

CHAPTER 889

DOCUMENTARY AND RECORD EVIDENCE

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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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Copies of records must be given to any applicant who tenders the proper fee, regardless of his purpose in requesting the copy. 58 Atty. Gen. 67

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.

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.

889.16 Judgment of foreign justice. A certified copy of the record of the judicial proceedings of any foreign court not of record with

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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:

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.

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. 446.02 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.

This section does not make admissible police accident reports which contain hearsay or conclusions. *Wilder v. Classified Risk Ins. Co.* 47 W (2d) 286, 177 NW (2d) 109.

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.

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.

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.

This section would not permit introduction of a copy of an insurance policy supported by an affidavit since the acknowledgment must be by the signer of the instrument. *Whalen v. State Farm Mut. Auto. Ins. Co.* 51 W (2d) 635, 187 NW (2d) 820.

889.24 Conveyance, how proved. When any grantor shall die or depart from or reside out of this state, not having acknowledged his conveyance, the due execution thereof may be proved by any competent subscribing witness thereto before any court of record; if all the subscribing witnesses to such deed shall be dead or out of this state the same may be proved before

any such court by proving the handwriting of the grantor and of any subscribing witness thereto.

889.241 How made when grantor refuses. If any grantor residing in this state refuses to acknowledge his conveyance the grantee or any person claiming under him may apply to the county judge in the county where the land lies or where the grantor or any subscribing witness to the conveyance resides, who shall thereupon issue a summons to the grantor to appear at a certain time and place before said judge to hear the testimony of the subscribing witnesses to the conveyance; and the summons, with a copy of the conveyance annexed, shall be served at least 7 days before the time therein assigned for proving the same. At the time mentioned in such summons or at any time to which the hearing may be adjourned the due execution of the conveyance may be proved by the testimony of one or more of the subscribing witnesses; and if proved to the satisfaction of the judge he shall certify the same thereon, and in such certificate he shall note the presence or absence of the grantor as the fact may be.

889.242 How, when witnesses dead. If any grantor residing in this state refuses to acknowledge his conveyance and all the subscribing witnesses thereto are dead or out of the state, it may be proved before any court of record by proving the handwriting of the grantor or of any subscribing witness, upon the court first summoning the grantor to hear the testimony as provided in s. 889.241.

889.243 Witnesses, how subpoenaed; neglect to appear. The court before whom any conveyance may be presented to be proved, as provided in ss. 889.24 to 889.243, may issue subpoenas to the subscribing witnesses or others, as required, to appear and testify touching the execution of such deed, which subpoenas may be served in any part of this state; and every person so subpoenaed who, without reasonable cause, neglects to appear or refuses to answer on oath touching the matters aforesaid shall be liable to the party injured in the sum of \$100 damages and for such further damages as the party may sustain thereby, and may also be punished as for a contempt by the court.

889.244 Copy of defective conveyance may be filed. Any person interested in a conveyance that is not acknowledged may, before or during any such application to prove the same, file in the office of the register of deeds a copy of the conveyance compared with the origi-

nal by the register, which shall, if such proceedings shall have been or shall within 10 days thereafter be commenced, have the same effect as the recording of such conveyance until the expiration of 7 days after the termination of such proceedings, if such conveyance shall before that time be duly proved or recorded.

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.

Police accident reports are not admissible as business entries. *Wilder v. Classified Risk Ins. Co.* 47 W (2d) 286, 177 NW (2d) 109.

Medical proof in Wisconsin. *Holz*, 1970 WLR 989.

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.

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.

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 combi-

nation 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.

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. The board shall approve the type of microform to be used in copying, including without restriction because of enumeration, reel, cartridge, microfiche, jacket, aperture card or camera card.

(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, microphotographed or otherwise reproduced on film.

(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 shall carry a title target giving the name of the county department, agency, board, commission or court, and a brief title of record series. Where applicable, the microform shall also contain 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, if such microform is used. 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: 1971 c. 69

889.31 Offer of learned treatises; notice, time limit. (1) No published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art may be received in evidence, except for impeachment on cross-examination, unless the party proposing to offer such document in evidence serves notice in writing upon opposing counsel at least 20 days before trial. The notice shall fully describe the document which the party proposes to offer, giving the name of such document, the name of the author, the date of publication, the name of the publisher, and specifically designating the portion thereof to be offered. The offering party shall deliver with the notice a true and correct copy of the treatise, periodical or pamphlet or of the portion thereof to be offered.

(2) No rebutting published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art shall be received in evidence unless the party pro-

posing to offer the same shall, not later than 10 days after service of the notice described in sub. (1), serve notice similar to that provided in sub. (1) upon counsel who has served the original notice. He shall deliver with the notice a true and correct copy of the treatise, periodical or pamphlet or of the portion thereof to be offered.

(3) Before admitting any such document into evidence the court shall determine that it is a reliable authority on a subject of history, science or art.

(4) The court may, for cause shown prior to or at the trial, relieve the party from the requirements of this section in order to prevent a manifest injustice.

History: Sup. Ct. Order, 50 W (2d) vii.

Comment of Judicial Council, 1971: Lewandowski v. Preferred Risk Mutual Insurance Co., 33 Wis. (2d) 69, provided for the admission in evidence of learned treatises. This section provides notice and limitation upon the latest time at which counsel should notify his opponent of his intent to offer a textbook or learned treatise.

The phrase "published treatise, periodical or pamphlet constituting a reliable authority on a subject of history, science or art" is used because that phrase was used in Lewandowski and is also used in Rule 63 of the Uniform Rules of Evidence and in Rule 529 of the Model Code of Evidence of the American Law Institute [Re Order effective July 1, 1971]

Medical proof in Wisconsin Holz, 1970 WLR 989.