

### Essential info on the California Birth Certificate Statute

**Enactment:** This is Chapter 1086 of the 1977 California Session Laws, introduced as A.B. 385 by Assembly Member (now San Francisco Mayor) Willie Brown.

**Current:** Although two different bills to aid transsexuals not born in California to obtain identity documentation passed both houses of the Legislature in recent years, both were vetoed by Gov. Gray Davis. However, the original statute is still in effect - and the California Judicial Council has promulgated a [standard form](#) for bringing an action pursuant to this statute.

**Historical Context:** This statute was enacted during the same legislative session as was an initial version of the state's prohibition against same-sex marriages. If ever confronted with a judge or an opposing party claiming that any of California's anti-same-sex marriage provisions were designed to prohibit heterosexual marriages between post-transition transsexuals and non-transsexuals, you must be able to present this legislative history. Had the same legislature that passed an anti-same-sex marriage law intended for post-transition transsexuals not to be able to marry a member of their pre-transition gender, certainly such an intent would have been spelled out in one or both statutes - and such an intent appears in neither.

Interestingly, although the bill was sponsored by a legendary liberal, the bill received support from at least one conservative Republican who said that the bill was necessary and proper - saying so in the face of criticism from another conservative who felt as though it was a means to get around the already-enacted anti-same-sex marriage statute. For more info on this legislative history, see Katrina C. Rose, *Sign of a Wave? The Kansas Court of Appeals Rejects Texas Simplicity in Favor of Transsexual Reality*, 70 UMKC L. Rev. 257, 281-83 (2001).

## CHAPTER 1086

An act to add Section 10618 to, and to add Article 9 (commencing with Section 10475) to Chapter 8 of Division 9 of, the Health and Safety Code, relating to vital records.

[Approved by Governor September 27, 1977. Filed with Secretary of State September 27, 1977.]

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

**SECTION 1.** Section 10618 is added to the Health and Safety Code, to read:

10618. A fee of five dollars (\$5) shall be paid to the State Registrar by the applicant for establishment of a new record of birth under the provisions of Article 9 (commencing with Section 10475) of Chapter 8 of this division.

SEC. 2. Article 9 (commencing with Section 10475) is added to Chapter 8 of Division 9 of the Health and Safety Code, to read:

Article 9. Revision of Birth Records to Reflect Change of Sex

10475. Whenever a person born in this state has undergone surgical treatment for the purpose of altering his or her sexual characteristics to those of the opposite sex, a new birth certificate may be prepared for such person reflecting the change of gender and any change of name accomplished by an order of a court of this state, another state, the District of Columbia, or any territory of the United States. A petition for the issuance of a new birth certificate in such cases shall be filed with the superior court of the county where the petitioner resides.

10476. (a) The petition shall be accompanied by an affidavit of a physician documenting the sex change, and a certified copy of the court order changing the applicant's name (if applicable).

(b) Such petition shall be heard at the time appointed by the court and objections may be filed by any person who can, in such objections, show to the court good reason against such change of birth certificate. At the hearing, the court may examine on oath the petitioner, and any other person having knowledge of facts relevant to the application. At the conclusion of the hearing the court shall make an order to issue a new certificate, or dismissing the petition, as to the court may seem right and proper.

(c) A certified copy of the decree of the court ordering the new birth certificate, shall within 30 days from the date of such decree, be filed with the State Registrar. Upon receipt thereof together with the fee prescribed by Section 10618, the State Registrar shall establish a new birth certificate for the applicant.

(d) The new birth certificate shall indicate the sex of the registrant as it has been surgically altered and shall reflect any change of name specified in the application if accompanied by a court order, as prescribed by Section 10475. No reference shall be made in the new birth certificate, nor shall its form in any way indicate, that it is not the original birth certificate of the registrant.

10477. In lieu of separate proceedings, a single petition for a change of name and issuance of a new birth certificate reflecting a change of gender may be filed with the superior court. With respect to such a petition, the court shall follow the procedure set forth in Title 8 (commencing with Section 1275) of Part III of the Code of Civil Procedure. A certified copy of the decree of the court issued pursuant to this section shall within 30 days be filed with both the Secretary of State and the State Registrar. Upon its receipt, the State Registrar shall establish a new birth certificate as provided in this article.

10478. The new birth certificate shall supplant any birth certificate previously registered for the applicant and shall be the only birth certificate open to public inspection. The application and supporting

affidavit shall be filed with the original record of birth, which shall remain as a part of the records of the State Registrar. All records and information specified in this article, other than the newly issued birth certificate, shall be available only upon written request of the registrant or an order of a court of record.

When a new birth certificate is established under the provisions of this article, the State Registrar shall transmit copies of the newly established birth certificate for filing to the local registrar and the county recorder whose records contain copies of the original certificate, who shall forward such copies of the original certificate to the State Registrar for filing with the original certificate, if it is practical for him to do so. If it is impractical for him to forward the copy to the State Registrar, he shall effectually seal a cover over the copy of the original certificate in such a manner as not to deface or destroy such copy and forward a verified statement of his action to the State Registrar. Thereafter the information contained in such record shall be available only upon written request of the registrant or on order of a court of record.

10479. The State Registrar shall transmit a certified copy of a birth certificate newly established under this article to the registrant without additional charge.

SEC. 2. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to that section nor shall there be an appropriation made by this act because the duties, obligations, or responsibilities imposed on local governmental entities or school districts by this act are such that related costs are incurred as part of their normal operating procedures.

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## CHAPTER 1087

An act to amend Section 25203 of the Government Code, relating to counties.

[Approved by Governor September 27, 1977. Filed with  
Secretary of State September 27, 1977.]

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

SECTION 1. Section 25203 of the Government Code is amended to read:

25203. The board shall direct and control the conduct of litigation in which the county, or any public entity of which the board is the governing body, is a party; by a two-thirds vote of all the members, the board may employ counsel to assist the district attorney, county counsel, or other counsel for the county or entity in the conduct of such actions; provided, however, that the board may authorize county officials, who are not attorneys, to initiate and conduct litigation in small claims court on behalf of the county.