

Legislative Analysis



CHANGE OF NAME AFTER DIVORCE: MAKE GENDER NEUTRAL

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House Bill 4704 as introduced
Sponsor: Rep. Pam Byrnes
Committee: Judiciary

First Analysis (9-1-09)

BRIEF SUMMARY: The bill would extend to a man who took his wife's name the same ability to restore a previous surname after a divorce that is currently afforded only to women.

FISCAL IMPACT: The bill would have no fiscal impact on the judicial branch of government.

THE APPARENT PROBLEM:

There has been a trend in recent years for husbands to take their wives' names, in whole or in part, upon marriage instead of the more traditional practice of the wives taking the husbands' surnames. A man may choose to combine his surname with that of his wife (with or without a hyphen), or he may drop his own name altogether in favor of adopting hers. Still others, such as Los Angeles Mayor Antonio Villaraigosa, merged his surname – *Villar* – with that of his wife's – *Raigosa*. Some men who have married women with children say they do it so that all in the family share the same last name. Others may choose to do it as a way to honor the wife's heritage.

If a marriage fails, however, men face discriminatory treatment under the law. Currently, a woman, as part of the divorce decree, is allowed to request restoration of her maiden name or other legal surname used prior to the marriage. The same right to restoration of a previous surname is not currently afforded to a man who took his wife's name. Instead, the man must go through an often time-consuming and costly court process to have his name restored. It has been suggested that the statute allowing a divorced woman to have a previous surname restored should be amended to also apply to men.

THE CONTENT OF THE BILL:

Currently, after a divorce is granted by a court, the court may restore a woman's maiden name or her legal surname prior to the marriage. If a man, however, had taken all or a part of his wife's name, he must complete a formal court procedure at an additional cost to restore his prior surname.

House Bill 4704 would amend Public Act 299 of 1905 (MCL 552.391), which provides for changing and determining the names of divorced women, to instead provide for changing and determining the names of divorced individuals. The bill would revise the current law to be gender neutral, applying to either or both parties in a divorce action.

BACKGROUND INFORMATION:

The bill is identical to House Bill 5513 of the 2007-2008 legislative session, which was passed by the House but failed to see Senate action.

ARGUMENTS:

For:

Michigan law currently allows a woman, as part of the divorce decree, to change her last name back to her maiden name, a previous last name, or any other name that may be lawfully adopted. The same is not true for a man who took all or a part of his wife's name. In order to legally restore his previous surname, he must file a petition in circuit court, be fingerprinted (at his own expense, currently about \$54 plus any local police agency fees), be subject to a hearing, and pay various court and filing fees of at least \$160. However, without the order from the court restoring his name, the man cannot change the name on his driver's license or other legal documents.

The bill, by extending the current statute to also apply to a husband in a divorce proceeding, would eliminate the need for the man to file for a separate court order to restore his last name. It would save time and additional expense for the man, and would be less burdensome on courts with already heavy dockets.

Response:

The measure is a first step toward gender equality regarding married surnames, but doesn't go far enough. In many cultures, it is common for the wife's name to be used or for the husband and wife to use both surnames. Whereas the common law in Michigan allows a woman to take her husband's surname in marriage without going through the longer court process generally required to change a name, the same is not true for the husband. A man wishing to adopt all or part of his wife's name must currently go through the court process at the beginning of the marriage, and again should the marriage end in divorce. Without a court order substantiating the name change, a man is unable to have the name on his driver's license or other legal documents changed.

Some states specifically allow either party in a marriage to adopt the spouse's last name. At least eight of these states have amended their statutes to also allow either party to restore his or her surname in the divorce decree if the marriage ends. Statutes allowing either party to change his or her name - at the beginning and end of a marriage - do more than address gender discrimination; they acknowledge and respect cultural practices and individual choice.

POSITIONS:

The Family Law Section of the State Bar of Michigan supports the bill. (8-4-09)

The ACLU of Michigan indicated support for the bill. (8-19-09)

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