

AMENDED IN SENATE APRIL 15, 2010

**SENATE BILL**

**No. 906**

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**Introduced by Senator Leno**  
**(Principal coauthor: Senator Kehoe)**  
(Principal coauthor: Assembly Member Ammiano)  
**(~~Coauthor: Senator~~ Coauthors: Senators Pavley, Price, and**  
**Steinberg)**  
(Coauthor: Assembly Member Jones)

January 27, 2010

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 420. (a) No particular form for the ceremony of marriage is  
21 required for solemnization of the civil marriage, but the parties  
22 shall declare, in the physical presence of the person solemnizing  
23 the marriage and necessary witnesses, that they take each other as  
24 husband and wife.

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

1 of the marriage. The original power of attorney shall be a part of  
2 the marriage certificate upon registration.

3 (c) No contract of civil marriage, if otherwise duly made, shall  
4 be invalidated for want of conformity to the requirements of any  
5 religious sect.

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

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

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

17 422. The person solemnizing a civil marriage shall, sign and  
18 print or type upon the marriage license a statement, in the form  
19 prescribed by the State Department of Public Health, showing all  
20 of the following:

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

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

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

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

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

31 423. The person solemnizing the civil marriage shall return  
32 the marriage license, endorsed as required in Section 422, to the  
33 county recorder of the county in which the license was issued  
34 within 10 days after the ceremony.

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

36 425. If no record of the solemnization of a California civil  
37 marriage previously contracted under this division for that marriage  
38 is known to exist, the parties may purchase a License and  
39 Certificate of Declaration of Marriage from the county clerk in the  
40 parties' county of residence one year or more from the date of the

1 marriage. The license and certificate shall be returned to the county  
2 recorder of the county in which the license was issued.

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

4 426. If for sufficient reason, as described in subdivision (d),  
5 either or both of the parties to be married are physically unable to  
6 appear in person before the county clerk, a marriage license may  
7 be issued by the county clerk to the person solemnizing the civil  
8 marriage if the following requirements are met:

9 (a) The person solemnizing the marriage physically presents an  
10 affidavit to the county clerk explaining the reason for the inability  
11 to appear.

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

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

18 (d) Sufficient reason includes proof of hospitalization,  
19 incarceration, or any other reason proved to the satisfaction of the  
20 county clerk.