



SPONSOR: Rep. Lynn & Sen. Henry  
Reps. Baumbach, J. Johnson, Keeley, Kowalko, Viola;  
Sen. Townsend

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 178

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO MINORS' PETITIONS FOR NAME CHANGE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 5902, Title 10 of the Delaware Code by making deletions as shown by strike through and  
2           insertions as shown by underline as follows:

3           § 5904 Determination by Court.

4           (a) Upon presentation of a petition for change of name under this chapter, and it appearing that the requirements of  
5           this chapter have been fully complied with, and there appearing no reason for not granting the petition, the prayer of the  
6           petition may be granted.

7           (b) If a parent of a minor files a petition under this chapter and seeks to add that parent's surname to the minor's  
8           surname either as an additional name or hyphenated with the minor's previously-existing surname, there is a presumption in  
9           favor of granting the petition. A parent opposing a petition filed under this chapter has the burden to overcome the  
10          presumption by establishing by clear and convincing evidence that the totality of the following factors demonstrates that  
11          granting the petition would cause the minor more harm than benefit:

12                   (1) The petitioning parent's failure to maintain contact with the minor.

13                   (2) The length of time that a surname has been used for or by the minor.

14                   (3) The minor's reasonable preference for a surname.

15                   (4) The effect of the change of the minor's surname on the preservation and development of the minor's  
16          relationship with each parent.

17                   (5) The degree of community respect associated with the minor's present surname and proposed surname.

18                   (6) The difficulties, harassment, or embarrassment that the minor may experience from bearing the present or  
19          proposed name.

20                   (6) The identification of the minor as a part of the family unit.

## SYNOPSIS

The children of parents who divorce or were never married often share a surname with only one parent, which may lead to confusion or hardship when schools, doctors, or others fail to recognize the child's connection with the parent with whom the child does not share a similar surname. Parents and children in such circumstances have compelling reason to seek to add a second surname to the child's name.

Delaware law currently provides that a petition to change a minor's surname should be granted if there are no reasons for not granting the petition. This standard applies to changing a minor's name, regardless of whether the change is to eliminate and replace an existing surname or simply add a second surname, and also puts the burden on the petitioning parent to demonstrate that the petition should be granted.

This Act separates circumstance in which a parent seeks to replace a minor's surname from those in which a parent seeks to add to the minor's surname, by establishing a presumption in favor of granting a petition to add a parent's surname to a minor's surname either as an additional name or hyphenated with the minor's previously existing surname. The presumption in favor of granting the petition may be overcome by the opposing parent establishing by clear and convincing evidence that the consideration of several, specific factors demonstrate that granting the petition would cause the minor more harm than benefit.

The factors specified in this Act are taken from the larger list of factors which Delaware Courts have developed through case law to consider when determining whether to grant a petition to change a minor's surname and do not include the factors which are relevant only when a parent seeks to replace, rather than add to, the minor's surname.