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HOUSE BILL NO. 233

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

House Amendments in [] — February 10, 2014

A BILL to amend and reenact § 8.01-217 of the Code of Virginia, relating to how name of person may be changed.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-217 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-217. How name of person may be changed.

A. Any person desiring to change his own name, or that of his child or ward, may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. ~~Applications of probationers and incarcerated persons may be accepted if the court finds that good cause exists for such application.~~ An incarcerated person may apply to the circuit court of the county or city in which such person is incarcerated. In case of a minor who has no living parent or guardian, the application may be made by his next friend. In case of a minor who has both parents living, the parent who does not join in the application shall be served with reasonable notice of the application pursuant to § 8.01-296 and, should such parent object to the change of name, a hearing shall be held to determine whether the change of name is in the best interest of the minor. It shall not be necessary to effect service upon any parent who files an answer to the application. If, after application is made on behalf of a minor and an ex parte hearing is held thereon, the court finds by clear and convincing evidence that such notice would present a serious threat to the health and safety of the applicant, the court may waive such notice.

B. Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother, the date and place of birth of the applicant, the applicant's felony conviction record, if any, *whether the applicant is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1*, whether the applicant is presently incarcerated or a probationer with any court, and if the applicant has previously changed his name, his former name or names.

C. On any such application and hearing, if such be demanded, the court, shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in a case involving a minor, that the change of name is not in the best interest of the minor, order a change of name.

D. *No application shall be accepted by a court for a change of name of a probationer, person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarcerated person unless the court finds that good cause exists for consideration of such application under the reasons alleged in the application for the requested change of name. For purposes of this subsection, "good cause" means that the applicant's reasons for the requested name change may outweigh any potential negative impact to the public interest. If the court accepts the application, a copy of the application shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed and the attorney for the Commonwealth for any jurisdiction where a conviction occurred that resulted in the petitioner's probation, registration with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarceration. The attorney for the Commonwealth where the petition was filed shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing on the application and may order a change of name if, after receiving and considering evidence concerning the circumstances regarding the requested change of name, the court determines that the change of name (i) would not frustrate a legitimate law-enforcement purpose, (ii) is not sought for a fraudulent purpose, and (iii) would not otherwise infringe upon the rights of others, including the rights of the public at large. Such order shall contain written findings stating the court's basis for granting the order.*

E. *The provisions of subsection D are jurisdictional and any order granting a change of name pursuant to subsection D that fails to comply with any provision of subsection D is void ab initio. The attorney for the Commonwealth for the jurisdiction where the petition was filed has the authority to bring an independent action at any time to have such order declared void. If an order granting a change of name is declared void pursuant to this subsection, or if a person is convicted of perjury pursuant to § 18.2-434 for unlawfully changing his name pursuant to § 18.2-504.1 based on conduct that violates this section, the clerk of the court entering the order or the order of conviction shall*

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60 *transmit a certified copy of the order to the State Registrar of Vital Records, the Department of Motor*
61 *Vehicles, the State Board of Elections, the Central Criminal Records Exchange, and any agency or*
62 *department of the Commonwealth that has issued a license to the person where such license utilizes the*
63 *person's changed name.*

64 F. The order shall contain no identifying information other than the applicant's former name or
65 names, new name, and current address. The clerk of the court shall spread the order upon the current
66 deed book in his office, index it in both the old and new names, and transmit a certified copy of the
67 order and the application to the State Registrar of Vital Records and the Central Criminal Records
68 Exchange. Transmittal of a copy of the order and the application to the State Registrar of Vital Records
69 and the Central Criminal Records Exchange shall not be required of a person who changed his or her
70 former name by reason of marriage and who makes application to resume a former name pursuant to
71 § 20-121.4.

72 D. G. If the applicant shall show cause to believe that in the event his change of name should
73 become a public record, a serious threat to the health or safety of the applicant or his immediate family
74 would exist, the chief judge of the circuit court may waive the requirement that the application be under
75 oath or the court may order the record sealed and direct the clerk not to spread and index any orders
76 entered in the cause, and shall not transmit a certified copy to the State Registrar of Vital Records or
77 the Central Criminal Records Exchange. Upon receipt of such order by the State Registrar of Vital
78 Records, for a person born in this Commonwealth, together with a proper request and payment of
79 required fees, the Registrar shall issue certifications of the amended birth record which do not reveal the
80 former name or names of the applicant unless so ordered by a court of competent jurisdiction. Such
81 certifications shall not be marked "amended" and show the effective date as provided in § 32.1-272.
82 Such order shall set forth the date and place of birth of the person whose name is changed, the full
83 names of his parents, including the maiden name of the mother and, if such person has previously
84 changed his name, his former name or names.

85 **[§ 32.1-269. Amending vital records; change of name; acknowledgment of paternity; change of**
86 **sex.**

87 A. A vital record registered under this chapter may be amended only in accordance with this article
88 and such regulations as may be adopted by the Board to protect the integrity and accuracy of such vital
89 records. Such regulations shall specify the minimum evidence required for a change in any such vital
90 record.

91 B. Except in the case of an amendment provided for in subsection D, a vital record that is amended
92 under this section shall be marked "amended" and the date of amendment and a summary description of
93 the evidence submitted in support of the amendment shall be endorsed on or made a part of the vital
94 record. The Board shall prescribe by regulation the conditions under which omissions or errors on
95 certificates, including designation of sex, may be corrected within one year after the date of the event
96 without the certificate being marked amended. In a case of hermaphroditism or pseudo-hermaphroditism,
97 the certificate of birth may be corrected at any time without being considered as amended upon
98 presentation to the State Registrar of such medical evidence as the Board may require by regulation.

99 C. Upon receipt of a certified copy of a court order changing the name of a person as listed in a
100 vital record and upon request of such person or his parent, guardian, or legal representative or the
101 registrant, the State Registrar shall amend such vital records to reflect the new name. *Upon receipt of a*
102 *certified copy of a court order pursuant to subsection E of § 8.01-217 stating that a previously entered*
103 *order changing the name of a person as listed in a vital record is void, the State Registrar shall amend*
104 *such vital records to reflect the person's name before the amendment of such vital records based on the*
105 *void order.*

106 D. Upon written request of both parents and receipt of a sworn acknowledgment of paternity
107 executed subsequent to the birth and signed by both parents of a child born out of wedlock, the State
108 Registrar shall amend the certificate of birth to show such paternity if paternity is not shown on the
109 birth certificate. Upon request of the parents, the surname of the child shall be changed on the certificate
110 to that of the father.

111 E. Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that
112 the sex of an individual has been changed by medical procedure and upon request of such person, the
113 State Registrar shall amend such person's certificate of birth to show the change of sex and, if a certified
114 copy of a court order changing the person's name is submitted, to show a new name.

115 F. When an applicant does not submit the minimum documentation required by regulation to amend
116 a vital record or when the State Registrar finds reason to question the validity or sufficiency of the
117 evidence, the vital record shall not be amended and he shall so advise the applicant. An aggrieved
118 applicant may petition the circuit court of the county or city in which he resides or the Circuit Court of
119 the City of Richmond, Division I, for an order compelling the State Registrar to amend the vital record;
120 an aggrieved applicant who was born in Virginia, but is currently residing out of State, may petition any
121 circuit court in the Commonwealth for such an order. The State Registrar or his authorized

122 ~~representative may appear and testify in such proceeding.]~~

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