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

Testimony of FreeState Justice

IN SUPPORT OF

HB0370: Certificates of Birth – Issuance of New Certificates – Sex Designation

To the Honorable Chair Shane Pendergrass, Vice Chair Joseline Pena-Melnyk, and esteemed members of the Health and Government Operations Committee:

FreeState Justice is Maryland's lesbian, gay, bisexual, transgender, and queer (LGBTQ) civil rights advocacy organization. Each year, we provide free legal services to dozens, if not hundreds, of LGBTQ+ Marylanders who could not otherwise be able to afford an attorney, as well as advocate more broadly on behalf of the LGBTQ+ community.

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 legal advocacy work. Over the past decade, FreeState Justice and our panel of pro bono attorneys has helped hundreds of 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 or a family member are transgender, or

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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.

how others around you who overhear will respond. ID that outs you as trans can also contribute to discrimination in employment, education, housing, and other areas.

We write today in support of House Bill 370, which builds on the important legislation Maryland has adopted over the past decade to allow transgender Marylanders to update their—and their children’s—identity documents. HB370 will create a standard procedure for transgender parents wanting to update their own names and gender designations on their children’s birth certificates, will clarify that the Department of Health may use a third gender marker (“X”) to designate the gender of nonbinary Marylanders, and will streamline the often burdensome process of changing the gender marker on one’s own Maryland birth certificate. Together, these changes will bring Department of Health policy in line with policies implemented by the Maryland Motor Vehicle Administration since 2019, as well as join a growing consensus of other states and the federal Department of State.

While they are used less frequently as ID documents than driver’s licenses or other state ID cards, birth are required on a routine basis and in a variety of circumstances to establish an individual’s identity or citizenship or to prove that a relationship exists between parent and child. Birth certificates are one of a limited number of documents (and are by far the most commonly available) that may be used to prove employment eligibility or to enroll a child in school. Children’s birth certificates are also routinely requested by employers, insurance companies, and government agencies when establishing benefits eligibility, e.g., for health insurance. Carrying a child’s birth certificate to establish parentage may also be necessary or advisable when travelling, especially when travelling internationally.

Without updated birth certificates, Marylanders are required to out themselves or their family members, 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.

While Maryland enacted legislation in 2015 (now codified in Health—General section 4-211) to make it easier for transgender Marylanders to update their own birth certificates, significant barriers remain in place. First, the 2015 legislation does not specifically address the birth certificates of the children of transgender individuals, leading to confusion and inconsistent enforcement at the Division of Vital Records. Many parents are initially told that they cannot update their children’s birth certificates, while others are issued amended birth certificates that merely strike out the parent’s former name or gender designation, rather than a new birth certificate, as would be available under HB370. This bill would standardize the process, and would, in fact, bring it in line with the procedures

already used by the Division of Vital Records when issuing new birth certificates for transgender individuals themselves.

Second, while existing legislation does not limit Maryland birth certificates to only the binary “male” or “female” gender markers, and, in fact, Maryland law recognizes the existence of nonbinary individuals, the Division of Vital Records has yet to issue birth certificates with a third gender marker. Because a third gender marker—an “X”—has been available on Maryland driver’s licenses since 2019, a significant number of nonbinary Marylanders have found themselves with identity documents that are inconsistent with each other, at least some of which do not affirm their gender identity or their human dignity. Twelve states have already moved to allow for a third gender marker on birth certificates, and the federal Department of State has announced that it is currently in the process of updating internal systems and processes to allow individuals to adopt a third gender marker on their passports and consular records of birth abroad. It is time that Maryland join this growing number of jurisdictions in affirmatively allowing a third gender marker on birth certificates, as well as bring Division of Vital Records practice in line with the MVA and other state agencies, including the Board of Elections.

Finally, HB370 would also streamline the process by which transgender individuals may update the gender on their birth certificates. Under current law, transgender individuals are required to either obtain a court order recognizing their gender identity or submit documentation signed by a medical provider affirming that they have undergone transition-related care or have been diagnosed with an intersex condition. HB370 would eliminate the requirement for affirmation from a medical provider, and would instead allow transgender Marylanders to affirm their gender identity under penalty of perjury.

In our experience representing transgender clients across the state, we have found that the requirement for medical certification is often a stumbling block in updating birth certificates. It can be especially burdensome for individuals living outside of major metropolitan areas, especially in Western Maryland or on the Eastern Shore, where trans-affirming medical providers can be sparse and, where they exist, are often not included in the client’s insurance network. Many transgender Marylanders thus find themselves having to pay out of pocket to have providers fill out a simple form.

Currently, ten states and the federal Department of State allow transgender individuals to affirm the gender on their birth certificates without certification by a medical provider. Moreover, self-attestation of gender has been used by Maryland’s Motor Vehicle Administration since 2019 without incident.

Based on the experiences in Maryland and other states, there is no reason to believe that streamlining the process to change the gender marker on one's own birth certificate will result in unforeseen issues. There has been no rush elsewhere by individuals to fraudulently change their birth certificates for nefarious purposes. Even so, HB370 protects against that eventuality by requiring that the affirmation of one's gender identity be made under penalty of perjury, allowing for prosecution in this unlikely event.

Moreover, HB370 does nothing to amend Maryland's current laws protecting individuals from discrimination on the basis of gender identity, or to other laws or procedures governing the treatment of transgender individuals, such as the housing of transgender inmates by the Department of Public Services and Correctional Services. HB370 merely allows transgender individuals to update their own and their children's birth certificates to more accurately reflect who they are, so that they and their families are not unnecessarily subjected to discrimination when required to present the birth certificate as an identity document.

For these reasons, FreeState Justice urges a favorable report on House Bill 370.