



2021 ASSEMBLY BILL 270

April 16, 2021 - Introduced by Representatives WITKE, DUCHOW, KUGLITSCH, BOWEN, EDMING, KNODL and SUBECK, cosponsored by Senators KOOYENGA, CARPENTER, MARKLEIN and ROYS. Referred to Committee on Family Law.

1 **AN ACT to amend** 765.05, 765.08, 765.09 (3) (a), 765.09 (3) (b), 765.12 (2), 765.13,
2 765.16 (1m) (intro.), 765.19, 765.23, 765.30 (3) (a) and (b) and 765.30 (4) (a); and
3 **to create** 765.09 (3) (c) of the statutes; **relating to:** marriage solemnization
4 requirements and marriage document requirements, issuance, and validity.

Analysis by the Legislative Reference Bureau

This bill makes various changes to requirements relating to marriage documentation and marriage ceremonies.

Current law requires an applicant for a marriage license to exhibit a certified copy of a birth record and to submit a copy of any judgment or death record affecting the applicant's marital status. If a birth record, death record, or judgment is unobtainable, current law allows the applicant to present other satisfactory documentary proof of the requisite facts therein in lieu of the these documents. Under the bill, the county clerk has discretion to determine whether a document is unobtainable. With regard to birth records, the bill provides that if an applicant presents certain documentation specified in the bill in lieu of the required birth record, such as a passport or permanent resident card, the county clerk is required to consider that documentation satisfactory documentary proof for purposes of a license.

Under current law, if a county clerk is not satisfied with the documentation presented, the clerk is required to submit the presented documentation to a judge in the county of application for an opinion as to its sufficiency. The bill modifies this procedure, requiring that if a county clerk is not satisfied with the documentation

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presented, he or she must notify the applicant of the right to request review by a judge and then, if the applicant requests such review, submit the documentation to a judge as under current law.

The bill also eliminates current law residency requirements and allows parties, resident or nonresident, to obtain a marriage license in any county of the state; extends the period for which a marriage license is valid from 30 days to 60 days; and 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 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.

Under current law, for a marriage ceremony in which both parties are nonresidents of the state, the ceremony is required to be performed in the county in which the marriage license is issued. The bill eliminates that requirement and allows both residents and nonresidents to marry in a ceremony in any county in the state. The bill also 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. Finally, the bill modifies the requirements for return of the marriage document after a marriage ceremony. Under current law, the marriage document must be returned to the register of deed of the county in which the marriage was performed. Under the bill, the marriage document may be returned to the register of deeds in any county in the state.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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 the any county in which ~~one of the parties has~~
5 ~~resided for at least 30 days immediately prior to making application therefor.~~ 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~~ this state.
8 If one of the persons is a nonresident of the county ~~where the marriage license is to~~

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1 issue state, the nonresident's part of the application may be completed and sworn to
2 or affirmed before the person authorized to accept marriage license applications in
3 the county and state in which the nonresident resides.

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

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

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

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

13 765.09 **(3)** (a) Each applicant for a marriage license shall present satisfactory,
14 documentary proof of identification and residence and shall swear to or affirm the
15 application before the clerk who is to issue the marriage license or the person
16 authorized to accept marriage license applications in the county and state where the
17 party resides. The application shall contain the social security number of each party
18 who has a social security number, as well as any other informational items that the
19 department of health services directs. The clerk shall accept as proof of identification
20 documentation as set forth under par. (b). The portion of the marriage application
21 form that is collected for statistical purposes only shall indicate that the address of
22 the marriage license applicant may be provided by a county clerk to a law
23 enforcement officer under the conditions specified under s. 765.20 (2).

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

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1 765.09 (3) (b) Each applicant for a marriage license shall exhibit to the clerk
2 a certified copy of a birth record, and each applicant shall submit a copy of any
3 judgment or death record affecting the applicant's marital status. If any applicable
4 birth record, death record, or judgment is unobtainable, other satisfactory
5 documentary proof of the requisite facts therein may be presented in lieu of the birth
6 certificate record, death certificate record, or judgment. If an applicant presents a
7 passport, license, or identification that meets the requirements of P.L. 109-13,
8 permanent resident card, or naturalization paper in lieu of the birth record, the clerk
9 shall consider such documentation satisfactory documentary proof for purposes of
10 this paragraph. Whenever the clerk is not satisfied with the documentary proof
11 presented, he or she shall notify the applicant that the applicant has the right to
12 request review of the submitted material by a judge of a court of record and shall,
13 upon request by an applicant, submit the presented proof to a judge of a court of
14 record in the county of application for an opinion as to its sufficiency.

15 **SECTION 5.** 765.09 (3) (c) of the statutes is created to read:

16 765.09 (3) (c) For purposes of par. (b), the clerk shall have discretion to
17 determine whether a document is unobtainable.

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

19 765.12 (2) The marriage license shall authorize the marriage ceremony to be
20 performed in any county of this state within ~~30~~ 60 days of issuance, ~~excepting that~~
21 ~~where both parties are nonresidents of the state, the ceremony shall be performed~~
22 ~~only in the county in which the marriage license is issued.~~ The officiating person
23 shall determine that the parties presenting themselves to be married are the parties
24 named in the marriage license. If aware of any legal impediment to such marriage,
25 the person shall refuse to perform the ceremony. The issuance of a marriage license

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1 shall not be deemed to remove or dispense with any legal disability, impediment or
2 prohibition rendering marriage between the parties illegal, and the marriage license
3 shall contain a statement to that effect.

4 **SECTION 7.** 765.13 of the statutes is amended to read:

5 **765.13 Form of marriage document.** The marriage document shall consist
6 of the marriage license and the marriage license worksheet. The marriage license
7 shall contain a notification of the time limits of the authorization to marry, a notation
8 that the issue of the marriage license shall not be deemed to remove or dispense with
9 any legal disability, impediment or prohibition rendering marriage between the
10 parties illegal, and the signature of the county clerk, who shall acquire the
11 information for the marriage document and enter it in its proper place when the
12 marriage license is issued. The marriage license worksheet shall contain the social
13 security number of each party who has a social security number, as well as any other
14 information items that the department of health services determines are necessary
15 and shall agree in the main with the standard form recommended by the federal
16 agency responsible for national vital statistics. The county clerk shall transmit the
17 marriage license worksheet to the state registrar within 5 days after the date of
18 issuance of the marriage license.

19 **SECTION 8.** 765.16 (1m) (intro.) of the statutes is amended to read:

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

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1 one competent adult witness other than the officiating person is required. The
2 following are authorized to be officiating persons:

3 **SECTION 9.** 765.19 of the statutes is amended to read:

4 **765.19 Delivery and filing of marriage document.** The marriage
5 document, legibly and completely filled out with unfading black ink, shall be
6 returned by the officiating person, or, in the case of a marriage ceremony performed
7 without an officiating person, then by the parties to the marriage contract, or either
8 of them, to the register of deeds of the any county in which the marriage was
9 performed this state within 3 days after the date of the marriage.

10 **SECTION 10.** 765.23 of the statutes is amended to read:

11 **765.23 Immaterial irregularities otherwise.** No marriage hereafter
12 contracted shall be void either by reason of the marriage license having been issued
13 by a county clerk not having jurisdiction to issue the same; or by reason of any
14 informality or irregularity of form in the application for the marriage license or in
15 the marriage license itself, or the incompetency of the witnesses to such marriage;
16 ~~or because the marriage may have been solemnized in a county other than the county~~
17 ~~prescribed in s. 765.12,~~ or more than ~~30~~ 60 days after the date of the marriage license,
18 if the marriage is in other respects lawful and is consummated with the full belief
19 on the part of the persons so married, or either of them, that they have been lawfully
20 joined in marriage. Where a marriage has been celebrated in one of the forms
21 provided for in s. 765.16 (1m), and the parties thereto have immediately thereafter
22 assumed the habit and repute of husband and wife, and having continued the same
23 uninterruptedly thereafter for the period of one year, or until the death of either of
24 them, it shall be deemed that a marriage license has been issued as required by ss.
25 765.05 to 765.24 and 767.803.

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1 **SECTION 11.** 765.30 (3) (a) and (b) of the statutes are amended to read:

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

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

17 **SECTION 12.** 765.30 (4) (a) of the statutes is amended to read:

18 765.30 (4) (a) *Penalty for failure to file marriage certificate.* Every officiating
19 person, or persons marrying without the presence of an officiating person, as
20 provided by s. 765.16 (1m) (c), who neglect or refuse to transmit the original marriage
21 certificate, solemnized by the officiating person or the persons marrying, to the
22 register of deeds of the any county in which the marriage was performed this state
23 within 3 days after the date of the marriage.

24 **SECTION 13. Initial applicability.**

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1 (1) The treatment of ss. 765.05, 765.08, 765.09 (3) (a), (b), and (c), and 765.13
2 first applies to applications for marriage licenses received on the effective date of this
3 subsection.

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

7 (3) The treatment of ss. 765.16 (1m) (intro.) and 765.30 (3) (a) and (b) relating
8 to the number of witnesses required; 765.19; and 765.30 (4) (a) first applies to
9 marriages solemnized on the effective date of this subsection.

10 **SECTION 14. Effective date.**

11 (1) This act takes effect on July 1, 2022.

12 (END)