

‘A person’s sex is no more subject to change than a person’s age’: Utah lawmaker defends bill to block changes to birth certificates

By Courtney Tanner

Salt Lake Tribune

January 23, 2019

<https://www.sltrib.com/news/politics/2019/01/23/utah-lawmaker-wants/>

A conservative state representative is pushing a proposal that would block Utahns from changing the sex listed on their birth certificates and leave only two designations — male or female.

The state’s existing law for a person wanting to make a legal change to match their gender identity is ambiguous and [under review of the Utah Supreme Court](#). Currently, government agencies have applied their own, and often inconsistent, interpretations, and judges have pinballed between granting and denying requests.

The bill that Rep. Merrill Nelson, R-Grantsville, [plans to introduce during the legislative session](#), which starts next week, would require individuals — including those who are transgender and gender nonconforming — to keep on their birth certificates the sex they were assigned at birth. The lawmaker could not be reached for comment Tuesday but emailed a written statement Wednesday.

“H.B. 153 is based on the scientific and medical fact that an individual’s sex is determined at conception by chromosomal make-up and is not subject to change or self-determination later in life,” Nelson wrote.



LGBT groups and advocates in the state balked at the move. Equality Utah's executive director Troy Williams called it "an egregious attack on the transgender community." The ACLU of Utah labeled it "unconstitutional." Former state Sen. Steve Urquhart, who pushed gay-rights legislation during his tenure, asked: "Why do they feel the need to do this?" Misty Snow, a transgender woman who [made history in winning a U.S. Senate nomination](#), said it's "a bad bill" built on discrimination.

Still, the Senate sponsor of the measure, Sen. Ralph Okerlund, R-Monroe, said the measure "just makes sense to me."

"It's a vital statistic, one that's created when a person is born," he said. "What is a physical fact at birth, gender, is put on the birth certificate and should stay at all times of life."

The proposal would add definitions of male and female to state code and define those by "the innate and immutable characteristics established at conception," according to the current language.

Female, the draft states, is designated to an individual at birth with ovaries and the "external anatomical characteristics that appear to have the purpose of performing the natural reproductive function of providing eggs and receiving sperm from a male donor." Male, it adds, is given to a person with testes and the "reproductive function of providing and delivering sperm to a female recipient."

In some cases, the bill would allow for a child's sex to be listed as undetermined and updated in time. But in no cases could a person request that a judge change the assignment later in life based on gender identity.

Nelson, who is a lawyer at the firm Kirton McConkie, which also represents The Church of Jesus Christ of Latter-day Saints, had previously hinted during the interim that he intended to run this kind of bill. He was [the single opposing vote](#) during a judiciary committee meeting in August on a potential committee bill to establish clear rules for legally changing the sex designation on a birth certificate.

“We’re not bound to take this course,” [Nelson said of the idea at the time](#). “There are other alternatives.”

Legislation on the topic in the 2018 session [failed to pass the Senate](#). The sponsor of that, Sen. Todd Weiler, R-Woods Cross, tweeted Tuesday night that he questions “Nelson’s logic” in pushing an opposing measure. The state changes birth certificates every day, he said, including in cases of adoption.

Nelson [told Utah Policy on Tuesday](#) that his proposal has nothing to do with the church, as some have suggested. It does come, though, after a recent speech by one of the faith’s leaders, Dallin H. Oaks, who said in October that [“gender is eternal”](#) and members should oppose pressures to “make changes that confuse or alter gender or homogenize the differences between men and women.”

“This bill is not motivated by any form of ‘phobia’ or hate,” Nelson said in his response sent to The Tribune, “but only by a desire to maintain the integrity of the birth certificate and to provide clarity and consistency to an otherwise ambiguous statute that has produced conflicting results. ... A person’s sex is no more subject to change than a person’s age. While some may feel younger or look younger, that would not justify a change of the person’s actual date of birth.”

Nelson has also previously wanted to [ban nominating committees from considering racial and gender diversity](#) when vetting potential judges. That bill was pulled.

Okerlund said in this case, where judges would be prohibited from changing the sex listed on a birth certificate, individuals would still be able to change their name if they wanted to. “I don’t have a problem with any other changes that people would make,” he added.

But Williams with Equality Utah challenged the measure as step backward that limits identity and alienates the community. He pointed, too, to [a 2015 nondiscrimination agreement](#) where leaders of the LDS Church supported a measure to protect LGBT rights with housing and jobs. This, he said, flies in the face of that.

“Nelson has made zero effort to get to know the transgender community and understand the complexities of their lives and yet he’s willing to legislate in a way that harms them,” he said.

A case is pending before the Utah Supreme Court over whether a judge has the authority to change a person’s gender identity under existing state law. One of the plaintiffs, [Sean Childers-Gray](#), a transgender man, was denied when he requested to update his identification and has fought the decision.

On Tuesday, he said the definitions in Nelson’s bill “are disturbing” for his case and others. They are based on reproduction and anatomy, Childers-Gray noted, but: “What if you’re not born with ovaries? What if you can’t have children?”

“Not everyone can do that,” he said. “I’m sure this will be ripped apart by many, many lawyers.”

Childers-Gray, who started his medical transition in 2012, said he wants his birth certificate and driver license to be “congruent to the identity that I live.”

Currently, at least 10 states explicitly allow individuals to change the sex assignment on their birth certificate with a medical note from a doctor. More than 30 states, according to [The National Center for Transgender Equality](#), require a person to undergo sex reassignment surgery — which not all transgender people choose to do — before requesting an update.

Snow, a transgender woman who opposes Nelson’s proposal, was able to change her birth certificate after her request was approved by a judge in the state. But that shows how Utah’s statute can be interpreted in different ways.

Not being able to change legal documents, she said, can make it hard to get a bank account or a job.

“It can really lead to a lot of consequences that can stop you from participating in your life.”