

# The Virgin Islands Consortium

**Currently in the USVI, If a Woman Marries a Man and Keeps Her Last Name, She is Breaking the Law. Senators are Working to Change That.**

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A bill that seeks to strike down an archaic Virgin Islands law pertaining to women being able to retain their last names upon marriage, was held in committee Friday not because senators didn't agree it needed to change, but because the main testifiers — members of the V.I. Bar Association — were not present to provide clarity on certain definitions.

Nonetheless, Bill No. 34-00356, "An Act amending title 16 Virgin Islands Code, chapter 1, subchapter III, section 61 relating to a wife's name to give either party to a marriage the right to use the other's surname," — sponsored by Senator Alma Francis-Heyliger — was

debated during a Committee on Rules and Judiciary hearing.

Currently, it's against the law in the V.I. for a woman to keep her last name when she gets married. By contrast, there is no law on the mainland United States requiring a name change after marriage, though the tradition is still very much alive.

Ms. Francis-Heyliger in opening remarks made clear that the bill was not an attack on marriage. "This bill speaks to a simple change in the Virgin Islands Code... This has nothing to do with the attempt to remove the sanctity of marriage within the VI Code," she said.

For some historical perspective, according to [Seattle Bride](#), the matter of a wife taking a husband's surname didn't surface in English common law until the ninth century, when lawmakers began to consider the legalities surrounding personhood, families, and marriage. Hence the doctrine of coverture emerged – and women were thereafter considered "one" with their husbands and therefore required to assume the husband's surname as their own.

Under the concept of coverture, which literally means "covered by," women had no independent legal identity apart from their spouse. And this "coverage" began upon the birth of a female baby — who was given her father's surname — and could only change upon the marriage of that female, at which point her name was automatically changed to that of her new husband.

The Seattle Bride said coverture laws also prevented women from entering into contracts, engaging in litigation, participating in business, or exercising ownership over real estate or personal property.

It wasn't until the 1970s that the U.S. Supreme Court struck down a Tennessee law requiring a woman to assume the last name of her husband before registering to vote. Around the same time, the prefix "Ms." emerged, allowing women to assert their identity apart from their marital status.

Women in the United States began to take exception to their non-existent legal status, and a feminist uprising occurred concurrently with the passage of Married Women's Property Acts in several U.S. states in the mid-1800s. Under these acts, women gained individual legal status for purposes of signing contracts, engaging in business and commerce, and making purchases to acquire property. Accordingly, now that the woman's name had its own independent legal significance, the number of women opting to retain their birth name began to rise.

Sen. Francis-Heyliger explained that because of how the code is written, many women in the USVI are breaking the law. "Because this is written into our law and it's the law of the land that a wife shall bear her husband's surname, that means many women in our society right now that may choose not to carry the surname of their spouse, it's basically breaking the law currently and that is not something that we should continue to this day to have on our code books," she said.

She further stated, "We just basically want to amend the code to these words: Either party, husband or wife of a marriage, may use the surname of their spouse. That would eliminate in the code people having to be obligated because the law says they shall do

it."

Attorney Charlotte Perrell, President VI Bar Association, did not attend the hearing but penned a letter stating the bar's position. "The Virgin Islands Bar Association supports these changes but suggests that the statute read 'either party of the marriage may use the surname of the party's spouse.'" She said including husband or wife is not necessary to clarify the meaning of the Senate, and that those definitions also exclude binary individuals who may marry but not consider themselves husband or wife.

Ms. Perrell also suggested the bill title be changed from "name of wife" to "name change upon marriage."

"This for me has to do with a lot with the word 'shall'...all it does is change it from shall to may, it gives women the option to decide opposed to a law demanding that she has to do it. In modern day times many women right now already do it, I'm just fixing it so that they are not breaking the current law," said Ms. Francis-Heyliger.

Senator Milton Potter understood the legislation, but wondered whether there were any consequences for not abiding to this statute. "It is the current law of the land but I'm not aware of any consequences of a violation. You have many women today who choose to bear their own name, choose to keep their name and it really has no consequence from a legal standpoint of them violating the law," he said.

The bill was held because senators needed clarity on definitions that no one was available to provide. Senator Kenneth Gittens, chairman of the Rules Committee, called for a recess. Following the break, Mr. Gittens motioned that the bill be held in the committee. Senators supported the motion and the measure was held.

Ms. Francis-Heyliger used a point of information to explain why the measure was held and the potential next course of action to create the change she was looking for. She said, "To be fair, because there seems to be quite a bit of various definitions even with the recommendation of the bar association and some of my colleagues not knowing certain terms and us wanting to make sure the legal terms for everything, we're going to make a decision later on whether it might be best to completely remove this out of the V.I. Code so it's no longer affecting any one, as opposed to potentially amending after all the definitions are shared with the colleagues."