

**Senate Bill No. 906**

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Passed the Senate August 25, 2010

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*Secretary of the Senate*

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Passed the Assembly August 19, 2010

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2010, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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, 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, or his or her religious denomination, would be required to solemnize a marriage that is contrary to the tenets of his, her, or its 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.

*The people of the State of California do enact as follows:*

SECTION 1. Section 300 of the Family Code is amended to read:

300. (a) Civil marriage is 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. Consent alone does not constitute civil marriage. Consent must be followed by the issuance of a license and

solemnization as authorized by this division, except as provided by Section 425 and Part 4 (commencing with Section 500).

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

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

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

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

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

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

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

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

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

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

(4) A United States magistrate or retired magistrate.

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

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

402. In addition to the persons permitted to solemnize civil marriages under Section 400, a county may license officials of a nonprofit religious institution, whose articles of incorporation are registered with the Secretary of State, to solemnize the civil marriages of persons who are affiliated with or are members of the religious institution. The licensee shall possess the degree of doctor of philosophy and must perform religious services or rites

for the institution on a regular basis. The civil marriages shall be performed without fee to the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The signature of any party to be married who is unable to appear in person before the county clerk is authenticated by a

notary public or a court prior to the county clerk issuing the marriage license.

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



Approved \_\_\_\_\_, 2010

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*Governor*