

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 583 (Davies)  
Version: May 20, 2021  
Hearing Date: June 15, 2021  
Fiscal: No  
Urgency: Yes  
JT

**SUBJECT**

Remote marriage license issuance and solemnization

**DIGEST**

This bill, until January 1, 2024, authorizes county clerks to enable couples to receive a marriage license, and solemnize their marriage, using remote technology, as defined.

**EXECUTIVE SUMMARY**

For a marriage to be legally recognized, the parties must first appear together in person before the county clerk to obtain the marriage license. The couple must then appear in person before a person who solemnizes the license and witnesses who authenticate it. The license must then be submitted to the county recorder to become a marriage certificate.

In response to the COVID-19 pandemic, Governor Newsom issued an Executive Order (EO) that enables adults to obtain a marriage license at the discretion of the county clerk through video-conferencing, provided that both adults are located in California, are present at the same time, and present identification during the video conference. The license is then issued by email or other electronic means and can be filled out and signed electronically. The EO also provides that marriages may be solemnized through video-conferencing, provided that both parties, the person solemnizing the marriage, and at least one witness can join the live video conference.

This bill seeks to extend these provisions statutorily until January 1, 2024 by authorizing county clerks to enable couples to receive a marriage license, and solemnize their marriage, using remote technology, as defined. The bill contains an urgency clause. The bill is sponsored by the California Association of Clerks and Election Officials, supported by the Family Law Section of the Los Angeles County Bar Association, and has no known opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Provides that marriage is a personal relation arising out of a civil contract between two consenting persons. (Fam. Code § 300(a).)<sup>1</sup> Requires a license to be issued and solemnized. (*Id.*) States that the document issued by the county clerk is a marriage license until it is registered with the county recorder, at which time it becomes a marriage certificate. (*Id.* at (b).)
- 2) Requires that a marriage be licensed, solemnized, and authenticated, and that the authenticated marriage license be returned to the county recorder of the county where the license was issued. (§ 306.)
- 3) Requires the parties, before entering marriage, to first obtain a marriage license from a county clerk. (§ 350.) The parties must present authentic photo identification to the county clerk, who may examine the applicants on oath and who may request additional documentary proof as to the facts stated. (§ 354(a)-(c).) The license expires 90 days after its issuance. (§ 356.)
- 4) Requires the applicants to first appear together in person before the county clerk to obtain a marriage license. (§ 359(a).) The issued marriage license must be presented to the person solemnizing the marriage by the parties to be married. (*Id.* at (c).) The person solemnizing the marriage must complete the solemnization sections on the marriage license, and ensure that the license is witnessed. (*Id.* at (d).) Within 10 days of the ceremony, the marriage license must be presented in person, or postmarked, by the person solemnizing the marriage to the county recorder of the county in which the license was issued. (*Id.* at (e), (f).)
- 5) Provides that no particular form for the ceremony of marriage is required for its solemnization, but does require that the parties declare, in the physical presence of the person solemnizing the marriage and necessary witnesses, that they take each other as spouses. (§ 420(a).) Authorizes members of the Armed Forces stationed overseas to appear for licensure and solemnization by appearance of attorney in fact. (*Id.* at (b).)
- 6) Provides that before solemnizing a marriage, the person solemnizing the marriage must require the presentation of the marriage license. (§ 421.)
- 7) Prescribes information that must be included on the certificate of registry of marriage. (§ 422; Health & Saf. Code § 103175.)

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<sup>1</sup> All further references are to the Family Code unless otherwise indicated.

- 8) Provides that if no record of the solemnization of a California marriage is known to exist, the parties may purchase a License and Certificate of Declaration of Marriage from the county clerk in the parties' county of residence one year or more from the date of the marriage. (§ 425.) The license and certificate must be returned to the county record of the county in which the license was issued. (*Id.*)

This bill:

- 1) Authorizes, until January 1, 2024, a county clerk to issue a marriage license or solemnize or witness a marriage ceremony using remote technology, defined as audio-visual technology provided by a county clerk that allows the couple and others participating in a marriage solemnization to appear together from the same physical location and directly interact with each other and the county clerk.
- 2) Requires a couple seeking a remote marriage license or solemnization to present, in a manner requested by the county clerk, a copy of a valid government-issued photo identification and any additional documentary proof requested by the county clerk.
- 3) Requires each member of the couple to be physically located in California when obtaining a marriage license remotely, and physically located in the same location in California when solemnizing their marriage remotely.
- 4) Provides that the county clerk may require the couple to complete an affidavit affirming their physical presence in California, and that of others participating, in a remote solemnization.
- 5) Gives the clerk discretion to determine whether the marriage license may be signed electronically or with an original wet signature. A signed, legible copy of the license must be sent to the county clerk by mail or electronic means, as specified by the county clerk. However, if the marriage was solemnized by anyone other than a county clerk, the signature must be a wet signature and the original document must be submitted to the county clerk.
- 6) Provides that a county clerk may provide guidance relating to marriage license applications, marriage license issuance, and the witnessing or solemnizing of the marriage ceremony within their jurisdiction using remote technology.
- 7) Contains an urgency clause.

## COMMENTS

### 1. Author's statement

The author writes:

AB 583 codifies the Governor's Executive Order and memorializes the best practices for electronic issuance of marriage licenses and solemnization ceremonies through live, interactive video technology that California's counties have employed over the last year. In order to ensure we provide as many options as possible for Californians to obtain marriage licenses, no matter in times of emergency or not, the Legislature should codify the Governor's Executive Order and allow this practice to continue as a standard mode of operation for those who want it.

### 2. Two-year extension of the process for obtaining a marriage license remotely

"The state has a vital interest in the institution of marriage and plenary power to fix the conditions under which the marital status may be created or terminated. [Citation.] The regulation of marriage is solely within the province of the Legislature. [Citation.]" *Estate of DePasse* (2002) 97 Cal.App.4th 92, overruled in part on unrelated grounds by *Ceja v. Rudolph & Sletten, Inc.* (2013) 56 Cal.4th 1113, 1126.) For a marriage to be legally recognized, the parties must first appear together in person before the county clerk to obtain the marriage license. (§ 359(a).) Within 90 days of its issuance, the license must be filled out, solemnized, and witnessed. (§§ 350, 356, 359(c), (d).) Within 10 days of the ceremony, the person who solemnized the marriage must return the license to the county recorder, either in person or by mail. (§ 359(e).) Once registered with the county recorder, the license becomes a marriage certificate. (§ 300(b).)

In response to the COVID-19 pandemic, Governor Newsom issued an EO that enables adults to obtain a marriage license at the discretion of the county clerk through video-conferencing, provided that both adults are located in California, are present at the same time, and presents identification during the video conference.<sup>2</sup> The license is then issued by email or other electronic means and can be filled out and signed electronically. The EO also provides that marriages may be solemnized through video-conferencing, provided that both parties, the person solemnizing the marriage, and at least one witness can join the live video conference. The EO also applies to confidential

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<sup>2</sup> Executive Order N-58-20 (Apr. 30, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/04/4.30.20-EO-N-58-20.pdf> (as of May 20, 2021); see also *Governor Newsom Signs Executive Order* (Apr. 30, 2020) Office of Governor Gavin Newsom, <https://www.gov.ca.gov/2020/04/30/governor-newsom-signs-executive-order-on-marriages/> (as of May 20, 2021). On June 30, 2020, the Governor extended the remote marriage executive order until the COVID State of Emergency is terminated, or until the order is otherwise modified or rescinded. (Governor Newsom Executive Order N-71-20.)

marriages, for which witnesses are not required and records are not public. (See § 500 et seq.) It does not, however, apply to marriages of minors, which require judicial approval. (§§ 302-304.) The EO will cease to be in effect 60 days after the Governor lifts the state of emergency related to the pandemic.

This bill seeks to extend these provisions statutorily until January 1, 2024. While the bill closely resembles the EO with respect to obtaining a marriage license, it is narrower than the EO when it comes to solemnization. Instead of allowing anyone to conduct a solemnization remotely, the bill only authorizes county clerks to perform remote solemnizations. If the clerk solemnizes the marriage remotely, the license may be transmitted to the clerk by mail or electronic means using an electronic signature. If the solemnization was not performed by the county clerk, the license must be signed in ink with an original wet signature and the original document must be submitted to the county clerk.

### 3. Support

The sponsor writes:

AB 583 explores, collates and memorializes in Code the best practices that have been employed by California's counties during the past year with regard to remote and electronic issuance of marriage licenses and solemnization ceremonies through live, interactive video technology. The framework proposed by AB 583 is the product of months of discussion, troubleshooting and problem-solving over the course of this challenging year; as counties and the State evolved to meet the immediate needs of our constituents.

### SUPPORT

California Association of Clerks and Election Officials (sponsor)  
Family Law Section of the Los Angeles County Bar Association

### OPPOSITION

None known

### RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: None known.

**PRIOR VOTES:**

Assembly Floor (Ayes 75, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)

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