

1971 Senate Bill 241

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CHAPTER 220, Laws of 1971

AN ACT to repeal 247.235 and 247.35; to renumber 248.04; to amend 245.03 (2), 247.05 (3), 247.07 (6) and (7), 247.08, 247.085 (1) (a), 247.10, 247.101, 247.23 (1), 247.232, 247.245, 247.26, 247.28, 247.30, 247.31, 247.32, 247.34, 247.37 (1) (a) and (4) and 248.01; and to create 247.07 (9), 247.082 and 248.04 (2) of the statutes, relating to actions affecting marriage.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 245.03 (2) of the statutes is amended to read:

245.03 (2) It is unlawful for any person, who is or has been a party to an action for divorce in any court in this state, or elsewhere, to marry again until ~~one year~~ 6 months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of ~~one year~~ 6 months from the date of the granting of judgment of divorce shall be void.

SECTION 2. 247.05 (3) of the statutes is amended to read:

247.05 (3) ACTIONS BY OR AGAINST RESIDENTS FOR DIVORCE. Regardless of where the cause of action arose, an action for divorce by or against a person who has been a bona fide resident of this state for at least ~~2 years~~ 6 months next preceding the commencement of the action shall be commenced in the county of this state in which at least one of the parties has been a bona fide resident for not less than 30 days next preceding the commencement of the action.

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SECTION 3. 247.07 (6) and (7) of the statutes are amended to read:

247.07 (6) Whenever the husband and wife have voluntarily lived entirely separate for ~~5~~ one year next preceding the commencement of the action, at the suit of either party.

(7) Whenever the husband and wife, pursuant to a judgment of legal separation, have lived entirely apart for ~~5~~ one year next preceding the commencement of the action a divorce may be granted at the suit of either party.

SECTION 3m. 247.07 (9) of the statutes is created to read:

247.07 (9) When either party, subsequent to the marriage, has been involuntarily committed under ch. 51 to any mental institution and has remained there for at least one year, at the suit of the party who has not been committed.

SECTION 4. 247.08 of the statutes is amended to read:

**247.08 (title) ACTIONS TO COMPEL SUPPORT BY SPOUSE.** If ~~any husband either spouse is under obligation to provide maintenance and support by any court order or judgment and~~ fails or refuses, without lawful or reasonable excuse, to provide for the support and maintenance of ~~his wife the other spouse~~ or minor children, ~~the wife other spouse~~ may commence an action in any court having jurisdiction in actions for divorce, to compel ~~such husband the spouse~~ to provide for ~~the such~~ support and maintenance of ~~herself and such minor children~~ as ~~he~~ may be legally required to support. The court, in such action, may determine and adjudge the amount ~~such husband the spouse~~ should reasonably contribute to the support and maintenance of ~~said wife the other spouse~~ or children and how such sum should be paid. The amount so ordered to be paid may be changed or modified by the court upon notice of motion or order to show cause by either ~~the husband or wife spouse~~ upon sufficient evidence. Such determination may be enforced by contempt proceedings. In any such support action there shall be no filing fee, suit tax or other costs taxable to the ~~wife the other spouse~~, but after the action has been commenced and filed the court in its discretion may direct that any part of or all fees and costs incurred shall be paid by the ~~husband spouse~~.

SECTION 5. 247.082 of the statutes is created to read:

**247.082 SUSPENSION OF PROCEEDINGS TO EFFECT RECONCILIATION.** During the pendency of any action for divorce or legal separation, the court may, upon written stipulation of both parties that they desire to attempt a reconciliation, enter an order suspending any and all orders and proceedings for such period, not exceeding 90 days, as the court determines advisable so as to permit the parties to attempt a reconciliation without prejudice to their respective rights. During the period of suspension the parties may resume living together as husband and wife and their acts and conduct shall not constitute condonation of prior misconduct or a defense to existing grounds for divorce or legal separation. Suspension may be revoked upon motion of either party by order of the court. If the parties become reconciled, the court shall dismiss the action. If the parties are not reconciled after the period of suspension, the action shall proceed as though no reconciliation period was attempted.

SECTION 5m. 247.085 (1) (a) of the statutes is amended to read:

247.085 (1) (a) The name and age of the parties, the social security number of the husband and wife, the date and place of marriage and the facts relating to the residence of both parties.

SECTION 6. 247.10 of the statutes is amended to read:

**247.10 COLLUSION; PROCUREMENT; CONNIVANCE; CONDONATION; STIPULATION; PROPERTY RIGHTS.** No judgment of annulment, divorce or legal separation shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, and no judgment of divorce or legal separation shall be granted if it likewise appears that the plaintiff has procured or connived at the offense charged, or has condoned it; ~~or has been guilty of adultery not condoned;~~ but the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce or legal separation is granted or a marriage annulled.

SECTION 7. 247.101 of the statutes is amended to read:

**247.101 (title) COMPARATIVE RECTITUDE.** ~~The equitable doctrine that the court shall not aid a wrongdoer is applicable to any party suing in any action~~ for divorce or legal separation under s. 247.07 (1) to (5), ~~except that~~ where it appears from the evidence that both parties have been guilty of misconduct sufficiently grave to constitute cause for divorce or legal separation, the court may grant a judgment of divorce or legal separation to the party whose equities on the whole are found to be superior. Neither the doctrine of comparative rectitude nor misconduct of a party shall be considered in actions brought under s. 247.07 (6), (7) and (8).

SECTION 8. 247.23 (1) of the statutes is amended to read:

**247.23 (title) TEMPORARY ORDERS FOR SUPPORT OF SPOUSE AND CHILDREN; SUIT MONEY; ATTORNEY'S FEES.** (1) In every action affecting marriage, the court or family court commissioner may, during the pendency thereof, make such temporary orders concerning the care, custody and suitable maintenance of the minor children, requiring ~~the husband either party~~ to pay such sums for the support of ~~the wife and the minor children in her custody~~ other party and enabling ~~her the other party~~ to carry on or defend the action, and requiring either party or both to pay such sums for the support of the minor children, and in relation to the persons or property of the parties as in its discretion shall be deemed just and reasonable in light of all circumstances, including the incomes and estates of the parties, and may prohibit either spouse from imposing any restraint on the personal liberty of the other. Any such order may be based upon the written stipulation of the parties, subject to the approval of the family court commissioner or the court.

SECTION 9. 247.232 of the statutes is amended to read:

**247.232 WAGE ASSIGNMENT BY FAMILY COURT COMMISSIONER.** After an order for the support of minor children of the parties has been entered in an action affecting marriage, and there has been a failure to comply with such order by ~~the father either spouse~~ under circumstances which would necessitate the issuance of a contempt order by the court, the family court commissioner may issue an order directing the ~~father spouse~~ to assign such salary or wages due him or to be due him in the future from his employer or successor employers to the clerk of court, where the action is pending, as will be sufficient to pay allowances for the maintenance of ~~his wife the other spouse~~ and the support, maintenance and education of their minor children. The assignment shall be binding upon the employer and successor employers immediately upon personal service on the employer of a copy of the assignment signed by the employe and annexed to a copy of the order, until further order of the family court commissioner or the court. For each payment the employer shall receive \$1 which he shall deduct from the money to be paid the employe. Section 241.09 shall not apply to assignments under this

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section. The employer may not use such assignment as a basis for the discharge of an employe or for any disciplinary action against the employe. Compliance by an employer with the order operates as a discharge of the employer's liability to the employe as to that portion of the employe's wages so affected.

SECTION 10. 247.235 of the statutes is repealed.

SECTION 11. 247.245 of the statutes is amended to read:

**247.245 ANNULMENT; ALIMONY.** Whenever a judgment of annulment is granted in favor of or against an innocent spouse who has relied upon the representations made by ~~her~~ the alleged husband spouse as to ~~his~~ capacity to contract marriage by reason of not having a prior spouse living, or of having completed the ~~one-year~~ 6-month waiting period for ~~his~~ divorce, or who married the alleged ~~husband spouse~~ in good faith, because of ~~his~~ failure to ~~inform her~~ reveal that he needed permission of the court as was required in pursuant to s. 245.10, the court may grant alimony payments to the injured party as it deems just and equitable.

SECTION 12. 247.26 of the statutes is amended to read:

**247.26 ALIMONY, PROPERTY DIVISION.** Upon every judgment of divorce or legal separation for ~~any cause excepting that of adultery committed by the wife~~, the court may, subject to s. 247.20, further adjudge for ~~a limited period of time to the wife~~ either party such alimony out of the property or income of the ~~husband, other party~~ for ~~her~~ support and maintenance, except no alimony shall be granted to a party guilty of adultery not condoned, and the court may further grant such allowance to be paid by either or both parties for the support, maintenance and education of the minor children committed to ~~her~~ the other party's care and custody as it deems just and reasonable. The court may also finally divide and distribute the estate, both real and personal, of ~~the husband, and so much of the estate of the wife as has been derived from the husband~~ either party between the parties and divest and transfer the title of any thereof accordingly, after having given due regard to the legal and equitable rights of each party, ~~the ability of the husband, the special estate of the wife, the length of the marriage, the age and health of the parties, the liability of either party for debts or support of children, their respective abilities and estates, whether the property award is in lieu of or in addition to alimony,~~ the character and situation of the parties and all the circumstances of the case; but no such final division shall impair the power of the court in respect to revision of allowances for minor children under s. 247.45. A certified copy of such judgment which affects title to real estate shall be recorded in the office of the register of deeds of the county in which the lands so affected are situated.

SECTION 13. 247.28 of the statutes is amended to read:

**247.28 MAINTENANCE, CUSTODY AND SUPPORT WHEN DIVORCE OR SEPARATION DENIED.** In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the custody of any of the minor children and for the maintenance of ~~the wife~~ either spouse and support of such children by ~~the husband and either spouse~~ out of ~~his~~ property or income, and ~~may further make such order for the support of any child by the wife or out of her separate property or income,~~ as the nature of the case may render just and reasonable.

SECTION 14. 247.30 of the statutes is amended to read:

**247.30 ALIMONY, PAYMENT OF AND SECURITY FOR.** In all cases where alimony or other allowance shall be adjudged to ~~the wife~~ either party or for the support or education of the children the

court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for payment according to the judgment; and upon neglect or refusal to give such security or upon the failure to pay such alimony or allowance the court may enforce the payment thereof by execution or under s. 295.03 or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

SECTION 15. 247.31 and 247.32 of the statutes are amended to read:

**247.31 TRUSTEE MAY BE APPOINTED.** The court may also appoint a trustee, when deemed expedient, to receive any money adjudged to ~~the wife either spouse~~ upon trust, to invest the same and pay over the income thereof for ~~her~~ the maintenance of the spouse entitled thereto or the support and education of any of the minor children, or to pay over the principal sum in such proportions and at such times as the court directs. The trustee shall give such bond, with such sureties as the court requires, for the faithful performance of his trust.

**247.32 REVISION OF JUDGMENT.** After a judgment providing for alimony or other allowance for ~~the wife a spouse~~ and children, or either of them, or for the appointment of trustees as aforesaid the court may, from time to time, on the petition of either of the parties and upon notice to the family court commissioner, revise and alter such judgment respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the said matters which such court might have made in the original action. ~~But when a final division of the property shall have been made under s. 247.26 no other provisions shall be thereafter made for the wife, except that a judgment which either fails to provide alimony for either party or provides alimony for either party for a limited period only under s. 247.26 shall not thereafter be revised or altered in either respect nor shall the provisions of a judgment with respect to final division of property be subject to revision or modification.~~

SECTION 16. 247.34 of the statutes is amended to read:

**247.34 RESTORING PROPERTY UPON ANNULMENT.** Upon rendering a judgment of annulment the court may make provision for restoring to ~~the wife either party~~ the whole or such part, as it deems just and reasonable, of any property which the ~~husband other party~~ may have received from ~~her him~~ or the value thereof, and may compel him to disclose what property he has received and how the same has been disposed of. ~~The court may in like manner provide for the restoration to the husband of any property which he has transferred to his wife.~~

SECTION 17. 247.35 of the statutes is repealed.

SECTION 18. 247.37 (1) (a) and (4) of the statutes are amended to read:

247.37 (1) (a) When a judgment of divorce is granted it shall not be effective so far as it affects the marital status of the parties until the expiration of ~~one year~~ 6 months from the date of the granting of such judgment, except that it shall immediately bar the parties from cohabitation together and except that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment, unless vacated or reversed,

shall be deemed to have entirely severed the marriage relation immediately before such death. The written judgment shall include the substance of the preceding language; and if the court orders alimony or other allowances for ~~the wife~~ a party or the children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under s. 295.03 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the prevailing party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the action has been uncontested, they shall first be submitted to opposing counsel, if any, and if the family court commissioner has appeared in the action, such original papers, together with copies thereof, shall also be sent to him for examination before submission of the same to the court.

(4) Such judgment, or any provision of the same, may be reviewed by an appeal taken within ~~one year~~ 6 months from the date when such judgment was granted. At the expiration of such ~~year~~ period, such judgment shall become final and conclusive without further proceedings, unless an appeal is pending, or the court, for sufficient cause shown, upon its own motion, or that of the family court commissioner, or upon the application of a party to the action, shall otherwise order before the expiration of said period. If any appeal is pending at the expiration of said ~~year~~ period, such judgment shall not become final and conclusive until said appeal has been finally determined.

SECTION 19. 248.01 of the statutes is amended to read:

**248.01 (title) ACTIONS FOR BREACH OF PROMISE, ALIENATION OF AFFECTION AND CRIMINAL CONVERSATION ABOLISHED.** All causes of action for breach of contract to marry, alienation of affections and criminal conversation are hereby abolished, except that this section shall not apply to contracts now existing or to causes of action which heretofore accrued.

SECTION 20. 248.04 of the statutes is renumbered 248.04 (1).

SECTION 21. 248.04 (2) of the statutes is created to read:

248.04 (2) Actions for alienation of affection and criminal conversation accruing upon or prior to the effective date of this subsection (1971) shall be commenced, and the process, pleading or paper setting forth the same filed, within 6 months after January 1, 1972, and, if not so commenced and filed, shall thereafter be barred.

SECTION 22. **APPLICABILITY.** The provisions of this act affecting chapters 245 and 247 of the statutes shall apply in all actions wherein judgment is rendered or granted after the effective date of this act.