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AB-421 Change of gender and sex identifier. (2021-2022)

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Assembly Bill No. 421

CHAPTER 40

An act to amend Section 103430 of the Health and Safety Code, relating to vital records, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 23, 2022. Filed with Secretary of State June 23, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 421, Ward. Change of gender and sex identifier.

Existing law authorizes a person to file a petition with the superior court seeking a judgment recognizing their change of gender to female, male, or nonbinary. Under existing law, if the person whose gender is to be changed is under 18 years of age, the petition is required to be signed by at least one of the minor's parents or a guardian or attorney of the minor, or if both parents are deceased and there is no guardian of the minor, by a near relative or friend of the minor. Under existing law, to be operative January 1, 2023, if the petition does not include a signature from one of those persons, the court is required to make an order directing the person or persons whose required signatures are not on the petition to show cause why the petition should not be granted by filing a written objection, as specified.

This bill, instead, would require the court to make that order if the petition is not signed by all living parents, and would require the order to direct the parent or parents who did not sign the petition to show cause why the petition should not be granted by filing a written objection, as specified.

Existing law requires, if the petition is filed by a guardian appointed by the juvenile court or the probate court, by a court-appointed dependency attorney appointed as a guardian ad litem, or by an attorney for a minor who is alleged or adjudged to be a ward of the court, and if either or both parents are deceased or cannot be located, the guardian to cause, not less than 30 days before the hearing, a notice of the time and place of the hearing or a copy of the order to show cause to be served on the child's grandparents, as specified.

This bill would instead, in those circumstances, require the court to make an order directing the living grandparents to show cause why the petition for a court order to recognize a change in the minor's gender and sex identifier should not be granted within 6 weeks, as specified. The bill would additionally make other technical changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 103430 of the Health and Safety Code, as added by Section 8.5 of Chapter 577 of the Statutes of 2021, is amended to read:

103430. (a) A petition for a court order to recognize a change in the petitioner's gender and sex identifier as female, male, or nonbinary and to direct the issuance of new administrative documents to reflect those changes shall be accompanied by an affidavit from the petitioner and a certified copy of the court order changing the petitioner's name, if applicable. The petitioner's affidavit shall be accepted as conclusive proof of gender change if it contains substantially the following language: "I, (petitioner's full name), hereby attest under penalty of perjury that the request for a change in gender to (female, male, or nonbinary) is to conform my legal gender to my gender identity and is not for any fraudulent purpose."

(b) (1) If the person whose gender is to be changed is under 18 years of age, the petition shall be signed either (A) by at least one of the minor's parents, any guardian of the minor, or a person specified in subdivision (c); or (B) if both parents are deceased and there is no guardian of the minor, by either a near relative or friend of the minor. The affidavit pursuant to subdivision (a) may be signed by the minor.

(2) If the person whose gender is to be changed requests in their petition the issuance of a new marriage license and certificate or confidential marriage license and certificate pursuant to subdivision (c) of Section 103425, the petition shall be signed by the spouse who shares the marriage license and certificate or confidential marriage license and certificate that would be changed by granting the petition if the spouse is living and capable of signing the petition, or, if not signed by the spouse who shares the marriage license and certificate or confidential marriage license and certificate, and the spouse is living and capable, notice must be given to that nonsigning spouse as provided in subdivision (f).

(3) If the person whose gender is to be changed requests in their petition the issuance of a new birth certificate for their adult child pursuant to subdivision (d) of Section 103425, the petition shall be signed by the child whose birth certificate would be changed by granting the petition if the child is 18 years of age or older. A petition that requests a new birth certificate for an adult child pursuant to subdivision (d) of Section 103425 that does not include the signature of the adult child shall not be granted with respect to the new birth certificate for that child if the child is living and capable of providing a signature.

(4) If the person whose gender is to be changed requests in their petition the issuance of a new birth certificate for their minor child pursuant to subdivision (d) of Section 103425, the petition need not include the signature of the petitioner's child if the child is under 18 years of age.

(c) A petition to recognize a change of the gender of a minor signed by a guardian appointed by the juvenile court or the probate court, by a court-appointed dependency attorney appointed as guardian ad litem pursuant to rules adopted under Section 326.5 of the Welfare and Institutions Code, or by an attorney for a minor who is alleged or adjudged to be a person described in Section 601 or 602 of the Welfare and Institutions Code shall be made in the court having jurisdiction over the minor. All petitions to recognize a change of the gender of a nonminor dependent may be made in the juvenile court.

(d) (1) If the petition is signed by a guardian, the petition shall specify relevant information regarding the guardianship, the likelihood that the child will remain under the guardian's care until the child reaches the age of majority, and information suggesting that the child will not likely be returned to the custody of the child's parents.

(2) Before granting a petition in accordance with this subdivision, the court shall first find that the ward is likely to remain in the guardian's care until the age of majority and that the ward is not likely to be returned to the custody of the parents.

(e) (1) If a petition to recognize a change of gender of a minor does not include the signature of all living parents, then upon receipt of the petition, the court shall thereupon make an order directing the parent or parents who did not sign the petition to show cause why the petition for a court order to recognize a change in the minor's gender and sex identifier to female, male, or nonbinary should not be granted by filing a written objection, which includes any reasons for the objection, within six weeks of the making of the order, and shall state that if no objection showing good cause to oppose the gender recognition is timely filed, the court shall, without hearing, enter the order that the gender and sex identifier recognition is granted.

(2) If a petition to recognize a change of gender of a minor is filed by a person specified in subdivision (c) and all parents are deceased or cannot be located, then upon receipt of the petition, the court shall thereupon make an order directing the living grandparents to show cause why the petition for a court order to recognize a change in the minor's gender and sex identifier to female, male, or nonbinary should not be granted by filing a written objection, which includes any reasons for the objection, within six weeks of the making of the order, and shall state that if no objection showing good cause to oppose the gender recognition is timely filed, the court shall, without hearing, enter the order that the gender and sex identifier recognition is granted.

(3) If a petition pursuant to this section does not include any signature required by paragraph (2) of subdivision (b), then upon receipt of the petition, the court shall thereupon make an order reciting the filing of the petition, the proposed changes to the

petitioner's marriage license and certificate or confidential marriage license and certificate, and the name of the person by whom it is filed. The order shall direct the spouse of the petitioner who appears on the marriage license and certificate or confidential marriage license and certificate to make known any objection to the changes requested on the marriage license and certificate or confidential marriage license and certificate by filing a written objection, which includes any reasons why the requested changes would be fraudulent, within six weeks of the making of the order, and shall state that if no objection showing good cause to oppose the changes to the marriage license and certificate or confidential marriage license and certificate is timely filed, the court shall, without hearing, enter the order that the gender and sex identifier recognition is granted.

(f) If the court makes an order to show cause in accordance with subdivision (e), the petition and the order to show cause shall be served on the required person or persons who did not sign the petition, pursuant to Section 413.10, 414.10, 415.10, or 415.40 of the Code of Civil Procedure, within four weeks from the date on which the order is made by the court. If service cannot reasonably be accomplished pursuant to Section 415.10 or 415.40 of the Code of Civil Procedure, the court may order that service be accomplished in a manner that the court determines is reasonably calculated to give actual notice to the person who did not sign the petition.

(g) If no service is required on any party pursuant this section, the court shall grant the petition without a hearing if no written objection is timely filed within six weeks of the filing of the petition.

(h) The court shall grant the petition without a hearing, unless a timely objection showing good cause is filed. If an objection showing good cause is timely filed, the court may set a hearing at a time designated by the court. Objections based solely on concerns over the petitioner's actual gender identity or gender assigned at birth shall not constitute good cause.

(1) If a timely objection showing good cause is filed by anyone other than a parent who objects to changes to their minor child's birth certificate, at the hearing, the court may examine under oath the petitioner and any other person having knowledge of the facts relevant to the petition. At the conclusion of the hearing, the court shall grant the petition if the court determines that the petition is not made for any fraudulent purpose.

(2) If the objection was timely filed by a parent who objects to changes to their minor child's birth certificate, after holding a hearing on the matter, the court may deny the petition if the court finds that the change of gender and sex identifier is not in the best interest of the minor. At the hearing, the court may examine under oath the minor and any other person having knowledge of the facts relevant to the petition.

(i) This section shall become operative January 1, 2023.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address internal inconsistencies in recently enacted vital records statutes that could result in Californians and other individuals entitled to relief being denied relief, it is necessary for this act to take effect immediately.