



Contra  
Costa  
County

To: Board of Supervisors  
From: LEGISLATION COMMITTEE  
Date: May 24, 2016

Subject: Support position on AB 2128 (Achadjian): Marriage

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**RECOMMENDATION(S):**

ADOPT a "Support" position on AB 2128 (Achadjian): Marriage, a bill that would amend existing law that allows a member of the Armed Force of the United States who is unable to appear for the license and solemnization of marriage to enter into that marriage by the appearance of an attorney in fact, as recommended by the Legislation Committee.

**FISCAL IMPACT:**

No immediate impact.

**BACKGROUND:**

At its May 9, 2016 meeting, the Legislation Committee considered and supported the recommendation from the Clerk-Recorder to recommend a position of "Support" to the Board of Supervisors on AB 2128, as amended on 4/11/16.

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☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **05/24/2016** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Mary N. Piepho, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: May 24, 2016

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Stacey M. Boyd, Deputy

Contact: L. DeLaney,  
925-335-1097

cc:

## BACKGROUND: (CONT'D)

Status: 05/02/2016 In ASSEMBLY. Read third time. Passed ASSEMBLY. \*\*\*\*\*To SENATE. (76-0)

### **Bill Analysis - 04/29/2016**

**SUMMARY:** Limits the power of a county clerk or the State Register to reject a power of attorney from a member of the Armed Forces stationed overseas and seeking to marry "by proxy." Specifically, this bill provides that proper completion of a power of attorney by a member of the armed forces, stationed overseas, serving in a conflict or a war and seeking to marry through an attorney-in-fact, is the sole determinant as to whether the county clerk's office and the State Registrar must accept the power of attorney and allow the military member to get married. EXISTING LAW allows a member of the United States armed forces who is stationed overseas and serving in a conflict or a war and is unable to appear for licensure and solemnization of his or her marriage to enter into that marriage by the appearance of an attorney-in-fact, commissioned and empowered in writing for that purpose through a power of attorney. (Family Code Section 420.)

**FISCAL EFFECT:** None

**COMMENTS:** To prevent fraud, California has historically had a prohibition on "marriages by proxy," that is, marriages where one of the parties is not present at the required solemnization and is instead represented by an attorney-in-fact. In 2004, when the wars in Afghanistan and Iraq were raging, reservists were being called up for extended service with little warning. Based on the needs of the conflict, some ended up serving overseas for a year or longer, potentially wreaking havoc in the lives of their loved ones left behind. It was against that backdrop, the Legislature passed SB 7 (Brulte), Chapter 476, Statutes of 2004, which established a process for marriage by proxy for those members of the armed forces who are serving overseas in a conflict or war zone. When considering the bill, the Legislature heard from Theresa Arnold. Her fiancé Marine Corps Lieutenant Thomas Cogan IV was stationed in Iraq. Theresa and Thomas are expecting their first child the next month, but under then-existing law, they have no way to get married prior to the birth of their child. Allowing marriage by proxy for members of the armed forces serving in a conflict or war overseas has helped ensure that military members' loved ones, including spouses and children, receive critical health and other benefits. In the case of Theresa Arnold and Thomas Cogan, their immediate marriage helped ensure that prenatal and birth costs were covered and that both Theresa and the baby received appropriate benefits should anything have happened to Lieutenant Cogan while in Iraq. Without that bill, they may not have been entitled to receive such benefits, whether in a timely manner or at all. California is now one of only a handful of states, including Texas and Colorado, that permit marriage by proxy. Montana allows a "double proxy marriage" in which neither party must be present in the state in order to legally marry, provided at least one party is either a resident of Montana or a member of the military. The current problem, according to the sponsor, the California Association of

Clerks and Elections Officials, is that a small number of county clerks and state officials have questioned whether some of the overseas military members seeking to marry by proxy are actually in war or conflict zones and have, as a result, rejected some requests to marry by proxy or later rejected marriage licenses. Given the international nature of today's evolving threat of terrorism, it may not be clear to a county clerk or an official with the State Registrar where conflict zones are. Thus, it appears best to accept a military member's signed declaration, which as stated on the required form must be done under penalty of perjury, that he or she is serving in war or conflict zone. This bill does just that by providing that proper completion of a power of attorney by a member of the armed forces, stationed overseas and serving in a conflict or a war and seeking to marry through an attorney-in-fact, is the sole determinant as to whether the county clerk's office and the State Registrar must accept the power of attorney and allow the military member to get married.

Analysis Prepared by: Leora Gershenzon / JUD. / (916) 319-2334 FN: 0002829

Attachment A includes the bill text.

CONSEQUENCE OF NEGATIVE ACTION:

Contra Costa County would not have a position on the bill.

ATTACHMENTS

Attachment A: AB 2128 bill text