

20105797D

HOUSE BILL NO. 1041

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare, Institutions
on January 28, 2020)

(Patron Prior to Substitute—Delegate Simon)

A BILL to amend and reenact §§ 32.1-261 and 32.1-269 of the Code of Virginia, relating to Board of Health; certificate of birth; change of sex.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-261 and 32.1-269 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-261. New certificate of birth established on proof of adoption, legitimation or determination of paternity, or change of sex.

A. The State Registrar shall establish a new certificate of birth for a person born in the Commonwealth upon receipt of the following:

1. An adoption report as provided in § 32.1-262, a report of adoption prepared and filed in accordance with the laws of another state or foreign country, or a certified copy of the decree of adoption together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; except that a new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adopted person if 18 years of age or older.

2. A request that a new certificate be established and such evidence as may be required by regulation of the Board proving that such person has been legitimated or that a court of the Commonwealth has, by final order, determined the paternity of such person. The request shall state that no appeal has been taken from the final order and that the time allowed to perfect an appeal has expired.

3. An order entered pursuant to subsection D of § 20-160. The order shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

4. A surrogate consent and report form as authorized by § 20-162. The report shall contain sufficient information to identify the original certificate of birth and to establish a new certificate of birth in the names of the intended parents.

5. *Upon request of a person and in accordance with requirements of the Board, the State Registrar shall issue a new certificate of birth to show a change of sex of the person and, if a certified copy of a court order changing the person's name is submitted, to show a new name. Requirements related to obtaining a new certificate of birth to show a change of sex shall include a requirement that the person requesting the new certificate of birth submit a form furnished by the state registrar and completed by a health care provider from whom the person has received treatment stating that the person has undergone clinically appropriate treatment for gender transition. Requirements related to obtaining a new certificate of birth to show a change of sex shall not include any requirement for evidence or documentation of any medical procedure.*

B. When a new certificate of birth is established pursuant to subsection A, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity or legitimation shall be sealed and filed and not be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252. However, upon receipt of notice of a decision or order granting an adult adopted person access to identifying information regarding his birth parents from the Commissioner of Social Services or a circuit court, and proof of identification and payment, the State Registrar shall mail an adult adopted person a copy of the original certificate of birth.

C. Upon receipt of a report of an amended decree of adoption, the certificate of birth shall be amended as provided by regulation.

D. Upon receipt of notice or decree of annulment of adoption, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of the Commonwealth or in accordance with § 32.1-252.

E. The State Registrar shall, upon request, establish and register a Virginia certificate of birth for a person born in a foreign country (i) upon receipt of a report of adoption for an adoption finalized pursuant to the laws of the foreign country as provided in subsection B of § 63.2-1200.1, or (ii) upon receipt of a report or final order of adoption entered in a court of the Commonwealth as provided in § 32.1-262; however, a Virginia certificate of birth shall not be established or registered if so requested by the court decreeing the adoption, the adoptive parents or the adopted person if 18 years of age or older. If a circuit court of the Commonwealth corrects or establishes a date of birth for a person born in a foreign country during the adoption proceedings or upon a petition to amend a certificate of foreign

60 birth, the State Registrar shall issue a certificate showing the date of birth established by the court. After
61 registration of the birth certificate in the new name of the adopted person, the State Registrar shall seal
62 and file the report of adoption which shall not be subject to inspection except upon order of a court of
63 the Commonwealth or in accordance with § 32.1-252. The birth certificate shall (i) show the true or
64 probable foreign country of birth and (ii) state that the certificate is not evidence of United States
65 citizenship for the child for whom it is issued or for the adoptive parents. However, for any adopted
66 person who has attained United States citizenship, the State Registrar shall, upon request and receipt of
67 evidence demonstrating such citizenship, establish and register a new certificate of birth that does not
68 contain the statement required by clause (ii).

69 F. If no certificate of birth is on file for the person for whom a new certificate is to be established
70 under this section, a delayed certificate of birth shall be filed with the State Registrar as provided in
71 § 32.1-259 or 32.1-260 before a new certificate of birth is established, except that when the date and
72 place of birth and parentage have been established in the adoption proceedings, a delayed certificate
73 shall not be required.

74 G. When a new certificate of birth is established pursuant to subdivision A 1, the State Registrar
75 shall issue along with the new certificate of birth a document, furnished by the Department of Social
76 Services pursuant to § 63.2-1220, listing all post-adoption services available to adoptive families.

77 **§ 32.1-269. Amending vital records; change of name; acknowledgment of paternity.**

78 A. A vital record registered under this chapter, with the exception of a death certificate, may be
79 amended only in accordance with this section and such regulations as may be adopted by the Board to
80 protect the integrity and accuracy of such vital records. Such regulations shall specify the minimum
81 evidence required for a change in any such vital record.

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

90 C. Upon receipt of a certified copy of a court order changing the name of a person as listed in a
91 vital record and upon request of such person or his parent, guardian, or legal representative or the
92 registrant, the State Registrar shall amend such vital records to reflect the new name.

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

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

102 F. When an applicant does not submit the minimum documentation required by regulation to amend
103 a vital record or when the State Registrar finds reason to question the validity or sufficiency of the
104 evidence, the vital record shall not be amended and the State Registrar shall so advise the applicant. An
105 aggrieved applicant may petition the circuit court of the county or city in which he resides or the Circuit
106 Court of the City of Richmond, Division I, for an order compelling the State Registrar to amend the
107 vital record; an aggrieved applicant who was born in Virginia, but is currently residing out of State, may
108 petition any circuit court in the Commonwealth for such an order. The State Registrar or his authorized
109 representative may appear and testify in such proceeding.

110 **2. That the State Registrar shall develop the form required by § 32.1-261, as amended and**
111 **reenacted in this act, by September 1, 2020.**