

Assembly Bill No. 2761

CHAPTER 528

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

[Approved by Governor September 23, 2016. Filed with
Secretary of State September 23, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2761, 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 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.

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

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

400. (a) Although marriage is a personal relation arising out of a civil, and not a religious, contract, a marriage may be solemnized by a priest, minister, rabbi, or authorized person of any religious denomination who is 18 years of age or older. A person authorized by this subdivision shall not be required to solemnize a marriage that is contrary to the tenets of his or her faith. Any refusal to solemnize a marriage under this subdivision, either

by an individual or by a religious denomination, shall not affect the tax-exempt status of any entity.

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

(1) 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.

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

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

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

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

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

(D) A United States magistrate or retired magistrate.

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

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

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

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

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

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