

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 77 (Pacheco) – As Introduced December 14, 2022

SUBJECT: Vital records: diacritical marks.

SUMMARY: Requires the State Registrar of Vital Statistics (State Registrar) to require a diacritical mark on an English letter to be properly recorded on a certificate of live birth, fetal death, or death, and a marriage license. Specifically, **this bill:**

- 1) Requires the State Registrar to require the use of a diacritical mark on an English letter to be properly recorded, when applicable, on a certificate of live birth, fetal death, or death, and a marriage license.
- 2) Requires the use of a diacritical mark on an English letter to be deemed an acceptable entry on a certificate of live birth, fetal death, or death, and a marriage license by the State Registrar.
- 3) Prohibits the absence of a diacritical mark on a document listed in 2) above from rendering the document invalid, or affecting any constructive notice imparted by proper recordation of the document.
- 4) Defines, for purposes of this bill, a diacritical mark to include, but not be limited to, accents, tildes, graves, umlauts, and cedillas.
- 5) Authorizes a person, person's conservator, parent, or guardian to submit a written request to the State Registrar for a new document if a name is not accurately recorded because of the absence of a diacritical mark.
- 6) Requires the State registrar to review a request pursuant to 5) above, and if the request is accompanied with the payment of the fee described in 5) in existing law below, to issue a new document with the accurate name identified in the request.

EXISTING LAW:

- 1) Establishes the California Department of Public Health (DPH) and sets forth its powers and duties, including, but not limited to, the duties as State Registrar relating to vital records and health statistics. [Health and Safety Code (HSC) §102100, *et seq.*]
- 2) Requires the State Registrar to prescribe and furnish all record forms for use in carrying out the provisions governing vital records and prohibits the use of any record form or format other than those prescribed by the State Registrar. [HSC §102200]
- 3) Requires every live birth, fetal death, death, and marriage that occurs in the state to be registered with the local registrar. Requires certificates of live birth, fetal death, or death, and marriage licenses to include specified information, such as the full name of the child on a birth certificate and the full names of the parties to be married on a marriage license. [HSC § 102230]

- 4) Requires the State Registrar, local registrar, or county recorder to, upon request and payment of the required fee, supply an applicant with a certified copy of the record of a birth, fetal death, death, marriage, or marriage dissolution registered with the official. Prohibits, when the original forms of certificates of live birth furnished by the State Registrar contain a printed section at the bottom containing medical and social data or labeled “Confidential Information for Public Health Use Only,” that section from being reproduced in a certified copy of the record except as specifically authorized. [HSC §103525]
- 5) Sets the base fee for a certified birth, death, or fetal death record at \$12, and allows jurisdictions to create local vital and health statistics trust funds to be collected by the applicable jurisdiction to defray administrative costs, modernization of vital records operations, and improved data collection and analysis. [HSC §103625 et seq.]
- 6) Provides that English is the common language of the people of the United States and the State of California, and that English is the official language of the State of California. [Article III, Section 6, California Constitution].
- 7) Requires the Legislature to enforce the provisions of 4) above by appropriate legislation, to take all steps necessary to insure that the role of English as the common language of the state is preserved and enhanced, and to make no law which diminishes or ignores the role of English as the states common language. [*Id.*]

FISCAL EFFECT: Unknown. This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, with California being the most populist and diverse state it should allow for parents to name their children as they see fit without limitation, especially if there is a cultural component to it. The author states that California once allowed for diacritical marks such as accent marks and umlauts, tildes and cedillas to be used on vital records, such as birth certificates, death certificates, and marriage licenses. This all changed with the passage of Proposition 63, which declared English the official language of California, and eliminated the use of diacritical marks on vital records. The author concludes that California law should not prevent residents from keeping their cultural identity via their names when it was permitted prior to Proposition 63 and no legitimate reason exists for such a limitation.
- 2) **BACKGROUND.**
 - a) **Vital Records.** The Office of Vital Records within DPH is charged with maintaining a uniform system for registration and a permanent central registry with a comprehensive and continuous index for all birth, death, fetal death, marriage, and dissolution certificates registered for vital events which occur in California, which are over one million events each year. Certified copies of vital records are available from DPH, 58 county recorders, and 61 local health jurisdictions. DPH maintains, and can provide, birth and death records from 1905 to the present. For marriage records, DPH maintains and can provide those from 1946 to the present, with some years excluded. At the local level, birth and death records for current-year events and one year prior are available from the county health department; records for all years are maintained by the county recorder. Public marriage

records may be obtained from the county recorder; confidential marriage records are available only through the county clerk of the county where the license was issued.

- b) **Diacritical marks.** Diacritical marks include, but are not limited to: grave or acute accents (è or á) and tildes (ñ or ã), commonly found in Spanish language names or umlauts (ö or ü) used in German and cedillas (ç or ş) found in French, Turkish, and other languages. Federal law requires all federal databases to follow standards determined by the National Institute of Standards and Technology and to use the 26 letters of the alphabet without diacritical marks (Public Law 100-235). California law is silent on diacritical marks, however HSC Section 102200 states that the State Registrar "...shall prescribe and furnish all record forms for use in carrying out the purposes of this part, or shall prescribe the format, quality, and content of forms electronically produced in each county, and no record forms or formats other than those prescribed shall be used."
- c) **California, the Constitution, and Changing demographics.** The California Constitution was drafted in both English and Spanish by American pioneers, European settlers, and Californios (Hispanics of California), and adopted at the 1849 Constitutional Convention of Monterey, following the American Conquest of California and the Mexican-American War, and in advance of California's Admission to the Union in 1850.

In 1986 California voters approved Proposition 63 which declared that English is the official language of the State of California. Proposition 63 directed the Legislature to enact legislation to "preserve the role of English as the state's common language," and prohibited it from "passing laws which diminish or ignore the role of English as the state's common language." The proposition also stated that its intent was to "preserve, protect and strengthen the English language, and not to supersede any of the rights guaranteed to the people by this Constitution." According to DPH, prior to 1986, registration of vital records was a manual paper process. Birth clerks at the hospitals completed the registration forms and it was their choice whether to include diacritical marks or not.

Currently no race or ethnic group constitutes a majority of California's population: 39% of Californians are Latino, 35% are white, 15% are Asian American or Pacific Islander, 5% are Black, 4% are multiracial, and fewer than 1% are Native American or Alaska Natives, according to the 2020 Census. Only five other states (Hawaii, New Mexico, Texas, Nevada, and Maryland) have similarly diverse populations. However, more than half of young Californians (ages 24 and under) are Latino. Conversely, more than half of those 65 and older are white.

- d) **The California Electronic Birth Registration System (EBRS).** In 2015, the California State Registrar, convened a workgroup to review the contents of California's Birth, Death, and Fetal Death certificates and considered proposed changes to data elements collected on those certificates. The implementation of EBRS in 2018 did not accommodate the use of diacritical marks during the registration process.

The Office of Vital Records: Birth and Death Registration Handbook, referencing the provisions of Proposition 63, states that forms are "to be completed using the 26 alphabetical characters of the English language." The 2023 handbook also explicitly states (on pages five and six) that unacceptable marks include "diacritical marks—any of

various marks added to a letter to indicate its pronunciation or to distinguish it in some way, e.g., è, ñ, ç.” Appropriate punctuation is a standardized mark or sign used in sentences or phrases. Acceptable punctuation includes hyphen (-), period (.), comma (,), or apostrophe (‘). Examples of appropriate punctuation for vital records: Hyphen such as “Smith-Jones,” apostrophe as in “O’Hare,” period as used with “Jr.,” or a comma such as “Smith, Jr.” Therefore, the name O’Brian can be spelled correctly on a vital record, but Hernández cannot.

According to DPH the programming changes that prohibit diacritical marks could be removed; however, DPH contracts with the University of California, San Diego which is responsible for all EBRS system changes. DPH understands that even small changes can be costly and time consuming, however, DPH is still in the process of identifying what those specific changes would need to be and how much they would cost. DPH also assumes that, in addition to the costs of changing the underlying technology, there would also be costs associated with the implementation of such a change for those with existing birth records that desire to have amendments that reflect the diacritical marks, and that these costs would impact both the state and county registrar’s offices.

- e) **Other States.** Although most other states prohibit diacritical marks and other symbols on birth certificates, at least seven states allow diacritical marks: Alaska, Hawaii, Illinois, Kansas, North Carolina, Oregon, and Texas. Oregon’s vital records system limits them to a specific set of diacritical marks. Their system simply requires the ALT key to be held down and a 4-digit code to be entered. Oregon also uses a program that removes the diacritical marks prior to sending to the Social Security Administration (SSA). Texas passed House Bill 1823 in 2017, which allows for properly recorded diacritical marks in vital statistics records, driver’s licenses, commercial driver’s license, and personal identification certificates. According to staff at the Texas Public Health Committee, they began using diacritical marks on vital records in 2019 when they implemented their electronic vital records management system. The vendor that Texas uses allowed for keyboard shortcuts for four diacritical marks: accents, graves, umlautes, and tildes. Texas prints birth certificates with diacritical marks, and then strips the marks from the data that is sent to SSA.
 - f) **Federal requirements.** All U.S. Passports lettering is in block capitals and does not include diacritical marks. Names on Social Security cards may include only letters, spaces, hyphens, or apostrophes.
- 3) **SUPPORT.** The Southeast Asia Resource Action Center (SEARAC) supports this bill and states that diacritical marks are important accents placed above or below a letter in a word to indicate a particular pronunciation in regard to accent, tone, or stress. Diacritical marks are used in dozens of foreign languages, including Vietnamese, Afrikaans, Arabic, Hebrew, Filipino, Finnish, Greek, Galician, Irish, Italian, Spanish, and Welsh. SEARAC notes that many of these marks are required in order to correctly pronounce and further change the meaning of several foreign words that have migrated into the English language. SEARAC concludes that given California’s increasing diversity, it is important that cultural name pronunciations that deviate from the typical English language are represented and reflected in California law.

- 4) **OPPOSE UNLESS AMENDED.** The California Association of Clerks and Election Officials (CACEO) opposes this bill unless it is amended. CACEO is concerned about the mechanics, cost, and feasibility of this local mandate. Individual counties each may encounter unique issues in attempting to comply with this proposal depending on the vendor and technology employed to issue licenses and maintain indexes. In order to ensure that local governments, the state government and the federal government continue to work in a uniform and cohesive manner, CACEO urges that the measure be amended to impose this policy change from the “top down” to ensure that vital records and identification documents are created on a solid foundation of traceable, consistent information that uses the same rules and guidelines.

CACEO notes that California utilizes a uniform system for registration and manages a permanent central registry with a comprehensive and continuous index for all birth, death, fetal death, marriage, and dissolution certificates registered for vital events which occur in the state (over one million events annually). Mandating this change at the local level will be challenging, if not impossible, without a concurrent or ideally preexisting adoption of this policy at the State level. Counties will be unable to simply add or create names containing diacritical marks without Government-issued identification that displays the person’s name with the requested diacritical mark. Until the California Department of Motor Vehicles (DMV), for example, begins to issue driver’s licenses or identification cards with diacritical marks, counties will be regrettably prevented from providing their customers with the new marks without a drastic change of policy.

5) **PREVIOUS LEGISLATION.**

- a) AB 82 (Medina) of 2017 would have required the State Registrar to require the use of a diacritical mark on an English letter to be properly recorded, when applicable, on a certificate of live birth, fetal death, or death, and a marriage license, and deemed the use of diacritical marks as an acceptable entry on these certificates and licenses. AB 82 was vetoed by Governor Edmund G. Brown, Jr., who stated in part: “Mandating the use of diacritical marks on certain state and local vital records without a corresponding requirement for all state and federal government records is a difficult and expensive proposition. This bill would create inconsistencies in vital records and require significant state funds to replace or modify existing registration systems.”
- b) AB 2528 (Skinner) of 2014 would have required the State Registrar to ensure that diacritical marks on English letters were properly recorded on birth certificates, including, but not limited to, accents, tildes, graves, umlauts, and cedillas. AB 2528 also would have required the State Registrar to develop procedures to include other reasonable requests relating to names on birth certificates and created substantially similar requirements for the Secretary of State relating to certificates of registered domestic partnerships, and the DMV relating to identification cards. AB 2528 was held in the Assembly Appropriations Committee.

- 6) **POLICY COMMENTS.** As this bill moves forward, the author may wish to work with DPH, county clerks, and recorders to ensure the appropriate transfer of information between local and state departments and federal interoperability. The author may also wish to consider a delayed implementation date to allow DPH and the counties to phase in the necessary technology.

7) TECHNICAL AMENDMENT. County clerks and recorders issue and retain confidential marriage licenses at the local level, and the archived licenses are not sent to or housed at DPH. The Committee may wish to amend this bill to provide a process for counties to respond to the requests for diacritical marks on confidential marriage licenses.

REGISTERED SUPPORT / OPPOSITION:

Support

Southeast Asia Resource Action Center

Opposition

None on file.

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