

**2019 DRAFTING REQUEST**

**Bill**

For: **Robert Wittke (608) 266-0731** Drafter: **swalkenh**  
 By: **Terri** Secondary Drafters:  
 Date: **4/15/2019** May Contact:

Same as LRB:

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

**Pre Topic:**

No specific pre topic given

**Topic:**

Modifying marriage license application requirements and timing for issuance and validity

**Instructions:**

See attached--Redraft 2019 LRB 0445/P1

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	swalkenh 4/25/2019	kfollett 4/25/2019			
/P1	swalkenh 7/24/2019		mbarman 4/26/2019		
/P2	swalkenh 8/6/2019	anienaja 7/24/2019	mbarman 7/24/2019		
/P3		kfollett 8/6/2019	lparisi 8/6/2019		
/1			mbarman	mbarman	

Vers.    Drafted

Reviewed

Submitted  
8/12/2019

Jacketed  
8/12/2019

Required

FE Sent For:

*2  
not  
needed*

<END>

## Walkenhorst Barber, Sarah

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**From:** Griffiths, Terri  
**Sent:** Monday, April 15, 2019 4:00 PM  
**To:** Walkenhorst Barber, Sarah  
**Subject:** LRB 0445/P1

Hi Sarah,

Prior to his departure from the legislature, former Rep. Tom Weatherston had a preliminary draft done relating to marriage license application requirements, issuance, and validity. Rep. Wittke would like to have that drafted for him please. The draft you did for former Rep. Weatherston is LRB 0445/P1. If we can have a preliminary draft for Rep. Wittke (who is Tom Weatherston's successor) we'd appreciate it.

Thanks.

*Terri S. Griffiths*  
Office of Rep. Robert Wittke  
62<sup>nd</sup> Assembly District  
412 North, State Capitol  
(608) 266-0731

*NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.*



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0445/P1

SWB:amn

2187/p1

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

IN 4/25  
Requested by  
4/26 PLS

1 **AN ACT to amend** 765.05, 765.08, 765.09 (3) (a), 765.09 (3) (b), 765.12 (2), 765.16  
2 (1m) (intro.), 765.23 and 765.30 (3) (a) and (b) of the statutes; **relating to:**  
3 marriage license application requirements, issuance, and validity.

---

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

This bill makes various changes to the requirements relating to marriage licenses. Under the bill, an applicant for a marriage license is required to present a birth record, a driver's license, or other comparable evidence for the purposes of proof of identification and date of birth. Current law requires that an applicant exhibit a certified copy of a birth record, but if a birth record is unobtainable, allows the applicant to present other "satisfactory documentary proof of the requisite facts" in lieu of the birth record. The bill maintains the provision existing under current law that if the clerk is not satisfied with the documentary proof presented, the clerk is required to submit the proof to a judge of a court of record in the county of application for an opinion as to its sufficiency.

Current law also includes a requirement that the marriage license application contain the social security number for each party. This bill maintains that requirement, but specifies that the clerk is prohibited from requiring an applicant to present his or her social security card issued by the federal Social Security Administration.

Under the bill, the waiting period for a marriage license is reduced from five days to three days. The county clerk retains discretion to waive the minimum waiting period and charge a fee of up to \$25 to cover any additional processing cost incurred by the county for expediting the license. This bill extends the period for

and that  
the county  
clerk has  
discretion  
to waive  
the 30-day  
residency  
requirement

which a marriage license is valid from 30 days to 60 days and allows the county clerk discretion to waive the current law requirement that one of the parties reside in the county in which the marriage license application is filed for at 30 days. The bill also provides that the 30-day residency requirement does not apply if one of the parties is in the active military service of the United States. Finally, this bill creates an exception to the requirement that two competent adult witnesses other than the officiating person be present for the solemnization of marriage to be valid. Under the bill, if one of the parties is in the active military service of the United States, the presence of only one competent adult witness other than the officiating person is required.

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

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

strike Except as otherwise provided in this section, No

2 **765.05 Marriage license; by whom issued.** No person may be joined in  
3 marriage within this state until a marriage license has been obtained for that  
4 purpose from the county clerk of the county in which one of the parties has resided  
5 for at least 30 days immediately prior to making application therefor. The 30-day  
6 residency requirement does not apply if one of the parties is in the active military  
7 service of the United States. The county clerk <sup>also</sup> may, at his or her discretion, waive  
8 the 30-day residency requirement. If both parties are nonresidents of the state, the  
9 marriage license may be obtained from the county clerk of the county where the  
10 marriage ceremony is to be performed. If one of the persons is a nonresident of the  
11 county where the marriage license is to issue, the nonresident's part of the  
12 application may be completed and sworn to or affirmed before the person authorized  
13 to accept marriage license applications in the county and state in which the  
14 nonresident resides.

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

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

4           (2) The county clerk may, at his or her discretion, issue a marriage license  
5 within less than ~~5~~ 3 days after application if the applicant pays an additional fee  
6 of not more than \$25 to cover any increased processing cost incurred by the county.  
7 The county clerk shall pay this fee into the county treasury.

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

9           765.09 (3) (a) Each applicant for a marriage license shall present satisfactory,  
10 documentary proof of identification and residence and shall swear to or affirm the  
11 application before the clerk who is to issue the marriage license or the person  
12 authorized to accept marriage license applications in the county and state where the  
13 party resides. The application shall contain the social security number of each party,  
14 as well as any other informational items that the department of health services  
15 directs, but the clerk may not require an applicant to present his or her social security  
16 card issued by the federal social security administration. The portion of the marriage  
17 application form that is collected for statistical purposes only shall indicate that the  
18 address of the marriage license applicant may be provided by a county clerk to a law  
19 enforcement officer under the conditions specified under s. 765.20 (2).

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

21           765.09 (3) (b) Each applicant for a marriage license shall exhibit to the clerk  
22 a certified copy of a birth record, and each a driver's license, or other comparable  
23 evidence for proof of identification and date of birth. Each applicant shall submit a  
24 copy of any judgment or death record affecting the applicant's marital status. If any  
25 applicable birth record, death record or judgment is unobtainable, other satisfactory

1 documentary proof of the requisite facts therein may be presented in lieu of the birth  
2 certificate, death certificate or judgment. Whenever the clerk is not satisfied with  
3 the documentary proof presented, he or she shall submit the presented proof to a  
4 judge of a court of record in the county of application for an opinion as to its  
5 sufficiency.

\*\*\*\*NOTE: In this preliminary version, I attempted to incorporate the proof of identification standards referenced under Colorado law. Under that law, CO Rev. Stat. § 14-2-105 (1) (a), a party is required to present proof of date of birth by "a birth certificate, a driver's license, or other comparable evidence." Please let me know if this language is consistent with your intent, or if you would like to go another direction.

6 **SECTION 5.** 765.12 (2) of the statutes is amended to read:

7 765.12 (2) The marriage license shall authorize the marriage ceremony to be  
8 performed in any county of this state within ~~30~~ 60 days of issuance, excepting that  
9 where both parties are nonresidents of the state, the ceremony shall be performed  
10 only in the county in which the marriage license is issued. The officiating person  
11 shall determine that the parties presenting themselves to be married are the parties  
12 named in the marriage license. If aware of any legal impediment to such marriage,  
13 the person shall refuse to perform the ceremony. The issuance of a marriage license  
14 shall not be deemed to remove or dispense with any legal disability, impediment or  
15 prohibition rendering marriage between the parties illegal, and the marriage license  
16 shall contain a statement to that effect.

17 **SECTION 6.** 765.16 (1m) (intro.) of the statutes is amended to read:

18 765.16 (1m) (intro.) Marriage may be validly solemnized and contracted in this  
19 state only after a marriage license has been issued therefor, and only by the mutual  
20 declarations of the 2 parties to be joined in marriage that they take each other as  
21 husband and wife, made before an authorized officiating person and in the presence  
22 of at least 2 competent adult witnesses other than the officiating person. If one of

1 the parties is in the active military service of the United States, the presence of only  
2 one competent adult witness other than the officiating person is required. The  
3 following are authorized to be officiating persons:

4 **SECTION 7.** 765.23 of the statutes is amended to read:

5 **765.23 Immaterial irregularities otherwise.** No marriage hereafter  
6 contracted shall be void either by reason of the marriage license having been issued  
7 by a county clerk not having jurisdiction to issue the same; or by reason of any  
8 informality or irregularity of form in the application for the marriage license or in  
9 the marriage license itself, or the incompetency of the witnesses to such marriage;  
10 or because the marriage may have been solemnized in a county other than the county  
11 prescribed in s. 765.12, or more than ~~30~~ 60 days after the date of the marriage license,  
12 if the marriage is in other respects lawful and is consummated with the full belief  
13 on the part of the persons so married, or either of them, that they have been lawfully  
14 joined in marriage. Where a marriage has been celebrated in one of the forms  
15 provided for in s. 765.16 (1m), and the parties thereto have immediately thereafter  
16 assumed the habit and repute of husband and wife, and having continued the same  
17 uninterruptedly thereafter for the period of one year, or until the death of either of  
18 them, it shall be deemed that a marriage license has been issued as required by ss.  
19 765.05 to 765.24 and 767.803.

20 **SECTION 8.** 765.30 (3) (a) and (b) of the statutes are amended to read:


21 765.30 (3) (a) *Penalty for unlawful solemnization of marriage.* Any officiating  
22 person who solemnizes a marriage unless the contracting parties have first obtained  
23 a proper marriage license as heretofore provided; or unless the parties to such  
24 marriage declare that they take each other as husband and wife; or without the  
25 presence of ~~2~~ competent adult witnesses as required under s. 765.16 (1m); or



1 solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a  
2 marriage more than ~~30~~ 60 days after the date of the marriage license; or falsely  
3 certifies to the date of a marriage solemnized by the officiating person; or solemnizes  
4 a marriage in a county other than the county prescribed in s. 765.12.

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

11 (END)



\*\*\* Would you like to include an intra applicability  
provision? Please let me know if you would like to discuss.



Rep. Wittke

Ds / p2

- Leave application period for new

- Add capital applicability provision

- Remove residency requirement entirely,  
(allow for destination weddings)



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2787/P1  
SWB:amn&kjf

IP2  
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 7/24  
Requested today  
if possible  
INSERT

1 AN ACT to amend 765.05, 765.08, 765.09 (3) (a), 765.09 (3) (b), 765.12 (2), 765.16  
2 (1m) (intro.), 765.23 and 765.30 (3) (a) and (b) of the statutes; relating to:  
3 marriage license application requirements, issuance, and validity.

*Analysis by the Legislative Reference Bureau*

This bill makes various changes to the requirements relating to marriage licenses. Under the bill, an applicant for a marriage license is required to present a birth record, a driver’s license, or other comparable evidence for the purposes of proof of identification and date of birth. Current law requires that an applicant exhibit a certified copy of a birth record, but if a birth record is unobtainable, allows the applicant to present other “satisfactory documentary proof of the requisite facts” in lieu of the birth record. The bill maintains the provision existing under current law that if the clerk is not satisfied with the documentary proof presented, the clerk is required to submit the proof to a judge of a court of record in the county of application for an opinion as to its sufficiency.

Current law also includes a requirement that the marriage license application contain the social security number for each party. This bill maintains that requirement, but specifies that the clerk is prohibited from requiring an applicant to present his or her social security card issued by the federal Social Security Administration.

Under the bill, the waiting period for a marriage license is reduced from five days to three days. The county clerk retains discretion to waive the minimum waiting period and charge a fee of up to \$25 to cover any additional processing cost incurred by the county for expediting the license. This bill extends the period for

which a marriage license is valid from 30 days to 60 days and allows the county clerk discretion to waive the current law requirement that one of the parties reside in the county in which the marriage license application is filed for at 30 days. The bill also provides that the 30-day residency requirement does not apply if one of the parties is in the active military service of the United States and that the county clerk has discretion to waive the 30-day residency requirement. Finally, this bill creates an exception to the requirement that two competent adult witnesses other than the officiating person be present for the solemnization of marriage to be valid. Under the bill, if one of the parties is in the active military service of the United States, the presence of only one competent adult witness other than the officiating person is required.

*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.** <sup>No strike</sup> ~~No~~ Except as otherwise

provided in this section, <sup>no</sup> ~~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 county in which one of the parties <sup>strikes</sup> ~~has resided for at least 30 days immediately prior to making application therefor.~~ <sup>resides</sup> The 30-day residency requirement does not apply if one of the parties is in the active military service of the United States. The county clerk also may, at his or her discretion, waive the 30-day residency requirement. 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. If one of the persons is a nonresident of the county where the marriage license is to issue, 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:

WIS  
2-14

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

4           (2) The county clerk may, at his or her discretion, issue a marriage license  
5 within less than ~~5~~ 3 days after application if the applicant pays an additional fee  
6 of not more than \$25 to cover any increased processing cost incurred by the county.  
7 The county clerk shall pay this fee into the county treasury.

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

9           765.09 (3) (a) Each applicant for a marriage license shall present satisfactory,  
10 documentary proof of identification and residence and shall swear to or affirm the  
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12 authorized to accept marriage license applications in the county and state where the  
13 party resides. The application shall contain the social security number of each party,  
14 as well as any other informational items that the department of health services  
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17 application form that is collected for statistical purposes only shall indicate that the  
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19 enforcement officer under the conditions specified under s. 765.20 (2).

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1 documentary proof of the requisite facts therein may be presented in lieu of the birth  
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4 judge of a court of record in the county of application for an opinion as to its  
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6 **SECTION 5.** 765.12 (2) of the statutes is amended to read:

7 765.12 (2) The marriage license shall authorize the marriage ceremony to be  
8 performed in any county of this state within ~~30~~ 60 days of issuance, excepting that  
9 where both parties are nonresidents of the state, the ceremony shall be performed  
10 only in the county in which the marriage license is issued. The officiating person  
11 shall determine that the parties presenting themselves to be married are the parties  
12 named in the marriage license. If aware of any legal impediment to such marriage,  
13 the person shall refuse to perform the ceremony. The issuance of a marriage license  
14 shall not be deemed to remove or dispense with any legal disability, impediment or  
15 prohibition rendering marriage between the parties illegal, and the marriage license  
16 shall contain a statement to that effect.

17 **SECTION 6.** 765.16 (1m) (intro.) of the statutes is amended to read:

18 765.16 (1m) (intro.) Marriage may be validly solemnized and contracted in this  
19 state only after a marriage license has been issued therefor, and only by the mutual  
20 declarations of the 2 parties to be joined in marriage that they take each other as  
21 husband and wife, made before an authorized officiating person and in the presence  
22 of at least 2 competent adult witnesses other than the officiating person. If one of  
23 the parties is in the active military service of the United States, the presence of only  
24 one competent adult witness other than the officiating person is required. The  
25 following are authorized to be officiating persons:

1           **SECTION 7.** 765.23 of the statutes is amended to read:

2           **765.23 Immaterial irregularities otherwise.** No marriage hereafter  
3           contracted shall be void either by reason of the marriage license having been issued  
4           by a county clerk not having jurisdiction to issue the same; or by reason of any  
5           informality or irregularity of form in the application for the marriage license or in  
6           the marriage license itself, or the incompetency of the witnesses to such marriage;  
7           or because the marriage may have been solemnized in a county other than the county  
8           prescribed in s. 765.12, or more than ~~30~~ 60 days after the date of the marriage license,  
9           if the marriage is in other respects lawful and is consummated with the full belief  
10          on the part of the persons so married, or either of them, that they have been lawfully  
11          joined in marriage. Where a marriage has been celebrated in one of the forms  
12          provided for in s. 765.16 (1m), and the parties thereto have immediately thereafter  
13          assumed the habit and repute of husband and wife, and having continued the same  
14          uninterruptedly thereafter for the period of one year, or until the death of either of  
15          them, it shall be deemed that a marriage license has been issued as required by ss.  
16          765.05 to 765.24 and 767.803.

17          **SECTION 8.** 765.30 (3) (a) and (b) of the statutes are amended to read:

18          **765.30 (3) (a) *Penalty for unlawful solemnization of marriage.*** Any officiating  
19          person who solemnizes a marriage unless the contracting parties have first obtained  
20          a proper marriage license as heretofore provided; or unless the parties to such  
21          marriage declare that they take each other as husband and wife; or without the  
22          presence of ~~2~~ competent adult witnesses as required under s. 765.16 (1m); or  
23          solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a  
24          marriage more than ~~30~~ 60 days after the date of the marriage license; or falsely

1 certifies to the date of a marriage solemnized by the officiating person; or solemnizes  
2 a marriage in a county other than the county prescribed in s. 765.12.

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

9 **\*\*\*NOTE:** Would you like to include an initial applicability provision? Please let  
me know if you would like to discuss.

**(END)**

INS  
6-8



**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2787/P2ins  
SWB:amn&kjf

**INSERT 2-14**

\*\*\*\*NOTE: This version of the draft eliminates the 30-day residency requirement, but leaves in place language relating to the clerk from which parties should obtain a license. You could choose to modify the language to further simplify those requirements. Please let me know if you would like to discuss this issue.

**(END INSERT 2-14)**

**INSERT 6-8**

1           **SECTION 1. Initial applicability.**

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

4           (2) The treatment of ss. 765.12 (2), 765.16 (1m) (intro.), 765.23, and 765.30 (30)  
5 (a) and (b) first applies to marriage licenses issued on the effective date of this  
6 subsection.

**(END INSERT 6-8)**

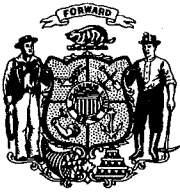


Per Terri

- Modify 765.05 provision to simplify/eliminate residency requirements and county-specific requirements

- modify related provisions accordingly consistent with that intent

- 765.09 (3)(a) okay as is per discussion - information about residency, but not requiring residency status for marriage license



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2787/P2  
SWB:amn&kjf

P3  
RMR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 8/16  
Requested today  
if possible  
PIS

This bill eliminates current law residency requirements and allows parties, resident or nonresident, to obtain a marriage license in any county of the state.

1 AN ACT to amend 765.05, 765.08, 765.09 (3) (a), 765.09 (3) (b), 765.12 (2), 765.16  
2 (1m) (intro.), 765.23 and 765.30 (3) (a) and (b) of the statutes; relating to:  
3 marriage license application requirements, issuance, and validity.

**Analysis by the Legislative Reference Bureau**

This bill makes various changes to the requirements relating to marriage licenses. Under the bill, an applicant for a marriage license is required to present a birth record, a driver's license, or other comparable evidence for the purposes of proof of identification and date of birth. Current law requires that an applicant exhibit a certified copy of a birth record, but if a birth record is unobtainable, allows the applicant to present other "satisfactory documentary proof of the requisite facts" in lieu of the birth record. The bill maintains the provision existing under current law that if the clerk is not satisfied with the documentary proof presented, the clerk is required to submit the proof to a judge of a court of record in the county of application for an opinion as to its sufficiency.

Current law also includes a requirement that the marriage license application contain the social security number for each party. This bill maintains that requirement, but specifies that the clerk is prohibited from requiring an applicant to present his or her social security card issued by the federal Social Security Administration.

The bill also reduces the waiting period for a marriage license is reduced from five days to three days. The county clerk retains discretion to waive the minimum waiting period and charge a fee of up to \$25 to cover any additional processing cost incurred by the county for expediting the license. This bill extends the period for

who has a social security number

as under current law

which a marriage license is valid from 30 days to 60 days. Finally, this bill creates an exception to the requirement that two competent adult witnesses other than the officiating person be present for the solemnization of marriage to be valid. Under the bill, if one of the parties is in the active military service of the United States, the presence of only one competent adult witness other than the officiating person is required.

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

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

2           **765.05 Marriage license; by whom issued.** No person may be joined in  
3 marriage within this state until a marriage license has been obtained for that  
4 purpose from the county clerk of <sup>strike</sup> ~~the~~ <sup>any</sup> county in which <sup>strike</sup> ~~one of the parties has resided~~  
5 for at least 30 days immediately prior to making application therefor resides. If both  
6 parties are nonresidents of the state, the marriage license may be obtained from the  
7 county clerk of the county where the marriage ceremony is to be performed. <sup>this state</sup> If one  
8 of the persons is a nonresident of the county where the marriage license is to issue, <sup>state</sup>  
9 the nonresident's part of the application may be completed and sworn to or affirmed  
10 before the person authorized to accept marriage license applications in the county  
11 and state in which the nonresident resides.

\*\*\*\*NOTE: This version of the draft eliminates the 30-day residency requirement, but leaves in place language relating to the clerk from which parties should obtain a license. You could choose to modify the language to further simplify those requirements. Please let me know if you would like to discuss this issue.

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

13           **765.08 Application for marriage license.** (1) Except as provided in sub.  
14 (2), no marriage license may be issued within ~~5~~ 3 days of application for the marriage  
15 license.

16           (2) The county clerk may, at his or her discretion, issue a marriage license  
17 within less than ~~5~~ 3 days after application if the applicant pays an additional fee

1 of not more than \$25 to cover any increased processing cost incurred by the county.  
2 The county clerk shall pay this fee into the county treasury.

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

4 765.09 (3) (a) Each applicant for a marriage license shall present satisfactory,  
5 documentary proof of identification and residence and shall swear to or affirm the  
6 application before the clerk who is to issue the marriage license or the person  
7 authorized to accept marriage license applications in the county and state where the  
8 party resides. The application shall contain the social security number of each party,  
9 as well as any other informational items that the department of health services  
10 directs, but the clerk may not require an applicant to present his or her social security  
11 card issued by the federal social security administration. The portion of the marriage  
12 application form that is collected for statistical purposes only shall indicate that the  
13 address of the marriage license applicant may be provided by a county clerk to a law  
14 enforcement officer under the conditions specified under s. 765.20 (2).

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

16 765.09 (3) (b) Each applicant for a marriage license shall exhibit to the clerk  
17 a certified copy of a birth record, and each a driver's license, or other comparable  
18 evidence for proof of identification and date of birth. Each applicant shall submit a  
19 copy of any judgment or death record affecting the applicant's marital status. If any  
20 applicable ~~birth record~~, death record or judgment is unobtainable, other satisfactory  
21 documentary proof of the requisite facts therein may be presented in lieu of the ~~birth~~  
22 ~~certificate~~, death certificate or judgment. Whenever the clerk is not satisfied with  
23 the documentary proof presented, he or she shall submit the presented proof to a  
24 judge of a court of record in the county of application for an opinion as to its  
25 sufficiency.

1 SECTION 5. 765.12 (2) of the statutes is amended to read:

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

} strike

12 SECTION 6. 765.16 (1m) (intro.) of the statutes is amended to read:

13 765.16 (1m) (intro.) Marriage may be validly solemnized and contracted in this  
 14 state only after a marriage license has been issued therefor, and only by the mutual  
 15 declarations of the 2 parties to be joined in marriage that they take each other as  
 16 husband and wife, made before an authorized officiating person and in the presence  
 17 of at least 2 competent adult witnesses other than the officiating person. If one of  
 18 the parties is in the active military service of the United States, the presence of only  
 19 one competent adult witness other than the officiating person is required. The  
 20 following are authorized to be officiating persons:

21 SECTION 7. 765.23 of the statutes is amended to read:

22 **765.23 Immaterial irregularities otherwise.** No marriage hereafter  
 23 contracted shall be void either by reason of the marriage license having been issued  
 24 by a county clerk not having jurisdiction to issue the same; or by reason of any  
 25 informality or irregularity of form in the application for the marriage license or in

1 the marriage license itself, or the incompetency of the witnesses to such marriage;  
 2 ~~or because the marriage may have been solemnized in a county other than the county~~  
 3 ~~prescribed in s. 765.12~~; or more than 30 60 days after the date of the marriage license,  
 4 if the marriage is in other respects lawful and is consummated with the full belief  
 5 on the part of the persons so married, or either of them, that they have been lawfully  
 6 joined in marriage. Where a marriage has been celebrated in one of the forms  
 7 provided for in s. 765.16 (1m), and the parties thereto have immediately thereafter  
 8 assumed the habit and repute of husband and wife, and having continued the same  
 9 uninterrupted thereafter for the period of one year, or until the death of either of  
 10 them, it shall be deemed that a marriage license has been issued as required by ss.  
 11 765.05 to 765.24 and 767.803.

12 **SECTION 8.** 765.30 (3) (a) and (b) of the statutes are amended to read:

13 765.30 (3) (a) *Penalty for unlawful solemnization of marriage.* Any officiating  
 14 person who solemnizes a marriage unless the contracting parties have first obtained  
 15 a proper marriage license as heretofore provided; or unless the parties to such  
 16 marriage declare that they take each other as husband and wife; or without the  
 17 presence of ~~2~~ competent adult witnesses as required under s. 765.16 (1m); or  
 18 solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a  
 19 marriage more than 30 60 days after the date of the marriage license; or falsely  
 20 certifies to the date of a marriage solemnized by the officiating person; ~~or solemnizes~~  
 21 ~~a marriage in a county other than the county prescribed in s. 765.12.~~

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

1

or falsely certify to the date of such marriage; or solemnize the same in a county other

*strike*

2

than the county prescribed in s. 765.12.

*strike*

3

**SECTION 9. Initial applicability.**

4

(1) The treatment of ss. 765.05, 765.08, and 765.09 (3) (a) and (b) first applies

5

to applications for marriage licenses received on the effective date of this subsection.

6

(2) The treatment of ss. 765.12 (2), 765.16 (1m) (intro.), 765.23, and 765.30 (3)

7

(a) and (b) first applies to marriage licenses issued on the effective date of this

*relating to the length of time issued marriage licenses are valid*

8

subsection.

9

(END)



## Walkenhorst Barber, Sarah

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**From:** Rep.Wittke  
**Sent:** Monday, August 12, 2019 11:35 AM  
**To:** Walkenhorst Barber, Sarah  
**Subject:** LRB 2787  
**Attachments:** 19-2787\_P3.pdf

Sarah,

Please put this in introducible form. Thanks.

***Terri S. Griffiths***

Office of Rep. Robert Wittke  
62<sup>nd</sup> Assembly District  
412 North, State Capitol  
(608) 266-0731

*NOTE: Emails sent to and from this account may be subject to open records requests and should not be considered private.*



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-2787/P3

SWB:amn&kjf

1

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to amend* 765.05, 765.08, 765.09 (3) (a), 765.09 (3) (b), 765.12 (2), 765.16  
2           (1m) (intro.), 765.23 and 765.30 (3) (a) and (b) of the statutes; **relating to:**  
3           marriage license application requirements, issuance, and validity.

---

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

This bill makes various changes to the requirements relating to marriage licenses. Under the bill, an applicant for a marriage license is required to present a birth record, a driver's license, or other comparable evidence for the purposes of proof of identification and date of birth. Current law requires that an applicant exhibit a certified copy of a birth record, but if a birth record is unobtainable, allows the applicant to present other "satisfactory documentary proof of the requisite facts" in lieu of the birth record. The bill maintains the provision existing under current law that if the clerk is not satisfied with the documentary proof presented, the clerk is required to submit the proof to a judge of a court of record in the county of application for an opinion as to its sufficiency.

Current law also includes a requirement that the marriage license application contain the social security number for each party who has a social security number. This bill maintains that requirement, but specifies that the clerk is prohibited from requiring an applicant to present his or her social security card issued by the federal Social Security Administration.

This bill eliminates current law residency requirements and allows parties, resident or nonresident, to obtain a marriage license in any county of the state. The bill also reduces the waiting period for a marriage license from five days to three days. The county clerk retains discretion as under current law to waive the

1 or falsely certify to the date of such marriage; or solemnize the same in a county other  
2 than the county prescribed in s. 765.12.

3 **SECTION 9. Initial applicability.**

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

6 (2) The treatment of ss. 765.12 (2), 765.16 (1m) (intro.), 765.23, and 765.30 (3)  
7 (a) and (b) relating to the length of time issued marriage licenses are valid first  
8 applies to marriage licenses issued on the effective date of this subsection.

9 (END)

**Barman, Mike**

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**From:** LRB.Legal  
**To:** Rep.Wittke  
**Subject:** Draft review: LRB -2787/1  
**Attachments:** 19-2787/1

**State of Wisconsin - Legislative Reference Bureau**  
**One East Main Street - Suite 200 - Madison**

**The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.** If you have any questions concerning the draft or would like to have it redrafted, please contact Sarah Walkenhorst Barber, Legislative Attorney, at (608) 504-5826, at [sarah.walkenhorstbarber@legis.wisconsin.gov](mailto:sarah.walkenhorstbarber@legis.wisconsin.gov), or at One East Main Street, Suite 200.

**We will jacket this draft for introduction in the Assembly.**

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at [LRB.Legal@legis.wisconsin.gov](mailto:LRB.Legal@legis.wisconsin.gov) or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

**Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.**