

## Senate Bill No. 875

### CHAPTER 211

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

[Approved by Governor August 26, 2016. Filed with  
Secretary of State August 26, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 875, Gaines. Solemnization of marriage: county sheriff.

Existing law authorizes specified individuals to solemnize a marriage, including, among others, an authorized person of any religious denomination, a judge or magistrate, a current Member of the Legislature or constitutional officer of this state, and a current Member of Congress of the United States who represents a district within this state, as specified.

Existing law additionally authorizes a county supervisor, a city clerk, and a mayor, as specified, to solemnize a marriage, while that person holds office. Existing law requires the county supervisor, city clerk, or mayor to obtain and review from the county clerk all available instructions for marriage solemnization before that person first solemnizes a marriage.

This bill would additionally authorize a county sheriff, while that person holds office, to solemnize a marriage. The bill would delete 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 make conforming changes.

This bill would incorporate additional changes in Section 400 of the Family Code proposed by AB 2761, that would become operative only if AB 2761 and this bill are both chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

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

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

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

(a) A priest, minister, rabbi, or authorized person of any religious denomination. 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) 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 of the United States, 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 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, while that person holds office.

(f) A county supervisor, a county sheriff, the city clerk of a charter city or serving in accordance with subdivision (b) of Section 36501 of the Government Code, or a mayor of a city elected in accordance with Article 3 (commencing with Section 34900) of Chapter 4 of Part 1 of Division 2 of Title 4 of the Government Code, while that person holds office.

SEC. 1.5. 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 any of the following persons who are 18 years of age or older:

(1) A priest, minister, rabbi, or authorized person of any religious denomination. 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.

(2) 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.

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

(4) 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 Congress of the United States, 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.

(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 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.

(2) A person that holds or formerly held an elected office of a city, county, or city and county, including, but not limited to, a county sheriff.

(3) 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 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.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 400 of the Family Code proposed by both this bill and Assembly Bill 2761. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 400 of the Family Code, and (3) this bill is enacted after Assembly Bill 2761, in which case Section 1 of this bill shall not become operative.