

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 372 (Menjivar)
Version: March 20, 2023
Hearing Date: April 18, 2023
Fiscal: Yes
Urgency: No
CK

SUBJECT

Department of Consumer Affairs: licensee and registrant records: name and gender changes

DIGEST

This bill requires a board within the Department of Consumer Affairs to update a licensee or registrant's records with an updated legal name or gender upon receiving specified government-issued documentation and to reissue updated documents as provided.

EXECUTIVE SUMMARY

A host of California laws have sought to ease the process for changing one's gender and name both legally and on official records. This has been done most recently for community college students, staff and faculty. One area where concerns continue to arise is within the Department of Consumer Affairs. Specifically, licensees and registrants of boards within the department have reported struggles with being identified by "deadnames" through the department's online licensing system, BreEZe.

This bill requires boards to update official records, including their online systems, with updated names and genders after receiving proper government identification. Former names and genders will be protected, but the boards will be required to have a system to provide those former names and genders when necessary in connection with a complaint against the registrant or licensee.

This bill is sponsored by the California Council of Community Behavioral Health Agencies, the California Association for Licensed Professional Clinical Counselors, the California Association of Marriage and Family Therapists, the California Association of Social Rehabilitation Agencies, the California Psychiatric Alliance, the California Psychological Association, the California State Association of Psychiatrists, the National Association of Social Workers, California Chapter, and the Psychiatric Physicians

Alliance of California. It is supported by a number of organizations. There is no known opposition. The bill passed out of the Senate Business, Professions, and Economic Development Committee on a vote of 8 to 2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires boards within the Department of Consumer Affairs to provide on the internet information regarding the status of every license issued by that entity in accordance with existing law. The public information to be provided on the internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement actions, including actions taken by the board relative to persons, businesses, or facilities subject to licensure or regulation by the board. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. (Bus. & Prof. Code § 27.)
- 2) Defines "board" to refer to the board in which the administration of each provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." (Bus. & Prof. Code § 22.)
- 3) Requires specified medical boards to disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee, including a former licensee, by the board or by another state or jurisdiction, including temporary restraining orders issued; revocations, suspensions, probations, or limitations on practice ordered; public letters of reprimand issued; and infractions, citations, or fines imposed. (Bus. & Prof. Code § 803.1.)
- 4) Specifies the guidelines for a proceeding for a change of name to conform the petitioner's name to the petitioner's gender identity. Such a proceeding is exempt from the requirement for publication. (Code Civ. Proc. § 1277.5)

This bill:

- 1) Requires a board to update a licensee or registrant's records, including any records contained within an online license verification system, to include their updated legal name or gender if the board receives specified government-issued documentation demonstrating that the licensee or registrant's legal name or gender has been changed.

- 2) Requires a board to remove the former name after proper documentation from any online license verification system. It makes the licensee or registrant's former name and gender confidential. However, the board must establish a process for providing the former name and gender in connection with complaints made against them. The board must consider licensee's and registrants' privacy and safety when establishing this process.
- 3) Requires a board, if requested by the licensee or registrant, to reissue any documents conferred upon the licensee or registrant with the licensee or registrant's updated legal name or gender. The board is prohibited from charging a higher fee for reissuing such updated documents than the fee it charges for reissuing a document with other corrected or updated information.
- 4) Provides that the following are sufficient documentation demonstrating a legal name or gender change:
 - a) a state-issued driver's license or identification card;
 - b) a birth certificate;
 - c) a passport;
 - d) a social security card; and
 - e) a court order indicating a name change or a gender change.
- 5) Clarifies that it does not require a board to modify records that the licensee or registrant has not requested for modification or reissuance.

COMMENTS

1. Respecting the integrity and identity of California's professionals

Over the past decade, the struggles of the transgender and gender nonconforming communities have become part of the American zeitgeist, particularly as various media have explored the institutional challenges facing these communities. In order to live safe, full, and authentic lives, it is essential that transgender and gender nonconforming people have access to identifying or professional documents that accurately reflect their true name, gender identity, and gender expression. The ability to change one's documentation or status can have a significant impact on all other aspects of a person's life including employment, marriage, and inheritance rights. A National Transgender Discrimination Survey found that 90 percent of transgender people experienced mistreatment or discrimination at work or took actions to avoid such discrimination.¹ Nearly 47 percent of those surveyed lost their jobs, were denied a promotion, or were denied a job as a direct result of discrimination because they were transgender.

¹ Jaime M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011) National Center for Transgender Equality and National Gay and Lesbian Task Force, https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf. All internet citations are current as of March 27, 2023.

The importance of affirming a person's new name cannot be understated:

A new name can represent a more affirming life for some transgender or gender nonconforming (someone who doesn't follow gender stereotypes) people. It's a fresh start and it gives them a way to finally live in their truth. But when people refuse to acknowledge a person's new name or continue to use their old name, it can be quite invalidating or traumatic.²

Although the term is not universally accepted, this failure or refusal to acknowledge a person's new name is sometimes referred to as "deadnaming":

A transgender person may decide to no longer use their birth or legal name. Instead, they'll choose a name that better aligns with their identity. When someone uses their old name after being asked not to, that is what we call 'deadnaming.' The person who they once were is dead, but the new person is alive, so their current name should be used."³

The quantitative data emphasizes the importance of using people's affirmed names:

In one of the largest and most diverse studies of transgender youths to date, researchers led by a team at The University of Texas at Austin have found that when transgender youths are allowed to use their chosen name in places such as work, school and at home, their risk of depression and suicide drops.

"Many kids who are transgender have chosen a name that is different than the one that they were given at birth," said author Stephen T. Russell, professor and chair of human development and family science. "We showed that the more contexts or settings where they were able to use their preferred name, the stronger their mental health was." . . .

Because many names are common to one gender, allowing transgender youths to use a chosen name is one simple step that institutions such as schools, hospitals, financial institutions, workplaces and community organizations can use to help young people affirm their gender identity, Russell said.

"It's practical to support young people in using the name that they choose," Russell said. "It's respectful and developmentally appropriate."⁴

2. Legislative efforts to address these issues

² *Why Deadnaming Is Harmful* (November 18, 2021) Cleveland Clinic, <https://health.clevelandclinic.org/deadnaming/>.

³ *Ibid.*

⁴ *Using Chosen Names Reduces Odds of Depression and Suicide in Transgender Youths* (March 30, 2018) UT News, <https://news.utexas.edu/2018/03/30/name-use-matters-for-transgender-youths-mental-health/>.

In recent years, the Legislature has addressed the hurdles faced by the transgender community. To address the barriers faced by transgender individuals going through the court process for name changes, AB 1121 (Atkins, Ch. 651, Stats. 2013) was introduced and enacted into law. It *required* courts to grant petitions for a change of name sought to conform an individual's name to the individual's gender identity without a hearing if no timely objection is made. In 2017, SB 179 (Atkins, Ch. 853, Stats. 2017) streamlined these processes even further and updated the required documentation to reflect an evolved understanding of gender identity.

AB 218 (Ward, Ch. 577, Stats. 2021) took the next step in providing more inclusive processes for the transgender and gender nonconforming communities. That bill extended the existing framework for petitioners changing their names and/or genders on their own birth certificates to further update their marriage licenses and certificates and the birth certificates of their children. It also extended eligibility for certain processes to persons not born or residing within the state and recognizes orders in foreign jurisdictions for purposes of sufficient documentation.

California law establishes a procedure by which kindergarten through grade 12 students can obtain corrected documents from their school, when the request is accompanied by specified government-issued documentation.⁵ AB 245 (Chiu, Ch. 555, Stats. 2021) expanded these processes for some students. It required campuses of the University of California, the California State University, and California Community Colleges to provide an option for a former student to request that their records be updated, and reissued, to reflect a legal name or gender change, when in receipt of specified legal documentation. Commencing with the 2023–24 graduating class, these institutions are also required to provide an option for a graduating student to request that the diploma to be conferred by the institution list the student's chosen name, regardless of whether there is documentation of a legal name or gender change. Last year, this was extended to California's community colleges. AB 2315 (Arambula, Ch. 932, Stats. 2022) requires the governing board of each community college district to implement a system by which students, staff, and faculty can declare an affirmed name, gender, or both, to be used and to be updated, in certain records. This bill takes these efforts to state boards within the Department of Consumer Affairs.

3. Name and gender changes within state boards

According to the author:

The Department of Consumer Affairs (DCA) licenses professionals ranging from accountants to mental health professionals to nurses, who are all catalogued under the their BreEZe online license verification system. Currently, however, transgender and non-binary licensees who

⁵ Ed. Code § 49062.5.

have gone through the process of legally changing their names still have their original or “dead” names listed on the DCA’s online site. When trans or non-binary people transition or come out, they may choose a new name to affirm their identity. Research has shown that referring to someone using their chosen name can reduce depressive symptoms and even suicidal ideation for trans people. DCA’s current practice can both negatively impact the mental health as well as the physical safety of all DCA licensees who are identified by their deadname online. SB 372 takes a simple and much-needed step to protect the safety and privacy of transgender and non-binary people licensed under DCA by requiring DCA to update its site to only identify its licensees by their current legal name.

This bill requires any board within DCA to update their records when they receive specified government-issued documentation. This includes records that are contained within online license verification systems. This includes the aforementioned BreEZe system: “BreEZe is DCA’s licensing and enforcement system and a one-stop shop for consumers, licensees and applicants! BreEZe enables consumers to verify a professional license and file a consumer complaint. Licensees and applicants can submit license applications, renew a license and change their address among other services.”⁶ Writing in support, Asian Americans for Community Involvement highlight the relevant issues with the system:

Currently, when a licensed professional has legally changed their name, their former or deadname is publicly available on the DCA’s Breeze online license verification system. This makes their former or deadname public information, making their identity vulnerable to harassment or being outed to the community. This imposes a danger for providers who wish to keep their transition private.

In order to further protect licensees and registrants within these systems, the bill specifically provides that boards must remove former names, and the former name and gender, where applicable, are to be deemed confidential. However, in order to ensure that consumers are adequately protected, the bill requires each board to establish a process for providing former names and genders upon request when related to a complaint against that licensee or registrant. The board must take certain specified considerations when establishing this process. Concerns have been raised about the timeline for this process and the responsiveness to relevant consumer requests. To alleviate this concern, the author has agreed to amendments that require a timely response, within ten business days, when there is a request that is related to an enforcement action against the licensee or registrant or a search of a licensee or

⁶ DCA BreEZe Online Services, Department of Consumer Affairs, available at <https://www.breeze.ca.gov/datamart/mainMenu.do>.

registrant by a previous name. All of this will be accomplished in compliance with the Public Records Act:

Amendment

Amend Section 27.5 (a)(2)(B) to read: "The board shall establish a process for providing a licensee's or registrant's current name or enforcement action record linked to a former name upon receipt of a request that is related to an enforcement action against the licensee or registrant or a search of a licensee by a previous name. The process shall ensure that the request is completed within ten business days. This section shall be implemented in compliance with the Public Records Act."

The boards are also required to reissue updated documents without charging higher fees than reissuance would otherwise cost.

The bill is sponsored by a coalition of professional organizations represented among the boards affected by this bill, including the California Psychological Association and the California Council of Community Behavioral Health Agencies. The coalition writes:

When a licensed professional legally changes their name, their original, or deadname, appears on the DCA's Breeze online license verification system. This practice negatively impacts all licensees under the DCA who are identified by their previous name, when they prefer their legal name to be publicly shared.

By limiting what is shared on the website, the safety and privacy of transitioned persons and others who have changed licensed under DCA is protected. Victims of domestic violence that have legally changed their name may wish for their information to be kept confidential.

Individuals that have transitioned may be harassed or discriminated against when their transition is shared on the Breeze system.

Safeguards for consumers to ensure that a complaint can be filed under either name are included in the bill. If a disciplinary action was taken under the deadname, that information would remain linked to the license number and available for the public to review.

SUPPORT

California Council of Community Behavioral Health Agencies (co-sponsor)
California Association for Licensed Professional Clinical Counselors (co-sponsor)
California Association of Marriage and Family Therapists (co-sponsor)

California Association of Social Rehabilitation Agencies (co-sponsor)
California Psychiatric Alliance (co-sponsor)
California Psychological Association (co-sponsor)
California State Association of Psychiatrists (co-sponsor)
National Association of Social Workers, California Chapter (co-sponsor)
Psychiatric Physicians Alliance of California (co-sponsor)
American Federation of State, County, and Municipal Employees (AFSCME), AFL-CIO
Asian Americans for Community Involvement
California Academy of Family Physicians
California Access Coalition
California Consortium of Addiction Programs and Professionals
California Dental Association
Equality California
The Kennedy Forum
Pathpoint
Steinberg Institute
One individual

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 2315 (Arambula, Ch. 932, Stats. 2022) supplements existing law by requiring community colleges in California to implement a system that enables current students, staff, and faculty to declare an affirmed name, gender, or both name and gender identification to be used in their records where legal names are not required by law. Commencing with the 2023–24 academic year, these campuses are required to be fully capable of allowing a student, staff, or faculty to declare an affirmed name, gender, or both name and gender identification.

AB 421 (Ward, 2022) updates procedures for changing gender and sex identifiers on official documents, addressing internal inconsistencies from previous legislation. This bill is currently on the Assembly Floor.

AB 218 (Ward, Ch. 577, Stats. 2021) *See Comment 2.*

AB 245 (Chiu, Ch. 555, Stats. 2021) *See Comment 2.*

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SB 179 (Atkins, Ch. 853, Stats. 2017) *See* Comment 2.

AB 1121 (Atkins, Ch. 651, Stats. 2013) *See* Comment 2.

PRIOR VOTES:

Senate Business, Professions, and Economic Development Committee (8 Ayes, 2 Noes)
