

Introduced by Senator Leno
(Principal coauthor: Senator Kehoe)
(Principal coauthor: Assembly Member Ammiano)
(Coauthor: Senator Steinberg)
(Coauthor: Assembly Member Jones)

January 27, 2010

An act to amend Sections 300, 400, 402, 420, 421, 422, 423, 425, and 426 of the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

SB 906, as introduced, Leno. Marriage.

Existing law defines marriage as a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary.

This bill would instead define the term civil marriage as a personal relation arising out of a civil contract between a man and a woman, established pursuant to a State of California marriage license issued by the county clerk, to which the consent of the parties capable of making that contract is necessary. The bill would also make conforming related changes by changing certain references to marriage to civil marriage.

Existing law enumerates persons who are authorized to solemnize a marriage, including, but not limited to, any priest, minister, rabbi, or authorized person of any religious denomination.

The bill would specify that no priest, minister, rabbi, or authorized person of any religious denomination would be required to solemnize a marriage that is contrary to the tenets of his or her faith. The bill would state that any refusal to solemnize a marriage under that provision shall not affect the tax exempt status of any entity.

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 300 of the Family Code is amended to
2 read:

3 300. (a) ~~Marriage~~ *Civil marriage* is a personal relation arising
4 out of a civil contract between a man and a woman, *established*
5 *pursuant to a State of California marriage license issued by the*
6 *county clerk*, to which the consent of the parties capable of making
7 that contract is necessary. Consent alone does not constitute *civil*
8 marriage. Consent must be followed by the issuance of a license
9 and solemnization as authorized by this division, except as provided
10 by Section 425 and Part 4 (commencing with Section 500).

11 (b) For purposes of this part, the document issued by the county
12 clerk is a marriage license until it is registered with the county
13 recorder, at which time the license becomes a marriage certificate.

14 SEC. 2. Section 400 of the Family Code is amended to read:

15 400. ~~Marriage~~ *Civil marriage* may be solemnized by any of
16 the following who is of the age of 18 years or older:

17 (a) A priest, minister, rabbi, or authorized person of any religious
18 denomination. *No person authorized by this subdivision shall be*
19 *required to solemnize a marriage that is contrary to the tenets of*
20 *his or her faith. Any refusal to solemnize a marriage under this*
21 *subdivision shall not affect the tax exempt status of any entity.*

22 (b) A judge or retired judge, commissioner of civil marriages
23 or retired commissioner of civil marriages, commissioner or retired
24 commissioner, or assistant commissioner of a court of record in
25 this state.

26 (c) A judge or magistrate who has resigned from office.

27 (d) Any of the following judges or magistrates of the United
28 States:

29 (1) A justice or retired justice of the United States Supreme
30 Court.

31 (2) A judge or retired judge of a court of appeals, a district court,
32 or a court created by an act of Congress the judges of which are
33 entitled to hold office during good behavior.

34 (3) A judge or retired judge of a bankruptcy court or a tax court.

35 (4) A United States magistrate or retired magistrate.

1 (e) A legislator or constitutional officer of this state or a Member
2 of Congress who represents a district within this state, while that
3 person holds office.

4 SEC. 3. Section 402 of the Family Code is amended to read:

5 402. In addition to the persons permitted to solemnize *civil*
6 marriages under Section 400, a county may license officials of a
7 nonprofit religious institution, whose articles of incorporation are
8 registered with the Secretary of State, to solemnize the *civil*
9 marriages of persons who are affiliated with or are members of
10 the religious institution. The licensee shall possess the degree of
11 doctor of philosophy and must perform religious services or rites
12 for the institution on a regular basis. The *civil* marriages shall be
13 performed without fee to the parties.

14 SEC. 4. Section 420 of the Family Code is amended to read:

15 420. (a) No particular form for the ceremony of marriage is
16 required for solemnization of the *civil* marriage, but the parties
17 shall declare, in the physical presence of the person solemnizing
18 the marriage and necessary witnesses, that they take each other as
19 husband and wife.

20 (b) Notwithstanding subdivision (a), a member of the Armed
21 Forces of the United States who is stationed overseas and serving
22 in a conflict or a war and is unable to appear for the licensure and
23 solemnization of the *civil* marriage may enter into that marriage
24 by the appearance of an attorney in fact, commissioned and
25 empowered in writing for that purpose through a power of attorney.
26 The attorney in fact must personally appear at the county clerk's
27 office with the party who is not stationed overseas, and present
28 the original power of attorney duly signed by the party stationed
29 overseas and acknowledged by a notary or witnessed by two
30 officers of the United States Armed Forces. Copies in any form,
31 including by facsimile, are not acceptable. The power of attorney
32 shall state the full given names at birth, or by court order, of the
33 parties to be married, and that the power of attorney is solely for
34 the purpose of authorizing the attorney in fact to obtain a marriage
35 license on the person's behalf and participate in the solemnization
36 of the marriage. The original power of attorney shall be a part of
37 the marriage certificate upon registration.

38 (c) No contract of *civil* marriage, if otherwise duly made, shall
39 be invalidated for want of conformity to the requirements of any
40 religious sect.

1 SEC. 5. Section 421 of the Family Code is amended to read:

2 421. Before solemnizing a *civil* marriage, the person
3 solemnizing the marriage shall require the presentation of the
4 marriage license. If the person solemnizing the marriage has reason
5 to doubt the correctness of the statement of facts in the marriage
6 license, the person must be satisfied as to the correctness of the
7 statement of facts before solemnizing the marriage. For this
8 purpose, the person may administer oaths and examine the parties
9 and witnesses in the same manner as the county clerk does before
10 issuing the license.

11 SEC. 6. Section 422 of the Family Code is amended to read:

12 422. The person solemnizing a *civil* marriage shall, sign and
13 print or type upon the marriage license a statement, in the form
14 prescribed by the State Department of Public Health, showing all
15 of the following:

16 (a) The fact, date (month, day, year), and place (city and county)
17 of solemnization.

18 (b) The printed names, signatures, and mailing addresses of at
19 least one, and no more than two, witnesses to the ceremony.

20 (c) The official position of the person solemnizing the marriage,
21 or of the denomination of which that person is a priest, minister,
22 rabbi, or other authorized person of any religious denomination.

23 (d) The person solemnizing the marriage shall also type or print
24 his or her name and mailing address.

25 SEC. 7. Section 423 of the Family Code is amended to read:

26 423. The person solemnizing the *civil* marriage shall return the
27 marriage license, endorsed as required in Section 422, to the county
28 recorder of the county in which the license was issued within 10
29 days after the ceremony.

30 SEC. 8. Section 425 of the Family Code is amended to read:

31 425. If no record of the solemnization of a California *civil*
32 marriage previously contracted under this division for that marriage
33 is known to exist, the parties may purchase a License and
34 Certificate of Declaration of Marriage from the county clerk in the
35 parties' county of residence one year or more from the date of the
36 marriage. The license and certificate shall be returned to the county
37 recorder of the county in which the license was issued.

38 SEC. 9. Section 426 of the Family Code is amended to read:

39 426. If for sufficient reason, as described in subdivision (d),
40 either or both of the parties to be married are physically unable to

1 appear in person before the county clerk, a marriage license may
2 be issued by the county clerk to the person solemnizing the *civil*
3 marriage if the following requirements are met:

4 (a) The person solemnizing the marriage physically presents an
5 affidavit to the county clerk explaining the reason for the inability
6 to appear.

7 (b) The affidavit is signed under penalty of perjury by the person
8 solemnizing the marriage and by both parties.

9 (c) The signature of any party to be married who is unable to
10 appear in person before the county clerk is authenticated by a
11 notary public or a court prior to the county clerk issuing the
12 marriage license.

13 (d) Sufficient reason includes proof of hospitalization,
14 incarceration, or any other reason proved to the satisfaction of the
15 county clerk.