



2526 SAINT PAUL STREET
BALTIMORE, MD 21218
TEL (410) 625-LGBT (5428)
FAX (410) 625-7423
www.freestate-justice.org
C.P. Hoffman
Legal Director
cphoffman@freestate-justice.org

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The Honorable Shane E. Pendergrass
House Health and Government Operations Committee
Room 241
House Office Building
Annapolis, Maryland 21401

Testimony of FreeState Justice

IN SUPPORT OF

HB1203: Certificates of Birth and Marriage Certificates - Issuance of New Certificates - Sex Designation

To the Chair, Vice Chair, and esteemed members of the House Health and Government Operations Committee:

FreeState Justice is a legal advocacy organization that seeks to improve the lives of low-income LGBTQ+ Marylanders, as well as advocate on issues affecting the broader LGBTQ+ community in Maryland. As part of this mission, FreeState Justice represents dozens, if not hundreds, of LGBTQ+ clients each year on matters relating to their sexual orientation or gender identity.

Importance of Birth Certificates and Marriage Certificates as Identity Documents

FreeState Justice's identity documents practice, which centers on helping transgender Marylanders obtain legal name changes and update their identity documents, is a cornerstone of our work. Over the past decade, FreeState Justice and our panel of pro bono attorneys has helped approximately 500 trans Marylanders update their identity documents.

Having accurate and affirming identity documents is critical to navigating through our world. Being forced to present inaccurate ID that outs you as transgender can lead to awkward, tense, and ultimately unsafe situations. You never know how someone will react when they realize you are trans, or how others around you who overhear will respond. ID that outs you as trans can also contribute to discrimination in employment, housing, and other areas.

Fortunately, the Maryland General Assembly has been among the vanguard in expanding access to identity documents for transgender individuals. In 2015, for instance, this body enacted legislation, now codified in Health—General section 4-211, that instructs the Department of

FreeState Justice, Inc. (formerly FreeState Legal Project, Inc., merging with Equality Maryland) is a social justice organization that works through direct legal services, legislative and policy advocacy, and community engagement to enable Marylanders across the spectrum of lesbian, gay, bisexual, transgender, and queer identities to be free to live authentically, with safety and dignity, in all communities throughout our state.

Health to issue new (not amended) birth certificates for transgender individuals born in Maryland.

Unfortunately, that legislation and others have left a few unanticipated gaps, leaving transgender Marylanders unable to obtain several types of affirming ID, including new birth certificates for the children of transgender parents and new marriage certificates for transgender individuals who remain with their spouse post-transition. Neither of these were intentionally left out of earlier legislation—they were simply issues the sponsors and legislative committees didn't think of at the time the bills were considered.

While they are used less frequently as ID documents, children's birth certificates and marriage certificates are both required on a routine basis and in a variety of circumstances to establish that a relationship exists between the individuals. Both, for instance, are often required by employers and by government agencies when establishing benefits eligibility, e.g., for health insurance. In addition, parents are required under a number of situations to provide a copy of their child's birth certificate to establish the parent/child relationship, such as when enrolling the child for school or when traveling.

Without updated birth or marriage certificates, Marylanders are required to out themselves or their partners, making each of these interactions an opportunity for discrimination. Employers, landlords, school officials, and others often start acting differently once they realize the individual, their spouse, or their parent is transgender.

Birth Certificates for Children of Transgender Marylanders

Unfortunately, under current law, there are significant issues for transgender Marylanders seeking to update their children's birth certificates or their own marriage certificates.

At present, the Department of Health does not have a consistent policy for issuing new birth certificates to individuals with transgender parents. In many cases, individuals are issued amended—rather than new—birth certificates, which merely strike out the former name and gender designation of the parent and write the new information above. As you might imagine, these amended birth certificates do little to alleviate the concerns of transgender Marylanders about being forcibly outed.

Indeed, it was because of these concerns that in 2015 the Maryland General Assembly adopted legislation expressly requiring the Department of Health to issue *new* birth certificates. The birth certificate provisions of House Bill 1203 would merely correct a gap inadvertently left open in that original legislation. Indeed, it adopts the same legal evidentiary standard as the existing legislation, but merely expands its applicability to the birth certificates of individuals with transgender parents.

Marriage Certificates for Transgender Marylanders

There is currently no official or standardized procedure for issuing new marriage certificates after a party to the marriage has transitioned or even simply changed their name. This lack of a



procedure leads to significant confusion, not only among transgender Marylanders seeking to update their marriage certificates, but also among county clerks asked to do so.

Transgender Marylanders who have tried to update their marriage certificates are routinely told that doing so is impossible. County clerks have even been known to tell people that the only way to do it is to get divorced and then remarry, an astonishing suggestion that flies in the face of Maryland's public policies in favor of both marriage and judicial economy. Moreover, it's not clear that a couple attempting to divorce under these circumstances would have grounds to do so under state law.

In limited cases, Maryland courts have issued one-off orders to county clerks to issue a new marriage certificate. There is, however, no statute, court rule, or even appellate case governing that process, and both the general public and the county clerks are largely unaware that it's an option at all. Even if it were well-publicized, however, it's not clear why transgender Marylanders should be required to obtain two separate court orders to update their marriage certificates.

As with birth certificates, FreeState Justice strongly believes there should be a process for obtaining an updated marriage certificate that does not out one of the parties to others as transgender without their consent.

By creating a process whereby transgender individuals can update their marriage certificates and their children's birth certificates, HBI 203 would protect the privacy and safety of trans Marylanders and their families, reduce the likelihood that they will be exposed to unnecessary discrimination and violence, and create a standardized system for both the Department of Health and for the county clerks.

For these reasons, FreeState Justice respectfully urges a favorable report.

