

TITLE XXIII.
Domestic Relations.

CHAPTER 245.

MARRIAGE

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245.01 A civil contract. Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential.

245.02 Who may contract. Every male person who shall have attained the full age of eighteen years and every female who shall have attained the full age of fifteen years shall be capable in law of contracting marriage if otherwise competent.

245.03 Who shall not marry; divorced persons. (1) No marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer of kin than second cousins, excepting that marriage may be contracted between first cousins where the female has attained the age of fifty years. Relationship under this section shall be computed by the rule of the civil law, whether the parties to the marriage are of the half or of the whole blood. No insane, imbecile, feeble-minded or epileptic person or idiot shall be capable of contracting marriage.

(2) It shall not be lawful for any person, who is a party to an action for divorce from the bonds of matrimony, in any court in this state, to marry again until one year after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of one year from the date of the granting of judgment of divorce shall be null and void. [1935 c. 379]

Cross Reference: Section 69.43 provides for filing a certificate of marriage when parties living in this state go out of it to be married and return to it to reside.

Note: Under this section a marriage with an epileptic is void. In view of this statute and 245.04 (1), and an Illinois statute declaring a marriage of nonresidents in Illinois void if the marriage would be void if contracted in the state of their residence, a marriage entered into in Illinois by Wisconsin residents, the woman being an epileptic, was void. Consequently, the other party was not entitled to the administration of the woman's estate on her death, since he was not the husband or otherwise the heir of the woman. Estate of Canon, 221 W 322, 266 NW 918.

Though generally a marriage valid where celebrated is valid everywhere, that is not true where marriage is declared by statute to have no validity. To enable Anna Soucek, an Austrian, to enter the U. S. on a non-quota visa, her sister, Mary Waltz, living

in Wisconsin with her husband, Albert Waltz, a naturalized American citizen, obtained a decree of divorce from him on February 25, 1930, in circuit court in Milwaukee County. Anna came to Canada and Albert went there and on July 26, 1930 he went through a marriage ceremony with her. He returned to Wisconsin, never having lived with Anna. On December 29, 1930 Anna entered the U. S. on a nonquota visa as the wife of an American citizen. Waltz continued to live with his first wife Mary. On July 28, 1931 he obtained a divorce decree from Anna, and on August 4, 1931 he remarried Mary.

The marriage of Albert and Anna was void under the Wisconsin law as respects Anna's rights to enter the U. S. on a non-quota visa. The granting of the divorce to Albert from Anna in Wisconsin was not res judicata on the subject of the validity of their marriage in Canada within a year from the first divorce, where the validity of the marriage was not determined in the

second (Albert's) divorce suit. Ex parte Soucek, 101 F (2d) 405.

A marriage with a soldier, void because entered into within one year after the wife's divorce, was not validated by the subsequent decree annulling wife's marriage with her former husband, so as to entitle her to war risk insurance. Cummings v. United States, 34 F (2d) 284.

245.04 Marriage abroad to circumvent the laws. (1) If any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state shall go into another state or country and there contract a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state with the same effect as though such prohibited marriage had been entered into in this state.

(2) No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction, if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.

Note: Marriage of a Wisconsin resident in Indiana within year of entry in 1920 of Illinois divorce judgment held valid, notwithstanding statutory limitations. Fitzgerald v. Fitzgerald, 210 W 543, 550, 246 NW 680.

Vacating decree of divorce by proper court within one year from entry thereof returns husband and wife to full marital status. Any marriage entered into by either party in another state within said period of one year is void. 26 Atty. Gen. 161.

See note to 245.03, citing Ex Parte Soucek, 101 F (2d) 405.

245.05 Who may solemnize. Marriages may be solemnized by any justice of the peace, police justice, municipal judge or court commissioner in the county in which he is elected or appointed, and throughout the state by any judge of a court of record, and by any ordained minister or priest in regular communion with any religious society and who continues to be such minister or priest.

Note: One who assumes position of minister of Gospel but who has not been ordained or appointed by denominational or nondenominational group is not authorized to solemnize marriages. 27 Atty. Gen. 460.

245.06 Licentiate may perform ceremony. In addition to the persons named in section 245.05, it shall be lawful for any licentiate of a denominational body or an appointee of any bishop, while serving as the regular minister or priest of any church of the denomination to which he belongs, to solemnize marriages; provided, he be not restrained from so doing by the discipline of his denomination.

245.07 Credentials to be filed with clerk of circuit court. Before any person named in section 245.06 shall be authorized to solemnize a marriage, he shall file credentials of license or appointment with the clerk of circuit court of the county in which is located the church under his ministry, who shall record the same and give a certificate thereof; and the place where such credentials are recorded shall be indorsed upon each certificate of marriage granted by any such licentiate or appointee and recorded with the same.

245.08 Proof of authority to solemnize to be filed. Ministers or priests, before they shall be authorized to solemnize a marriage, shall file a copy of their credentials of ordination or other proof of such official character with the clerk of the circuit court of some county in this state, who shall record the same and give a certificate thereof; and the place where such credentials are recorded shall be indorsed upon each certificate of marriage granted by any minister or priest and recorded with the same.

245.09 [Renumbered section 372.11 by 1933 c. 436 s. 12]

245.10 Antenuptial physical examination and Wassermann test. (1) All male persons making application for license to marry shall at any time within fifteen days prior to such application, be examined as to the existence or nonexistence in such person of any venereal disease, and it shall be unlawful for the county clerk of any county to issue a license to marry to any person who fails to present and file with such county clerk a certificate setting forth that such person is free from venereal diseases so nearly as can be determined by a thorough examination and by the application of the recognized clinical and laboratory tests of scientific search, when in the discretion of the examining physician such clinical and laboratory tests are necessary. When a microscopical examination for gonococci is required such examination shall upon the request of any physician in the state be made by the state laboratory of hygiene free of charge. Such certificate shall be made by a physician, licensed to practice in this state or in the state in which such male person resides, shall be filed with the application for license to marry, and shall read as follows, to wit:

I, (name of physician), being a physician, legally licensed to practice in the state of, my credentials being filed in the office of, in the city of, county of, state of, do certify that I have this day of, 19.., made a thorough examination of (name of person), and believe him to be free from all venereal diseases.

. (Signature of physician).

(2) Such examiners shall be physicians duly licensed to practice in this state, or in the state in which such male person resides. The fee for such examination, to be paid by the applicant before examination before the certificate shall be granted, shall not exceed two dollars. The county or asylum physician of any county, shall, upon request, make the necessary examination and issue such certificate, if the same can be properly issued, without charge to applicant, if said applicant be indigent.

(3) Any county clerk who shall unlawfully issue a license to marry to any person who fails to present and file any certificate provided by subsections (1) and (5) of this section, or any party or parties having knowledge of any matter relating or pertaining to the examination of any applicant for license to marry or Wassermann test taken by any party to a proposed marriage, who shall disclose the same, or any portion thereof, except as may be required by law, shall upon proof thereof be punished by a fine of not more than one hundred dollars or by imprisonment not more than six months.

(4) Any physician who shall knowingly and wilfully make any false statement in any certificate provided for in subsections (1) and (5) of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment not more than six months.

(5) In addition to the requirements of subsection (1) both parties to a proposed marriage shall, within fifteen days prior to making application for a license to marry, submit to and be given the Wassermann or other standard blood test for syphilis, either in this state or in the state where such person to be examined resides. In this state such blood shall be examined in a laboratory approved by the state board of health as competent to make such examination and at the request of any physician in this state it shall be made at the Wisconsin psychiatric institute free of charge. When such test is made without the state, the original certificate from the laboratory making such test shall accompany the physician's certificate with a statement from the health officer of such state or his qualified representative, stating that he believes such laboratory competent to make such test. If the test for any such party shall result in a negative finding he shall be given a certificate in the following form:

I, (name of physician), being a physician, legally licensed to practice medicine and surgery in the state of, my credentials being filed in the office of in the city of, county of, state of, do certify that (name of person) was given the Wassermann or other standard blood test for syphilis at (name of laboratory) from blood taken by on the day of, 19.. and that the result of such test was negative.

. (Signature of physician making laboratory test).

Such certificate of negative finding as to each of the parties to a proposed marriage shall be filed with the county clerk at the time application for a license to marry is made, and it shall be unlawful for any county clerk to issue a license to marry if such certificates of negative finding as to both parties to the proposed marriage are not so filed, except as provided in subsection (4) of section 245.11.

(6) (a) When the examination as to existence or nonexistence of a venereal disease is of a person serving in the military forces of the United States, and the certificate prescribed in subsection (1) shall so show, such examination and certificate may be made by any physician serving as such in the military forces of the United States. When so made the certificate shall state at the foot thereof the military rank and station of the physician.

(b) When a person submitting to a Wassermann test under subsection (5) is in the military service of the United States, such test may be made in any United States military laboratory and the certificate of negative finding prescribed by subsection (5) may be subscribed by any physician serving as such in the military forces of the United States. When subscribed by such physician the certificate shall show that the person given the test is in the military service of the United States and the military rank and station of the subscribing physician. A certificate made pursuant to this subsection need not in any case be accompanied by a statement of a state health officer as to competency of the laboratory making the test.

(c) The provisions of this subsection shall supersede any provision in subsections (1) to (5) in conflict therewith. [1937 c. 311; 1939 c. 252; 1945 c. 114]

Note: 245.10 and 245.11 must be construed together. State health officer is authorized to issue certificate under 245.11 (4) only if the individual has complied with 245.10 (5) by submitting to blood test for syphilis within fifteen days before applying for marriage license, which test resulted positively. 29 Atty. Gen. 354.

245.11 Marriage of person having had venereal disease. (1) No person who has ever been afflicted with gonorrhoea or syphilis shall be granted a marriage license in this state until such person shall furnish to the county clerk issuing the license a certificate from the director of the state laboratory of hygiene, or from the state board of health branch

laboratory, or from one of the state co-operative laboratories controlled by the state board of health, setting forth the fact that the necessary microscopical examination has been made and that the individual named in the certificate is not in the infective or communicable state of gonorrhoea, or a certificate from the director of the psychiatric institute at Mendota setting forth the fact that the necessary blood test for the Wassermann reaction has been made and that the person named in the certificate is not in the infective or communicable stage of syphilis. In all cases where the individual has been afflicted with both gonorrhoea and syphilis, both such certificates shall be furnished before such license is granted.

(2) Such a certificate or certificates shall be furnished to any citizen of this state by the director of any of the laboratories mentioned, without charge.

(3) The necessary smears for gonorrhoea examinations and the blood for determining the presence of syphilis shall be collected and forwarded to the laboratory by physicians designated by the state board of health or the state health officer, for which a fee not to exceed two dollars may be charged.

(4) In the case of an individual whose laboratory test for syphilis results in a positive finding, when in the opinion of his attending physician the individual no longer has syphilis in an infective or communicable stage, the state board of health may review the findings and clinical evidence through a deputy state health officer and thereafter the state health officer is empowered to grant a certificate to the county clerk that the individual is not in the infective or communicable stage of syphilis if such be his best judgment.

(5) Any person who shall obtain any such license contrary to the provisions of this section shall, upon conviction thereof, be punished by a fine of not less than one hundred dollars or by imprisonment in the county jail for not less than three months, or by both such fine and imprisonment. [1939 c. 252]

245.12 Marriage contract; how made. Marriage may be validly contracted in this state only after a license has been issued therefor, in the manner following:

(1) Before any person authorized by the laws of this state to celebrate marriages (and hereinafter designated as the officiating person), by declaring in the presence of at least two competent witnesses other than such officiating person, that they take each other as husband and wife; or,

(2) In accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties may belong, by declaring in the presence of at least two competent witnesses, that they take each other as husband and wife.

Note: "Spiritual Assembly of the Bahais" tracted according to its customs, rules and may not file credentials under provisions of regulations, under provisions of 245.12. 32 245.07 and 245.08, but marriage may be con- Atty. Gen. 105.

245.13 Marriage license; by whom issued. No persons shall be joined in marriage within this state until a license shall have been obtained for that purpose from the county clerk of the county in which one of the parties resides; provided that if both parties be nonresidents of the state, such license may be obtained from the county clerk of the county where the marriage ceremony is to be performed; and provided further that if one of such persons be a nonresident that his part of the application may be completed before the county clerk in the state in which he resided. [1941 c. 162]

245.14 Application for license. Application for a marriage license shall be made at least 5 days before a license shall be issued; provided, that, upon application of either of the parties to a proposed marriage, any judge of a court of record, or a judge of municipal court, may, upon satisfactory evidence being presented to him that either of the parties to the proposed marriage is dangerously ill, such illness being likely to result in death, or that the female is pregnant with child, or upon the request of the parent or parents or guardian, if any, of the female, or if in the opinion of the judge of said court that the circumstances warrant special dispensation, by order authorize the license to be issued at any time before the expiration of said 5 days. The person applying for such order or dispensation shall have been a resident of the state for at least 30 days prior to making such application. Such order shall be delivered to the person issuing the license and by him retained as prima facie evidence of his authority to so issue the marriage license. The judge or court making such order shall not receive any compensation therefor from the county, but may charge the person applying for such order a sum not to exceed \$2, which sum shall be paid into the county treasury for the use of the county. [1933 c. 63; 1941 c. 162]

245.15 Identification of parties; statement of qualifications. No marriage license shall issue unless the application therefor is subscribed by the parties intending to intermarry and is filed with the clerk who issues the license. Each party shall be identified and shall swear to the application before the clerk who is to issue the license or the clerk of the county where the party resides. The application shall contain a statement under

oath that the contemplated marriage will be lawful, and giving the date the marriage is intended to take place, the names of the parties, their relationship, age, nationality, color, residence and occupation, the names of their parents and guardians, any prior marriage of either party and the manner of the dissolution thereof. If there be no legal objection thereto the county clerk shall issue a marriage license. [1937 c. 35, 260]

Note: Under 245.15 the county clerk has power and duty to determine whether facts stated in application for marriage license present any reason why a lawful marriage could not be entered into in the state by parties making such application. Texas statute providing in effect that neither party to divorce granted on ground of cruel and inhuman treatment shall marry any other person within year after divorce is granted has no extraterritorial effect and will not under facts stated prevent one of the parties to a Texas divorce from entering into a lawful marriage in Wisconsin with a third person, before the expiration of a year from the date of the Texas divorce. Facts do not bring case within provisions of 245.03 (2) or 245.04 (1) or (2). 36 Atty. Gen. 71.

245.16 Consent of parent or guardian. No license shall be issued if either of the contracting parties be under the marriageable age of consent as established by law. If either of the contracting parties be between the age of eighteen years and twenty-one years if a male, and between the age of fifteen years and eighteen years if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party or parties, given before the county clerk under oath, or certified under the hand of such parents or guardian as aforesaid, and properly verified by affidavit before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of said county clerk and entered by him on the marriage license docket before issuing said license; provided, that if there be no guardian or parent having the actual care, custody and control of said party or parties, then the judge of the court having probate jurisdiction in the county where the application is pending may, after hearing, upon proper cause shown, make an order allowing the marriage of said party or parties.

Note: It is necessary to have the consent of both parents where a party to a marriage is between the ages of eighteen and twenty-one if a male, and between the ages of fifteen and eighteen if a female, except that the consent of but one parent is necessary where such parent has the actual care, custody and control of said party. 34 Atty. Gen. 76.

245.17 Objections to marriage. (1) Immediately upon entering an application for a license, the county clerk shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, brother, sister or guardian or either of the applicants for a license or the district attorney, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the court having probate jurisdiction in the county in which the license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for a rule upon the parties making such application to show cause why the license should not be refused. Whereupon, said court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court may direct, but not more than fourteen days from and after the date of said rule, which order shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application shall have been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served upon said nonresident or nonresidents by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said nonresident or nonresidents at the address contained in the application.

(2) If, upon hearing, the court shall find that the statements in the application are wilfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the license. If, however, said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the license shall issue. In case any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to wilfulness or negligence, order the license to issue notwithstanding such insufficiency. The costs of the proceedings under this section shall rest in the discretion of the court. [1937 c. 184]

245.18 Penalty for false statement. Any person who shall, in any affidavit or statement required or provided for by sections 245.15, 245.16 or 245.17, wilfully and falsely swear, or who shall procure another to swear falsely in regard to any material fact relating to the competency of either or both of the parties applying for a marriage license, or as to the ages of such parties, if minors, or who shall falsely pretend to be the parent or guardian having authority to give consent to the marriage of such minor, shall be guilty

of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

245.19 Penalty for unlawful issue of license. Any county clerk who shall knowingly issue a marriage license contrary to, or in violation of the provisions of sections 245.12 to 245.38, shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

245.20 Records and blanks. The state registrar of vital statistics shall prescribe model forms for blank applications, statement, consent of parents, affidavits, licenses, and marriage certificates and other such forms as shall be necessary to comply with the provisions of this chapter. The county clerk shall keep in his office among his records, a suitable book to be called the marriage license docket and enter therein a complete record of the applications for, and the issuing of all marriage licenses, and of all other matters which he is required by this chapter to ascertain relative to the rights of any person to obtain a license. Said marriage license docket shall be open for public inspection or examination at all times during office hours. [1943 c. 393]

245.21 Contents of license. The license shall authorize the marriage ceremony to be performed in any county of this state, excepting that where both parties are nonresidents of the state, the ceremony shall be performed only in the county in which the license is issued. The license shall be directed "to any person authorized by the law of this state to solemnize marriage," and shall authorize him to solemnize marriage between the parties therein named, at any time not more than thirty days from and after the date thereof. If the marriage is to be solemnized by the parties without the presence of an officiating person, as provided by subsection (2) of section 245.12, the license shall be directed to the parties to the marriage. If either of the parties be not of the age of legal majority, then his or her age shall be stated; and the fact of the consent of his or her parents or guardian shall likewise be stated; and if either of said parties shall have been theretofore married, then the number of times he or she shall have been previously married, and the manner in which the prior marriage or marriages was or were dissolved, shall be stated. The officiating person shall satisfy himself that the parties presenting themselves to be married by him are the parties named in the license; and if he knows of any legal impediment to such marriage, he shall refuse to perform the ceremony. The issue of a license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the license shall contain a statement to that effect.

245.22 Form of license. Said license shall be in form substantially as follows:

STATE OF WISCONSIN, } ss.
County of }

No.

To any person authorized by the laws of this state to solemnize marriage:

You are hereby authorized at any time not more than thirty days from and after the date hereof, within the state of Wisconsin (not knowing any legal impediment thereto), to join together in marriage in accordance with the laws of this state, A.... B...., aged, and never heretofore married (or married on the day of, A. D., to E.... F...., said E.... F.... having died on the day of, A. D.; or, said A.... B...., having been divorced from said E.... F.... by the court of the of, state of, on the day of, A. D.), and C.... D...., aged, and never heretofore married (or married on the day of, A. D., to G.... H...., said G.... H.... having died on the day of, A. D.; or said C.... D...., having been divorced from said G.... H.... by the court of of the of, state of, on the day of, A. D.), the consent of, the of the said A.... B...., and of, the of the said C.... D...., having been duly given. The issue of this license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal.

Given under my hand and seal at, state of Wisconsin, this day of, Anno Domini, one thousand nine hundred and

(Seal)

.....
County Clerk.

245.23 Form when solemnized by parties. If the marriage is to be solemnized by the parties without an officiating person, as provided by subsection (2) of section 245.12, the license shall be in form substantially as follows:

STATE OF WISCONSIN, } ss.
County of }

To A.... B...., aged, and C.... D...., aged:

This is to certify that, legal evidence having been furnished to me as required by law, and the consent of the of said A B, and of the of the said C D having been duly given, I am satisfied there is no legal impediment to your joining yourselves in marriage in accordance with the customs, rules and regulations of any religious society, denomination or sect to which you, or either of you, may belong, at any time not more than thirty days from and after the date hereof, within the state of Wisconsin.

The issue of this license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between you illegal.

Given under the hand and seal of the county clerk of county, at, state of Wisconsin, this day of, Anno Domini, one thousand nine hundred and

(Seal)

Marriage License Clerk.

245.24 Marriage certificate; form. (1) The license shall have appended to it three certificates, numbered to correspond with the license (one marked "original," one marked "duplicate," and one marked "triplicate"), which shall be in form substantially as follows:

MARRIAGE CERTIFICATE.

I,, hereby certify that on the day of, Anno Domini, one thousand nine hundred and, at in the of, state of Wisconsin, A B of, state of and C D, of, state of, were by me united in marriage as authorized by a marriage license issued for that purpose by the county clerk of county and state of Wisconsin, numbered, and dated the day of, A. D. 19

Signed

(Official designation)

We, the undersigned, were present at the marriage of A B and C D, as set forth in the foregoing certificate, at their request, and heard their declarations that they took each other for husband and wife.

E F

G H

(2) But, if, as provided by section 245.23, the license has been issued to the parties themselves, then the certificate (in triplicate) shall be in form substantially as follows:

MARRIAGE CERTIFICATE.

We hereby certify that on the day of, Anno Domini, one thousand nine hundred and, we united ourselves in marriage in accordance with the customs, rules and regulations of the at, in the of and state of Wisconsin, having first obtained from the county clerk of the county of, state of Wisconsin, a marriage license numbered and dated the day of, A. D. 19, certifying that he was satisfied there was no legal impediment to our so doing.

A B

C D

We, the undersigned, were present at the marriage of A B and C D, as set forth in the foregoing certificate, at their request, and heard their declarations that they took each other as husband and wife.

E F

G H

(3) The blank form for the certificate in each case shall also provide space for the entry of the following items: Information concerning which it shall be the duty of the county clerk to acquire and enter in its proper place on the certificate at the time when the license is issued, the full name, age, color, place of residence, place of birth, occupation, and, if known, the father's name, and mother's name of each of the parties married; the number of times either of the parties may have been previously married and condition of each, whether single, widowed, or divorced; the bride's maiden name, in case she is a widow; together with such other statistical items as may, from time to time, be prescribed by the registrar of vital statistics. The original certificate in each case shall contain the following words. "N. B. This original certificate, legibly and completely filled out with unfading ink, must be returned to the local registrar of vital statistics within three days from the date of marriage. Maximum penalty for noncompliance, \$200." [1943 c. 503 s. 66; 1947 c. 143]

245.25 Delivery and filing of certificates. (1) The marriage certificates marked "duplicate" and "triplicate," duly signed, shall be given by the officiating person to the persons married by him; and the certificate marked "original," legibly and completely filled out with unfading ink, shall be returned by such officiating person, or, in the case of a marriage ceremony performed without an officiating person, then by the parties to the marriage contract, or either of them, to the register of deeds of the county in which said marriage was performed, or if performed in a city, then to the city health officer within 3 days after the date of said marriage. The marriage license shall be retained by the person who solemnizes the marriage, or in case of a marriage performed without an

officiating person, by the parties to the marriage contract, or either of them, to be prima facie evidence of authority to perform the marriage ceremony.

(2) When a marriage is entered into outside of this state and either of the parties resides in Wisconsin, they may file their certificate of marriage with the register of deeds or city health officer, and thereafter that certificate shall be filed, forwarded and recorded as though the marriage had occurred in this state. [1943 c. 503 s. 66, 67; 1947 c. 143]

Note: An out-of-state marriage certificate may be filed only with the register of deeds or city health officer of the county or city where one of the parties resided at the time of the marriage. 34 Atty. Gen. 336.

Marriage certificate must be accepted for filing even though such certificate and the

marriage license are irregular. 35 Atty. Gen. 299.

Certificate of marriage of Wisconsin resident married outside of the United States is eligible for filing. 35 Atty. Gen. 313.

245.26 Penalty for unlawful solemnization of marriage. If any officiating person shall solemnize a marriage unless the contracting parties shall first have obtained a proper license as hereinbefore provided; or unless the parties to such marriage declare that they take each other as husband and wife; or without the presence of two competent witnesses; or, in the case of parties within the age limits prescribed in section 245.16, unless the consent, as hereinbefore provided, of the parent or guardian of such parties be stated in such license; or shall solemnize a marriage knowing of any legal impediment thereto; or shall solemnize a marriage more than thirty days from and after the date of the license; or shall falsely certify to the date of a marriage solemnized by him; or shall solemnize a marriage in a county other than the county prescribed in section 245.21, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

245.27 Penalty for unlawful solemnization by parties. Where a marriage is solemnized without the presence of an officiating person, then, and in that case, if the parties to such marriage shall solemnize the same more than thirty days from and after the date of the license; or shall falsely certify to the date of such marriage; or shall solemnize the same in a county other than the county prescribed in section 245.21, they or either of them shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

245.28 Penalty for false solemnization of marriage. If any person, not being duly authorized by the laws of this state, shall wilfully or knowingly undertake to solemnize a marriage in this state, or if any person shall participate in or in any way aid or abet any false or fictitious marriage, he shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

245.29 Penalty for failure to file certificate. Every officiating person, or persons marrying without the presence of an officiating person, as provided by section 245.12 (2), who shall neglect or refuse to transmit the original certificate of any marriage solemnized by him or them, to the register of deeds of the county or the city health officer as provided in section 69.09 three days after the date of such marriage, shall be fined the sum of not to exceed \$200. [1943 c. 503 s. 68]

245.30 Penalty for violations relating to records. Any county clerk who shall refuse or neglect to enter upon the marriage license docket a complete record of each application, and of each marriage license issued from his office, immediately after the same shall have been made or issued, as the case may be, or shall fail to keep such marriage license docket open for inspection or examination by the public during office hours, or shall prohibit or prevent any person from making a copy or abstract of the entries in the marriage license docket, shall for each such illegal act, omission or denial, be fined the sum of not to exceed fifty dollars.

245.31 Action of debt to recover penalties. Any fine or forfeiture accruing under the provisions of sections 245.12 to 245.38 may be recovered by an action of debt, in the same manner as other debts are recovered by law, with the usual costs, in any court of record in any county in this state in which the defendant or defendants may be found.

245.32 Unlawful marriages void; validation. All marriages hereafter contracted in violation of any of the requirements of section 245.12 shall be null and void (except as provided in sections 245.33 and 245.34); provided, that the parties to any such void marriage may, at any time, validate such marriage by complying with the requirements of sections 245.12 to 245.38.

245.33 Immaterial irregularities as to authority of person officiating. No marriage hereafter contracted shall be void by reason of want of authority or jurisdiction in the offi-

ciating person solemnizing such marriage, if the marriage is in other respects lawful, and is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

245.34 Immaterial irregularities otherwise. No marriage hereafter contracted shall be void either by reason of the license having been issued without the consent of the parents or guardian as provided in section 245.16, or by a county clerk not having jurisdiction to issue the same, or by reason of any omission, informality or irregularity of form in the application for the license or in the license itself, or by reason of the incompetency of the witnesses to such marriage, or because the marriage may have been solemnized in a county other than the county prescribed in section 245.21, or more than thirty days after the date of the license, if the marriage is in other respects lawful and is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Where a marriage has been celebrated in one of the forms provided for in section 245.12, and the parties thereto have immediately thereafter assumed the habit and repute of husband and wife, and having continued the same uninterruptedly thereafter for the period of one year, or until the death of either of them, it shall be deemed that a license has been issued as required by sections 245.12 to 245.38.

245.35 Removal of impediments to subsequent marriage. If a person during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract in accordance with the provisions of section 245.12, and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, or that the former marriage had been annulled, or dissolved by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to such former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married from and after the removal of such impediment, and the issue of such subsequent marriage shall be considered as the legitimate issue of both parents.

Note: Where a marriage of Wisconsin residents in Illinois was void, under 245.03 (2) and 245.04 (1), because contracted within one year of the woman's divorce in Wisconsin, but the testimony of the man himself, in a divorce action wherein he alternately prayed for an annulment, warranted the conclusion that such marriage was entered into by the man in good faith and in the full belief that the woman's former marriage had been dissolved by a divorce,

and the impediment to the marriage of the parties was thereafter removed by the woman's divorce becoming absolute, and the parties continued to live together as husband and wife in good faith on the part of the man, the parties must be held, under 245.35, to have been legally married from and after the removal of the impediment. *Hoffman v. Hoffman*, 242 W 83, 7 NW (2d) 428.

245.36 Legitimation of children. In any and every case where the father and mother of an illegitimate child or children shall lawfully intermarry, such child or children shall thereby become legitimated and enjoy all the rights and privileges of legitimacy as if they had been born during the wedlock of their parents; and this section shall be taken to apply to all cases prior to its date, as well as those subsequent thereto; provided, that no estate already vested shall be divested by section 237.06 and sections 245.12 to 245.38. The issue of all marriages declared null in law shall, nevertheless, be legitimate.

245.37 Interpretation of marriage law. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

245.38 Fee to county clerk. Each county clerk shall receive as a fee for each license granted the sum of one dollar, which shall become a part of the funds of the county, plus a notary fee which may be retained by county clerks operating on a fee or part fee basis. [1939 c. 73]