

1973 Bill 81

Second Session, 17th Legislature, 22 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 81

The Change of Name Act, 1973

THE MINISTER OF HEALTH AND SOCIAL DEVELOPMENT

First Reading

Second Reading

Third Reading

BILL 81

1973

THE CHANGE OF NAME ACT, 1973

(Assented to _____, 1973)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

1. In this Act,
 - (a) "applicant" means a person applying for a change of name under this Act;
 - (b) "change" means any change by way of alteration, substitution, addition or abandonment;
 - (c) "child" means an unmarried minor child;
 - (d) "Director" means the Director of Vital Statistics;
 - (e) "given name" includes a Christian name and a baptismal name;
 - (f) "Minister" means the member of the Executive Council charged with the administration of this Act;
 - (g) "name" means a given name or a surname or both;
 - (h) "prescribed" means prescribed by the regulations;
 - (i) "surname" includes a family name and patronymic;
 - (j) "widowed" refers both to a person who is or has been a widow or widower.

2. An application under this Act to change a name may only be made by a person who
 - (a) is at least 18 years of age, and
 - (b) is a bona fide resident of Alberta.

3. Subject to this Act, any person
 - (a) may apply to change a given name of his;
 - (b) may apply to change his surname.

4. A person may not apply under this Act to change a given name or the surname of a child who is 12 years of age or older without the consent of the child.

5. (1) A married person may apply
 - (a) to change a given name of the spouse of the married person;

Explanatory Notes

1. This Bill will repeal and replace The Change of Name Act R.S.A. 1970, Chapter 41.

It is a revision of that Act to remove possible conflicts with The Alberta Bill of Rights and also to modify certain restrictions and limitations that make the present Act too inflexible.

2. Eligibility to apply under the Act. The present section contains citizenship and 90 day residence requirements.

3. Given names and surnames may be changed under the Act.

4. Consent to change of name of children 12 and older.

5. Change of name of married persons and their children. Under the present Act the application can only be made by the husband.

- (b) to change a given name of a child of the married person who is also a child of the spouse of the married person.
- (2) A married person who applies for a change of surname shall also apply for a like change of the surname of
 - (a) the spouse of the married person, and
 - (b) each child of the married person who is also a child of the spouse of the married person.
- (3) A married person may not apply under this section
 - (a) to change a given name or the surname of the spouse of the married person, or
 - (b) to change a given name or the surname of a child of the married person who is also a child of the spouse of the married person,without the consent of the spouse.

6. (1) A widowed person may apply to change a given name of a child of the widowed person who is also the child of the deceased spouse of the widowed person.

(2) A widowed person who applies for a change of surname shall also apply for a change of the surname of each child of the widowed person who is also a child of the deceased spouse of the widowed person.

(3) A widowed mother who remarries may apply to change the surname of a child of hers who is also the child of her deceased spouse to the surname of her husband but only with the consent of her husband, if living.

7. (1) A person whose marriage has been dissolved and who has lawful custody of a child of the dissolved marriage may, with the consent of the other parent of the child, if living, apply

- (a) to change a given name of the child;
- (b) to change the surname of the child.

(2) A woman whose marriage has been dissolved and who remarries may apply to change the surname of a child of the dissolved marriage to the surname of her husband but only with the consent of her husband, if living.

8. (1) The mother of a child born out of wedlock may apply to change a given name of her child of whom she has lawful custody.

(2) Subject to this section, the mother of a child born out of wedlock may apply to change the surname of her child of whom she has lawful custody

6. Change of surname of child of widowed person. Subsection (3) is new.

7. Change of name of children of divorced couples. The present Act does not allow the ex-wife to apply to change a child's surname at all.

8. Change of name of child born out of wedlock. Subsections (3), (4) and (5) are new.

- (a) to her surname at the time of the application, or
- (b) if she is also applying to change her own surname, to her proposed surname.

(3) The mother of a child born out of wedlock who marries may apply to change the surname of the child to the surname of her husband but only with the consent of her husband, if living.

(4) The mother of a child born out of wedlock who is not married to but is cohabiting with a man as wife and husband may apply to change the surname of the child to the surname of that man but only with the consent of that man.

(5) Subject to subsection (4) the mother of a child born out of wedlock may not apply to change the surname of her child to the surname of the putative father of the child unless

- (a) he has been declared by a court to be the father of the child, or
- (b) he has acknowledged during his lifetime that he was the father of the child.

9. (1) Where a person other than a parent is a guardian of a child jointly with one of the parents,

- (a) the guardian may apply, with the consent of that parent, or
- (b) that parent may apply with the consent of the guardian,

to change a given name or the surname of the child.

(2) Where neither of the parents of a child is a guardian of the child

- (a) the guardian, or
- (b) if two guardians have been appointed, one guardian with the consent of the other guardian,

may apply to change a given name or the surname of the child.

(3) A parent who has been deprived of the guardianship of his child

- (a) shall not and is not required to apply to change the child's name, and
- (b) is not required to consent to an application to change the child's name.

10. A person may not apply for a change of surname so as to acquire the surname of another person whom the applicant is not married to but is co-habiting with as husband and wife.

9. Applications to change the name of a child who has one or more guardians.

10. Surname of “common law” spouse cannot be acquired.

11. (1) Where, on an application to change a surname, this Act requires that application also be made to change the surname of some other person then, if

- (a) this Act requires the consent of the other person to the change of the other person's surname, and
- (b) the applicant is unable to obtain the consent of the other person,

the Supreme Court may authorize the application to be made with that other person's name excluded therefrom, in which case that person's consent is not required and his surname is not changed.

(2) Where the surname of a child is excluded from an application by virtue of an order under subsection (1) and the child subsequently consents to a like change in his surname a parent of the child may apply to change the surname of the child.

(3) Where on an application to change a given name or the surname of a child the consent thereto of some other person is required under section 5, 6, 7, 8 or 9 and the applicant is unable to obtain the consent of the other person, the Supreme Court, having regard to the best interests of the child, may dispense with the consent of the other person to the change of name.

12. Where a person whose consent is required to an application under this Act is a mentally incompetent person

- (a) the Public Trustee if acting as the committee of the estate of the mentally incompetent person, or
- (b) a committee appointed by the Court in respect of the person or estate of the mentally incompetent person,

may consent to the application on behalf of the mentally incompetent person.

13. (1) Every applicant for a change of a surname shall publish in one issue of The Alberta Gazette a notice in the prescribed form or to the like effect of the application stating the name of and proposed name of every person whose surname may be changed as a result of the application.

(2) The notice required under subsection (1) shall be published not more than two months prior to the date of receipt of the application in the office of the Director.

(3) The Supreme Court may dispense with the necessity of publishing notice of the application as required by subsection (1) if, in its opinion,

- (a) the applicant would be unduly prejudiced or embarrassed by the publication, or
- (b) the change of surname applied for is of a minor character, or
- (c) the applicant has been commonly known under the surname applied for.

11. Court orders to enable a change of surname of a married person and/or children while surname of spouse and/or other children remain the same and to dispense with the consent of a person (other than the child) to the change of the child's name.

12. Consent of mentally incompetent person.

13. Publication of notice of application. The present Act also requires publication in a local newspaper. Subsection (3) is new.

14. (1) Every application for a change of name under this Act shall be filed with the Director and shall be in the prescribed form.

(2) Every applicant shall file with his application

- (a) where the application includes an application for change of surname, a clipping from The Alberta Gazette in which the notice has been published pursuant to section 13, subsection (1), containing the notice of the intended application or a copy of an order made under section 13, subsection (3),
- (b) an affidavit of bona fides in the prescribed form or to the like effect,
- (c) the consent in the prescribed form or to the like effect of every person whose consent is necessary under this Act and a copy of any order made under section 11,
- (d) the certificate of birth of the applicant and the certificate of birth of every person whose name may be changed as a result of the application or, if that is not available, such other documentary proof of name or identity as may be acceptable to the Director, and
- (e) such further documentary evidence of information as may be required by the Director.

(3) An application under section 7 shall be accompanied by such proof as may be required of the dissolution of the marriage and that the applicant has lawful custody of the child named in the application.

15. (1) The Director shall,

- (a) upon all requirements of this Act being complied with, and
 - (b) upon payment of the prescribed fee,
- register the change of name by the issuance of a certificate thereof in the prescribed form.

(2) Notwithstanding subsection (1), the Director may, in his discretion, refuse registration of a proposed change of name if in his opinion the proposed name is one that could be used in a manner that could defraud or mislead the public.

(3) Where the Director refuses to register a proposed change of name pursuant to subsection (2), the applicant may appeal, in writing, to the Minister who may confirm the Director's decision or instruct the Director to register the proposed change of name.

(4) A certificate of change of name issued under subsection (1) takes effect from 12:01 p.m. on the day it is issued.

14. Form and content of application and accompanying documents.

15. Registration of change of name.

(5) Registration under the provisions of this Act shall for all purposes effect a change of name according to the tenor of the application.

(6) Where a change of name has been effected under this Act the certificate thereof shall be kept in the office of the Director and shall be preserved and remain in his custody as part of the records of his office.

16. The Director shall forthwith upon registering a change of name amend his records under *The Vital Statistics Act* in conformity with any certificate issued under this Act and shall make no charge for the amendments.

17. (1) Upon registration of a change of name a duplicate of the certificate issued shall be delivered to the applicant.

(2) Upon payment by any person of the prescribed fee a duplicate or certified copy of a certificate of change of name made under this Act shall be delivered to that person.

18. The Director shall cause notice of the issuance of a certificate issued under section 15 to be published forthwith in *The Alberta Gazette*, except where publication of notice of the application was dispensed with by an order under section 13.

19. Without restricting the effect that a change of name has by law, a person

- (a) whose birth or marriage is registered in Alberta, and
- (b) whose name has been changed, while resident elsewhere than in Alberta, in accordance with the laws of the jurisdiction in which he was resident,

is entitled, upon production of satisfactory proof of the change of name and of his identity, to have his new name substituted instead of his former name in the records kept and certificates issued by the Director under *The Vital Statistics Act*.

20. (1) Without restricting the effect that a change of name has by law,

- (a) a person whose name has been changed in accordance with this Act or a predecessor Act, upon production of a duplicate or certified copy of the certificate issued under this Act or a predecessor Act, and upon satisfactory proof of his identity and payment of such fees, if any, as are prescribed by law, and
- (b) a person referred to in section 19, upon production of a certificate from the Director certifying to the change of his name, and upon satisfactory proof of identity and payment of such fees, if any, as are prescribed by law,

16. Alteration of records under The Vital Statistics Act.

17. Issue of certificate of change of name.

18. Publication of change of name in The Alberta Gazette.

19. Change of Alberta records when a name is changed outside the Province.

20. Change of name on other records and documents. Subsection (2) is new.

is entitled to have his new name substituted instead of his former name in any and every record, certificate, instrument, contract or other document whether it is or is not ejusdem generis with those previously mentioned and whether it is public or private.

(2) The substitution of a new name in any certificate, record or other public document pursuant to subsection (1) may be made by the person in charge of issuing, maintaining or keeping that type of certificate, record or document who shall also enter thereon a certificate that the substitution was made pursuant to this section.

21. Where, in the application of section 19 or 20, a question arises concerning the existence of or compliance with any or all of the facts or matters therein required or contained, on the application of the person seeking substitution of his new name instead of his former name, the Supreme Court may make an order

- (a) declaring that he has complied with all the requirements of that section, and
- (b) directing the Director or other person to alter his records, certificates or other documents in conformity therewith.

22. (1) The Director may, if satisfied that any change of name has been obtained by fraud, duress or misrepresentation, annul the change of name by order, effective from a date named therein.

(2) A marginal notation of the annulling order shall be made on the certificate kept in the office of the Director.

(3) Notice of the annulment shall be forthwith published in The Alberta Gazette.

(4) The Director shall without charge make any alterations in his records which are necessary by reason of the annulling order.

(5) The Director may in any such case by order require any person to whom a duplicate or a certified copy of the certificate of change of name has been issued forthwith to deliver it up to him.

23. (1) Any person who refuses or neglects to comply with an order issued under section 22, subsection (5) is guilty of an offence and liable on summary conviction to a fine of not more than \$100 and in default of payment to imprisonment for a term of not more than 30 days.

(2) A person who by fraud or misrepresentation obtains a change of name under this Act is guilty of an offence and

21. Court order to settle any doubts arising under section 19 or 20.

22. Annulment of change of name.

23. Offences and penalties. Subsection (3) is new.

liable on summary conviction to a fine of not more than \$500 or to imprisonment for a term of not more than 90 days.

(3) No prosecution for an offence under this Act shall be commenced except with the consent in writing of the Minister.

24. A certificate, a duplicate certificate or a certified copy of a certificate of change of name issued under this Act or a predecessor Act, is for all purposes conclusive proof of its contents and it is not necessary to prove the signature or official position of the person by whom the certificate, duplicate certificate or certified copy purports to be signed.

25. (1) Where the signature of the Director is required for any purpose of this Act, the signature may be written, engraved, lithographed or reproduced by any other mode of reproducing words in visible form.

(2) Every document issued under this Act under the signature of the Director is and remains valid notwithstanding that the Director has ceased to hold office before the issue of the document.

26. An application to the Supreme Court under this Act shall be by petition on such notice, if any, as the Court may require.

27. The Minister may make regulations

- (a) prescribing the fees payable upon an application and upon any certificate or other matter required or permitted to be given or done under this Act;
- (b) prescribing the forms and contents of applications for change of name, affidavits, certificates, notices of application, consents to the application and any other forms and the contents thereof, for the purposes of this Act;
- (c) respecting any other matter necessary to carry out the intent of this Act.

28. *The Vital Statistics Act is amended as to section 21 by adding after the words "The Change of Name Act" wherever it occurs the figure ", 1973".*

29. *The Change of Name Act is repealed, but any proceedings to change a name commenced under that Act prior to the date of its repeal may be continued to completion under that Act as if it had not been repealed.*

30. This Act comes into force on the day upon which it is assented to.

24. Conclusiveness of documents issued under this Act.

25. Validity of reproduced signature on documents issued under this Act.

26. Procedure on court applications.

27. Regulations.

28. Consequential amendments.

29. Repeal of the Revised Statutes of Alberta 1970, chapter 41.