

Date of Hearing: July 10, 2017

ASSEMBLY COMMITTEE ON TRANSPORTATION
Jim Frazier, Chair
SB 179 (Atkins) – As Amended June 29, 2017

SENATE VOTE: 26-12

SUBJECT: Gender identity: female, male, or nonbinary

SUMMARY: Modifies the procedures for individuals to change their name and gender marker to reflect their gender identity on documents including their birth certificate issued by the State Registrar and driver's license (DL) or identification card (ID card) issued by the Department of Motor Vehicles (DMV). Specifically, **this bill:**

- 1) Makes findings and declarations relative to the importance of full legal recognition and equal treatment under the law for intersex, transgender, and nonbinary people.
- 2) Makes numerous changes to the procedures to obtain a court-recognized name change or gender change and a State Registrar-issued birth certificate.
- 3) Beginning January 1, 2019, requires an applicant for a DL or ID card to choose a gender category of female, male, or nonbinary to be included as part of the applicant's description on the DL or ID card.
- 4) Specifies that an applicant's choice of gender category on an original, renewed, or amended DL or ID card is not subject to review by DMV.
- 5) Requires DMV to adopt regulations to provide a process for an expedient amendment to a gender category and prohibits DMV from requiring an applicant to provide documentation other than the request from the applicant.
- 6) Substitutes gender-neutral terms in various sections of statute.

EXISTING LAW:

- 1) Establishes procedures to obtain a court-recognized name change or gender change and a State Registrar-issued birth certificate.
- 2) Requires DMV to issue a DL to an applicant that the department determines is lawfully entitled to, as specified.
- 3) Requires every application for an original or renewal DL to contain specified identifying information.
- 4) Authorizes DMV to issue an ID card to any person attesting to the true full name, correct age, and other identifying data as certified by the applicant, as specified.
- 5) Federal law, the REAL ID Act of 2005, requires every state to include specified information on each DL and ID card issued to a person including, but not limited to, the person's full legal name, date of birth, and gender.

FISCAL EFFECT: Unknown

COMMENTS: According to the authors, when gender appearance does not match identification documents, it creates significant hardships for transgender, intersex, and nonbinary individuals in their everyday lives, ranging from difficulty traveling and shopping with a credit card to harassment and discrimination.

This bill would modify the procedures for obtaining a court-recognized name change or gender change, and obtaining identification documents accurately reflecting a person's gender identity, including a DMV-issued DL or ID card. The provisions of this bill relating to court procedure and birth certificates were considered by the Assembly Judiciary Committee.

As it relates to this Committee, this bill would require an applicant for a DL or ID card to choose a gender designation of female, male, or nonbinary to be included as part of the applicant's description on the DL or ID card. This bill would also prohibit DMV from reviewing an applicant's stated gender designation or requiring an applicant to provide any documentation to substantiate their choice. To accommodate DMV's implementation schedule, the provisions of this bill relating to DLs and IDs would not take effect until January 1, 2019.

Requiring DL or ID card applicants to select one of the three gender categories specified in this bill would allow applicants to choose a designation that more closely reflects their gender identity and obtain state-issued documents supporting that designation. On June 27, 2017, Washington D.C. became the first jurisdiction in the country to offer nonbinary DLs and ID cards. Also in June, the Oregon Department of Transportation announced regulations allowing the issuance of nonbinary DLs and ID cards beginning July 1, 2017. While the federal government does not offer identification documents that recognize a nonbinary gender option, Australia, Canada, and India are among the nations that do.

Writing in support of this bill, co-sponsors Equality California and Transgender Law Center state, "By streamlining the process by which individuals can apply to the state for a change in name and gender and creating a third, nonbinary gender marker on California birth certificates, drivers' licenses, identity cards, and gender-change court orders, this bill will help reduce the discrimination and harassment that too many intersex, transgender and nonbinary individuals face on a daily basis."

Writing in opposition to this bill, the Pacific Justice Institute – Center for Public Policy argues that allowing a third gender category on California DLs and ID cards "may result in the Transportation Security Administration's [TSA's] denial of use of California-issued ID for pre-boarding security screening for travel" as a result of this bill, and that the authors of the bill must "produce written assurances that the Secretary of Homeland Security will accept the proposed new version of California IDs." This argument is inconsistent with the provisions of the federal REAL ID Act in two ways:

- 1) The REAL ID Act requires states to include specified information on each DL and ID card issued to a person, including the person's gender, in order for those documents to be used to access federal facilities, including boarding federally regulated commercial aircraft and entering nuclear power plants. In its final rule implementing the REAL ID Act, the Department of Homeland Security (DHS) writes, "DHS will leave the determination of gender up to the States since different States have different requirements concerning when, and under what circumstances, a transgendered individual should be identified as another

gender.” TSA’s acceptance of identification documents is dictated by a state’s compliance with REAL ID, thus, the concern that this bill will invalidate all California-issued DLs and ID cards for use as travel documents is likely unfounded.

- 2) Because the REAL ID Act authorizes states to issue clearly-marked non-compliant DLs and IDs for non-federal purposes, California would still be able to issue documents marked with a third gender category pursuant to the provisions of this bill, even if they are determined to be out of compliance with REAL ID standards. California has issued other DLs and IDs marked as REAL ID non-compliant since 2015, with no negative effect on the DLs or ID cards of other Californians.

Double-referral: This bill passed out of the Assembly Judiciary Committee on June 27, 2017, with a 9-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Equality California (Co-Sponsor)
 Transgender Law Center (Co-Sponsor)
 American Civil Liberties Union of California
 Anti-Defamation League
 Bay Area Lawyers for Individual Freedom
 California Latinas for Reproductive Justice
 California LGBT Health & Human Services Network
 California Pan-Ethnic Health Network
 California Teachers Association
 Community Action Fund of Planned Parenthood of Orange and San Bernardino Counties
 Conference of California Bar Associations
 Ella Baker Center for Human Rights
 HealthRIGHT 360
 Intersex & Genderqueer Recognition Project
 National Association of Social Workers, California Chapter
 Planned Parenthood Affiliates of California
 Planned Parenthood Mar Monte
 Planned Parenthood Northern California Action Fund
 San Diego LGBT Community Center
 Santa Clara County Board of Supervisors
 Secular Coalition for California
 St. John’s Well Child and Family Center’s Transgender Health Program
 St. James Infirmary
 Transgender Advocates for Justice & Accountability
 Transgender Gendervariant Intersex Justice Project
 Western Regional Advocacy Project
 67 private individuals

Opposition

California Catholic Conference
 California Family Council

Catholics for the Common Good Institute
Pacific Justice Institute-Center for Public Policy

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