

# State of Wisconsin



2021 Assembly Bill 270

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## 2021 WISCONSIN ACT 84

AN ACT *to amend* 765.05, 765.08, 765.09 (3) (a), 765.09 (3) (b), 765.12 (2), 765.13, 765.16 (1m) (intro.), 765.19, 765.23, 765.30 (3) (a) and (b) and 765.30 (4) (a); and *to create* 765.09 (3) (c) of the statutes; **relating to:** marriage solemnization requirements and marriage document requirements, issuance, and validity.

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

**SECTION 1.** 765.05 of the statutes is amended to read:

**765.05 Marriage license; by whom issued.** No person may be joined in marriage within this state until a marriage license has been obtained for that purpose from the county clerk of the any county in which one of the parties has resided for at least 30 days immediately prior to making application therefor. ~~If both parties are nonresidents of the state, the marriage license may be obtained from the county clerk of the county where the marriage ceremony is to be performed this state. If one of the persons is a nonresident of the county where the marriage license is to issue state, the nonresident's part of the application may be completed and sworn to or affirmed before the person authorized to accept marriage license applications in the county and state in which the nonresident resides.~~

**SECTION 2.** 765.08 of the statutes is amended to read:

**765.08 Application for marriage license. (1)** Except as provided in sub. (2), no marriage license may be issued within ~~5~~ 3 days of application for the marriage license.

(2) The county clerk may, at his or her discretion, issue a marriage license within less than ~~5~~ 3 days after application if the applicant pays an additional fee of not

more than \$25 to cover any increased processing cost incurred by the county. The county clerk shall pay this fee into the county treasury.

**SECTION 3.** 765.09 (3) (a) of the statutes is amended to read:

765.09 (3) (a) Each applicant for a marriage license shall present satisfactory, documentary proof of identification and residence and shall swear to or affirm the application before the clerk who is to issue the marriage license or the person authorized to accept marriage license applications in the county and state where the party resides. The application shall contain the social security number of each party who has a social security number, as well as any other informational items that the department of health services directs. The clerk shall accept as proof of identification documentation as set forth under par. (b). The portion of the marriage application form that is collected for statistical purposes only shall indicate that the address of the marriage license applicant may be provided by a county clerk to a law enforcement officer under the conditions specified under s. 765.20 (2).

**SECTION 4.** 765.09 (3) (b) of the statutes is amended to read:

765.09 (3) (b) Each applicant for a marriage license shall exhibit to the clerk a certified copy of a birth record, and each applicant shall submit a copy of any judgment

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

or death record affecting the applicant's marital status. If any applicable birth record, death record, or judgment is unobtainable, other satisfactory documentary proof of the requisite facts therein may be presented in lieu of the birth ~~certificate record~~, death ~~certificate record~~, or judgment. If an applicant presents a passport, license or identification card that meets the requirements of P.L. 109-13, permanent resident card, or naturalization paper in lieu of the birth record, the clerk shall consider such documentation satisfactory documentary proof for purposes of this paragraph. Whenever the clerk is not satisfied with the documentary proof presented, he or she shall notify the applicant that the applicant has the right to request review of the submitted material by a judge of a court of record and shall, upon request by an applicant, submit the presented proof to a judge of a court of record in the county of application for an opinion as to its sufficiency.

**SECTION 5.** 765.09 (3) (c) of the statutes is created to read:

765.09 (3) (c) For purposes of par. (b), the clerk shall have discretion to determine whether a document is unobtainable.

**SECTION 6.** 765.12 (2) of the statutes is amended to read:

765.12 (2) The marriage license shall authorize the marriage ceremony to be performed in any county of this state within 30 60 days of issuance, ~~excepting that where both parties are nonresidents of the state, the ceremony shall be performed only in the county in which the marriage license is issued.~~ The officiating person shall determine that the parties presenting themselves to be married are the parties named in the marriage license. If aware of any legal impediment to such marriage, the person shall refuse to perform the ceremony. The issuance of a marriage license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the marriage license shall contain a statement to that effect.

**SECTION 7.** 765.13 of the statutes is amended to read:

**765.13 Form of marriage document.** The marriage document shall consist of the marriage license and the marriage license worksheet. The marriage license shall contain a notification of the time limits of the authorization to marry, a notation that the issue of the marriage license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the signature of the county clerk, who shall acquire the information for the marriage document and enter it in its proper place when the marriage license is issued. The marriage license worksheet shall contain the social security number of each party who has a social security number, as well as any other information items that the department of health services determines are necessary and shall agree in the main with the standard form recommended

by the federal agency responsible for national vital statistics. The county clerk shall transmit the marriage license worksheet to the state registrar within 5 days after the date of issuance of the marriage license.

**SECTION 8.** 765.16 (1m) (intro.) of the statutes is amended to read:

765.16 (1m) (intro.) Marriage may be validly solemnized and contracted in this state only after a marriage license has been issued therefor, and only by the mutual declarations of the 2 parties to be joined in marriage that they take each other as husband and wife, made before an authorized officiating person and in the presence of at least 2 competent adult witnesses other than the officiating person. If one of the parties is serving on active duty in the U.S. armed forces or in forces incorporated in the U.S. armed forces, in a reserve unit of the U.S. armed forces, or in the national guard, the presence of only one competent adult witness other than the officiating person is required. The following are authorized to be officiating persons:

**SECTION 9.** 765.19 of the statutes is amended to read:

**765.19 Delivery and filing of marriage document.**

The marriage document, legibly and completely filled out with unfading black ink, shall be returned by the 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 any county in which the marriage was performed this state within 3 days after the date of the marriage.

**SECTION 10.** 765.23 of the statutes is amended to read:

**765.23 Immaterial irregularities otherwise.** No marriage hereafter contracted shall be void either by reason of the marriage license having been issued by a county clerk not having jurisdiction to issue the same; or by reason of any informality or irregularity of form in the application for the marriage license or in the marriage license itself, or 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 s. 765.12,~~ or more than 30 60 days after the date of the marriage 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 s. 765.16 (1m), 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 marriage license has been issued as required by ss. 765.05 to 765.24 and 767.803.

**SECTION 11.** 765.30 (3) (a) and (b) of the statutes are amended to read:

765.30 (3) (a) *Penalty for unlawful solemnization of marriage.* Any officiating person who solemnizes a marriage unless the contracting parties have first obtained a proper marriage license as heretofore provided; or unless the parties to such marriage declare that they take each other as husband and wife; or without the presence of ~~2~~ competent adult witnesses as required under s. 765.16 (1m); or solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a marriage more than ~~30~~ 60 days after the date of the marriage license; or falsely certifies to the date of a marriage solemnized by the officiating person; ~~or solemnizes a marriage in a county other than the county prescribed in s. 765.12.~~

(b) *Penalty for unlawful solemnization by parties.* Where a marriage is solemnized without the presence of an officiating person if the parties to such marriage solemnize the same without the presence of ~~2~~ competent adult witnesses as required under s. 765.16 (1m) or more than ~~30~~ 60 days after the date of the license; or falsely certify to the date of such marriage; ~~or solemnize the same in a county other than the county prescribed in s. 765.12.~~

**SECTION 12.** 765.30 (4) (a) of the statutes is amended to read:

765.30 (4) (a) *Penalty for failure to file marriage certificate.* Every officiating person, or persons marrying without the presence of an officiating person, as provided by s. 765.16 (1m) (c), who neglect or refuse to transmit the original marriage certificate, solemnized by the officiating person or the persons marrying, to the register of deeds of ~~the any~~ county in which the marriage was performed this state within 3 days after the date of the marriage.

**SECTION 13. Initial applicability.**

(1) The treatment of ss. 765.05, 765.08, 765.09 (3) (a), (b), and (c), and 765.13 first applies to applications for marriage licenses received on the effective date of this subsection.

(2) The treatment of ss. 765.12 (2), 765.23, and 765.30 (3) (a) and (b) relating to the length of time issued marriage licenses are valid first applies to marriage licenses issued on the effective date of this subsection.

(3) The treatment of ss. 765.16 (1m) (intro.) and 765.30 (3) (a) and (b) relating to the number of witnesses required; 765.19; and 765.30 (4) (a) first applies to marriages solemnized on the effective date of this subsection.

**SECTION 14. Effective date.**

(1) This act takes effect on July 1, 2022.