
Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: March 16, 2020

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2019 Senate Bill 439

Senate Amendment 1

2019 SENATE BILL 439

The bill makes several changes to the requirements relating to the application for and issuance of a marriage license.

Residency Requirements

Current law generally requires that a marriage license be obtained from the clerk of the county in which one of the parties to the marriage has resided for at least 30 days. Once issued, the marriage license authorizes a marriage ceremony to be performed in any county in Wisconsin. However, if neither party is a Wisconsin resident, a marriage license must be obtained from the county clerk of the county in which the marriage ceremony will be performed, and the ceremony may be performed only in the county in which the marriage license was issued.

The bill eliminates the residency requirements under current law, and instead allows a marriage license to be obtained from the clerk of any county in Wisconsin and further allows the license to authorize performance of a marriage ceremony in any county.

Time Periods

Under current law, no marriage license may be issued within five days of application for the marriage license. However, the county clerk has the discretion to issue a marriage license within less than five days after application if the applicant pays an additional fee up to \$25. Once issued, the marriage license authorizes a marriage ceremony to be performed within 30 days of issuance.

The bill decreases the waiting period between the application and issuance of a marriage license from five days to three days, and maintains the clerk's discretion to issue a marriage license within less than three days, if the applicant pays the additional fee. The bill also lengthens from 30 to 60 days the period in which a license authorizes a marriage ceremony to be performed.

Witnesses

Current law generally requires that a marriage be solemnized by the parties mutually declaring to be joined in marriage before an authorized officiating person and in the presence of at least two competent adult witnesses other than the officiating person. The bill requires the presence of only one competent adult witness, other than the officiating person, if one of the parties is in active U.S. military service.

Required Documentation

Social Security Number

Under current law, an application for a marriage license must contain the Social Security number of each party, as well as any other information directed by the Department of Health Services (DHS). The

bill provides that the clerk may not require an applicant to present his or her Social Security card issued by the federal Society Security Administration.

Birth Records

Current law requires that each applicant for a marriage license exhibit to the clerk a certified copy of a birth record, and also submit a copy of any judgment or death record affecting the applicant's marital status. If any applicable birth record, death record, or judgment is unobtainable, an applicant may present other satisfactory documentary proof of the requisite facts in lieu of the birth record, death record, or judgment. If the clerk is not satisfied with the documentary proof presented, the clerk must submit the presented proof to a judge or a court of record in the county of application for an opinion as to the document's sufficiency.

The bill modifies this procedure with regard to birth records. First, the bill eliminates the requirement that the birth record exhibited by an applicant be a certified copy of that record. Second, the bill allows documents other than a birth record to provide proof of certain facts. Specifically, under the bill, an applicant may exhibit a birth record, driver's license, or other comparable evidence for proof of identification and date of birth. Third, the bill removes birth records from the type of records for which an applicant may present "satisfactory documentary proof" when the record is unobtainable.

SENATE AMENDMENT 1

Senate Amendment 1 modifies the provisions in the bill concerning: (1) the documentation required when applying for a marriage license; (2) the requirement that a marriage license worksheet include each applicant's Social Security number; (3) the county in which a marriage document must be returned after the date of marriage; and (4) the bill's effective date.¹

Required Documentation

Social Security Number

The amendment removes the provision from the bill prohibiting the clerk from requiring an applicant to present his or her Social Security card. Instead, the amendment narrows current law to require that the application contain the Social Security number of each applicant only when an applicant has a Social Security number.

Birth Record

The amendment maintains current law with regard to birth records, in that it requires each applicant to exhibit a certified copy of a birth record to the clerk and allows applicants to provide satisfactory documentary proof in lieu of a birth record, if the birth record is unobtainable.

The amendment also provides that if, in lieu of a birth record, an applicant presents a passport, license, an identification card that complies with the federal Real ID Act of 2005, a permanent resident card, or naturalization paper, the clerk must consider such documentation to be satisfactory documentary proof of identification.

Moreover, the amendment requires a clerk to notify applicants of their right to request judicial review of the material submitted as documentary proof of identification for an opinion as to its sufficiency, and further requires the clerk to seek such judicial review upon request by an applicant.

¹ Senate Amendment 1 to 2019 Senate Bill 439 combines the language in Assembly Amendments 1 and 2 to companion bill 2019 Assembly Bill 457. The amendments are otherwise identical.

Unobtainable Documents

Current law, as maintained in the bill under Assembly Amendment 1, allows an applicant to present other satisfactory documentary proof if an applicant's birth record, death record, or judgment affecting marital status is unobtainable. The amendment provides that the clerk has the discretion to determine whether a document is unobtainable.

Social Security Number

Under current law, the marriage license worksheet must contain the Social Security number of each party, as well as any other information deemed necessary by DHS. The amendment narrows this requirement to apply only when a party has a Social Security number, similar to other provisions under current law.

Return of Marriage Document

Current law requires that, within three days after the date of the marriage, the marriage document be returned to the register of deeds of the county in which the marriage was performed, either by the officiating person, or, if the ceremony was performed without an officiating person, one or both of the parties to the marriage. Any officiating person or party who neglects or refuses to comply with this requirement may be subject to criminal penalties. Under the amendment, the marriage document may be returned to the register of deeds of any county in this state.

Effective Date

The amendment creates a delayed effective date of July 1, 2021.

BILL HISTORY

Senator Kooyenga introduced the bill on September 23, 2019, and offered the amendment on January 10, 2020. On February 26, 2020, the Senate Committee on Public Benefits, Licensing, and State-Federal Relations unanimously recommended adoption of the amendment and passage of the bill, as amended.

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