

JAN 22 2021

A BILL FOR AN ACT

RELATING TO VITAL STATISTICS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in 2019, it passed
2 H.B. No. 1165, which the governor signed into law as Act 142.
3 This law expanded gender markers for Hawaii's driver's licenses
4 and state identification cards. The legislature further
5 acknowledges that on July 1 of this year, that law went into
6 effect smoothly. In other states, such as Washington, the third
7 gender-marker has also been instated for other official
8 documents, such as birth certificates. This ensures that an
9 individual's gender markers match on the individual's driver's
10 license, state identification card, and other official
11 documents. The purpose of this Act is to add the third gender
12 marker "X" as a third gender option on birth certificates.

13 SECTION 2. Section 338-17.7, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§338-17.7 Establishment of new certificates of birth,
16 when. (a) The department of health shall establish, in the
17 following circumstances, a new certificate of birth for a person



1 born in this State who already has a birth certificate filed
2 with the department and who is referred to below as the "birth
3 registrant":

4 (1) Upon receipt of an affidavit of paternity, a court
5 order establishing paternity, or a certificate of
6 marriage establishing the marriage of the natural
7 parents to each other, together with a request from
8 the birth registrant, or the birth registrant's parent
9 or other person having legal custody of the birth
10 registrant, that a new birth certificate be prepared
11 because previously recorded information has been
12 altered pursuant to law;

13 (2) Upon receipt of a certified copy of a final order,
14 judgment, or decree of a court of competent
15 jurisdiction that determined the nonexistence of a
16 parent and child relationship between a person
17 identified as a parent on the birth certificate on
18 file and the birth registrant;

19 (3) Upon receipt of a certified copy of a final adoption
20 decree, or of an abstract of the decree, pursuant to
21 sections 338-20 and 578-14;



1 (4) Upon receipt of an affidavit [~~from a United States~~
2 ~~licensed physician attesting that:~~
3 ~~(A) The physician has a bona fide physician patient~~
4 ~~relationship with the birth registrant;~~
5 ~~(B) The physician has treated and evaluated the birth~~
6 ~~registrant and has reviewed and evaluated the~~
7 ~~birth registrant's medical history;~~
8 ~~(C) The birth registrant has had appropriate clinical~~
9 ~~treatment for gender transition to the new gender~~
10 ~~and has completed the transition to the new~~
11 ~~gender; and~~
12 ~~(D) The new gender does not align with the sex~~
13 ~~designation on the birth registrant's birth~~
14 ~~certificate;]~~
15 for a change in sex designation on a person's own
16 birth certificate by an adult, or for a change in sex
17 designation of a minor's birth certificate by a
18 minor's parent or legal guardian, provided that:
19 (A) "Adult" means a person who is at least eighteen
20 years of age or older, or is an emancipated minor



- 1 under chapter 577-25; "X" means a third non-
2 binary gender option;
- 3 (B) Only an adult may apply for a change in sex
4 designation on a certificate for oneself;
- 5 (C) Only the parent or legal guardian of a minor may
6 apply for a change of sex designation on the
7 minor's birth certificate; and
- 8 (D) To change sex designation on a birth certificate,
9 an adult, or parent or legal guardian of a minor
10 must submit to the department a completed,
11 signed, and dated application provided by the
12 state registrar that includes, at a minimum, the
13 following information for the person named on the
14 birth certificate:
- 15 (i) Full name listed on the birth certificate;
16 (ii) Date of birth;
17 (iii) Place of birth;
18 (iv) Both parents' full names as listed on the
19 birth certificate;
20 (v) Contact information; and



- 1 (vi) Sex designation requested (male, female, or
2 X);
- 3 (E) If an adult, or parent or legal guardian cannot
4 provide the information in paragraph (D) of this
5 subsection due to special circumstances; the
6 adult, or parent or legal guardian must submit a
7 written explanation of the circumstances to the
8 state registrar. The department may change the
9 sex designation on the birth certificate if, in
10 the state registrar's judgment, these
11 circumstances prevent the adult, or parent or
12 legal guardian from knowing one or more of the
13 required items;
- 14 (F) The sex designation change application of an
15 adult must be notarized and signed under penalty
16 of perjury;
- 17 (G) The sex designation change application of a minor
18 must include a signed statement by the minor's
19 licensed health care provider attesting that:
- 20 (i) The minor identified on the application is
21 under the care of the provider; and



1 (ii) The provider has determined the request to
2 change sex designation on the birth
3 certificate is consistent with the minor's
4 identity; and

5 (H) Only licensed health care providers whose scope
6 of practice allows for attestation of a sex
7 designation change may provide this attestation;

8 or

9 (5) Upon request of a law enforcement agency certifying
10 that a new birth certificate showing different
11 information would provide for the safety of the birth
12 registrant; provided that the new birth certificate
13 shall contain information requested by the law
14 enforcement agency, shall be assigned a new number and
15 filed accordingly, and shall not substitute for the
16 birth registrant's original birth certificate, which
17 shall remain in place.

18 (b) When a new certificate of birth is established under
19 this section, it shall be substituted for the original
20 certificate of birth. The new certificate shall not be marked
21 as amended and shall in no way reveal the original language



1 changed by any amendment. Thereafter, the original certificate
2 and the evidence supporting the preparation of the new
3 certificate shall be sealed and filed. The sealed documents
4 shall be opened only by an order of a court of record or, for
5 those documents amended pursuant to subsection (a)(4), by
6 request of the birth registrant.

7 (c) If a new certificate of birth is established under
8 subsection (a)(4), it shall reflect, or shall be reissued to
9 reflect, any legal name change made before, simultaneously, or
10 after the change in sex designation; provided appropriate
11 documentation of the name change is submitted.

12 (d) If a new certificate of birth is established under
13 subsection (a)(4), the department shall not require any
14 additional medical information or records other than those
15 required by subsection (a)(4).

16 (e) The department shall create and make available the
17 necessary forms for the application for the establishment of a
18 new certificate of birth for all categories listed in this
19 section."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 281

1 SECTION 4. This Act shall take effect on January 1, 2022;
2 provided that subsection (e) shall take effect on July 1, 2021.

3

INTRODUCED BY: _____

Karl Rhoads



S.B. NO. 281

Report Title:

Vital Statistics; Birth Certificate; Gender Marker

Description:

Allows a qualified applicant to change their sex designation on their own birth certificate.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

