

Date of Hearing: April 19, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT  
Cecilia Aguiar-Curry, Chair  
AB 331 (Eggman) – As Amended March 21, 2017

**SUBJECT:** County recorders: veterans: recorded documents.

**SUMMARY:** Requires county recorders to remove a veteran's previously recorded DD214 form from the record and replace it with an updated DD214 form upon presentation of an updated DD214 form. Specifically, **this bill**:

- 1) Requires county recorders to record DD214 forms as vital records.
- 2) Removes a requirement that a veteran or authorized person submitting a DD214 form to the county recorder sign a form acknowledging that the document will become an official record of the county and is open to inspection by any person.
- 3) Requires a county recorder, upon presentation of an updated DD214 form, to remove the previously recorded DD214 form from the record and replaces it with the updated DD214 form.
- 4) Requires a county recorder to withdraw a DD214 form upon request, as specified.
- 5) States that no reimbursement is required for this service because a local agency or school district has the authority to levy service charges, fees, or assessments.

**EXISTING LAW:**

- 1) Allows county recorders to use recording techniques, such as microphotography or optical disk, that do not permit additions, deletions, or changes to the original documents to record documents.
- 2) Requires that a true copy of a recorded document be kept in a safe and separate place that will reasonably assure its preservation.
- 3) Allows veterans or authorized persons to record military records with county recorders.
- 4) Prohibits any public entity, or any officer or employee thereof, from demanding or receiving compensation for recording, indexing, or issuing certified copies of specified documents related to service in the Armed Forces of the United States.
- 5) Allows any person to access official documents recorded with county recorders.
- 6) Requires veterans who record a DD214 to sign an acknowledgement that recorded documents are public record and are accessible by anyone as such.
- 7) Permits a family member or legal representative of a veteran to request recordation of military discharge documents.

- 8) Provides, pursuant to the California Public Records Act of 1968, that public records of state and local agencies are open for inspection at all times during agency office hours, and that every person has a right to inspect any public record except as provided in the act.

**FISCAL EFFECT:** This bill is keyed fiscal and contains a state-mandated local program.

**COMMENTS:**

- 1) **Bill Summary.** This bill would allow for a veteran who has previously recorded a DD214 form to remove their recorded form and replace it with an updated version. For example, if a veteran has legally changed their name since their DD214 form was recorded, they would be able to replace their form to update their name. This bill is sponsored by the author.
- 2) **Author's Statement.** According to the author, "With the Department of Defense having lifted the ban on military service by transgender men and women, the state of California should be leading the way on stateside implementation. The recording of DD214s at County Clerk-Recorders is a convenience offered to veterans – whose originals are kept by the federal government – who are frequently called upon to provide documentation of their military service, and who benefit from the security and convenience of their records being stored locally by a public agency. However, through a quirk in state law and county clerk practice, we are actually permanently recording the records of some transgender veterans with their gender assigned at birth. We do this despite the Department of Defense having adopted a process allowing military records to be changed for both gender and name updates. This is an entirely unintended consequence of how DD214s are recorded by clerks – similarly to how property records are recorded, rather than the way other vital records are recorded. Instead, California should respect gender identity and transgender service by simply allowing these records to be updated, and for the deprecated record to be eliminated, or withdrawn."
- 3) **Background.** DD214 forms are issued to members of the Armed Forces of the United States upon their retirement, separation, or discharge from active duty. The forms detail a veteran's name, branch of the military, social security number, date of birth, and blood type, among other things. These forms can then be used to secure veteran benefits after service.

Some veterans choose to record their DD214 forms with a county recorder for preservation. Recording a document with the county recorder is an optional service that a veteran may pursue to ensure that if a DD214 form is lost or damaged, the veteran or their family members can retrieve it later to secure benefits.

Pursuant to the California Public Records Act of 1968, all specified records, including official records, are public documents. Under current law, DD214 forms are official records of the county and are therefore available to the public.

When documents are recorded as an official record, there are risks for potential identity theft, particularly for forms that contain sensitive information, such as social security numbers. SB 544 (Chesbro), Chapter 301, Statutes of 2003, sought to address these issues by requiring veterans to sign an acknowledgement that, once recorded, the DD214 form would become public record and available for inspection by anyone.

- 4) **Challenges for People Who are Transgender.** In 2016, the Department of Defense repealed regulations that explicitly banned people who are transgender from serving in the military. While people who are transgender are now able to enlist in the Armed Services, they may still experience a wide range of discrimination and violence.

Although the author did not produce specific examples of the DD214 form of a veteran who is transgender being retrieved for malicious purposes, public and state discrimination against people who are transgender is well documented.

Currently, federal law allows for a veteran to correct their military records when it is necessary to rectify an error or to remove an injustice. A veteran who is transgender may choose to update their incorrect DD214 forms for a number of reasons, such as to align their name with their gender identity, or to avoid further social stigma and discrimination when presenting their military forms to receive benefits.

- 5) **Recording Process in California.** Recording a document with a county recorder's office ensures the preservation of documents for future use. Residents may optionally record documents that are specified by law to ensure their preservation.

There are two categories of documents handled by the county recorder's office, official and vital records. Official records are documents that are available to the public, such as property deeds and military discharge forms. For example, veterans recording their DD214 forms are required by state law to sign an acknowledgement that, once recorded, the document becomes a part of the official record of the county and is therefore available to the public. Vital records, such as birth and death certificates, are only available to authorized individuals or agencies.

When a county recorder's office receives an official or a vital document to record, the document is scanned and returned to the applicant within three days. The scanned image is transferred to either microfilm or microfiche. Microfilm is a series of images shrunk to fit on a roll of plastic film, which can then be viewed on a microfilm reader. Microfiche is a single sheet of plastic that may contain multiple images on one sheet.

A copy of the document on microfiche or microfilm is kept at the county recorder's office and indexed with other records, and an additional copy is sent to be stored at an offsite storage unit in order to ensure preservation. Due to the structural nature of microfiche and microfilm, recorded images may only be edited by splicing. Splicing requires the careful cutting of portions of the film, which may weaken or damage the plastic if done improperly. In order to edit all versions of the recorded document, the county recorder's office must splice both the copy kept in the office and the copy kept in offsite storage.

However, due to its costly nature and the risks associated with editing a document, splicing is a method that is rarely used by the state's county recorders. Currently, when official records are updated, county recorders record an updated version of the document and layer it over the old image. This way, when the image is searched for, the updated copy is the first image someone will see. This method is currently used for updating certain official records, such as property deeds.

Removal of official documents from the county records has no precedent. This is due to the recording process in California, where retrieving and deleting documents under the current

recording system is difficult. According to the County Recorders' Association of California, retrieving and deleting the records is a time-consuming and costly process.

6) **Prior Legislation:**

- a) AB 2215 (Maienschein), Chapter 651, Statutes of 2014, permits a family member or legal representative of a veteran to request recordation of military discharge documents.
- b) SB 544 (Chesbro), Chapter 301, Statutes of 2003, requires a military veteran to sign a form acknowledging that recorded military discharge documents become official record of the county, and are therefore public information.

7) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Practical Implementation.** This bill requires a county recorder to remove and replace a previously recorded DD214 form upon the presentation of an updated DD214 form. The County Recorders' Association of California has indicated that the process of retrieving and deleting records is unprecedented because of the time, cost, and risks associated with it.

The Committee may wish to ask the author to discuss what other options there may be that will maintain the intent of the bill but mitigate some of the time, cost, and risks, and why those options do not suffice.

- b) **Limited Problem.** By the very nature of its intent, this bill would affect a small population. Veterans may choose to record their DD214 forms with the county recorder – it is optional. This bill would only apply to those veterans who have chosen to record their DD214 forms and who are seeking to completely remove their DD214 form and replace it with a new one. There has been one example provided by the author's office in which a veteran who is transgender has tried to redact their information. Aside from this example, there is no information available to indicate that this is a widespread problem.

- 8) **Arguments in Support.** The Transgender Law Center, in support, writes that “this will enable transgender veterans to update and replace their old DD214s upon request and will permit the withdrawal of the old DD214s.”

- 9) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Transgender Law Center

**Opposition**

None on file

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