

AMENDED IN SENATE MAY 15, 2012

AMENDED IN SENATE APRIL 18, 2012

SENATE BILL

No. 1477

Introduced by Senator Anderson

February 24, 2012

An act to amend ~~Sections 1276 and~~ *Section 1277* of the Code of Civil Procedure, relating to confidential records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1477, as amended, Anderson. Confidential records: name changes.

Existing law establishes the procedure for a person to change his or her name. In the case of a petition for the name change of a person under 18 years of age, existing law requires the petition to include the name and address of the minor's parent or parents, as specified, and requires a minor's nonconsenting parent to be served with notice of the time and place of the hearing. When a proceeding for a change of name is commenced by the filing of a petition, existing law requires the court to issue an order reciting the filing of the petition, the name of the person by whom it is filed, and the name proposed, except as specified. Existing law also authorizes an address confidentiality program for victims of domestic violence, sexual assault, or stalking for the purposes of enabling state and local agencies to respond to requests for public records without disclosing a program participant's residence address contained in any public record and otherwise providing for confidentiality of identity for that person, subject to specified conditions. Existing law provides that if a petition for a change of name alleges a specified reason or circumstance and the petitioner is a participant in the address confidentiality program, the action for a change of name is exempt from the publication requirement.

~~This bill would, in the case of a petition for the name change of a minor signed by the minor's custodial parent, provide that the name and address of the minor's noncustodial parent need not be included in the petition if the petition alleges that the minor's noncustodial parent poses a sufficient threat, as defined, to the minor or to the custodial parent and the court determines that there is clear and convincing evidence of the threat. The bill would also exempt the petition from the publication and service requirements described above if the petitioner is a participant in the address confidentiality program.~~

This bill would authorize a court to waive the above-described requirements for publication and notice if required to protect the best interests of the child upon a showing by the petitioner that the child and petitioner are participants in the address confidentiality program, that the petitioner has sole custody of the child, that the child is protected by an order pursuant to the Domestic Violence Prevention Act that prevents the nonpetitioning parent from having contact with the child for at least 5 years, and that the nonpetitioning parent is not subject to an order to pay child support for the minor.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 ~~SECTION 1. Section 1276 of the Code of Civil Procedure is~~
- 2 ~~amended to read:~~
- 3 ~~1276. (a) All applications for change of names shall be made~~
- 4 ~~to the superior court of the county where the person whose name~~
- 5 ~~is proposed to be changed resides, except as specified in~~
- 6 ~~subdivision (e), either (1) by petition signed by the person or, if~~
- 7 ~~the person is under 18 years of age, either by one of the person's~~
- 8 ~~parents, or by any guardian of the person, or if both parents are~~
- 9 ~~dead and there is no guardian of the person, then by some near~~
- 10 ~~relative or friend of the person or (2) as provided in Section 7638~~
- 11 ~~of the Family Code.~~
- 12 ~~The petition or pleading shall specify the place of birth and~~
- 13 ~~residence of the person, his or her present name, the name~~
- 14 ~~proposed, and the reason for the change of name.~~
- 15 ~~(b) In a proceeding for a change of name commenced by the~~
- 16 ~~filing of a petition, if the person whose name is to be changed is~~
- 17 ~~under 18 years of age, the petition shall, if neither parent of the~~

1 person has signed the petition, name, as far as known to the person
2 proposing the name change, the parents of the person and their
3 place of residence, if living, or if neither parent is living, near
4 relatives of the person, and their place of residence.

5 (c) In a proceeding for a change of name commenced by the
6 filing of a petition, if the person whose name is proposed to be
7 changed is under 18 years of age and the petition is signed by only
8 one parent, the petition shall specify the address, if known, of the
9 other parent if living. If the petition is signed by a guardian, the
10 petition shall specify the name and address, if known, of the parent
11 or parents, if living, or the grandparents, if the addresses of both
12 parents are unknown or if both parents are deceased, of the person
13 whose name is proposed to be changed.

14 (d) In a proceeding for a change of name commenced by the
15 filing of a petition, if the person whose name is proposed to be
16 changed is 12 years of age or older, has been relinquished to an
17 adoption agency by his or her parent or parents, and has not been
18 legally adopted, the petition shall be signed by the person and the
19 adoption agency to which the person was relinquished. The near
20 relatives of the person and their place of residence shall not be
21 included in the petition unless they are known to the person whose
22 name is proposed to be changed.

23 (e) All petitions for the change of the name of a minor submitted
24 by a guardian appointed by the juvenile court or the probate court
25 shall be made in the appointing court.

26 (f) If the petition is signed by a guardian, the petition shall
27 specify relevant information regarding the guardianship, the
28 likelihood that the child will remain under the guardian's care until
29 the child reaches the age of majority, and information suggesting
30 that the child will not likely be returned to the custody of his or
31 her parents.

32 (g) (1) In a proceeding for a change of the name of a person
33 under 18 years of age commenced by the filing of a petition signed
34 by the minor's custodial parent, if the minor's custodial parent
35 alleges that the minor's noncustodial parent poses a sufficient
36 threat to the minor or custodial parent, the requirements of
37 subdivision (c) shall not apply if the court determines that there is
38 clear and convincing evidence of the threat.

1 ~~(2) For purposes of this subdivision, “sufficient threat” includes,~~
2 ~~but is not limited to, a threat of domestic violence, kidnapping,~~
3 ~~abduction, or homicide against the minor or custodial parent.~~

4 ~~SEC. 2.~~

5 SECTION 1. Section 1277 of the Code of Civil Procedure is
6 amended to read:

7 1277. (a) If a proceeding for a change of name is commenced
8 by the filing of a petition, except as provided in subdivisions (b),
9 (c), and (e), the court shall thereupon make an order reciting the
10 filing of the petition, the name of the person by whom it is filed,
11 and the name proposed. The order shall direct all persons interested
12 in the matter to appear before the court at a time and place
13 specified, which shall be not less than six nor more than 12 weeks
14 from the time of making the order, unless the court orders a
15 different time, to show cause why the application for change of
16 name should not be granted. The order shall direct all persons
17 interested in the matter to make known any objection that they
18 may have to the granting of the petition for change of name by
19 filing a written objection, which includes the reasons for the
20 objection, with the court at least two court days before the matter
21 is scheduled to be heard and by appearing in court at the hearing
22 to show cause why the petition for change of name should not be
23 granted. The order shall state that, if no written objection is timely
24 filed, the court may grant the petition without a hearing.

25 A copy of the order to show cause shall be published pursuant
26 to Section 6064 of the Government Code in a newspaper of general
27 circulation to be designated in the order published in the county.
28 If no newspaper of general circulation is published in the county,
29 a copy of the order to show cause shall be posted by the clerk of
30 the court in three of the most public places in the county in which
31 the court is located, for a like period. Proof shall be made to the
32 satisfaction of the court of this publication or posting, at the time
33 of the hearing of the application.

34 Four weekly publications shall be sufficient publication of the
35 order to show cause. If the order is published in a daily newspaper,
36 publication once a week for four successive weeks shall be
37 sufficient.

38 If a petition has been filed for a minor by a parent and the other
39 parent, if living, does not join in consenting thereto, the petitioner
40 shall cause, not less than 30 days prior to the hearing, to be served

1 notice of the time and place of the hearing or a copy of the order
2 to show cause on the other parent pursuant to Section 413.10,
3 414.10, 415.10, or 415.40. If notice of the hearing cannot
4 reasonably be accomplished pursuant to Section 415.10 or 415.40,
5 the court may order that notice be given in a manner that the court
6 determines is reasonably calculated to give actual notice to the
7 nonconsenting parent. In that case, if the court determines that
8 notice by publication is reasonably calculated to give actual notice
9 to the nonconsenting parent, the court may determine that
10 publication of the order to show cause pursuant to this subdivision
11 is sufficient notice to the nonconsenting parent. *A court may waive*
12 *the requirements for publication and notice under this section if*
13 *required to protect the best interests of the child upon a showing*
14 *by the petitioner of all of the following:*

15 (1) *The child and the petitioner are participants in the address*
16 *confidentiality program created pursuant to Chapter 3.1*
17 *(commencing with Section 6205) of Division 7 of Title 1 of the*
18 *Government Code.*

19 (2) *A court has issued a final order awarding the petitioner sole*
20 *legal and physical custody of the child.*

21 (3) *The child is protected by an order issued after a hearing*
22 *pursuant to the Domestic Violence Prevention Act, Division 10*
23 *(commencing with Section 6200) of the Family Code, that prevents*
24 *the nonpetitioning parent from having any contact with the child*
25 *and that was issued with a duration of at least five years.*

26 (4) *The nonpetitioning parent is not subject to an order to pay*
27 *child support for the minor whose name is proposed to be changed.*

28 (b) (1) If the petition for a change of name alleges a reason or
29 circumstance described in paragraph (2), and the petitioner is a
30 participant in the address confidentiality program created pursuant
31 to Chapter 3.1 (commencing with Section 6205) of Division 7 of
32 Title 1 of the Government Code, the action for a change of name
33 is exempt from the requirement for publication of the order to
34 show cause under subdivision (a), and the petition and the order
35 of the court shall, in lieu of reciting the proposed name, indicate
36 that the proposed name is confidential and will be on file with the
37 Secretary of State pursuant to the provisions of the address
38 confidentiality program.

39 (2) The procedure described in paragraph (1) applies to petitions
40 alleging any of the following reasons or circumstances:

1 (A) To avoid domestic violence, as defined in Section 6211 of
2 the Family Code.

3 (B) To avoid stalking, as defined in Section 646.9 of the Penal
4 Code.

5 (C) The petitioner is, or is filing on behalf of, a victim of sexual
6 assault, as defined in Section 1036.2 of the Evidence Code.

7 ~~(D) The petitioner alleges a sufficient threat to a child or~~
8 ~~custodial parent, as described by subdivision (g) of Section 1276,~~
9 ~~and the court determines that there is clear and convincing evidence~~
10 ~~of the threat.~~

11 (3) For any petition under this subdivision, the current legal
12 name of the petitioner shall be kept confidential by the court and
13 shall not be published or posted in the court's calendars, indexes,
14 or register of actions, as required by Article 7 (commencing with
15 Section 69840) of Chapter 5 of Title 8 of the Government Code,
16 or by any means or in any public forum, including a hardcopy or
17 an electronic copy, or any other type of public media or display.

18 (4) (A) A petitioner may request that the court file the petition
19 and any other papers associated with the proceeding under seal.
20 The court may consider the request at the same time as the petition
21 for name change, and may grant the request in any case in which
22 the court finds that all of the following factors apply:

23 (i) There exists an overriding interest that overcomes the right
24 of public access to the record.

25 (ii) The overriding interest supports sealing the record.

26 (iii) A substantial probability exists that the overriding interest
27 will be prejudiced if the record is not sealed.

28 (iv) The proposed order to seal the records is narrowly tailored.

29 (v) No less restrictive means exist to achieve the overriding
30 interest.

31 (B) On or before January 1, 2010, the Judicial Council shall
32 develop rules of court and forms consistent with the requirements
33 of this paragraph.

34 (c) A proceeding for a change of name for a witness participating
35 in the state Witness Protection Program established by Title 7.5
36 (commencing with Section 14020) of Part 4 of the Penal Code
37 who has been approved for the change of name by the program is
38 exempt from the requirement for publication of the order to show
39 cause under subdivision (a).

1 (d) If application for change of name is brought as part of an
2 action under the Uniform Parentage Act (Part 3 (commencing with
3 Section 7600) of Division 12 of the Family Code), whether as part
4 of a petition or cross-complaint or as a separate order to show
5 cause in a pending action thereunder, service of the application
6 shall be made upon all other parties to the action in a like manner
7 as prescribed for the service of a summons, as is set forth in Article
8 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of
9 Part 2. Upon the setting of a hearing on the issue, notice of the
10 hearing shall be given to all parties in the action in a like manner
11 and within the time limits prescribed generally for the type of
12 hearing (whether trial or order to show cause) at which the issue
13 of the change of name is to be decided.

14 (e) If a guardian files a petition to change the name of his or her
15 minor ward pursuant to Section 1276:

16 (1) The guardian shall provide notice of the hearing to any living
17 parent of the minor by personal service at least 30 days prior to
18 the hearing.

19 (2) If either or both parents are deceased or cannot be located,
20 the guardian shall cause, not less than 30 days prior to the hearing,
21 to be served a notice of the time and place of the hearing or a copy
22 of the order to show cause on the child's grandparents, if living,
23 pursuant to Section 413.10, 414.10, 415.10, or 415.40.