

CHAPTER 246.

PROPERTY RIGHTS OF MARRIED WOMEN.

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246.01 Realty of. The real estate of every description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were unmarried.

246.02 Estate of, not subject to husband. The real and personal property of any female who may hereafter marry and which she shall own at the time of marriage and the rents, issues and profits thereof shall not be subject to the disposal of her husband nor be liable for his debts and shall continue her sole and separate property.

246.03 May receive, hold and convey property. Any married female may receive by inheritance or by gift, grant, devise or bequest from any person, hold to her sole and separate use, convey and devise real and personal property and any interest or estate therein of any description, including all held in joint tenancy with her husband, and the rents, issues and profits thereof in the same manner and with like effect as if she were unmarried, and the same shall not be subject to the disposal of her husband nor be liable for his debts. Any conveyance, transfer or lien executed by either husband or wife to or in favor of the other shall be valid to the same extent as between other persons.

246.05 Individual earnings. The individual earnings of every married woman, except those accruing from labor performed for her husband, or in his employ or payable by him, shall be her separate property and shall not be subject to her husband's control or liable for his debts.

In an action by a husband against a landlord to recover for alleged overcharges of rent in excess of the amount lawfully chargeable under federal rent control, the evidence established that the relationship of landlord and tenant was solely between the defendant and the plaintiff's wife, and that all of the payments of rent were made by the plaintiff's wife out of her individual earnings from employment with the defendant, which earnings were her own separate property and not subject to her husband's control or liable for his debts; hence the husband was not entitled to recover from the landlord. *Quarles v. Nauert*, 259 W 562, 49 NW (2d) 725.

246.06 May transact business in her own name and for her own benefit. When the husband of any married woman shall have deserted her or shall from drunkenness, profligacy or any cause neglect or refuse to provide for her support or for the support and education of her children she shall have the right to transact business in her own name and to collect and receive the profits of such business, her own earnings and the earnings of her minor children in her charge or under her control, and apply the same for her own support and the support and education of such children. Such business and earnings shall not be subject to her husband's control or interference or liable for his debts.

246.07 May sue in her own name. Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business and to recover the earnings secured to her by sections 246.05 and 246.06, and shall be liable to be sued in respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property in all respects as if she were unmarried. And any married woman may bring and maintain an action in her own name for any injury to her person or character the same as if she were sole. She may also bring and maintain an action in her own name, and for her own benefit, for the alienation and the loss of the affection and society of her husband. Any judgment recovered in any such action shall be the separate property and estate of such married woman. Nothing herein contained shall affect the right of the husband to maintain a separate action for any such injuries as are now provided by law.

In the absence of judicial interpretation by the New Mexico courts of a New Mexico statute providing that a married woman may sue and be sued as if she were unmarried, the Wisconsin supreme court will presume that it means the same as this section: that a wife may maintain an action against her husband for injuries to her person prox-

mately caused by his negligence. *Nelson v. American Employers' Ins. Co.* 253 W 252, 45 NW (2d) 681.

Arizona, a community-property state, recognizes the right of the wife to be protected from injury by the husband and to sue him when he invades that right, and that when an action concerns her separate property or is between herself and her husband, she may sue or be sued alone, whenever they are adversary parties, so that, under the laws of Arizona, a wife domiciled with her husband in Wisconsin, and injured in Arizona because of the husband's negligent operation of an automobile there, has a cause of action and may sue and recover from the husband for her injuries. *Jaeger v. Jaeger*, 262 W 14, 53 NW (2d) 740.

The creation of new rights in the field of alienation of affections is a question for the consideration and determination of the legislature, a function which the court should not usurp. See also note to art. I, sec. 9, citing this case. *Scholberg v. Itnyre*, 264 W 211, 58 NW (2d) 698.

The provisions of 246.07, recognizing separate property rights of married women and enumerating actions which a married woman may maintain, are not enlarged by 6.015, at least not to the extent of enlarging the actions which a married woman may maintain so as to include an action by a wife for the loss of consortium of her husband caused by the negligent act of a third person. *Nickel v. Hardware Mut. Casualty Co.* 269 W 647, 70 NW (2d) 205.

The law governing the creation and extent of tort liability is that of the state where the tort was committed. Under Missouri law, a wife cannot maintain an action for damages for personal injuries against her husband; and such law governs as to a wife domiciled with her husband in Wisconsin but injured in Missouri because of the husband's alleged negligent operation of an automobile there; so that the wife cannot maintain an action against the husband in Wisconsin for the injuries thus sustained. *Hansen v. Hansen*, 274 W 262, 80 NW (2d) 230.

246.075 Liability of wife for injuries to husband. A husband shall have and may maintain an action against his wife for the recovery of damages for injuries sustained to his person caused by her wrongful act, neglect or default.

246.08 Husband not liable for antenuptial debts. No marriage contracted since the third day of April, 1872, or which shall hereafter be contracted, shall render the husband liable for the payment of the wife's antenuptial debts; but she shall be liable to all remedies for the recovery of such debts to be enforced against her and her separate property as if she were unmarried.

246.09 Insurance of husband, son, etc. (1) Any married woman may, in her own name or in the name of a third person as her trustee, with his assent, cause to be insured for her sole use the life of her husband, son or other person for any definite period or for the natural life of such person; and any person, whether her husband or not, effecting any insurance on his own life or on the life of another may cause the same to be made payable or assign the policy to a married woman or to any person in trust for her or her benefit; and every such policy, when expressed to be for the benefit of or assigned or made payable to any married woman or any such trustee, shall be the sole and separate property of such married woman and shall inure to her separate use and benefit and that of her children, and in case of her surviving the period or term of such policy the amount of the insurance and all proceeds and avails therefrom shall be payable to her or her trustee for her own use and benefit, free from the control, disposition or claims of her husband and of the person effecting or assigning such insurance and from the claims of their respective representatives and creditors and from the claims of her creditors, whether or not the right to change the beneficiary was reserved or permitted by the terms of the policy. The amount of such insurance, proceeds and avails free from the control, disposition or claims of her creditors shall be limited to five thousand dollars. Nothing contained in this section shall be deemed to affect or impair the right of the insured or person effecting such insurance to change the beneficiary of a policy in accordance with the terms thereof, where such right has been reserved.

(2) Provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy; but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice, by or in behalf of a creditor, of a claim to recover for transfer made or premiums paid with intent to defraud creditors, with specifications of the amount claimed. The amount of any such insurance may be made payable, in case of the death of such married woman before the period at which it becomes due, to her children or to their guardian for their use, if under age, or to any other person as shall be provided in the policy. In such case the receipt of such married woman or of such children, or of their guardian if minors, shall discharge the insurance corporation from all further liability therefor. The provisions of this section shall apply to all insurance on lives effected before November 1, 1878.

A wife has a vested interest in a life insurance policy of her husband naming her as beneficiary, subject to being divested if the right to change the beneficiary is reserved. After a divorce in which she received certain property in lieu of alimony and as a division of property and in satis-

faction of all claim to his property, but which did not affect her property, she could still claim the proceeds of the insurance if the designation of beneficiary was not changed at the time of death. *Hott v. Warner*, 268 W 264, 67 NW (2d) 370.

246.10 May be assignee or receiver, when. Any married woman who shall be admitted as an attorney of any court of record may be appointed and act as assignee or receiver, except of the estate of her husband or of property in which he is interested, and shall be subject to the same liabilities upon her bond and otherwise and exercise the same powers as other assignees or receivers.

246.11 Married women may assign insurance policy. Any married woman may, with the written consent of the person effecting the insurance, assign, incur or dispose of any right, title or interest she may have in, to or under any policy of life insurance, whether on the life of herself or of her husband, or of any other person, and whether such policy be expressed to be for the benefit of or assigned or made payable to such married woman, or any trustee for her, in the same manner and with like effect as if she were unmarried. The provisions of this section shall apply to all insurance on lives, whether effected before or after March 18, 1903, but shall not apply to assignments thereof made before said date.

History: 1953 c. 61.