CHAPTER 889

DOCUMENTARY AND RECORD EVIDENCE

889.01 Publication by state as evidence of laws. Books, pamphlets and other documents purporting to be printed by the state as copies of its statutes, legislative acts and resolutions, senate and assembly journals or orders, rules, regulations or decisions of any of its boards, departments, commissions or agencies, are prima facie evidence that they are such publications as they purport to be, and are correct copies of such statutes, acts, resolutions, journals, orders, rules, regulations and decisions, respectively; and such printed journals of said houses, respectively, are prima facie evidence of their proceedings.

History: 1965 c. 66 s. 2.

889.02 Publication by other states and United States as evidence of laws and regulations. Books, pamphlets and other documents purporting to be printed by the United States or any state or territory thereof as copies of its statutes, congressional or legislative acts and resolutions or as copies of orders, rules, regulations or decisions of any state or federal board, department, commission or agency, are presumptive evidence of such statutes, acts, resolutions, orders, rules, regulations or decisions.

History: 1965 c. 66 s. 2.

889.03 Copies certified by state librarian; fees. Matter contained in any book or pamphlet in the state library, purporting to be a copy of the opinion of any court, or of any statute, law, act or resolution of any state, territory, the United States, or any foreign country, certified by the state librarian, is prima facie evidence of the contents of such opinion, statute, law, act or resolution. The fee for such certification is the same as that provided for similar certification by the clerk of the supreme court.

History: 1965 c. 66 s. 2.

889.04 County and municipal ordinances. Matter printed in any newspaper, book, pamphlet, or other form purporting to be so published by any county, town, city or village in this state as a copy of its ordinance, bylaw, resolution or regulation, is prima facie evidence thereof; and after 3 years from the date of such publication, such book or pamphlet shall be conclusive proof of the regularity of the adoption and publication of the ordinance, bylaw, resolution or regulation.

History: 1965 c. 66 s. 2.

889.05 Common law of sister states. The unwritten or common law of any state or territory of the United States may be proved by parol evidence, and by the books of reports of cases adjudged in its courts.

History: 1965 c. 66 s. 2.

889.06 Alien laws. Foreign laws may be proved by parol evidence; but if it shall appear that the law in question is contained in a written statute or code the court may reject any evidence of such law that is not accompanied by a copy thereof.

History: 1965 c. 66 s. 2.

889.07 Court records and copies. The original records, papers and files in or concerning any action or proceeding of any nature or description in any court of the state, being produced by the legal custodian thereof, shall be receivable in evidence whenever relevant; and a certified copy thereof shall be received with like effect as the original.

History: 1965 c. 66 s. 2.

889.08 Copies, how certified, presumptions. (1) Whenever a certified copy is allowed by law to be evidence, such copy shall be certified by the legal custodian of the original to have been compared by him with the original, and to be a true copy thereof or a

correct transcript therefrom, or to be a photograph of the original; such certificate must be under his official seal or under the seal of the court, public body or board, whose custodian he is, when he or it is required to have or keep such seal.

(2) The executive officer, secretary or chief clerk of any state agency, and in agencies headed by one person, the head of the agency or his deputy, are, for the purposes of this section and s. 889.09, the legal custodians of the files and records of their agencies. In agencies having divisions, the heads of divisions are also legal custodians of the files and records of their divisions. "State agency" as used herein means the legislature, any officer, board, commission, department or bureau of the state government and the state historical society.

(3) Any certificate purporting to be signed, or signed and sealed, as authorized by law, shall be presumptive evidence that it was signed by the proper officer, and if sealed, that it has the proper seal affixed, except when the law requires an additional certificate of genuineness.

(4) The seal need not be affixed to a copy of a rule or order made by a court, or of any paper filed therein, when such copy is used in the same court or before any officer thereof.

(5) When a certified copy of any record, paper or instrument of any kind is made receivable in evidence such copy shall have the same effect as evidence as the original.

History: 1965 c. 66 s. 2.

889.09 Certification of nonfiling. (1) Whenever any officer to whom the legal custody of any document belongs, shall certify (under his official seal, if he have any) that he has made diligent examination in his office for such document, and that it cannot be found or that the same had not been filed or recorded in his office, such certificate shall be presumptive evidence of the fact so certified.

(2) The certificate of the legal custodian of the records of any public licensing officer, board or body that he has made diligent examination of the files and records of his office and that he can find no record of a license issued to a named person or that none has been issued to such person, specifying the kind of license in question, shall be evidence that none has been issued.

History: 1965 c. 66 s. 2.

889.10 Official certificates, etc. When a public officer is required or authorized by law to make a certificate or affidavit touching an act performed by him or to a fact ascertained by him in the course of his official duty and to file or deposit it in a public office such certificate or affidavit when so filed or deposited shall be received as presumptive evidence of the facts therein stated unless its effect is declared by some special provision of law.

History: 1965 c. 66 s. 2.

889.11 Reporter's transcript as evidence. Any writing certified by the official reporter of any court to have been carefully compared by him with his minutes of testimony and proceedings taken on any trial or hearing in such court, and to be a true and correct transcript of all or a specified portion of such minutes, and to be a correct statement of the evidence and proceedings had on such trial or hearing, shall be received in evidence with the same effect as the oral testimony of such reporter to the facts so certified.

History: 1965 c. 66 s. 2.

889.13 Transcript of justice's records. A certified transcript from the original records, papers and files in or concerning any action or proceeding in municipal court shall not be admissible in evidence outside of the county, unless there shall be affixed a certificate of the clerk of the circuit court of the county, under seal, that the person who certified the transcript was, at the date thereof, a municipal justice of the county, or other person having legal custody of the books and papers; and if the judgment was rendered by another, that such other was, at the date of the rendition of the judgment, a municipal justice of the county.

History: 1965 c. 66 s. 2; 1967 c. 276 ss. 39, 40.

889.14 Proof of unrecorded proceedings before justice. The proceedings in any cause had before a justice, not reduced to writing by said justice, nor being the contents of any paper or document produced before such justice, and the contents of any such paper or document as shall have been lost or destroyed, may be proved by the oath of the justice.

History: 1965 c. 66 s. 2.

889.15 Proceedings of other courts as evidence. The records and judicial proceedings of any court of the United States, or of any state or territory or district thereof and of any foreign country, and copies thereof, shall be admissible in evidence in all cases in this state when authenticated or certified in the manner directed by ss. 889.07 and 889.08 or by acts of congress, or the laws of such state,

territory or district, or of such foreign country.

History: 1965 c. 66 s. 2.

889.16 Judgment of foreign justice. A certified copy of the record of the judicial proceedings of any foreign court not of record with a certificate of magistracy affixed, signed and sealed by the clerk of a court of record in the county or district where such proceedings were had, shall be admissible in evidence in all cases.

History: 1965 c. 66 s. 2.

889.17 Conveyances and record thereof. Every instrument entitled by law to be recorded or filed in the office of a register of deeds, and the record thereof and a certified copy of any such record or of any such filed instrument, is admissible in evidence without further proof thereof, and the record and copies shall have like effect with the original.

History: 1965 c. 66 s. 2.

889.18 Official records. (1) AS EVIDENCE. Every official record, report or certificate made by any public officer, pursuant to law, is evidence of the facts which are therein stated and which are required or permitted to be by such officer recorded, reported or certified, except that the record by the county clerk of license or certificate under s. 147.23 or 153.05 [Stats. 1941] shall not be evidence on behalf of the licensee or certificate holder without production of the license or certificate or competent evidence from the board or body that issued the same.

(2) COPIES AS EVIDENCE. A certified copy of any written or printed matter preserved pursuant to law in any public office or with any public officer in this state, or of the United States, is admissible in evidence whenever and wherever the original is admissible, and with like effect.

(3) COPIES, DUTY TO MAKE. Any such officer of this state who, when tendered the legal fee therefor and requested to furnish such certified copy, shall unreasonably refuse to comply with such request, shall forfeit not less than $20 nor more than $100, one-half to the person prosecuting therefor.

History: 1965 c. 66 s. 2.

Conclusions stated in official records are not admissible under (1). Smith v. Rural Mut. Ins. Co. 20 W (2d) 592, 123 NW (2d) 496.

This section does not authorize admission of an accident report purporting to contain admissions of a driver where the officer making the report is dead and the accuracy of it cannot be tested. Voigt v. Voigt, 22 W (2d) 573, 126 NW (2d) 543.

A death certificate by a coroner is an official record, but when made by a coroner who is not a physician any medical conclusion stated therein is inadmissible to establish the cause of death. Novakofski v. State Farm Mut. Auto. Ins. Co. 34 W (2d) 154, 148 NW (2d) 714.

A mere letter from an employe of a governmental department purporting to reflect the contents of the public record could not be considered an official record, and since it did not come within any of the exceptions permitted either by statute or case law, but ran afoul of the best-evidence rule, was inadmissible. Ernst v. Greenwald, 35 W (2d) 763, 151 NW (2d) 706.

889.19 Pedigree recitals in deeds and wills. Any deed, mortgage, land contract or other conveyance that has been duly recorded in the proper register's office for 20 years, and any will that has been admitted to probate, containing a recital in respect to pedigree, consanguinity, marriage, celibacy, adoption or descent, and being in other respects admissible in evidence, shall be admitted as prima facie evidence that the recital is true.

History: 1965 c. 66 s. 2.

889.22 Demand to admit documents, facts; costs. (1) Any party to any action may, by notice in writing served upon a party or his attorney at any time after an issue of fact is joined and not later than 10 days before the trial, call upon such other party to admit or refuse to admit in writing:

(a) The existence, due execution, correctness, validity, signing, sending or receiving of any document, or,

(b) The existence of any specific fact or facts material in the action and stated in the notice.

(2) Such admission if made shall be taken as conclusive evidence against the party making it, but only for that particular action and in favor of the party giving the notice; it shall not be used against him in any other action or proceeding or on any other occasion, and shall not be received in evidence in any other action or trial.

(3) If the party receiving such notice fails to comply therewith within 5 days after such service the facts therein stated shall be taken to be admitted.

(4) In case of refusal to make such admission, the reasonable expense (including attorney fees not exceeding $250) of proving any fact or document mentioned in the notice and not so admitted shall be determined by the court at the trial and taxed as costs in any event against the party so notified, unless the court is satisfied the refusal was reasonable.

(5) The court may allow the party making any such admission to withdraw or amend it upon such terms as may be just, and may, for good cause shown, relieve a party from the consequences of a default.

History: 1965 c. 66 s. 2; Sup. Ct. Order, 29 W (2d) ix.

Where the refusal of the defendant liability insurer to admit liability to the plaintiffs beyond

the amount of its policy limits was 2 days late, but the plaintiffs, on the trial, did not state such default as an objection to questions put to the insurer's agent regarding the coverage limits of the policy, the plaintiffs thereby waived any right to rely on such default, since, if the plaintiffs had made such an objection, counsel for the insurer might then have presented evidence to the trial court establishing good cause for the 2 days' delay in serving refusal, in which case the trial court, under authority of (5) could have relieved the insurer from the consequences of such default. Foellmi v. Smith, 15 W (2d) 274, 112 NW (2d) 712.

Where the defendants offered copies of letters in evidence, the failure of the defendants to employ this section for the purpose of having the plaintiff admit or refuse to admit the existence of the letters did not preclude the admission of documents, or their copies, into evidence under rules of evidence applicable thereto. Grunwaldt v. State Highway Comm. 21 W (2d) 153, 124 NW (2d) 13.

889.23 Acknowledged writings, evidence. Every written instrument, except promissory notes and bills of exchange, and wills, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate and when so proved and acknowledged shall be competent evidence whenever it is relevant. Any instrument, which is attested but which is not required by law to be witnessed, may be proved as though there were no attesting witness thereto.

History: 1965 c. 66 s. 2.

889.25 Business records as evidence. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of such act, transaction, occurrence or event, if the custodian or other qualified witness testifies to its identity and mode of preparation, and if made in regular course of any business, and if it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but such circumstances shall not affect its admissibility. The term "business" as used in this section, includes business, profession, occupation and calling of every kind.

History: Sup. Ct. Order, 17 W (2d) xxiii; 1963 c. 256, 459; 1965 c. 66 s. 2.

The provision, that under certain circumstances business entries may be admitted in evidence although the makers of the entries do not testify concerning the entries, does not obviate the requirement in evidence of the entry itself but serves only to admit the entry in evidence without its identification by the actual maker. United States F. & G. Co. v. Milwaukee & S. T. Corp. 18 W (2d) 1, 117 NW (2d) 708.

Prejudicial error could not be predicated upon receipt in evidence of a Xerox copy of a hospital record pertaining to treatment of the plaintiff immediately following the accident, where it appeared that the original was received in evidence but without knowledge of plaintiff's attorney was taken back to the hospital by the custodian, and there was no showing how the adverse party was prejudiced thereby, since receipt of a copy of the record under these circumstances, although error, was harmless. Lundquist v. Western Casualty & Surety Co. 30 W (2d) 159, 140 NW (2d) 241.

A record of investigation of an accident made 6 months after the occurrence and after action started does not qualify as a business record. Smith v. Milwaukee & Suburban Transport Co. 33 W (2d) 269, 147 NW (2d) 233.

Medical evidence in Wisconsin, 1956-1966. Arnold, 49 MLR 657.

Admissibility of hospital records. 49 MLR 801.

889.26 Comparison of writing. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be the genuine handwriting of any person claimed on the trial to have made or executed the disputed writing, shall be permitted to be made by witnesses, and such writings and evidence respecting them may be submitted to the court or jury.

History: 1965 c. 66 s. 2.

889.28 Proof of age. The county court of any county may, upon application and satisfactory proof made, make a certificate specifying the age, place of birth and parentage of any resident of the county or of any person born in the county. Such certificate or a duplicate or a certified copy thereof, when filed in the office of the register of deeds, shall be prima facie evidence of the facts therein stated.

History: 1965 c. 66 s. 2.

889.29 Uniform photographic copies of business and public records as evidence act. (1) If any business, institution, member of a profession or calling, or any department or agency of government (except state government), in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business, provided the provisions of ss. 59.716 and 59.717 have been met, unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in

evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

(2) This section shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it.

History: 1961 c. 567; 1963 c. 167; 1965 c. 66 s. 2.

889.30 Copying of county public records on film. (1) COUNTY BOARD CONSENT. The powers granted by this section shall not be exercised except with the prior approval of the county board of supervisors evidenced by resolution duly adopted.

(2) AUTHORIZATION FOR REPRODUCTION ON FILM. Any elected or appointed officer of any county or the court clerk of any court maintained in whole or in part by the county including all courts of record in the state may cause any of the public records, papers, documents, or court records listed in s. 59.715 and kept by him to be photographed, micro-photographed or otherwise reproduced on film after the expiration of the respective period of limitation specified for such record, paper, document and court record in ss. 59.23 (8) and 59.715.

(3) COPY TO BE DEEMED TO BE ORIGINAL RECORD. (a) Records, papers, documents and court records for the purposes of this section are defined as all records, papers, documents, court records, original files or other material bearing upon the activities and functions of the county department, agency, board, commission, circuit court, county court and other courts of record.

(b) Any such photographic reproduction shall be deemed to be an original record for all purposes, provided:

1. That such reproduction is upon film which complies with the minimum standards of quality approved for permanent photographic records by the national bureau of standards;

2. That the device used to reproduce the records on film shall be one which accurately reproduces the content of the original;

3. That each reel or part of a reel of microfilm shall carry at the beginning a title target giving the name of the county department, agency, board, commission or court, a brief title of record series, and at the end the camera operator's certificate showing the microfilming project identification, reel number and a brief description of the first and last document on the reel or part of reel of film, together with a statement signed by the operator substantially as follows: I hereby certify that I have on this ____ day of ____, 19__, (photographed-microphotographed) the foregoing and above described documents in accordance with standards established by s. 889.30 (3) (b) and with established procedures; and

4. That a statement of compliance with the minimum standards for quality of film and for processing and developing permanent photographic records as provided by the national archives and records service of the general services administration shall be photographed at the end of each reel or part of a reel of microfilm. The certificate of the operator and the statement of compliance shall be presumptive evidence that all conditions and standards prescribed by this section have been complied with.

(c) Any photographic reproduction meeting the foregoing conditions prescribed shall be taken as and stand in lieu of and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible. A transcript, exemplification or certified copy thereof shall, for all purposes herein, be deemed to be a transcript exemplification or certified copy of the original. Such reproduction shall be placed in conveniently accessible files and provision shall be made for preserving, examining and using the same. An enlarged copy of any photographic reproduction on film made as herein provided and certified by the custodian as provided in s. 889.18 (2) shall have the same force and effect as the photographic reproduction itself.

(4) COST, HOW PAID. The county shall pay for such photographing, microphotographing or reproduction on film of said documents, papers and records.

History: 1965 c. 66 s. 2.