

California Bill May Spur Rewriting Gender Boilerplate

Thursday, September 21, 2017

On the penultimate day of the current session, the California legislature passed [SB 179](#) (Atkins & Wiener). If signed into law by Governor Brown, this bill would enact the California Gender Recognition Act. In general, SB 179 would create a third, nonbinary gender option on a California driver's license, identification card, and birth certificate. It also would restructure the process for individuals to change their names to conform with their gender identities and create a new procedure for an individual to secure a court-ordered change of gender. The legislature defines "nonbinary" as follows:

Nonbinary is an umbrella term for people with gender identities that fall somewhere outside of the traditional conceptions of strictly either female or male. People with nonbinary gender identities may or may not identify as transgender, may or may not have been born with intersex traits, may or may not use gender-neutral pronouns, and may or may not use more specific terms to describe their genders, such as agender, genderqueer, gender fluid, Two Spirit, bigender, pangender, gender nonconforming, or gender variant.

SB 179, § 2.

Currently, drafters of statutes and contracts try to accommodate three genders (masculine, feminine and neuter) by including provisions to the following effect:

The masculine gender includes the feminine and neuter.

Cal. Corp. Code § 9. There are more than 20 other statutes of similar import. In addition, similar interpretational rules can be found in the boilerplate provisions of innumerable private contracts. If SB 179 becomes law, I would expect that these provisions will be reworked to reflect the newly recognized nonbinary gender. Rewriting these provisions to include "nonbinary" may not be sufficient as other jurisdictions may adopt different nomenclature. Indeed, the legislature recognized the existence and use of a wide variety of other terms in SB 179.

Grammatical Gender

Grammatical gender is an aspect of many languages. Grammatical gender is not the same as perceived biological gender. In fact, a word's grammatical gender does not necessarily conform to biological gender. For example, the Latin word for a body of soldiers, *legio*, is a feminine noun even though a Roman Legion was comprised entirely of members of the male sex.

In modern English grammatical gender independent of biological gender has fallen into desuetude. Now, English pronouns (him, her and its) usually, but not invariably, conform to the biological or perceived gender of the referent. In addition, English sometimes uses different words based on perceived biological gender, for example - father/mother, waiter/waitress, and colt/filly. Contrary to popular belief, however, the noun "man" originally referred to people generally, not just males. This sense is retained in "mankind"

© 2010-2019 Allen Matkins Leck Gamble Mallory & Natsis LLP

Source URL: <https://www.natlawreview.com/article/california-bill-may-spur-rewriting-gender-boilerplate>

Allen Matkins
CHALLENGE. OPPORTUNITY. SUCCESS.

Article By

[Keith Paul Bishop](#)

[Allen Matkins Leck Gamble Mallory &](#)

[Natsis LLP](#)

[California Corporate and Securities Law](#)

[Election Law / Legislative News](#)

[Civil Rights](#)

[California](#)

