



2019 ASSEMBLY BILL 457

September 18, 2019 - Introduced by Representatives WITTKE, DUCHOW, KERKMAN, BALLWEG, KULP, TUSLER, ZIMMERMAN, STEFFEN, HUTTON, RAMTHUN and SKOWRONSKI, cosponsored by Senators KOYENGA, STROEBEL, KAPENGA and DARLING. Referred to Committee on Family Law.

AUTHORS SUBJECT TO CHANGE

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

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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. This bill extends the period for 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 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~~
9 ~~issue~~ state, the nonresident's part of the application may be completed and sworn to
10 or affirmed before the person authorized to accept marriage license applications in
11 the county and state in which the nonresident resides.

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~~ 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~~ 3 days after application if the applicant pays an additional fee

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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.

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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.

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

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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 uninterruptedly 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;

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SECTION 8

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)