

Assembly Bill No. 2636

Passed the Assembly August 24, 2016

Chief Clerk of the Assembly

Passed the Senate August 19, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 103526 of, and to add and repeal Section 103527.5 of, the Health and Safety Code, relating to vital records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2636, Linder. Certified copies of marriage, birth, and death certificates: electronic application.

Under existing law, a certified copy of a birth, death, marriage, or military service record may only be supplied by the State Registrar, local registrar, or county recorder to an authorized person, as defined, who submits a written, faxed, or digitized image request accompanied by a notarized statement sworn under penalty of perjury that the applicant is an authorized person.

This bill would, until January 1, 2021, if the request for a certified copy of a birth, death, or marriage record is made electronically, authorize the official to accept an electronic acknowledgment verifying the identity of the applicant using a multilayered remote identity proofing process. If an applicant's identity cannot be established electronically, the bill would require the applicant to include with his or her request a statement of identity notarized pursuant to existing law. The bill would require the verification to comply with specified provisions and protect the personal information of the applicant and guard against identity theft. The bill would require the State Registrar and any city or county that fulfills electronic requests without a notarized statement of identity to report to the Attorney General and the Legislature on or before January 1, 2019, regarding the number and types of requests and the availability of consumer protection mechanisms, as specified.

This bill would authorize the State Department of Public Health to implement its procedures relating to electronic verification through an all-county letter or similar instruction from the State Registrar without taking regulatory action. The bill would specifically authorize the department to accept an electronic verification of identity accompanied by an electronic statement sworn under penalty of perjury for the above purposes. By

expanding the crime of perjury, the bill would impose a state-mandated local program.

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.

The people of the State of California do enact as follows:

SECTION 1. Section 103526 of the Health and Safety Code 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 his or her 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) Meets or exceeds the National Institute of Standards and Technology (NIST) electronic authentication guideline for multilayered remote identity proofing.

(ii) (I) Verifies all of the following information provided by the applicant:

(ia) A valid government-issued identification number.

(ib) A financial or utility account number.

(II) The verification pursuant to this subparagraph shall occur through record checks with the state or local agency or a credit reporting agency or similar database and shall confirm that the name, date of birth, address, or other personal information in the record checks are consistent with the information provided by the applicant.

(iii) 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.

(iv) Retains for each electronic verification, as required by the NIST electronic authentication guideline, a record of the applicant whose identity has been verified and the steps taken to verify the identity.

(B) If an applicant's identity cannot be established electronically pursuant to this paragraph, the applicant shall include with his or her 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.

(F) An agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders certified copies of a death certificate on behalf of an individual specified in paragraphs (1) to (5), 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 his or her behalf warrants the truthfulness of his or her 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 his or her 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.

(h) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 2. Section 103526 is added to the Health and Safety Code, to read:

103526. (a) (1) If the State Registrar, local registrar, or county recorder receives a written, faxed, 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, or a faxed copy or digitized image of a notarized statement sworn under penalty of perjury, that the requester is an authorized person, as defined in this section, that official may furnish a certified copy to the applicant pursuant to Section 103525. 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 requester is signing his or her own legal name and is an authorized person, and that official may then furnish a certified copy to the applicant.

(2) 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.

(F) An agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders certified copies of a death certificate on behalf of any individual specified in paragraphs (1) to (5), 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 his or her behalf warrants the truthfulness of his or her 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 his or her 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) This section shall become operative January 1, 2021.

SEC. 3. Section 103527.5 is added to the Health and Safety Code, to read:

103527.5. (a) On or before January 1, 2019, the State Registrar and any city or county that fulfills electronic requests for certified copies of birth, death, or marriage records without being provided a notarized statement that the requester is an authorized person shall report the following information to the Attorney General, the Assembly and Senate Committee on Judiciary, and the Assembly Committee on Privacy and Consumer Protection:

(1) All of the following nonpersonally identifiable information:

(A) The total number of written, electronic, faxed, or in-person requests that include a notarized statement that the requester is an authorized person.

(B) The total number of electronic requests utilizing the multilayered remote identity proofing process described in Section 103526 that do not include a notarized statement.

(C) The total number of electronic requests denied while using the multilayered remote identity proofing process due to insufficient information or failed authentication.

(D) The total number of repeat electronic requests using the multilayered remote identity proofing process for the same record and the same individual.

(2) A description of the mechanism and process, if any, by which consumers who have been victims of identity theft may temporarily

limit electronic access to certified vital records, including all of the following:

(A) The number of consumers who have utilized this mechanism and process.

(B) The total number of electronic requests that utilize the multilayered remote identity proofing process, without a notarized statement, requesting records of consumers who have used the temporary limited access mechanism and process.

(C) The total number of electronic requests for records of consumers who have utilized this temporary limited access mechanism and process that were denied while using the multilayered remote identity proofing process.

(3) A description of the mechanism and process by which a consumer may report identity theft resulting from an alleged fraudulent records request, as well as the number of consumers who have used this mechanism and process.

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 4. 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.

Approved _____, 2016

Governor