

CHAPTER 765

MARRIAGE

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765.001 Title, intent and construction of chs. 765 to 768. (1) TITLE. Chapters 765 to 768 may be cited as "The Family Code"

(2) INTENT. It is the intent of chs. 765 to 768 to promote the stability and best interests of marriage and the family. It is the intent of the legislature to recognize the valuable contributions of both spouses during the marriage and at termination of the marriage by dissolution or death. Marriage is the institution that is the foundation of the family and of society. Its stability is basic to morality and civilization, and of vital interest to society and the state. The consequences of the marriage contract are more significant to society than those of other contracts, and the public interest must be taken into account always. The seriousness of marriage makes adequate premarital counseling and education for family living highly desirable and courses thereon are urged upon all persons contemplating marriage. The impairment or dissolution of the marriage relation generally results in injury to the public wholly apart from the effect upon the parties immediately concerned. Under the laws of this state, marriage is a legal relationship between 2 equal persons, a husband and wife, who owe to each other mutual responsibility and support. Each spouse has an equal obligation in accordance with his or her ability to contribute money or services or both which are necessary for the adequate support and maintenance of his or her minor children and of the other spouse. No spouse may be presumed primarily liable for support expenses under this subsection.

(3) CONSTRUCTION. Chapters 765 to 768 shall be liberally construed to effect the objectives of sub. (2).

History: 1979 c. 32 ss. 48, 92 (2); 1979 c. 175 s. 53; Stats. 1979 s. 765.001; 1983 a. 186.

Land contract which required reconveyance to husband's parents if he became divorced within 10 years was not against public policy. In re Terrill v. Terrill, 98 W (2d) 213, 295 NW (2d) 809 (Ct. App. 1980).

Family code doesn't preclude unmarried cohabitant from asserting contract and property claims against other cohabitant. Watts v. Watts, 137 W (2d) 506, 405 NW (2d) 303 (1987).

Assets of wife could be used to pay for husband's appointed counsel. United States v. Conn, 645 F Supp. 44 (E. D. Wis. 1986).

765.002 Definitions. (1) Unless the context clearly indicates otherwise "clergyman" in this chapter means spiritual adviser of any religion, whether the adviser is termed priest, rabbi, minister of the gospel, pastor, reverend or any other official designation.

(2) In this chapter "church under his or her ministry" includes any congregation, parish or place of worship at which any clergyman is located or assigned and also any administrative, missionary, welfare or educational agency,

institution or organization affiliated with any religious denomination or society in this state.

(3) In this chapter, "marriage certificate" means that portion of the marriage document designated as such, which includes the marriage license as well as the information concerning the marriage ceremony, signatures resulting from the ceremony and proof of filing.

(4) In this chapter, "marriage document" is that document consisting of the marriage license, the marriage certificate and the confidential information collected for statistical purposes only.

(5) In this chapter, "marriage license" means that portion of the marriage document designated as such, which is authorization for the marriage to take place.

(6) In chs. 765 to 768 "void" means null and void and not voidable.

History: 1979 c. 32 s. 48; 1979 c. 89, 176, 177; Stats. 1979 s. 765.002; 1981 c. 20.

765.01 A civil contract. Marriage, so far as its validity at law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting is essential, and which creates the legal status of husband and wife.

History: 1979 c. 32 s. 48; Stats. 1979 s. 765.01.

765.02 Marriageable age; who may contract. (1) Every person who has attained the age of 18 years may marry if otherwise competent.

(2) If a person is between the age of 16 and 18 years, a marriage license may be issued with the written consent of the person's parents, guardian, custodian under s. 767.23 (1) or 767.24, or parent having the actual care, custody and control of the person. The written consent must be given before the county clerk under oath, or certified in writing and verified by affidavit (or affirmation) before a notary public or other official authorized to take affidavits. The written consent shall be filed with the county clerk at the time of application for a marriage license. If there is no guardian, parent or custodian or if the custodian is an agency or department, the written consent may be given, after notice to any agency or department appointed as custodian and hearing proper cause shown, by the court having probate jurisdiction.

History: 1971 c. 149; 1971 c. 213 s. 5; 1975 c. 39, 94, 200; 1979 c. 32 ss. 48, 92 (4); Stats. 1979 s. 765.02; 1981 c. 20 s. 2200.

765.03 Who shall not marry; divorced persons. (1) No marriage shall be contracted while either of the parties has a husband or wife living, nor between persons who are nearer of kin than 2nd cousins except that marriage may be contracted between first cousins where the female has attained

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the age of 55 years or where either party, at the time of application for a marriage license, submits an affidavit signed by a physician stating that either party is permanently sterile. Relationship under this section shall be computed by the rule of the civil law, whether the parties to the marriage are of the half or of the whole blood. A marriage may not be contracted if either party has such want of understanding as renders him or her incapable of assenting to marriage.

(2) It is unlawful for any person, who is or has been a party to an action for divorce in any court in this state, or elsewhere, to marry again until 6 months after judgment of divorce is granted, and the marriage of any such person solemnized before the expiration of 6 months from the date of the granting of judgment of divorce shall be void.

History: 1971 c. 220; 1977 c. 8, 83, 203; 1979 c. 32 s. 48; Stats 1979 s. 765.03.

765.035 Validity of marriages of epileptics. All marriages, otherwise valid and legal, contracted prior to April 24, 1953, to which either party was an epileptic person are hereby validated and legalized in all respects as though such marriages had been duly and legally contracted in the first instance.

History: 1979 c. 32 s. 48; Stats 1979 s. 765.035.

765.04 Marriage abroad to circumvent the laws. (1) If any person residing and intending to continue to reside in this state who is disabled or prohibited from contracting marriage under the laws of this state goes into another state or country and there contracts a marriage prohibited or declared void under the laws of this state, such marriage shall be void for all purposes in this state with the same effect as though it had been entered into in this state.

(2) Proof that a person contracting a marriage in another jurisdiction was (a) domiciled in this state within 12 months prior to the marriage, and resumed residence in this state within 18 months after the date of departure therefrom, or (b) at all times after departure from this state, and until returning maintained a place of residence within this state, shall be prima facie evidence that at the time such marriage was contracted the person resided and intended to continue to reside in this state.

(3) No marriage shall be contracted in this state by a party residing and intending to continue to reside in another state or jurisdiction, if such marriage would be void if contracted in such other state or jurisdiction and every marriage celebrated in this state in violation of this provision shall be null and void.

History: 1979 c. 32 s. 48; 1979 c. 176; Stats 1979 s. 765.04.

765.05 Marriage license; by whom issued. 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 has resided for at least 30 days immediately prior to making application therefor. 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 such applications in the county and state in which the nonresident resides.

History: 1979 c. 32 ss. 48, 92 (2); 1979 c. 89, 176, 177, 355; Stats 1979 s. 765.05; 1981 c. 20, 142, 314.

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

(2) The county clerk may, at his or her discretion, issue a marriage license within less than 5 days after application if the applicant pays an additional fee of not more than \$10 to cover any increased processing cost incurred by the county. The county clerk shall pay this fee into the county treasury.

History: 1979 c. 32 s. 48; 1979 c. 176; Stats 1979 s. 765.08; 1981 c. 20, 142.

765.09 Identification of parties; statement of qualifications. (1) (a) No application for a marriage license may be made by persons lawfully married to each other and no marriage license may be issued to such persons.

(b) Paragraph (a) does not apply to persons whose marriage to one another is void under s. 765.03 (2) and who intend to intermarry under s. 765.21.

(2) No marriage license may be issued unless the application for it is subscribed by the parties intending to intermarry and is filed with the clerk who issues the marriage license.

(3) Each party shall present satisfactory, documentary proof of identification and residence and shall swear (or affirm) to the application before the clerk who is to issue the marriage license or the person authorized to accept such applications in the county and state where the party resides. The application shall contain such informational items as the department of health and social services directs. Each applicant under 30 years of age shall exhibit to the clerk a certified copy of a birth certificate, and any applicants shall submit a copy of any judgments or a death certificate affecting the marital status. If such certificate or judgment is unobtainable, other satisfactory documentary proof of the requisite facts therein may be presented in lieu thereof. Whenever the clerk is not satisfied with the documentary proof presented, he or she shall submit the same, for an opinion as to the sufficiency of the proof, to a judge of a court of record in the county of application.

History: 1977 c. 418; 1979 c. 32 s. 48; 1979 c. 221; Stats 1979 s. 765.09; 1981 c. 20; 1985 a. 103.

765.11 Objections to marriage. (1) If any parent, grandparent, child, or natural guardian of a minor applicant for a marriage license, any brother, sister or guardian of either of the applicants for a marriage license, either of the applicants, the district attorney or the family court commissioner believes that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, that person may file with the court having probate jurisdiction in the county in which the marriage license is applied for, a petition under oath, setting forth the grounds of objection to the marriage and asking for an order requiring the parties making such application to show cause why the marriage license should not be refused. Whereupon, the court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court directs, but not more than 14 days after the date of the order, which shall be served forthwith upon the applicants for the marriage license residing in the state, and upon the clerk before whom the application has been made, and shall operate as a stay upon the issuance of the marriage license until further ordered; if either or both of the applicants are nonresidents of the state the order shall be served forthwith upon the nonresident by publication of a class 1 notice, under ch. 985, in the county wherein the application is pending, and by mailing a copy thereof to the nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are wilfully false or insufficient, or that either or both of said parties are not competent in law to marry, the court shall make an order refusing the marriage license, and

shall immediately report such matter to the district attorney. If said falseness or insufficiency is due merely to inadvertence, then the court shall permit the parties to amend the application so as to make the statements therein true and sufficient, and upon application being so amended, the marriage license shall be issued. If any party is unable to supply any of the information required in the application, the court may, if satisfied that such inability is not due to wilfulness or negligence, order the marriage license to be issued notwithstanding such insufficiency. The costs and disbursements of the proceedings under this section shall rest in the discretion of the court, but none shall be taxed against any district attorney or family court commissioner acting in good faith.

History: 1979 c. 32 s. 48; 1979 c. 176; Stats. 1979 s. 765.11; 1981 c. 20 ss. 1777v, 2200.

765.12 Marriage license, when authorized; corrections; contents. (1) If ss. 765.02, 765.05, 765.08 and 765.09 are complied with, and if there is no prohibition against or legal objection to the marriage, the county clerk shall issue a marriage license. With each marriage license the county clerk shall provide a pamphlet describing the causes and effects of fetal alcohol syndrome. After the application for the marriage license the clerk shall, upon the sworn statement of either of the applicants, correct any erroneous, false or insufficient statement in the marriage license or in the application therefor which shall come to the clerk's attention prior to the marriage and shall show the corrected statement as soon as reasonably possible to the other applicant.

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

History: 1977 c. 105; 1979 c. 32 ss. 48, 92 (2); 1979 c. 176, 196; Stats. 1979 s. 765.12; 1981 c. 20; 1985 a. 19.

765.13 Form of marriage document. The marriage document shall contain such informational items as the department of health and social services determines are necessary and shall agree in the main with the standard form recommended by the federal agency responsible for national vital statistics. It shall contain a notification of the time limits of the authorization to marry, a notation that the issue of the marriage license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the signature of the county clerk, who shall acquire the information for the marriage document and enter it in its proper place when the marriage license is issued.

History: 1977 c. 418; 1979 c. 32 s. 48; Stats. 1979 s. 765.13; 1981 c. 20.

765.14 Form of marriage document when solemnized by parties. If the marriage is to be solemnized by the parties without an officiating person, as provided by s. 765.16 (3) the marriage document shall contain all those items and notations as required by s. 765.13.

History: 1977 c. 418; 1979 c. 32 ss. 48, 92 (2); Stats. 1979 s. 765.14; 1981 c. 20.

765.15 Fee to county clerk. Each county clerk shall receive as a fee for each license granted the sum of \$29.50, of which \$4.50 shall become a part of the funds of the county, and \$25 shall be paid into the state treasury. Each county board may increase the license fee of \$29.50 by any amount, which amount shall become a part of the funds of the county. The clerk shall also receive a standard notary fee of 50 cents for each license granted which may be retained by him or her if operating on a fee or part fee basis, but which otherwise shall become part of the funds of the county.

History: 1971 c. 125; 1979 c. 32 s. 48; 1979 c. 176; Stats. 1979 s. 765.15; 1981 c. 20; 1985 a. 29.

765.16 Marriage contract, how made; officiating person.

Marriage may be validly solemnized and contracted in this state only after a marriage license has been issued therefor, and only in the following manner: by the mutual declarations of the 2 parties to be joined in marriage, made before a duly authorized officiating person and in the presence of at least 2 competent adult witnesses other than such officiating person, that they take each other as husband and wife. The following are duly authorized to be officiating persons:

(1) Any ordained clergyman of any religious denomination or society who continues to be such ordained clergyman;

(2) Any licentiate of a denominational body or an appointee of any bishop serving as the regular clergyman of any church of the denomination to which the clergyman belongs, if not restrained from so doing by the discipline of the church or denomination;

(3) The 2 parties themselves, by such mutual declarations, in accordance with the customs, rules and regulations of any religious society, denomination or sect to which either of said parties may belong;

(4) Any judge of a court of record or a reserve judge appointed under s. 753.075.

(5) Any family court commissioner appointed under s. 767.13 or court commissioner appointed under s. 757.68.

(6) Any municipal court judge.

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.

Court commissioners do not have the power to officiate at marriages outside the county for which they were appointed. 78 Atty. Gen. 16.

765.17 Nonresident officiating person; sponsorship. Any clergyman, licentiate or appointee named in s. 765.16 who is not a resident of this state may solemnize marriages in this state if he or she possesses at the time of the marriage a letter of sponsorship from a clergyman of the same religious denomination or society who has a church in this state under his or her ministry.

History: 1979 c. 32 ss. 48, 92 (2); 1979 c. 176; Stats. 1979 s. 765.17; 1981 c. 142.

"Church under his or her ministry" discussed. 60 Atty. Gen. 92

765.19 Delivery and filing of marriage document. The marriage document, legibly and completely filled out with unfading black ink, shall be returned by the officiating person, or, in the case of a marriage ceremony performed without an officiating person, then by the parties to the marriage contract, or either of them, to the register of deeds of the county in which the marriage was performed within 3 days after the date of the marriage.

History: 1977 c. 418; 1979 c. 32 s. 48; 1979 c. 221, 355; Stats. 1979 s. 765.19; 1981 c. 20; 1983 a. 221.

765.20 Records and blanks. The state registrar of vital statistics shall prescribe forms for blank applications, statement, consent of parents, affidavits, documents and other forms as are necessary to comply with the provisions of this chapter. The county clerk shall keep among the records in the office a suitable book called the marriage license docket and

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shall enter therein a complete record of the applications for and the issuing of all marriage licenses, and of all other matters which the clerk is required by this chapter to ascertain relative to the rights of any person to obtain a marriage license. An application may be recorded by entering into the docket the completed application form, with any portion collected only for statistical purposes removed. The marriage license docket shall be open for public inspection or examination at all times during office hours.

History: 1979 c. 32 s. 48; 1979 c. 176; Stats. 1979 s. 765.20; 1981 c. 20.

765.21 Unlawful marriages void; validation. All marriages hereafter contracted in violation of ss. 765.02, 765.03, 765.04 and 765.16 shall be void, except as provided in ss. 765.22 and 765.23. The parties to any such marriage may validate the marriage by complying with the requirements of ss. 765.02 to 765.24 as follows:

(1) At any time, if the marriage is declared void under s. 765.02 or 765.16.

(2) No earlier than 6 months after the divorce judgment is granted, if the marriage is declared void under s. 765.03 (2).

History: 1979 c. 32 s. 48; Stats. 1979 s. 765.21; 1985 a. 103, 135

765.22 Immaterial irregularities as to authority of person officiating. No marriage hereafter contracted shall be void by reason of want of authority or jurisdiction in the officiating person solemnizing such marriage, if the marriage is in other respects lawful, and is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

History: 1979 c. 32 s. 48; Stats. 1979 s. 765.22.

765.23 Immaterial irregularities otherwise. No marriage hereafter contracted shall be void either by reason of the marriage license having been issued by a county clerk not having jurisdiction to issue the same; or by reason of any informality or irregularity of form in the application for the marriage license or in the marriage license itself, or the incompetency of the witnesses to such marriage; or because the marriage may have been solemnized in a county other than the county prescribed in s. 765.12, or more than 30 days after the date of the marriage license, if the marriage is in other respects lawful and is consummated with the full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. Where a marriage has been celebrated in one of the forms provided for in s. 765.16, and the parties thereto have immediately thereafter assumed the habit and repute of husband and wife, and having continued the same uninterruptedly thereafter for the period of one year, or until the death of either of them, it shall be deemed that a marriage license has been issued as required by ss. 765.05 to 765.24 and 767.60.

History: 1979 c. 32 ss. 48, 92 (2); Stats. 1979 s. 765.23; 1981 c. 20 s. 2200; 1981 c. 314 s. 146.

765.24 Removal of impediments to subsequent marriage. If a person during the lifetime of a husband or wife with whom the marriage is in force, enters into a subsequent marriage contract in accordance with s. 765.16, and the parties thereto live together thereafter as husband and wife, and such subsequent marriage contract was entered into by one of the parties in good faith, in the full belief that the former husband or wife was dead, or that the former marriage had been annulled, or dissolved by a divorce, or without knowledge of such former marriage, they shall, after the impediment to their marriage has been removed by the death or divorce of the other party to such former marriage, if they continue to live together as husband and wife in good faith on the part of one of them, be held to have been legally married

from and after the removal of such impediment and the issue of such subsequent marriage shall be considered as the marital issue of both parents.

History: 1979 c. 32 ss. 48, 92 (2); Stats. 1979 s. 765.24; 1983 a. 447.

A 2nd marriage entered into while plaintiff was already married will not be annulled where she did not live with the 2nd husband after the first husband died. *Smith v. Smith*, 52 W (2d) 262, 190 NW (2d) 174.

Common law validation of subsequent marriage discussed. *Corning v. Carriers Insurance Co.* 88 W (2d) 17, 276 NW (2d) 310 (Ct. App. 1979)

Equitable doctrine of "clean hands" precluded defendant from obtaining annulment of marriage to plaintiff. Voidable marriage became valid upon removal of impediment to marriage. *Halker v. Halker*, 92 W (2d) 645, 285 NW (2d) 745 (1979).

Husband was estopped from challenging validity of wife's divorce from her first husband. *Schlinder v. Schlinder*, 107 W (2d) 695, 321 NW (2d) 343 (Ct. App. 1982)

765.30 Penalties. (1) The following shall be fined not less than \$200 nor more than \$1,000, or imprisoned not more than one year, or both:

(a) *Penalty for marriage outside the state to circumvent the laws.* Any person residing and intending to continue to reside in this state who goes outside the state and there contracts a marriage prohibited or declared void under the laws of this state.

(2) The following shall be fined not less than \$100 nor more than \$1,000, or imprisoned not more than one year, or both:

(a) *Penalty for false statement.* Any person who in any affidavit or statement made under s. 765.02 (2), 765.09 or 765.11, wilfully and falsely swears, or who procures another to swear falsely in regard to any material fact relating to the competency of either or both of the parties applying for a marriage license, or as to the ages of such parties, if minors, or who falsely pretends to be the parent or guardian having authority to give consent to the marriage of such minor.

(b) *Penalty for unlawful issuance of marriage license.* Any county clerk who knowingly issues a marriage license contrary to or in violation of this chapter.

(c) *Penalty for false solemnization of marriage.* Any person, not being duly authorized by the laws of this state, who intentionally undertakes to solemnize a marriage in this state; or any person who intentionally participates in or in any way aids or abets any false or fictitious marriage.

(3) The following shall be fined not less than \$100 nor more than \$500, or imprisoned not more than 6 months, or both:

(a) *Penalty for unlawful solemnization of marriage.* Any officiating person who solemnizes a marriage unless the contracting parties have first obtained a proper marriage license as heretofore provided; or unless the parties to such marriage declare that they take each other as husband and wife; or without the presence of 2 competent adult witnesses; or solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a marriage more than 30 days after the date of the marriage license; or falsely certifies to the date of a marriage solemnized by the officiating person; or solemnizes a marriage in a county other than the county prescribed in s. 765.12.

(b) *Penalty for unlawful solemnization by parties.* Where a marriage is solemnized without the presence of an officiating person if the parties to such marriage solemnize the same without the presence of 2 competent adult witnesses or more than 30 days after the date of the license; or falsely certify to the date of such marriage; or solemnize the same in a county other than the county prescribed in s. 765.12.

(4) The following shall be fined not less than \$10 nor more than \$200, or imprisoned not more than 3 months, or both:

(a) *Penalty for failure to file marriage certificate.* Every officiating person, or persons marrying without the presence of an officiating person, as provided by s. 765.16 (3), who neglect or refuse to transmit the original marriage certificate, solemnized by him or them, to the register of deeds of the

county in which the marriage was performed within 3 days after the date of the marriage.

(b) *Penalty for violations relating to records.* Any county clerk who refuses or neglects to enter upon the marriage license docket a complete record of each application, and of each marriage license issued from the clerk's office, immediately after the same has been made or issued, as the case may be, or fails to keep such marriage license docket open for inspection or examination by the public during office hours, or prohibits or prevents any person from making a copy or abstract of the entries in the marriage license docket.

(5) The following shall be fined not less than \$10 nor more than \$50:

(a) *Penalty for other violations.* Any person violating any provision of this chapter for which no other penalty is provided.

History: 1977 c. 418; 1979 c. 32 ss. 48, 92 (2); 1979 c. 176; Stats. 1979 s. 765.30; 1981 c. 20, 390; 1983 a. 221.

765.31 Action to recover penalties. Any fine or forfeiture imposed under s. 765.30 may be recovered in the same manner as other debts are recovered with the usual costs, in any court of record in any county in this state in which the defendant may be found.

History: 1979 c. 32 ss. 48, 92 (2); Stats. 1979 s. 765.31.