

AMENDED IN SENATE AUGUST 18, 2016

AMENDED IN SENATE JUNE 16, 2016

AMENDED IN ASSEMBLY APRIL 25, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2761**

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**Introduced by Assembly Member Low**

February 19, 2016

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An act to amend Section 400 of, and to repeal Section 400.1 of, the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 2761, as amended, Low. Marriage.

Existing law enumerates persons who are authorized to solemnize a marriage, including current Members of the Legislature, constitutional officers of this state, Members of Congress of the United States who represent a district within this state, elected mayors, city clerks, and county supervisors. Existing law requires county supervisors, city clerks, and elected mayors to obtain and review from the county clerk all available instructions for marriage solemnization before the county supervisor, city clerk, or mayor first solemnizes a marriage.

This bill would additionally authorize former Members of the Legislature and constitutional officers of this state, former Members of Congress of the United States who represented a district within this state, and current and former elected officials of a city, county, or city and county, to solemnize a marriage. The bill would remove the requirement that county supervisors, city clerks, and elected mayors obtain and review all available instructions for marriage solemnization before first solemnizing a marriage. The bill would prohibit any of the

individuals listed above a judge, elected official, or city clerk from accepting compensation for solemnizing a marriage and would prohibit those individuals from solemnizing a marriage if they have been removed from office due to committing an offense or have been convicted of a crime that involves moral turpitude, dishonesty, or fraud. The bill would make conforming changes.

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. (a) Although marriage is a personal relation arising out  
4 of a civil, and not a religious, contract, a marriage may be  
5 solemnized by any of the following persons who are 18 years of  
6 age or older:

7 ~~(1) A~~ a priest, minister, rabbi, or authorized person of any  
8 religious ~~denomination.~~ *denomination who is 18 years of age or*  
9 *older.* A person authorized by this subdivision shall not be required  
10 to solemnize a marriage that is contrary to the tenets of his or her  
11 faith. Any refusal to solemnize a marriage under this subdivision,  
12 either by an individual or by a religious denomination, shall not  
13 affect the tax-exempt status of any entity.

14 (b) *Except as provided in subdivision (c), a marriage may also*  
15 *be solemnized by any of the following persons who are 18 years*  
16 *of age or older:*

17 ~~(2)~~

18 (1) A judge or retired judge, commissioner of civil marriages  
19 or retired commissioner of civil marriages, commissioner or retired  
20 commissioner, or assistant commissioner of a court of record in  
21 this state.

22 ~~(3)~~

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

24 ~~(4)~~

25 (3) Any of the following judges or magistrates of the United  
26 States:

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

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

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

6 (D) A United States magistrate or retired magistrate.

7 ~~(b) Except as provided in subdivision (c), a marriage may also~~  
8 ~~be solemnized by any of the following persons who are 18 years~~  
9 ~~of age or older:~~

10 ~~(1)~~

11 (4) A Member of the Legislature or constitutional officer of this  
12 state or a Member of Congress of the United States who represents  
13 a district within this state, or a former Member of the Legislature  
14 or constitutional officer of this state or a former Member of  
15 Congress of the United States who represented a district within  
16 this state.

17 ~~(2)~~

18 (5) A person that holds or formerly held an elected office of a  
19 city, county, or city and county.

20 ~~(3)~~

21 (6) A city clerk of a charter city or serving in accordance with  
22 subdivision (b) of Section 36501 of the Government Code, while  
23 that person holds office.

24 (c) (1) A person listed in subdivision (b) shall not accept  
25 compensation for solemnizing a marriage while holding office.

26 (2) A person listed in subdivision (b) shall not solemnize a  
27 marriage pursuant to this section if they have been removed from  
28 office due to committing an offense or have been convicted of an  
29 offense that involves moral turpitude, dishonesty, or fraud.

30 SEC. 2. Section 400.1 of the Family Code is repealed.