoption of the individual; or

21 (iii) If a father is not named on an earlier certificate of birth:

22 1. The father of the individual has acknowledged himself by
23 affidavit to be the father; and

24 2. The mother of the individual has consented by affidavit to
25 the acknowledgment.

26 **(B) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE**
27 **SECRETARY SHALL MAKE A NEW CERTIFICATE OF BIRTH FOR AN INDIVIDUAL IF THE**
28 **DEPARTMENT RECEIVES SATISFACTORY PROOF THAT:**

29 **(1) THE INDIVIDUAL WAS BORN IN THIS STATE; AND**

30 **(2) REGARDLESS OF THE LOCATION, ONE OF THE FOLLOWING HAS**
31 **OCCURRED:**

1 **(I) 1. A LICENSED HEALTH CARE ~~PROVIDER~~ PRACTITIONER**
2 **WHO HAS TREATED OR EVALUATED THE INDIVIDUAL HAS DETERMINED THAT THE**
3 **INDIVIDUAL'S SEX DESIGNATION SHOULD BE CHANGED BECAUSE THE INDIVIDUAL**
4 **HAS UNDERGONE TREATMENT APPROPRIATE FOR THE PURPOSE OF SEX**
5 **TRANSITION OR HAS BEEN DIAGNOSED WITH AN INTERSEX CONDITION;**

6 **2. THE INDIVIDUAL, OR IF THE INDIVIDUAL IS A MINOR**
7 **OR DISABLED PERSON UNDER GUARDIANSHIP, THE INDIVIDUAL'S PARENT,**
8 **GUARDIAN, OR LEGAL REPRESENTATIVE, HAS MADE A WRITTEN REQUEST FOR A**
9 **NEW CERTIFICATE OF BIRTH WITH A SEX DESIGNATION THAT DIFFERS FROM THE**
10 **SEX DESIGNATED ON THE ORIGINAL CERTIFICATE OF BIRTH; AND**

11 **3. THE LICENSED HEALTH CARE PRACTITIONER HAS**
12 **SIGNED A STATEMENT, UNDER PENALTY OF PERJURY, THAT:**

13 **A. THE INDIVIDUAL HAS UNDERGONE SURGICAL,**
14 **HORMONAL, OR OTHER TREATMENT APPROPRIATE FOR THE INDIVIDUAL, BASED ON**
15 **GENERALLY ACCEPTED MEDICAL STANDARDS; OR**

16 **B. THE INDIVIDUAL HAS AN INTERSEX CONDITION AND,**
17 **IN THE PROFESSIONAL OPINION OF THE LICENSED HEALTH CARE PRACTITIONER,**
18 **BASED ON GENERALLY ACCEPTED MEDICAL STANDARDS, THE INDIVIDUAL'S SEX**
19 **DESIGNATION SHOULD BE CHANGED ACCORDINGLY;**

20 **(II) A COURT OF COMPETENT JURISDICTION HAS ISSUED AN**
21 **ORDER INDICATING THAT THE SEX OF AN INDIVIDUAL BORN IN THIS STATE HAS**
22 **BEEN CHANGED; OR**

23 **(III) BEFORE OCTOBER 1, 2015, THE SECRETARY, AS PROVIDED**
24 **UNDER REGULATIONS ADOPTED BY THE DEPARTMENT, AMENDED AN ORIGINAL**
25 **CERTIFICATE OF BIRTH ON RECEIPT OF A CERTIFIED COPY OF AN ORDER OF A**
26 **COURT OF COMPETENT JURISDICTION INDICATING THE SEX OF THE INDIVIDUAL**
27 **HAD BEEN CHANGED.**

28 **[(b)] (C)** Except as provided in subsection **[(c)] (D)** of this section, the Secretary
29 may make a new certificate of birth for an individual who was born outside the United
30 States if one of the following occurred in this State:

31 (1) The previously unwed parents of the individual have married each
32 other after the birth of the individual;

33 (2) A court of competent jurisdiction in this State has entered an order as
34 to parentage or legitimation; or

1 (3) The father of the individual acknowledged himself by affidavit to be the
2 father and the mother of the individual has consented by affidavit to the acknowledgment.

3 **[(c)] (D)** The Secretary may not make a new certificate of birth **IN CONNECTION**
4 **WITH AN ORDER OF A COURT OF COMPETENT JURISDICTION RELATING TO THE**
5 **ADOPTION OF AN INDIVIDUAL**, if one of the following so directs the Secretary:

6 (1) The court that decrees the adoption.

7 (2) The adoptive parents.

8 (3) The adopted individual, if an adult.

9 **[(d)] (E)** A new certificate of birth shall be prepared on the following basis:

10 (1) The individual shall be treated as having at birth the status that later
11 is acquired or established and of which proof is submitted.

12 (2) If the parents of the individual were not married and paternity is
13 established by legal proceedings, the name of the father shall be inserted. The legal
14 proceeding should request and report to the Secretary that the surname of the subject of
15 the record be changed from that shown on the original certificate, if a change is desired.

16 (3) If the individual is adopted, the name of the individual shall be that set
17 by the decree of adoption, and the adoptive parents shall be recorded as the parents of the
18 individual.

19 (4) The new certificate of birth shall contain wording that requires each
20 parent shown on the new certificate to indicate his or her own Social Security number.

21 **(F) (1) WHEN A NEW CERTIFICATE OF BIRTH IS MADE UNDER**
22 **SUBSECTION (B) OF THIS SECTION:**

23 **(I) THE SEX DESIGNATION OF THE INDIVIDUAL ON THE NEW**
24 **CERTIFICATE OF BIRTH SHALL BE THE SEX DESIGNATION FOR WHICH**
25 **SATISFACTORY PROOF HAS BEEN SUBMITTED IN ACCORDANCE WITH SUBSECTION**
26 **(B) OF THIS SECTION; AND**

27 **(II) IF THE NAME OF THE INDIVIDUAL HAS BEEN CHANGED AT**
28 **ANY TIME, THE NAME OF THE INDIVIDUAL ON THE NEW CERTIFICATE OF BIRTH**
29 **SHALL BE THE NAME THAT WAS LAST ESTABLISHED AND FOR WHICH APPROPRIATE**
30 **DOCUMENTATION HAS BEEN SUBMITTED TO THE DEPARTMENT.**

31 **(2) A NEW CERTIFICATE OF BIRTH MADE UNDER SUBSECTION (B) OF**
32 **THIS SECTION MAY NOT:**

1 (I) BE MARKED "AMENDED"; OR

2 (II) SHOW ON ITS FACE THAT A CHANGE HAS BEEN MADE TO:

3 1. A SEX DESIGNATION; OR

4 2. IF APPLICABLE, A CHANGE OF NAME.

5 [(e)] (G) (1) If a new certificate of birth is made, the Secretary shall:

6 (i) Substitute the new certificate of birth for any certificate then on
7 file; and

8 (ii) Place the original certificate of birth and all records that relate
9 to the new certificate of birth under seal.

10 (2) The seal may be broken only:

11 (i) On order of a court of competent jurisdiction;

12 (ii) If it does not violate the confidentiality of the record, on written
13 order of a designee of the Secretary; ~~or~~

14 (iii) In accordance with Title 5, Subtitle 3A or Subtitle 4B of the
15 Family Law Article; ~~OR~~

16 ~~(IV) UNLESS INCONSISTENT WITH TITLE 5, SUBTITLE 3A OR~~
17 ~~SUBTITLE 4B OF THE FAMILY LAW ARTICLE, ON REQUEST OF AN INDIVIDUAL FOR~~
18 ~~WHOM A NEW CERTIFICATE OF BIRTH WAS MADE UNDER SUBSECTION (B) OF THIS~~
19 ~~SECTION.~~

20 (3) A certified copy of the certificate of birth that later is issued shall be a
21 copy of the new certificate of birth, unless:

22 (i) A court of competent jurisdiction orders the issuance of a copy of
23 the original certificate of birth; ~~or~~

24 (ii) TITLE 5, Subtitle 3A or Subtitle 4B of the Family Law Article
25 provides for the issuance of a copy of the original certificate of birth; ~~OR~~

26 ~~(III) 1. AN INDIVIDUAL FOR WHOM A NEW CERTIFICATE OF~~
27 ~~BIRTH WAS MADE UNDER SUBSECTION (B) OF THIS SECTION REQUESTS A COPY OF~~
28 ~~THE ORIGINAL CERTIFICATE OF BIRTH; AND~~

~~2. TITLE 5, SUBTITLE 3A OR SUBTITLE 4B OF THE
FAMILY LAW ARTICLE DOES NOT PROHIBIT ISSUANCE OF A COPY OF THE ORIGINAL
CERTIFICATE OF BIRTH TO THE INDIVIDUAL.~~

[(f)] (H) Each clerk of court shall send to the Secretary, on the form that the Secretary provides, a report of:

(1) Each decree of adoption;

(2) Each adjudication of paternity, including the father's Social Security number; and

(3) Each revocation or amendment of any decree of adoption or adjudication of paternity that the court enters.

[(g)] (I) Upon receipt of a report or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files, and the adoption certificate and any accompanying documents are not subject to inspection except upon order of a court of competent jurisdiction or as provided by regulation.

[(h)] (J) If no certificate of birth is on file for the person for whom a new birth certificate is to be established under this section, and the date and place of birth have not been determined in the adoption or paternity proceedings:

(1) A delayed certificate of birth shall be filed with the Secretary as provided in § 4-210 of this subtitle before a new certificate of birth is established; and

(2) The new birth certificate shall be prepared on the delayed birth certificate form.

[(i)] (K) (1) The Secretary shall, on request, prepare and register a certificate in this State for an individual born in a foreign country and who was adopted:

(i) Through a court of competent jurisdiction in this State; or

(ii) 1. Under the laws of a jurisdiction or country other than the United States and has been granted an IR-3 or IH-3 visa by the United States Immigration and Naturalization Service under the Immigration and Nationality Act; and

2. By an adopting parent who is a resident of this State.

(2) Except as provided in paragraph (3) of this subsection, the certificate shall be established on receipt of:

(i) A certificate of adoption from the court decreeing the adoption;

1 (ii) Proof of the date and place of the child's birth; and

2 (iii) A request from the court, the adopting parents, or the adopted
3 person if 18 years of age or over that the certificate be prepared.

4 (3) If the child was adopted under the laws of a jurisdiction or country other
5 than the United States and has been granted an IR-3 or IH-3 visa by the United States
6 Immigration and Naturalization Service under the Immigration and Nationality Act, the
7 certificate shall be established on receipt of:

8 (i) An official copy of the decree from the jurisdiction or country in
9 which the child was adopted;

10 (ii) A certified translation of the foreign adoption decree;

11 (iii) Proof of the date and place of the child's birth;

12 (iv) Proof of IR-3 or IH-3 visa status;

13 (v) A request from the court, the adopting parents, or the adopted
14 person if 18 years of age or over that the certificate be prepared; and

15 (vi) Proof that the adopting parent is a resident of this State.

16 (4) The certificate shall be labeled "Certificate of Foreign Birth" and shall
17 show the actual country of birth.

18 (5) A statement shall also be included on the certificate indicating that it
19 is not evidence of United States citizenship for the child for whom it is issued.

20 4-214.

21 (a) A certificate or record registered under this subtitle may be amended only in
22 accordance with this subtitle and any rules and regulations that the Secretary adopts to
23 protect the integrity and accuracy of vital records.

24 (b) (1) If any certificate of birth, death, or fetal death is amended, the facts
25 shall be certified to the Secretary and entered on the original certificate with the date of
26 the amendment, over the signature or initials of a designee of the Secretary and with a line
27 drawn through the original data.

28 (2) All amendments may be stored on electronic media approved by the
29 Secretary.

30 (3) All copies of certificates that are amended shall contain a notation that
31 an amendment has been made.

1 (4) A record shall be maintained which identifies the evidence upon which
2 the amendment was based, the date of the amendment, and the identity of the person
3 making the amendment.

4 (5) [Upon receipt of a certified copy of an order of a court of competent
5 jurisdiction indicating the sex of an individual born in this State has been changed by
6 surgical procedure and whether such individual's name has been changed, the Secretary
7 shall amend the certificate of birth of the individual as prescribed by regulation.

8 (6) When an informant does not submit the minimum documentation
9 required in the regulations for amending a vital record or when the Secretary has cause to
10 question the validity or adequacy of the applicant's sworn statements or the documentary
11 evidence, and if the deficiencies are not corrected, the Secretary shall not amend the vital
12 record and shall advise the applicant of the reason for this action and shall further advise
13 the applicant of the right of appeal to the Office of Administrative Hearings.

14 [(7) (6) (i) Except as provided in subparagraph (ii) of this paragraph,
15 any amendments to death certificates requested beyond 3 years or more after the death
16 shall require a court order.

17 (ii) The Office of the Chief Medical Examiner may amend the cause
18 of death on a certificate of death at any time after registration without a court order.

19 (c) (1) [On] **EXCEPT AS PROVIDED IN § 4-211(F) OF THIS SUBTITLE, ON**
20 receipt of a court order that changes the name of an individual who was born in this State
21 and on request of the individual or a parent, guardian, or legal representative of the
22 individual, the Secretary shall amend the certificate of birth to reflect the new name.

23 (2) The Department may change the name on a birth certificate once
24 without a court order if, within 12 months after the birth, the Department receives from
25 both parents of a child:

26 (i) A written request for the change of name; and

27 (ii) An affidavit that has been sworn before a notary public of this
28 State and states that they are the parents of the child and are making this request of their
29 own free will.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2015.