

AMENDED IN SENATE APRIL 23, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1140

Introduced by Senator Leno

February 21, 2012

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as amended, Leno. Marriage.

~~(1) Existing~~

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~~ *provide* that *marriage is a personal relation arising out of a civil, and not religious, contract. The bill would also specify that* ~~no~~ a priest, minister, rabbi, or authorized person of any religious denomination, ~~or his or her religious denomination, would~~ *shall not* be required to solemnize a marriage that is contrary to the tenets of his, *or her,* ~~or its~~ faith. The bill would state that any refusal to solemnize a marriage under ~~that~~ *this* provision shall not affect the tax exempt status of any entity.

~~(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 technical, nonsubstantive 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 400 of the Family Code is amended to
2 read:
3 400. ~~Marriage~~ *Although marriage is a personal relation arising*
4 *out of a civil, and not a religious, contract, a marriage may be*
5 *solemnized by any of the following who is of the age of 18 years*
6 *18 years of age or older:*
7 (a) A priest, minister, rabbi, or authorized person of any religious
8 denomination. ~~No~~ A person authorized by this subdivision, ~~or his~~
9 ~~or her religious denomination,~~ shall *not* be required to solemnize
10 a marriage that is contrary to the tenets of his, *or her,* ~~or its~~ faith.
11 Any refusal to solemnize a marriage under this subdivision shall
12 not affect the tax-exempt status of any entity.
13 (b) A judge or retired judge, commissioner of civil marriages
14 or retired commissioner of civil marriages, commissioner or retired
15 commissioner, or assistant commissioner of a court of record in
16 this state.
17 (c) A judge or magistrate who has resigned from office.
18 (d) Any of the following judges or magistrates of the United
19 States:
20 (1) A justice or retired justice of the United States Supreme
21 Court.
22 (2) A judge or retired judge of a court of appeals, a district court,
23 or a court created by an act of Congress the judges of which are
24 entitled to hold office during good behavior.
25 (3) A judge or retired judge of a bankruptcy court or a tax court.
26 (4) A United States magistrate or retired magistrate.
27 (e) A legislator or constitutional officer of this state or a Member
28 of Congress who represents a district within this state, while that
29 person holds office.
30 ~~SEC. 2. Section 420 of the Family Code is amended to read:~~
31 ~~420. (a) No particular form for the ceremony of marriage is~~
32 ~~required for solemnization of the marriage, but the parties shall~~
33 ~~declare, in the physical presence of the person solemnizing the~~
34 ~~marriage and necessary witnesses, that they take each other as~~
35 ~~husband and wife.~~

1 ~~(b) Notwithstanding subdivision (a), a member of the Armed~~
2 ~~Forces of the United States who is stationed overseas and serving~~
3 ~~in a conflict or a war and is unable to appear for the licensure and~~
4 ~~solemnization of the marriage may enter into that marriage by the~~
5 ~~appearance of an attorney-in-fact, commissioned and empowered~~
6 ~~in writing for that purpose through a power of attorney. The~~
7 ~~attorney-in-fact must personally appear at the county clerk's office~~
8 ~~with the party who is not stationed overseas, and present the~~
9 ~~original power of attorney duly signed by the party stationed~~
10 ~~overseas and acknowledged by a notary or witnessed by two~~
11 ~~officers of the United States Armed Forces. Copies in any form,~~
12 ~~including by facsimile, are not acceptable. The power of attorney~~
13 ~~shall state the full given names at birth, or by court order, of the~~
14 ~~parties to be married, and that the power of attorney is solely for~~
15 ~~the purpose of authorizing the attorney-in-fact to obtain a marriage~~
16 ~~license on the person's behalf and participate in the solemnization~~
17 ~~of the marriage. The original power of attorney shall be a part of~~
18 ~~the marriage certificate upon registration.~~
19 ~~(c) No contract of marriage, if otherwise duly made, shall be~~
20 ~~invalidated for want of conformity to the requirements of any~~
21 ~~religious sect.~~