

Introduced by Senator Anderson

February 22, 2013

An act to amend Section 1277 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 545, as amended, Anderson. Name change: minors.

(1) Existing law establishes the procedure for a person to change his or her name. 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. In the case of a petition filed by a parent for the name change of a person under 18 years of age, existing law requires a minor's nonconsenting parent to be served with notice of the time and place of the hearing, as specified.

This bill would authorize a court to waive the requirements for publication and notice to a nonconsenting parent if necessary to protect the best interests of the minor upon a showing by the petitioner that the minor and petitioner are participants in a specified address confidentiality program, that the petitioner has sole custody of the minor, 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 minor for at least 5 years, and that the nonpetitioning parent is not subject to an order to pay child support for the minor.

(2) *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 a specified address confidentiality program, the action for a change of name is exempt from the publication requirement.

This bill would provide that in order for the action for a change of name to be exempt from the publication requirement, the petitioner would also be required to establish that the name he or she is seeking to acquire is on file with the Secretary of State.

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 1277 of the Code of Civil Procedure is
2 amended to read:

3 1277. (a) (1) If a proceeding for a change of name is
4 commenced by the filing of a petition, except as provided in
5 subdivisions (b), (c), and (e), the court shall thereupon make an
6 order reciting the filing of the petition, the name of the person by
7 whom it is filed, and the name proposed. The order shall direct all
8 persons interested in the matter to appear before the court at a time
9 and place specified, which shall be not less than ~~six~~ *6 weeks* nor
10 more than 12 weeks from the time of making the order, unless the
11 court orders a different time, to show cause why the application
12 for change of name should not be granted. The order shall direct
13 all persons interested in the matter to make known any objection
14 that they may have to the granting of the petition for change of
15 name by filing a written objection, which includes the reasons for
16 the objection, with the court at least two court days before the
17 matter is scheduled to be heard and by appearing in court at the
18 hearing to show cause why the petition for change of name should
19 not be granted. The order shall state that, if no written objection
20 is timely filed, the court may grant the petition without a hearing.

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

1 (3) Four weekly publications shall be sufficient publication of
2 the order to show cause. If the order is published in a daily
3 newspaper, publication once a week for four successive weeks
4 shall be sufficient.

5 (4) If a petition has been filed for a minor by a parent and the
6 other parent, if living, does not join in consenting thereto, the
7 petitioner shall cause, not less than 30 days prior to the hearing,
8 to be served notice of the time and place of the hearing or a copy
9 of the order to show cause on the other parent pursuant to Section
10 413.10, 414.10, 415.10, or 415.40. If notice of the hearing cannot
11 reasonably be accomplished pursuant to Section 415.10 or 415.40,
12 the court may order that notice be given in a manner that the court
13 determines is reasonably calculated to give actual notice to the
14 nonconsenting parent. In that case, if the court determines that
15 notice by publication is reasonably calculated to give actual notice
16 to the nonconsenting parent, the court may determine that
17 publication of the order to show cause pursuant to this subdivision
18 is sufficient notice to the nonconsenting parent. A court may waive
19 the requirements of this paragraph for publication and notice if
20 necessary to protect the best interests of the minor upon a showing
21 by the petitioner of all of the following:

22 (A) The minor and the petitioner are participants in the address
23 confidentiality program created pursuant to Chapter 3.1
24 (commencing with Section 6205) of Division 7 of Title 1 of the
25 Government Code.

26 (B) A court has issued a final order awarding the petitioner sole
27 legal and physical custody of the minor.

28 (C) The minor is protected by an order issued after a hearing
29 pursuant to the Domestic Violence Prevention Act, of Division 10
30 (commencing with Section 6200) of the Family Code that prevents
31 the nonpetitioning parent, for a period of at least five years, from
32 having any contact with the minor.

33 (D) The nonpetitioning parent is not subject to an order to pay
34 child support for the minor whose name is proposed to be changed.

35 (b) (1) If the petition for a change of name alleges a reason or
36 circumstance described in paragraph (2), and the petitioner ~~is a~~
37 *has established that he or she is an active* participant in the address
38 confidentiality program created pursuant to Chapter 3.1
39 (commencing with Section 6205) of Division 7 of Title 1 of the
40 Government Code, *and that the name he or she is seeking to*

1 *acquire is on file with the Secretary of State*, the action for a change
2 of name is exempt from the requirement for publication of the
3 order to show cause under subdivision (a), and the petition and the
4 order of the court shall, in lieu of reciting the proposed name,
5 indicate that the proposed name is confidential and ~~will be~~ *is* on
6 file with the Secretary of State pursuant to the provisions of the
7 address confidentiality program.

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

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

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

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

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

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

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

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

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

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

34 (v) No less restrictive means exist to achieve the overriding
35 interest.

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

39 (c) A proceeding for a change of name for a witness participating
40 in the state Witness Protection Program established by Title 7.5

1 (commencing with Section 14020) of Part 4 of the Penal Code
2 who has been approved for the change of name by the program is
3 exempt from the requirement for publication of the order to show
4 cause under subdivision (a).

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

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

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

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