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AB-751 Vital records: certified copies: electronic requests. (2021-2022)

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Assembly Bill No. 751

CHAPTER 623

An act to amend and repeal Section 103526 of the Health and Safety Code, relating to vital records.

[Approved by Governor October 07, 2021. Filed with Secretary of State October 07, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 751, Irwin. Vital records: certified copies: electronic requests.

(1) Existing law generally authorizes the State Registrar, a local registrar, or a county recorder to furnish a certified copy of a birth, death, or marriage certificate to an authorized person, as defined, who submits a written, faxed, or digitized image of a request accompanied by a notarized statement, sworn under penalty of perjury, that the applicant is an authorized person. Existing law, until January 1, 2022, additionally authorizes these officials to accept an electronic request for a certified copy of these records if the request is accompanied by an electronic verification of identity and an electronic statement sworn under penalty of perjury.

The bill would delete the January 1, 2022, sunset date for authorizing an official to accept an electronic request, thereby applying those provisions indefinitely. By expanding the crime of perjury applicable to an electronic statement sworn under penalty of perjury, the bill would impose a state-mandated local program. The bill would also specify the guidelines for the electronic verification of identity and require the completion of a privacy risk assessment, as required by those guidelines.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 103526 of the Health and Safety Code, as amended by Section 6 of Chapter 302 of the Statutes of 2020, is amended to read:

103526. (a) (1) If the State Registrar, local registrar, or county recorder receives a written, faxed, electronic, or digitized image of a request for a certified copy of a birth, death, or marriage record pursuant to Section 103525 that is accompanied by a notarized

statement sworn under penalty of perjury, an electronic verification of identity accompanied by an electronic statement sworn under penalty of perjury, or a faxed copy or digitized image of a notarized statement sworn under penalty of perjury, that the applicant is an authorized person, as defined in this section, that official may furnish a certified copy to the applicant pursuant to Section 103525.

(2) A faxed or digitized image of the notary acknowledgment accompanying a faxed request received pursuant to this subdivision for a certified copy of a birth, death, or marriage record shall be legible and, if the notary's seal is not photographically reproducible, show the name of the notary, the county of the notary's principal place of business, the notary's telephone number, the notary's registration number, and the notary's commission expiration date typed or printed in a manner that is photographically reproducible below, or immediately adjacent to, the notary's signature in the acknowledgment. If a request for a certified copy of a birth, death, or marriage record is made in person, the official shall take a statement sworn under penalty of perjury that the applicant is signing the applicant's own legal name and is an authorized person, and that official may then furnish a certified copy to the applicant.

(3) (A) If a request for a certified copy of a birth, death, or marriage record is made electronically, the official may accept an electronic verification authenticating the identity of the applicant using a multilayered remote identity proofing process that complies with all of the following requirements:

(i) (I) Meets or exceeds the National Institute of Standards and Technology (NIST) Special Publication 800-63A Digital Identity Guidelines, or its successor publication, on electronic authentication guidelines for multilayered remote identity proofing.

(II) Verifies to Identity Assurance Level 2, as described within these guidelines.

(III) The verification pursuant to this clause shall occur as required by these guidelines, which may include record checks with the state or local agency, a credit reporting agency, or a similar database, knowledge-based verification, physical comparison, and biometric comparison.

(IV) Notwithstanding subclause (III), the verification pursuant to this clause shall not occur through biometric comparison. This subclause shall remain in effect only until January 1, 2025, and as of that date is inoperative.

(V) Completes a privacy risk assessment, as required by these guidelines.

(ii) Meets or exceeds the information security requirements of the Uniform Electronic Transactions Act (Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code) and the Federal Information Security Management Act of 2002 (Public Law 107-347) and all other applicable state and federal laws and regulations to protect the personal information of the applicant and guard against identity theft.

(iii) Retains for each electronic verification, as required by the NIST Special Publication 800-63A Digital Identity Guidelines, or its successor publication, a record of the applicant whose identity has been verified and the steps taken to verify the identity. Personal information and documents provided to the State Registrar, local registrar, or county recorder for the purpose of identity verification to acquire vital records shall not be used, shared, distributed, or accessed by any other state or municipal agency or third party for any other purpose.

(B) If an applicant's identity cannot be established electronically pursuant to this paragraph, the applicant shall include with the applicant's request a statement of identity notarized pursuant to paragraph (1).

(4) For purposes of this subdivision, "digitized image" means an image of an original paper request for a certified copy of a birth, death, or marriage record.

(b) (1) If the person requesting a certified copy of a birth, death, or nonconfidential marriage record is not an authorized person or is an authorized person who is otherwise unable to satisfy the requirements of subdivision (a), the certified copy provided to the applicant shall be an informational certified copy and shall display a legend that states "INFORMATIONAL, NOT A VALID DOCUMENT TO ESTABLISH IDENTITY." The legend shall be placed on the certificate in a manner that will not conceal information.

(2) If the person requesting a certified copy of a confidential marriage record is not an authorized person or is an authorized person who is otherwise unable to satisfy the requirements of subdivision (a), the official shall not release a certified copy of the confidential marriage record unless otherwise authorized by law.

(c) For purposes of this section, an "authorized person" means:

(1) For purposes of requests for certified copies of confidential marriage records, only a party to the confidential marriage.

(2) For purposes of requests for certified copies of birth, death, or nonconfidential marriage records, a person who is any of the following:

(A) The registrant or a parent or legal guardian of the registrant.

(B) A party entitled to receive the record as a result of a court order, or an attorney or a licensed adoption agency seeking the birth record in order to comply with the requirements of Section 3140 or 7603 of the Family Code.

(C) A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business.

(D) A child, grandparent, grandchild, sibling, spouse, or domestic partner of the registrant.

(E) An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.

(3) For purposes of requests for certified copies of death records, an authorized person is also a person who is any of the following:

(A) An individual described in paragraphs (1) to (8), inclusive, of subdivision (a) of Section 7100.

(B) An agent or employee of a funeral establishment who acts within the course and scope of the agent or employee's employment and who orders certified copies of a death certificate on behalf of an individual described in paragraphs (1) to (8), inclusive, of subdivision (a) of Section 7100.

(d) A person who asks the agent or employee of a funeral establishment to request a death certificate on the person's behalf warrants the truthfulness of the person's relationship to the decedent and is personally liable for all damages occasioned by, or resulting from, a breach of that warranty.

(e) Notwithstanding any other law:

(1) A member of a law enforcement agency or a representative of a state or local government agency, as provided by law, who orders a copy of a record to which subdivision (a) applies in conducting official business shall not be required to provide the notarized statement required by subdivision (a).

(2) An agent or employee of a funeral establishment who acts within the course and scope of the agent or employee's employment and who orders death certificates on behalf of individuals specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 7100 shall not be required to provide the notarized statement required by subdivision (a).

(f) Informational certified copies of birth and death certificates issued pursuant to subdivision (b) shall only be printed from the single statewide database prepared by the State Registrar and shall be electronically redacted to remove any signatures for purposes of compliance with this section. Local registrars and county recorders shall not issue informational certified copies of birth and death certificates from a source other than the statewide database prepared by the State Registrar. This subdivision shall become operative on July 1, 2007, but only after the statewide database becomes operational and the full calendar year of the birth and death indices and images is entered into the statewide database and is available for the respective year of the birth or death certificate for which an informational copy is requested. The State Registrar shall provide written notification to local registrars and county recorders as soon as a year becomes available for issuance from the statewide database.

(g) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer the changes made to this section by the act that added this subdivision through an all-county letter or similar instructions from the State Registrar without taking regulatory action.

SEC. 2. Section 103526 of the Health and Safety Code, as amended by Section 7 of Chapter 302 of the Statutes of 2020, is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which amends Section 103526 of the Health and Safety Code, as amended by Section 6 of Chapter 302 of the Statutes of 2020, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the

California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the privacy of the applicants with respect to personal and legal information related to those applications, it is necessary that the information and those records be confidential.