

## CHAPTER 246.

## PROPERTY RIGHTS OF MARRIED WOMEN.

246.01	Realty of.	246.075	Liability of wife for injuries to husband.
246.02	Estate of, not subject to husband.	246.08	Husband not liable for antenuptial debts.
246.03	May receive, hold and convey property.	246.09	Insurance of husband, son, etc.
246.05	Individual earnings.	246.10	May be assignee or receiver, when.
246.06	May transact business in her own name and for her own benefit.	246.11	Married women may assign insurance policy.
246.07	May sue in her own name.		

**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.

**246.04** [*Renumbered section 372.05 by 1933 c. 436 s. 6*]

**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.

**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.

**Note:** A father who had abandoned his child was not a necessary party to an action brought by the divorced mother to recover damages for the death of the child. *Fiel v. Racine*, 203 W 149, 233 NW 611.

A postnuptial agreement entered into by husband and wife a few days after marriage, providing for mutual releases by each party of any rights in the property or estate of the other, except that the wife was to receive \$500 from the estate of the husband, was not void for want of consideration on the ground that the husband had no rights to release, since the contract was at least a definite protection to the wife and her children by a former marriage in the event of a change in the law of curtesy. Legislation could not impair the obligation of the contract by giving the husband a right to share in her estate. *Estate of Nickolay*, 249 W 571, 25 NW (2d) 451.

**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.

**Note:** A wife cannot maintain an action against her husband for wrongs done to her other than those resulting in injury to her person or character, and hence cannot maintain an action against her husband as a conspirator to commit such other wrongs in concert with other persons. *Singer v. Singer*, 245 W 191, 14 NW (2d) 43.

A husband cannot maintain an action against his wife for injuries to his person

caused by the wife's negligence in operating an automobile, especially where such negligence has no reference to the wife's separate business. *Fehr v. General Acc. F. & L. Assur. Corp.* 246 W 228, 16 NW (2d) 787. Married women are as free in their right to own and control property as unmarried women and as men. *Goodman v. Wisconsin Electric Power Co.* 248 W 52, 20 NW (2d) 553.

**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. [1947 c. 164]

**246.08 Husband not liable for antenuptial debts.** No marriage contracted since the third day of April, one thousand eight hundred and seventy-two, 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 the passage of these statutes. [1931 c. 425 s. 3; 1933 c. 320; 1939 c. 139]

**Note:** In bankruptcy matters the federal courts accept the construction of the state courts of the state's exemption statutes, hence cash surrender value of an insurance policy on the life of a bankrupt, payable on his death to his wife, was not payable to the trustee in bankruptcy, although the bankrupt had the right to change the beneficiary. *Cannon v. Lincoln Nat. L. Ins. Co.*, 203 W 452, 243 NW 320.

The word "their" in this section is construed as referring to the representatives and creditors of the deceased husband or the representatives and creditors of the person effecting or assigning the insurance for the benefit of the married woman. *First Wisconsin Nat. Bank v. Strelitz*, 209 W 335, 245 NW 74.

The Wisconsin rule, that an insured may assign a life policy to secure the debts of the insured without the consent or joinder of the beneficiary, is a rule of property be-

cause of its long standing, and should not be changed except by statute, as has been done by 246.09 where husband and wife are the insured and beneficiary. *Beck v. First Nat. Bank of Madison*, 238 W 346, 298 NW 161.

Where a life policy reserves the right to change the beneficiary, and to assign the policy, the insured may assign the policy as security for a debt without the consent of the beneficiary even though she is the wife of the insured, such reserved right of the insured not being affected by 246.09 (1) relating to property rights of married women in life policies made payable to them. [Statement contra in *Beck v. First Nat. Bank of Madison*, 238 W 346, not necessary to decision of case, regarded as dicta.] *Oldenburg v. Central Life Assur. Society*, 243 W 8, 9 NW (2d) 133.

The status of a married woman for the purpose of the exemption provided by (1), must be determined as of the time the in-

Insurance which a corporate employer effected on the life of an employe by executing a group policy, paying the premiums thereon, and delivering to the employe a certificate naming as beneficiary a married woman was within (1). Luebke v. Vonnekold, 250 W 496, 27 NW (2d) 458.

Insurance which a corporate employer effected on the life of an employe by executing a group policy, paying the premiums thereon, and delivering to the employe a certificate naming as beneficiary a married woman was within (1). Luebke v. Vonnekold, 250 W 496, 27 NW (2d) 458.

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, incumber 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 act shall apply to all insurance on lives, whether effected before or after the passage of this act, but shall not apply to assignments thereof heretofore made.