

**2019 DRAFTING REQUEST**

**Bill**

For: **Ron Tusler (608) 266-5831** Drafter: **ewheeler**  
 By: **Evan** Secondary Drafters:  
 Date: **3/14/2019** May Contact:  
 Same as LRB: **-3663**

Submit via email: **YES**  
 Requester's email: **Rep.Tusler@legis.wisconsin.gov**  
 Carbon copy (CC) to: **Elizabeth.Wheeler@legis.wisconsin.gov**  
**sarah.walkenhorstbarber@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Permit out of state judges to officiate weddings

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	ewheeler 3/20/2019	anienaja 3/21/2019			
/P1	ewheeler 6/13/2019	anienaja 6/13/2019	lparisi 3/21/2019		
/P2	ewheeler 6/25/2019	anienaja 6/25/2019	lparisi 6/13/2019		
/P3			dwalker 6/25/2019		
/1				lparisi	

Vers.    Drafted

Reviewed

Submitted

Jacketed  
7/9/2019

Required

FE Sent For:

2  
not  
needed

<END>

## **Wheeler, Elizabeth**

---

**From:** Umpir, Evan  
**Sent:** Thursday, March 14, 2019 10:54 AM  
**To:** Walkenhorst Barber, Sarah; Wheeler, Elizabeth  
**Cc:** Rep.Tusler  
**Subject:** Drafting Request

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning,

Melinda mentioned that one of the two of you would probably be the appropriate drafter for this request. We are looking to amend 765.16(1m)(d) to permit out-of-state and federal judges to officiate weddings in Wisconsin. I was informed by the Courts that the current interpretation is too restrictive to allow this and other states have provisions in their statutes to allow out-of-state and federal judges officiate marriages.

Please let me know if you have any questions. My contact at the Courts said she could put together some research she had on other states' laws in this area. I can pass along when I receive that.

Thank you and have a great Thursday! Enjoy the heatwave!  
-Evan

**Evan Umpir**  
**Office of Representative Ron Tusler**  
**3<sup>rd</sup> District, Wisconsin State Assembly**  
**(608) 266-5831**  
**(888) 534-0003**

## Wheeler, Elizabeth

---

**From:** Umpir, Evan  
**Sent:** Friday, March 15, 2019 9:46 AM  
**To:** Wheeler, Elizabeth  
**Subject:** RE: Drafting Request

Good morning Elizabeth,

I've copied the information I received from the Courts below. Let me know if you have any questions. Thanks!

As you know, Wis. Stat. s. 765.16[1][1] sets forth who may officiate at a wedding. It provides:

### **765.16 Marriage contract, how made; officiating person.**

765.16(1m)(1m) 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. The following are authorized to be officiating persons:

765.16(1m)(a) (a) Any ordained member of the clergy of any religious denomination or society who continues to be an ordained member of the clergy.

765.16(1m)(b) (b) Any licentiate of a denominational body or an appointee of any bishop serving as the regular member of the clergy of any church of the denomination to which the member of the clergy belongs, if not restrained from so doing by the discipline of the church or denomination.

765.16(1m)(c) (c) The 2 parties themselves, by mutual declarations that they take each other as husband and wife, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of the parties may belong.

765.16(1m)(d) (d) **Any judge of a court of record or a reserve judge appointed under s. 753.075.**

765.16(1m)(e) (e) Any circuit court commissioner appointed under SCR 75.02 (1) or supplemental court commissioner appointed under s. 757.675 (1).

765.16(1m)(f) (f) Any municipal judge.

765.16(2m) (2m) An officiating person under sub. (1m) (a), (b), (d), (e), or (f) must be at least 18 years old.

(Emphasis added).

**Background:** For years, legal counsel in the Director of State Court's Office of Court Operations and legal counsel at the Wisconsin Vital Records Office agreed that the phrase in s. 765.16(d), "[a]ny judge of a court of record," meant a court of record *in Wisconsin*. [2][2] Vital Records is charged with recording marriages so that office decides whether to accept someone's signature as a person qualified under s. 765.16. So, for many years Wisconsin has told out of state judges that they may not officiate at a wedding in Wisconsin. In fact, in 2007, United States Supreme Court Justice Scalia visited Wisconsin to attend his son's Ph.D. graduation. Justice Scalia wanted to officiate at the wedding of his son's academic advisor and was told he couldn't. Several times a year the court fields inquiries on this same question. Until recently, the easiest solution has been to become certified as a minister on-line which seems a little ironic.

Recently, Vital Records revised its opinion and now interprets "court of record" to allow an out of state judge to officiate. Meanwhile, the Wisconsin Supreme Court is considering whether it might create an administrative mechanism to facilitate permission for an out of state judge or other authorized officiate to conduct a marriage in Wisconsin. Obviously, however, any such procedure must be consistent with the terms of relevant statute. The

question was raised, however, if that interpretation might change again. In short, it seems the best option might be to clarify the statutory language to explicitly permit an out of state judge (including a federal judge) to officiate at a wedding in Wisconsin.

**What change could be made?[3][3]**

The legislature could eliminate the disputed phrase "court of record" and revise s. 765.16(d) as follows:

**767.16(1m)765.16(1m)(d)(d) Any justice or judge, of a court of record or a reserve judge appointed under s. 753.075.**

As long as the statute is being revised, we'd recommend adding the term "justice." The intent of this change would be to authorize out of state and federal judges and justices who are presently serving in a judicial capacity, but limit permission for retired judges to those who are reserve judges in Wisconsin.[4][4] (For extra clarity you might add "in this state" after reserve judge)? I would be interested in the LRB's opinion, of course.

---

**From:** Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>  
**Sent:** Thursday, March 14, 2019 11:22  
**To:** Umpir, Evan <Evan.Umpir@legis.wisconsin.gov>; Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>  
**Cc:** Rep.Tusler <Ron.Tusler@legis.wisconsin.gov>  
**Subject:** RE: Drafting Request

Hi Evan, I would be happy to help you with this request, and I'll look forward to seeing the research you forward.

**Elizabeth Wheeler**  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
Direct: 608-504-5880  
[Elizabeth.wheeler@legis.wisconsin.gov](mailto:Elizabeth.wheeler@legis.wisconsin.gov)

---

**From:** Umpir, Evan <Evan.Umpir@legis.wisconsin.gov>  
**Sent:** Thursday, March 14, 2019 10:54 AM  
**To:** Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>; Wheeler, Elizabeth <Elizabeth.Wheeler@legis.wisconsin.gov>  
**Cc:** Rep.Tusler <Ron.Tusler@legis.wisconsin.gov>  
**Subject:** Drafting Request

Good morning,

Melinda mentioned that one of the two of you would probably be the appropriate drafter for this request. We are looking to amend 765.16(1m)(d) to permit out-of-state and federal judges to officiate weddings in Wisconsin. I was informed by the Courts that the current interpretation is too restrictive to allow this and other states have provisions in their statutes to allow out-of-state and federal judges officiate marriages.

Please let me know if you have any questions. My contact at the Courts said she could put together some research she had on other states' laws in this area. I can pass along when I receive that.

Thank you and have a great Thursday! Enjoy the heatwave!

-Evan

**Evan Umpir**

**Office of Representative Ron Tusler**

**3<sup>rd</sup> District, Wisconsin State Assembly**

**(608) 266-5831**

**(888) 534-0003**

---

[1][1] This statute was enacted in 1977 and has been amended 10 times, each time by the legislature.

[1][2] The phrase "judge of a court of record" is not defined in the Wisconsin statutes and its apparent meaning seems to depend largely on context.

[3][3] I have not conducted a thorough 50 state review, but I reviewed enough wedding officiant statutes to confirm that there is no "standard" language. The "court of record" phrase is found in other statutes. It is my understanding that Minnesota has the same "court of record" language, but decided it could include any court of record federal, out of state, etc. Some states are very specific about who can preside. Others clearly permit out of state judges to officiate. Nebraska permits "every judge, retired judge, or clerk magistrate." Neb. Rev. Stats. 42-108. Missouri provides that marriages may be solemnized, without compensation, "by any judge, including a municipal judge" Mo. Rev. Stats. 451.100. Indiana provides that marriages may be solemnized by "a judge." Ind. Code 31-11-6-1. Hawaii permits "any justice or judge or magistrate, active or retired, of a state or federal court in the State" HI Rev. Stat. 572-12. Arguably, however, this language might exclude tribal judges in Wisconsin who are currently permitted to officiate at Wisconsin weddings.

[4][4] If the legislature wants to permit retired judges and justices from other states or retired federal judges to officiate at weddings, it would need to further amend the statute. However, that would be more broad than just allowing active out of state judges to officiate. There may be concerns about whether these individuals should be permitted to officiate depending on the reasons they retired from office. In short, I think that's a policy question and beyond what the court was specifically interested in accomplishing.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2464?  
EAW:...

in 3119 due str

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SA-  
xref  
RW

Gen

1 **AN ACT** ...; **relating to:** marriage by justice or judge.

*Analysis by the Legislative Reference Bureau*

Under current law, any judge of a "court of record" or a reserve judge may officiate a wedding. This bill allows any justice or judge to officiate a wedding, regardless of whether the justice or judge is of a "court of record."

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

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

3 765.16 (1m) (d) Any justice or judge of a ~~court of record~~ or a reserve judge  
4 appointed under s. 753.075.

History: 1977 c. 323; 1979 c. 32 ss. 48, 92 (4); 1979 c. 176, 259; Stats. 1979 s. 765.16; 1981 c. 20 s. 2200; 1985 a. 29; 1991 a. 315; 1999 a. 85; 2001 a. 61; 2013 a. 372.

5

(END)

XXXX NOTE: Par. (f) specifically names municipal judges as officiants, and this bill makes par. (f) redundant, as a municipal judge now falls under par. (d). I left par. (f) alone, but please let me know if you would like to repeal or amend it.



in: 6/13  
due today

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SAR

Regan

1 **AN ACT to amend** 765.16 (1m) (d) of the statutes; **relating to:** marriage by justice  
2 or judge.

***Analysis by the Legislative Reference Bureau***

Under current law, any judge of a "court of record" or a reserve judge may officiate a wedding. This bill allows any justice or judge to officiate a wedding, regardless of whether the justice or judge is of a "court of record."

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

3 **SECTION 1.** 765.16 (1m) (d) of the statutes is amended to read:  
4 765.16 (1m) (d) Any justice or judge of a court of record or a reserve judge  
5 appointed under s. 753.075.

\*\*\*\*NOTE: Paragraph (f) specifically names municipal judges as officiants, and this bill makes par. (f) redundant, as a municipal judge now falls under par. (d). I left par. (f) alone, but please let me know if you would like to repeal or amend it.

6 (END)





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2464(P2) P3  
EAW:amn

ins:6/25  
due today if possible

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT to amend 765.16 (1m) (d) of the statutes; relating to: marriage by justice<sup>e</sup>  
2 or judge. (Judges authorized to officiate a marriage)

---

***Analysis by the Legislative Reference Bureau***

Under current law, any judge of a “court of record” or a reserve judge may officiate a wedding. This bill allows any justice or judge to officiate a wedding, regardless of whether the justice or judge is of a “court of record.”

---

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

3 SECTION 1. 765.16 (1m) (d) of the statutes is amended to read:  
4 765.16 (1m) (d) Any justice or judge of a court of record or a reserve judge  
5 appointed under s. 753.075.

6 (END)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2464/P3  
EAW:amn

11  
No  
changes

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 AN ACT *to amend* 765.16 (1m) (d) of the statutes; **relating to:** justices or judges  
2 authorized to officiate a marriage.

---

***Analysis by the Legislative Reference Bureau***

Under current law, any judge of a "court of record" or a reserve judge may officiate a wedding. This bill allows any justice or judge to officiate a wedding, regardless of whether the justice or judge is of a "court of record."

---

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

3 SECTION 1. 765.16 (1m) (d) of the statutes is amended to read:  
4 765.16 (1m) (d) Any justice or judge of a court of record or a reserve judge  
5 appointed under s. 753.075.

6 (END)