

**Introduced by Senator Leno**

February 21, 2012

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An act to amend Sections ~~300~~, 400, and 420 of the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as amended, Leno. Marriage.

~~(1) 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. Under existing law, consent to a marriage must be followed by a marriage license and solemnization of the marriage.~~

~~This bill would define the term 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 retain the requirement that consent of the parties be followed by solemnization of the marriage.~~

~~(2)~~

~~(1) Existing law enumerates persons who are authorized to solemnize a marriage, including any priest, minister, rabbi, or authorized person of any religious denomination.~~

~~This 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.

(3)

(2) Under existing law, no particular form of marriage ceremony is required for solemnization, but the parties must declare that they take each other as husband and wife in the presence of witnesses and the person solemnizing the marriage, with certain exceptions.

This bill would make a technical, nonsubstantive change *changes* to this provision.

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

16 SECTION 1. Section 400 of the Family Code is amended to  
17 read:

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

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

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

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

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

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

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

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

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

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

18 ~~SEC. 3.~~

19 *SEC. 2.* 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 marriage, but the parties shall  
22 declare, in the physical presence of the person solemnizing the  
23 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 marriage may enter into that marriage by the  
29 appearance of an attorney-in-fact, commissioned and empowered  
30 in writing for that purpose through a power of attorney. The  
31 attorney-in-fact must personally appear at the county clerk's office  
32 with the party who is not stationed overseas, and present the  
33 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 marriage, if otherwise duly made, shall be  
4 invalidated for want of conformity to the requirements of any  
5 religious sect.

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