

No. 151, A.]

[Published November 3, 1959.

CHAPTER 595

AN ACT to repeal 245.05, 245.10 (1) to (6) (a) and (c), 245.11 (2), 245.14, 245.15, 245.18, 245.19, 245.26 to 245.29, 245.37, 247.04, 247.07 (2), (7) and (7a) and 247.17 (1); to renumber 52.11, 245.11 (1), 245.22, 245.24 (3), 245.25, 245.33, 247.03 and 247.07 (3) and (5); to renumber and amend 245.02, 245.07, 245.10 (6) (b), 245.13, 245.17, 245.21, 245.23, 245.24 (1) and (2), 245.32, 245.34 to 245.36, 245.38, 247.07 (3) and (5) and 247.17 (2); to amend TITLE XXIII, 52.05 (1), 245.01, 245.03, 245.04 (1), 245.11 (title), 245.31, 246.06, 246.08, 246.10, chapter 247 (chapter title), 247.01, 247.02 (intro. par.), (2), (5), (6) and (7), 247.03 (title), 247.05, 247.07 (intro. par.) and (8), 247.10, 247.12 to 247.16, 247.18, 247.20, 247.21, 247.22 (1) and (2), 247.23 to 247.27, 247.29 (1), 247.30 to 247.35, 247.37 (2), (3) and (4), 247.375 (1), 252.016 (4) (a) (intro. par.) and 1, (c), (e) and (5) and 328.39; to repeal and recreate 245.06, 245.08, 245.12, 245.16, 245.30, 247.06, 247.09, 247.28, 247.36, 247.37 (1) and 247.39; and to create 52.055, 245.001, 245.002, 245.02 (2) and (3), 245.09, 245.10, 247.02 (8) and (9), 247.03, 247.065, 247.07 (6) and (7), 247.081, 247.085, 247.101, 247.125 and chapter 248 of the statutes, relating to enacting a revised family code on marriage and divorce and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. TITLE XXIII of the statutes is amended to read:

TITLE XXIII.

* * * THE FAMILY CODE.

SECTION 2. 52.05 (1) of the statutes is amended to read:

52.05 (1) Any person who, without just cause, deserts or wilfully neglects or refuses to provide for the support and maintenance of his wife or child under 18 years (legitimate or * * * *born out of wedlock*) in destitute or necessitous circumstances shall be fined not more than \$500, or imprisoned not more than 2 years, or both. The parent of any

* * * child *born out of wedlock* who has made provision for the support of such child by giving bond, or by settlement with the proper officers in accordance with ss. 52.21 to 52.45, *on which such parent is not in default*, shall not be subject to this section.

SECTION 2a. 52.055 of the statutes is created to read:

52.055 FAILURE TO SUPPORT. Any parent who intentionally neglects or refuses to provide for the necessary and adequate support of his child under 18 years (legitimate or born out of wedlock), or any person who, without just cause, intentionally neglects or refuses to provide for the necessary and adequate maintenance of his wife, shall be guilty of a misdemeanor and may be fined not more than \$100, or imprisoned not more than 3 months in the county jail, or both. The parent of any child born out of wedlock who has made provision for the support of such child by giving bond, or by settlement with the proper officers in accordance with ss. 52.21 to 52.45, on which such parent is not in default, shall not be subject to this section. Substantial failure by said parent or person to provide for such support or maintenance for more than 21 consecutive days immediately prior to the date when complaint is made under this section shall be prima facie evidence of intent hereunder; but this provision shall not preclude a prosecution hereunder for failure to support for a lesser time. Substantial failure by said parent or person to comply with any part of a court order under ch. 247 for support of any such child under the age of 18 years or for such maintenance of his wife shall be prima facie evidence of a violation of this section for prosecution hereunder.

SECTION 3. 52.11 of the statutes is renumbered 247.08.

SECTION 4. 245.001 and 245.002 of the statutes are created to read:

245.001 TITLE, INTENT AND CONSTRUCTION OF CHAPTERS 245 to 248. (1) TITLE. Chapters 245 to 248 may be cited as "The Family Code."

(2) INTENT. It is the intent of chs. 245 to 248 to promote the stability and best interests of marriage and the family. 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.

(3) CONSTRUCTION. Chapters 245 to 248 shall be liberally construed to effect the objectives of sub. (2).

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

SECTION 5. 245.01 of the statutes is amended to read:

245.01 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.*

SECTION 6. 245.02 of the statutes is renumbered 245.02 (1) and amended to read:

245.02 MARRIAGEABLE AGE; WHO MAY CONTRACT. (1) Every male person who * * * has attained the full age of 18 years or who has obtained the permission of the county judge as provided in * * * sub. (3) and every female person who * * * has attained the full age of * * * 16 years shall be capable in law of contracting marriage if otherwise competent.

SECTION 7. 245.02 (2) and (3) of the statutes are created to read:

245.02 (2) If either of the contracting parties is under the age of 21 years if a male, or between the age of 16 and 18 years if a female, no license shall be issued without the consent of his or her parents or guardian, or of the parent having the actual care, custody and control of said party, given before the county clerk under oath, or certified under the hand of such parents or guardian as aforesaid, and properly verified by affidavit (or affirmation) before a notary public or other official authorized by law to take affidavits, which certificate shall be filed of record in the office of said county clerk at the time of application for said license. If there is no guardian or parent having the actual care, custody and control of said party, then the judge of the court having probate jurisdiction in the county where the application is pending may, after hearing upon proper cause shown, make an order allowing the marriage of said party.

(3) A male under the age of 18 may lawfully contract to marry and obtain a marriage license if he first procures the written permission of the county judge of his county, who may in his discretion grant such permission only if he finds that the marriage will prevent a child fathered by the applicant from being born or raised out of wedlock.

SECTION 8. 245.03 of the statutes is amended to read:

245.03 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 second cousins excepting that marriage may be contracted between first cousins where the female has attained the age of * * * 55 years. 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 incapable of assenting to marriage, whether by reason of insanity, idiocy or other causes.*

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

SECTION 9. 245.04 (1) of the statutes is amended to read:

245.04 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.

SECTION 10. 245.05 of the statutes is repealed.

SECTION 11. 245.06 of the statutes is repealed and recreated to read:

245.06 ANTENUPTIAL PHYSICAL EXAMINATION AND TESTS. (1) (a) All persons making application for license to marry shall within 15 days prior to such application submit to an examination for the presence of any venereal disease and a Wassermann or other standard blood test for syphilis, either in this state, in the state where such person to be examined resides, or, if the person is serving in the military forces of the United States, as provided in sub. (2).

(b) No such test shall be made by any public laboratory in this state except upon request of a physician. Such test or microscopical examination shall upon the request of any physician in the state be made by the state laboratory of hygiene free of charge. In this state the blood for the test for syphilis shall be examined in a laboratory approved by the state board of health as competent to make such examination. When such blood test is made outside the state, the original certificate from the laboratory making such test shall accompany the physician's certificate with a statement from the health officer of such state or his qualified representative, stating that he believes such laboratory competent to make such test.

(c) A certificate of negative finding as to each of the parties to a proposed marriage shall be made by: 1. a physician licensed to practice in this state or in the state where such person resides; or 2. by a physician serving in the military forces of the United States as provided in sub. (2).

(d) The certificate shall be in the following form:

VOID AFTER 20 DAYS FROM DATE OF EXAMINATION
 BY PHYSICIAN

I, _____ (name of physician), being a physician, legally licensed to practice in the state of _____, do certify I have on _____, 19____ made a thorough examination of _____ (name of person) for, and believe such person to be free from, all venereal disease; and I do certify that such person was given the Wassermann or other standard blood test for syphilis at _____ (name of laboratory) from blood taken by _____ on _____, 19____ and that the result of such test was negative.

Dated at _____, _____, this _____ day of _____, 19____
 _____ (Signature of physician)
 _____ (P.O. address)

(e) Such certificate of negative finding as to each of the parties to a proposed marriage shall be filed with the county clerk at the time application for a license to marry is made, and it is unlawful for any county clerk to issue a license to marry if such certificates of negative finding as to both parties to the proposed marriage are not so filed, except as provided in par. (f) and s. 245.08.

(f) Any judge of a court of record, upon application of either party to a proposed marriage and upon satisfactory documentary evidence being presented to him that the medical examination or blood test required under this section is contrary to the tenets and practices of the religious creed of which the applicant is an adherent and if such judge is satisfied that the public health and welfare will not be injuriously affected thereby, may by order authorize the license to be issued without the certificate or certificates of negative finding required under this section. The person applying for such order or dispensation shall have been a resident of this state for at least 30 days prior to making such application. Such order shall be delivered, and the county treasurer's receipt for the charge

therefor, shall be exhibited to the person issuing the license, and the order retained by him as prima facie evidence of his authority to so issue the marriage license. The judge making such order shall not receive any compensation therefor from the county, but the person applying for such order shall be charged a fee of \$5, which shall be paid into the county treasury for the use of the county.

SECTION 12. 245.07 of the statutes is renumbered 245.17 and amended to read:

245.17 CREDENTIALS TO BE FILED WITH CLERK OF CIRCUIT COURT. Before any * * * *clergyman, licentiate or appointee* named in * * * *s. 245.16* is authorized to solemnize a marriage, he shall file credentials of *ordination, license or appointment, or other proof of such official character*, with the clerk of the circuit court of the county in this state in which is located * * * *a church under his ministry*, who shall record the same and give a certificate thereof * * *. The place where such credentials are recorded shall be indorsed upon each certificate of marriage * * * by * * * *the officiating clergyman, licentiate or appointee* and recorded with the same.

SECTION 13. 245.08 of the statutes is repealed and recreated to read:

245.08 APPLICATION FOR LICENSE. Application for a marriage license shall be made at least 5 days before a license shall be issued except as otherwise provided in this section. Any judge of a court of record, upon application of either of the parties to a proposed marriage and upon satisfactory documentary evidence being presented to him that either of said parties is dangerously ill, such illness being likely to result in death; or that the female is pregnant with child; or that either party is in military service; or upon the request of the parents or guardian of either of the parties; or upon such other circumstances as in his opinion warrant special dispensation; may by order authorize the license to be issued at any time before the expiration of said 5 days. The person applying for such order or dispensation shall have been a resident of this state for at least 30 days prior to making such application. Such order shall be delivered, and the county treasurer's receipt for the charge therefor, shall be exhibited to the person issuing the license, and the order by him retained as prima facie evidence of his authority to so issue the marriage license. The judge making such order shall not receive any compensation therefor from the county, but the person applying for such order shall be charged a fee of \$5, which shall be paid into the county treasury for the use of the county. In case of such illness, pregnancy, or military service, the fee may be waived by the judge with the reason therefor stated in the order.

SECTION 14. 245.09 of the statutes is created to read:

245.09 IDENTIFICATION OF PARTIES; STATEMENT OF QUALIFICATIONS. No application for a marriage license shall be made by persons lawfully married to each other and no marriage license shall be issued to such persons; nor shall a marriage license be issued unless the application therefor is subscribed by the parties intending to intermarry and is filed with the clerk who issues the license. 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 license or the clerk of the county in this state or elsewhere where the party resides. The application shall contain a statement under oath (or such affirmation) that the contemplated marriage will be lawful, and give the date the marriage is intended to take place, the names of the

parties, their relationship, the place and date and year of birth, nationality, race, residence and occupation, names of their parents and guardians, prior marriages of either party and the place, dates and manner of the dissolution thereof with the names of former spouses, and the names, ages and residence of any minor children of such prior marriage. Each applicant shall exhibit to the clerk a birth certificate and a copy of all judgments and death certificates 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 said clerk is not satisfied with the documentary proof presented, he shall submit the same, for an opinion as to the sufficiency thereof, to a judge of a court of record in the county of application.

SECTION 15. 245.10 (1) to (6) (a) and (c) of the statutes are repealed.

SECTION 16. 245.10 (6) (b) of the statutes is renumbered 245.06 (2) and amended to read:

245.06 (2) When a person submitting to a Wassermann or other standard test under * * * *this section* is in the military service of the United States, such test may be made in any United States military laboratory and the certificate of negative finding prescribed by sub. * * * (1) may be subscribed by any physician serving as such in the military forces of the United States, *who may also make the examination for venereal disease required by this section.* When subscribed by such physician the certificate shall show that the person given the *examination and test* is in the military service of the United States and *shall state* the military rank, serial number, and station of the subscribing physician. A certificate made pursuant to this subsection need not in any case be accompanied by a statement of a state health officer as to competency of the laboratory making the test.

SECTION 17. 245.10 of the statutes is created to read:

245.10 PERMISSION OF JUDGE REQUIRED IN CERTAIN CASES. When it appears that either applicant has minor issue of a prior marriage not in his custody and which he is under obligation to support by court order or judgment, no license shall be issued without the written permission of a judge of a court having divorce jurisdiction in the county of application. The judge shall, within 5 days after any such permission is sought, either grant the same or order a court hearing in the matter to allow said applicant to furnish proof of his compliance with such prior court obligation. The judge may allow the admission of other pertinent evidence. Upon the hearing, if said applicant furnishes such proof, or shows good cause why a marriage license should be issued to him in the absence thereof, the court shall grant such permission; otherwise permission for a license shall be ordered withheld until such proof is furnished or good cause shown, but any court order withholding such permission shall be deemed an appealable order.

SECTION 18. 245.11 (1) of the statutes is renumbered 245.07 and the title is amended to read:

245.07 (title) MARRIAGE OF PERSON HAVING VENEREAL DISEASE.

SECTION 19. 245.11 (2) of the statutes is repealed.

SECTION 20. 245.12 of the statutes is repealed and recreated to read:

245.12 LICENSE, WHEN AUTHORIZED; CORRECTIONS; CONTENTS. (1) If ss. 245.02, 245.05, 245.06, 245.08, 245.09, and 245.10 where applicable, are complied with, and if there is no prohibition against or legal objection to the marriage, the county clerk shall issue a marriage license; but after the application for such license said clerk shall, upon the sworn statement of either of the applicants, correct any erroneous, false or insufficient statement in such license or in the application therefor which shall come to his attention prior to the marriage and shall show the corrected statement as soon as reasonably possible to the other applicant.

SECTION 21. 245.13 of the statutes is renumbered 245.05 and amended to read:

245.05 MARRIAGE LICENSE; BY WHOM ISSUED. No * * * person shall be joined in marriage within this state until a 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 be non-residents of the state, such license may be obtained from the county clerk of the county where the marriage ceremony is to be performed * * *. If one of such persons * * * is a nonresident * * * of the county where such license is to issue, his 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 he * * * resides. At the time of application for such license, the clerk shall give to each of the applicants (or mail to an applicant who completes his part of the application outside of the state) a card with the language of s. 245.001 (2) printed thereon. Such cards shall be procured by the county clerk at the expense of the county and shall be in form substantially as follows:

MARITAL INFORMATION

Your marriage license will be issued to you under the provisions of chapter 245 of the Wisconsin statutes, which is part of "The Family Code." For your information and advice, section 245.001 of that chapter includes the following provision:

INTENT. It is the intent of chapters 245 to 248 to promote the stability and best interest of marriage and the family. 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.

SECTION 22. 245.14 and 245.15 of the statutes are repealed.

SECTION 23. 245.16 of the statutes is repealed and recreated to read:

245.16 MARRIAGE CONTRACT, HOW MADE; OFFICIATING PERSON. Marriage may be validly solemnized and contracted in this state only after a 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 he belongs, if he is not restrained from so doing by the discipline of his 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.

SECTION 24. 245.17 of the statutes is renumbered 245.11 and amended to read:

245.11 OBJECTIONS TO MARRIAGE. (1) Immediately upon entering an application for a license, the county clerk shall post in his office a notice giving the names and residences of the parties applying therefor, and the date of the application. Any parent, grandparent, *child, or natural guardian thereof if a minor*, brother, sister or guardian * * * of either of the applicants for a license, or either of the applicants, or the district attorney, or the family court commissioner, believing that the statements of the application are false or insufficient, or that the applicants or either of them are incompetent to marry, may file with the court having probate jurisdiction in the county in which the 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 license should not be refused. Whereupon, said 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 may direct, but not more than 14 days * * * after the date of said * * * order, which * * * shall be served forthwith upon the applicants for such license residing in the state, and upon the clerk before whom such application * * * has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of said applicants are nonresidents of the state said order shall be served *forthwith* upon said nonresident * * * by publication one time in a newspaper published in the county wherein said application is pending, and by mailing a copy thereof to said 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 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 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 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*.

SECTION 25. 245.18 and 245.19 of the statutes are repealed.

SECTION 26. 245.21 of the statutes is renumbered 245.12 (2) and amended to read:

245.12 (2) The license shall authorize the marriage ceremony to be performed in any county of this state, excepting that where both parties are nonresidents of the state, the ceremony shall be performed only in the county in which the license is issued. The license shall be directed "to any person authorized by the law of this state to solemnize marriage," and shall authorize him to solemnize marriage between the parties therein named, at any time not more than 30 days * * * after the date thereof. If the marriage is to be solemnized by the parties without the presence of an officiating person, as provided by * * * s. 245.16 (3), the license shall be directed to the parties to the marriage. If either of the parties * * * is not of the age of legal majority, then his or her age shall be stated; and the fact of the consent of his or her parents or guardian shall likewise be stated; and if either of said parties * * * has been theretofore married, then the number of times he or she * * * has been previously married, and the manner in which the prior marriage * * * was * * * dissolved, shall be stated. The officiating person shall satisfy himself that the parties presenting themselves to be married * * * are the parties named in the license; and if he knows of any legal impediment to such marriage, he shall refuse to perform the ceremony. The * * * issuance of a license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal, and the license shall contain a statement to that effect.

SECTION 27. 245.22 of the statutes is renumbered 245.13.

SECTION 28. 245.23 of the statutes is renumbered 245.14 and amended to read:

245.14 FORM WHEN SOLEMNIZED BY PARTIES. If the marriage is to be solemnized by the parties without an officiating person, as provided by * * * s. 245.16 (3), the license shall be in form substantially as follows:

State of Wisconsin,)
County of _____) ss.

To A----- B-----, aged____, and C----- D-----, aged____:

This is to certify that, legal evidence having been furnished to me as required by law, and the consent of _____ the _____ of said A----- B-----, and of _____ the _____ of the said C----- D----- having been duly given, I am satisfied there is no legal impediment to your joining yourselves in marriage in accordance with the customs, rules and regulations of any religious society, denomination or sect to which you, or either of you, may belong, at any time not more than thirty days from and after the date hereof, within the state of Wisconsin.

The * * * issuance of this license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between you illegal.

Given under the hand and seal of the county clerk of _____county, at_____, state of Wisconsin, this_____ day of_____, Anno Domini, one thousand nine hundred and _____
(Seal)

* * * County Clerk.

SECTION 29. 245.24 of the statutes is renumbered 245.18 and 245.18 (1) and (2) are amended to read:

245.18 MARRIAGE CERTIFICATE; FORM. (1) The license shall have appended to it 3 certificates, numbered to correspond with the license (one marked "original," one marked "duplicate," and one marked "triplicate" and with carbon paper or other duplicating process between them), which shall be in form substantially as follows:

MARRIAGE CERTIFICATE.

I, _____, hereby certify that on the _____ day of _____, Anno Domini, one thousand nine hundred and _____, at _____ in the _____ of _____, state of Wisconsin, A _____ B _____ of _____, state of _____ and C _____ D _____, of _____, state of _____, were by me united in marriage as authorized by a marriage license issued for that purpose by the county clerk of _____ county and state of Wisconsin, numbered _____, and dated the _____ day of _____, A.D. 19 _____.

Signed _____
(Official designation) _____

We, the undersigned *adult witnesses*, were present at the marriage of A _____ B _____ and C _____ D _____, as set forth in the foregoing certificate, at their request, and heard their declarations that they took each other for husband and wife.

E _____ F _____
G _____ H _____

(2) But, if, as provided by s. * * * 245.14, the license has been issued to the parties themselves, then the certificate (in triplicate and with carbon paper or other duplicating process between them) shall be in form substantially as follows:

MARRIAGE CERTIFICATE.

We hereby certify that on the _____ day of _____, Anno Domini, one thousand nine hundred and _____, we united ourselves in marriage in accordance with the customs, rules and regulations of the _____ at _____, in the _____ of _____ and state of Wisconsin, having first obtained from the county clerk of the county of _____, state of Wisconsin, a marriage license numbered _____ and dated the _____ day of _____, A.D. 19 _____, certifying that he was satisfied there was no legal impediment to our so doing.

A _____ B _____
C _____ D _____

We, the undersigned *adult witnesses*, were present at the marriage of A _____ B _____ and C _____ D _____, as set forth in the foregoing certificate, at their request, and heard their declarations that they took each other as husband and wife.

E _____ F _____
G _____ H _____

SECTION 30. 245.25 of the statutes is renumbered 245.19.

SECTION 31. 245.26 to 245.29 of the statutes are repealed.

SECTION 32. 245.30 of the statutes is repealed and recreated to read:

245.30 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 issuance of license without certificate.* Any county clerk who unlawfully issues a license to marry to any person who fails to present and file any certificate required by s. 245.06.

(b) *Penalty for disclosing examination and test.* Any party having knowledge of any matter relating to the examination of any applicant for license to marry or Wassermann test taken by any party to a proposed marriage, who discloses the same, or any portion thereof, except as may be required by law.

(c) *Penalty for false statement in physician's certificate.* Any physician who knowingly makes any false statement in any certificate required by s. 245.06.

(d) *Penalty for misrepresentation as to venereal disease.* Any person who obtains any license to marry by misrepresentation and contrary to s. 245.07.

(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. 245.02 (2), 245.09 or 245.11, 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 license.* Any county clerk who knowingly issues a marriage license contrary to or in violation of any section of this chapter, other than s. 245.06.

(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 license as hereinbefore 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, in the case of parties within the age limits prescribed in s. 245.02, unless the consent, as hereinbefore provided, of the parent or guardian of such parties is stated in such license; or solemnizes a marriage knowing of any legal impediment thereto; or solemnizes a marriage more than 30 days after the date of the license; or falsely certifies to the date of a marriage solemnized by him; or solemnizes a marriage in a county other than the county prescribed in s. 245.12.

(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. 245.12.

(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 certificate.* Every officiating person, or persons marrying without the presence of an officiating person, as provided by s. 245.16 (3), who neglect or refuse to transmit the original certificate of any marriage solemnized by him or them, to the register of deeds of the county or the city health officer as provided in s. 69.09 within 3 days after the date of such marriage.

(b) *Penalty for violations relating to records.* Any county clerk who refuses or neglects to enter upon the marriage license docket a com-

plete record of each application, and of each marriage license issued from his 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.

SECTION 33. 245.31 of the statutes is amended to read:

245.31 ACTION OF DEBT TO RECOVER PENALTIES. Any fine or forfeiture * * * imposed under * * * s. 245.30 may be recovered by an action of debt, in the same manner as other debts are recovered by law, with the usual costs, in any court of record in any county in this state in which the defendant * * * may be found.

SECTION 34. 245.32 of the statutes is renumbered 245.21 and amended to read:

245.21 UNLAWFUL MARRIAGES VOID; VALIDATION. All marriages hereafter contracted in violation of * * * ss. 245.02, 245.03, 245.04 and 245.16 shall be * * * void (except as provided in ss. * * * 245.22 and 245.23). The parties to any such * * * marriage declared void under s. 245.02 or 245.16 may, at any time, validate such marriage by complying with the requirements of ss. * * * 245.02 to 245.25.

SECTION 35. 245.33 of the statutes is renumbered 245.22.

SECTION 36. 245.34 to 245.36 of the statutes are renumbered 245.23 to 245.25, respectively, and amended to read:

245.23 IMMATERIAL IRREGULARITIES OTHERWISE. No marriage hereafter contracted shall be void either by reason of the 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 license or in the 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. * * * 245.12, or more than 30 days after the date of the 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. * * * 245.16, 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 license has been issued as required by ss. * * * 245.05 to 245.25.

245.24 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. * * * 245.16, 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 legitimate issue of both parents.

245.25 LEGITIMATION OF CHILDREN. In any * * * case where the father and mother of * * * *any* child or children born out of wedlock shall lawfully intermarry, except where the parental rights of the mother were terminated prior thereto, such child or children shall thereby become legitimated and enjoy all the rights and privileges of legitimacy as if they had been born during the wedlock of their parents; and this section shall be taken to apply to all cases prior to its date, as well as those subsequent thereto * * * *but* no estate already vested shall be divested by s. 237.06 and ss. * * * *245.05 to 245.25*. The issue of all marriages declared * * * *void under the law* shall, nevertheless, be legitimate.

SECTION 37. 245.37 of the statutes is repealed.

SECTION 38. 245.38 of the statutes is renumbered 245.15 and amended to read:

245.15 FEE TO COUNTY CLERK. Each county clerk shall receive as a fee for each license granted the sum of * * * \$3, which shall become a part of the funds of the county, plus a notary fee which may be retained by county clerks operating on a fee or part fee basis.

SECTION 39. 246.06 of the statutes is amended to read:

246.06 When the husband of any married woman * * * *has* deserted her or * * * *for any cause* * * * *neglects or refuses* to provide for her support or for the support and education of her children, she shall have the right to transact business in her own name and to collect and receive the profits of such business, her own earnings and the earnings of her minor children in her charge or under her control, and apply the same for her own support and the support and education of such children. Such business and earnings shall not be subject to her husband's control or interference or liable for his debts.

SECTION 40. 246.08 of the statutes is amended to read:

246.08 * * * *Marriage* * * * *does not* render the husband liable for the payment of the wife's antenuptial debts; but she shall be liable to all remedies for the recovery of such debts to be enforced against her and her separate property as if she were unmarried.

SECTION 41. 246.10 of the statutes is amended to read:

246.10 Any married woman * * * may be appointed and act as assignee or receiver, except of the estate of her husband or of property in which he is interested, and shall be subject to the same liabilities upon her bond and otherwise and exercise the same powers as other assignees or receivers.

SECTION 42. Chapter 247 (chapter title) of the statutes is amended to read:

CHAPTER 247.

* * * *ACTIONS AFFECTING MARRIAGE.*

SECTION 43. 247.01 of the statutes is amended to read:

247.01 *Notwithstanding other statutes and session laws*, the circuit court has jurisdiction of all actions * * * *affecting marriage* * * *

and of all actions under s. 52.10 (or concurrent jurisdiction where other courts are vested with like jurisdiction), and has authority to do all acts and things necessary and proper in such actions and to carry its orders and judgments into execution as hereinafter prescribed. All such actions shall be commenced and conducted and the orders and judgments therein enforced according to * * * these statutes in respect to actions in courts of record, as far as applicable, except as provided in this chapter and in s. 52.10. Whenever any court is presiding in any such action affecting marriage it shall be known as the "Family Court Branch".

SECTION 44. 247.02 (intro. par.), (2), (5), (6) and (7) of the statutes are amended to read:

247.02 (intro. par.) MARRIAGES, HOW VOIDED; ANNULMENT; CAUSES FOR. *No marriage shall be annulled or held void except pursuant to judicial proceedings.* A marriage may be annulled for any of the following causes existing at the time of marriage:

(2) Consanguinity * * * where the parties are nearer of kin than * * * second cousins * * * as computed by the rule of civil law, whether of the half or of the whole blood, at the suit of either party except as provided in s. 245.03 (1); but when any such marriage * * * has not * * * been annulled during the lifetime of the parties, the validity thereof shall not be inquired into after the death of either party.

(5) * * * Such want of understanding as renders either party incapable of assenting to marriage, *whether by reason of insanity, idiocy or other causes*, at the suit of the other, or at the suit of a guardian of the * * * insane or incompetent person, or of the * * * insane or incompetent person on regaining reason, unless such * * * insane or incompetent person, after regaining reason, has confirmed the marriage; provided that where the party compos mentis is the applicant, such party * * * was ignorant of the other's insanity or mental incompetency at the time of the marriage, and * * * has not * * * confirmed it subsequent to such person's * * * having gained or regained reason.

(6) At the suit of the wife or her parent or the guardian of her person when she was under the age of * * * 16 years at the time of the marriage, unless such marriage * * * is validated by compliance with ch. 245.

(7) At the suit of the husband or his parent or the guardian of his person when he was under the age of 18 at the time of the marriage, unless such marriage * * * is validated by compliance with ch. 245.

SECTION 45. 247.02 (8) and (9) of the statutes are created to read:

247.02 (8) At the suit of the parent or the guardian of the person of a party marrying without the consent of said parent or guardian where such consent is required by s. 245.02, provided the action is commenced before said party reaches the age of 21 years if a male or 18 if a female and within one year after the marriage.

(9) When such marriage is prohibited or declared void under ch. 245 for any cause not enumerated herein.

SECTION 46. 247.04 of the statutes is repealed.

SECTION 47. 247.03 of the statutes is renumbered 247.04 and the title amended to read:

247.04 (title) ACTIONS TO AFFIRM MARRIAGE.

SECTION 48. 247.03 of the statutes is created to read:

247.03 ACTIONS AFFECTING MARRIAGE. (1) Actions affecting marriage are:

- (a) To affirm marriage.
- (b) Annulment.
- (c) Divorce.
- (d) Legal separation (formerly divorce from bed and board).
- (e) To compel support by husband.

(2) Such actions other than those to compel support shall be commenced within 10 years after the cause of action arose, except that an action for annulment under s. 247.02 (3) may be commenced at any time while either of the parties has a husband or wife living.

(3) "Divorce" means divorce from the bonds of matrimony or absolute divorce, when used in this chapter.

SECTION 49. 247.05 of the statutes is amended to read:

247.05 ACTIONS AFFECTING MARRIAGE EXCEPT DIVORCE AND SUPPORT; JURISDICTION; PUBLICATION; PERSONAL SERVICE. For the purposes of * * * *actions affecting marriage other than those for divorce and to compel support*, jurisdiction may be acquired * * * by personal service upon the defendant within this state; or * * * *by publication under s. 262.08 (4) or 262.12*, when either party * * * *has been a bona fide resident of this state * * * and of the county where the action is commenced for at least 30 days next preceding the commencement of the action*. When both parties are nonresidents, jurisdiction to annul a marriage contracted within the state may be acquired * * * *by such personal service or publication* provided the action is commenced within a year after such marriage.

SECTION 50. 247.06 of the statutes is repealed and recreated to read:

247.06 DIVORCE; JURISDICTION. For purposes of divorce, jurisdiction may be acquired by personal service upon the defendant within this state, or by publication as provided in s. 262.08 (4) or 262.12, whether the cause of action arose in this state or elsewhere, provided that either party has been a bona fide resident of this state for at least 2 years next preceding the commencement of this action, and of the county where the action is commenced for at least 30 days next preceding the commencement of the action.

SECTION 50a. 247.065 of the statutes is created to read:

247.065 ACTIONS TO COMPEL SUPPORT; JURISDICTION. For purposes of actions to compel support, jurisdiction shall be acquired by personal service upon the defendant within this state.

SECTION 51. 247.07 (intro. par.) of the statutes is amended to read:

247.07 (intro. par.) CAUSES FOR DIVORCE OR LEGAL SEPARATION. A divorce * * *, or a *legal separation* for a limited time or forever, may be adjudged for any of the following causes:

SECTION 52. 247.07 (2), (7) and (7a) of the statutes are repealed.

SECTION 53. 247.07 (3) to (6) of the statutes are renumbered 247.07 (2) to (5), respectively, and 247.07 (2) and (4), as renumbered, are amended to read:

247.07 (2) When either party, subsequent to the marriage, has been sentenced *and committed* to imprisonment for 3 years or more; and no pardon granted after a divorce for that cause shall restore the party sentenced to his or her conjugal rights.

(4) When the treatment of * * * *one spouse* by the * * * *other* has been cruel and inhuman, whether practiced by using personal violence or by any other means * * *.

SECTION 54. 247.07 (6) and (7) of the statutes are created to read:

247.07 (6) Whenever the husband and wife have voluntarily lived entirely separate for 5 years next preceding the commencement of the action, at the suit of either party.

247.07 (7) Whenever the husband and wife, pursuant to a judgment of legal separation, have lived entirely apart for 5 years next preceding the commencement of the action a divorce may be granted at the suit of either party.

SECTION 55. 247.07 (8) of the statutes is amended to read:

247.07 (8) On the complaint of the wife, when the husband, being of sufficient ability, refuses or neglects to *adequately* provide for her.

SECTION 56. 247.081 of the statutes is created to read:

247.081 COMMENCEMENT OF DIVORCE AND LEGAL SEPARATION ACTIONS; FORM OF SUMMONS; WAITING PERIOD FOR SERVICE OR COMPLAINT AND ANSWER, AND FOR TRIAL. (1) Notwithstanding other provisions of law relating to the commencement of actions, a divorce or legal separation action shall be commenced by the service of a summons without the complaint. The summons shall be filed in court and a copy thereof shall be served upon the family court commissioner within 10 days after such service upon the defendant. Said summons shall specify whether the action is for a divorce or for a legal separation, shall be approved in writing by the plaintiff, and shall be substantially in the following form:

----- Court, -----County.

A. B., Plaintiff,)
P.O. Address -----)
v.)
C. D., Defendant,)
P.O. Address -----)

The State of Wisconsin, To said defendant:

You are hereby summoned to appear within 20 days after the plaintiff's complaint for divorce (or for legal separation) is subsequently served upon you, exclusive of the day of such service, and defend the above entitled action in the court aforesaid; and in case of your failure so to do judgment will be rendered against you according to the demand of such complaint which will allege a cause of action under section 247.07 of the Wisconsin statutes. In the absence of a court order to the contrary, service of such complaint upon you shall be delayed for 60 days after service of this summons.

E. F.,
Plaintiff's Attorney.
P.O. Address -----, -----County, Wis.

Approved:

A. B., Plaintiff

(2) (a) In every action for divorce or legal separation, there shall be a waiting period of 60 days after commencement of the action before the complaint may be served on the defendant unless the court, upon good cause shown that such waiting period will be injurious to the health or safety of either of the parties or any child of the marriage or that some other emergency exists, and upon the recommendation of

the family court commissioner, issues an order waiving such waiting period. Any answer or other pleading by the defendant must be served within 20 days after the service upon him of the copy of the complaint, except as otherwise provided in s. 247.085 (2).

(b) If the complaint is not served within 120 days after service of summons, the action may be dismissed upon motion of either party or of the family court commissioner.

(3) (a) In every such action, the family court commissioner shall cause an effort to be made to effect a reconciliation between the parties.

(b) After January 1, 1960, no such action, contested or uncontested, shall be brought to trial until the happening of whichever of the following events occurs first:

1. A report by the family court commissioner to the court showing the result of a reconciliation effort; or

2. The expiration of 60 days after filing of the complaint; or

3. An order by the court, after consideration of the recommendation of the family court commissioner, directing immediate trial of such action for the protection of the health or safety of either of the parties or any child of the marriage or for other emergency reasons.

(c) No report under par. (b) 1 shall be filed with or become part of the records of a case. Facts therein shall not be considered at trial of the action unless separately alleged and established by competent evidence.

(4) Either party at the time the action is commenced by service of summons under sub. (1), or at any time thereafter, may petition for immediate or temporary relief under s. 247.23, but said petition shall not set forth any of the grounds for divorce unless necessary to support the same.

SECTION 57. 247.085 of the statutes is created to read:

247.085 CONTENTS OF COMPLAINT. (1) In any action affecting marriage the complaint shall specifically allege:

(a) The name and age of the parties, the date and place of marriage, and the facts relating to the residence of the plaintiff.

(b) The name and date of birth of the minor and dependent children of the parties.

(c) Whether or not an action for obtaining a divorce or legal separation by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge thereof, in this state or elsewhere.

(2) In an action for divorce or legal separation, the complaint or counterclaim shall state the statutory ground for the action without detailing allegations which constitute the basis for such ground. The facts relied upon as the statutory ground for the action shall be furnished in a verified bill of particulars within 10 days after a written demand therefor. Such demand shall be deemed waived unless made within 20 days after the service of the complaint or counterclaim. If the bill of particulars is not furnished within such time the complaint shall be deemed automatically dismissed without court order. Where a bill of particulars has been demanded, the time to answer or reply shall begin to run from the time such bill of particulars is furnished. The court, upon motion therefor, may order either party to furnish such verified bill of particulars, or if the bill of particulars furnished is insufficient, may require additional facts to be supplied so as to advise the other party of the facts relied upon as the statutory ground for the action.

(3) In an action for divorce or legal separation, adultery shall be pleaded as a separate cause of action and not as an instance of cruel and inhuman treatment.

(4) When the demand of the complaint or counterclaim is for a legal separation, such pleading shall allege the specific reason why such remedy is demanded. If such reason is conscientious objection to divorce, it shall be so stated.

SECTION 58. 247.09 of the statutes is repealed and recreated to read:

247.09 POWER OF COURT IN DIVORCE AND LEGAL SEPARATION ACTIONS. When the court grants a judgment in any action for divorce or legal separation the kind of judgment granted shall be in accordance with the demand of the complaint or counterclaim of the prevailing party, except that a divorce or legal separation may be adjudged regardless of such demand whenever the court finds that it would not be in the best interests of the parties or the children of the marriage to grant such demand and also states the reason therefor. Conscientious objection to divorce shall be deemed a sufficient reason for granting a judgment of legal separation if such objection is confirmed at the trial by the party making such demand.

SECTION 59. 247.10 of the statutes is amended to read:

247.10 No * * * *judgment of annulment, divorce or legal separation* shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, * * * *and no judgment of divorce or legal separation shall be granted if it likewise appears that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned; * * * but the parties may, subject to the approval of the court, stipulate for a division of estate, for alimony, or for the support of children, in case a divorce * * * or legal separation is granted or a marriage annulled.*

SECTION 60. 247.101 and 247.125 of the statutes are created to read:

247.101 RECRIMINATION, WHEN APPLICABLE; COMPARATIVE RECTITUDE. The equitable doctrine that the court shall not aid a wrongdoer is applicable to any party suing for divorce under s. 247.07 (1) to (5), except that where it appears from the evidence that both parties have been guilty of misconduct sufficiently grave to constitute cause for divorce, the court may in its discretion grant a judgment of legal separation to the party whose equities on the whole are found to be superior.

247.125 ORDER FOR APPEARANCE OF DEFAULTED PARTY. Unless nonresidence in the state is shown by competent evidence, or unless the court shall for other good cause otherwise order, the party in default in actions for divorce or annulment shall be required to appear upon the trial. A court order requiring him or her to do so shall accordingly be procured by the party seeking the judgment, and shall be served upon such defaulted party personally before the trial.

SECTION 61. 247.12 to 247.16 of the statutes are amended to read:

247.12 TRIAL PROCEDURE. *In actions affecting marriage, all hearings and trials to determine whether * * * judgment shall be granted * * * shall be * * * before the court * * * except as otherwise required by s. 270.07 (1).* The testimony shall be taken by the reporter * * * and shall be written out and filed with the record if so ordered by the court. * * *

247.13 FAMILY COURT COMMISSIONER (FORMERLY DIVORCE COUNSEL); APPOINTMENT; POWERS; OATHS; MILWAUKEE COUNTY. (1) In each county of the state, except in counties

having a population of 500,000 or more, the circuit judge or judges in and for such county shall, by order filed in the office of the clerk of the circuit court on or before the first Monday of July of each year, appoint some reputable attorney * * * of recognized ability and standing at the bar, * * * *family court commissioner (formerly divorce counsel)* for such county. *Such commissioner shall, by virtue of his office and to the extent required for the performance of his duties, have the powers of a court commissioner. Such court commissioner shall be in addition to the maximum number of court commissioners permitted by s. 252.14. The office of the family court commissioner may be placed under a county civil service system by resolution of the county board.* Before entering upon the discharge of his duties such * * * commissioner shall take and file the official oath. The person so appointed shall continue to act until his successor is appointed and * * * qualified, *except that in the event of his disability or extended absence said judge or judges may appoint another reputable attorney to act as temporary family court commissioner.*

(2) In counties having a population of 500,000 or more, there is created in the classified civil service the office of * * * *family court commissioner* and such additional assistant * * * *family court commissioners* as the county board shall determine and authorize, who shall be appointed from the membership of the bar residing in such county by the judges of the circuit court of such county, pursuant to * * * ss. 16.31 to 16.44. Before entering upon the performance of their duties, such * * * *family court commissioner* and assistant * * * *family court commissioners* shall take and file the official oath. Such * * * *family court commissioner* and assistant * * * *family court commissioners* may be appointed court commissioners as provided in s. 252.14 (2). They shall receive such salary as may be fixed by the county board, shall perform their duties under the direction of the circuit judges of such county and shall be furnished with quarters and necessary office furnishing and supplies. The county board shall provide them their necessary stenographic and investigational service. * * * *When the family court commissioner is unavailable, any assistant * * * family court commissioner shall perform all the duties and have all the powers of the * * * family court commissioner as directed by the latter or * * * by a judge of the family court branch.* In addition to the duties of such * * * *family court commissioner* as defined in ch. 247, he shall perform such other duties as the circuit court of such county may direct.

247.14 SERVICE ON AND APPEARANCE BY FAMILY COURT COMMISSIONER. In any action to affirm or annul a marriage, * * * for * * * *divorce or legal separation or to compel support*, the plaintiff and defendant shall, within 10 days after making service on the opposite party of * * * *any pleading*, serve a copy of the same upon the * * * *family court commissioner* of the county in which the action is begun * * *, *whether such action is contested or not. No judgment in any such action shall be granted unless this section is complied with, or unless the parties have responded to the family court commissioner's inquiries under s. 247.15 except when otherwise ordered by the court.* Such * * * *commissioner* shall appear in the action when the defendant fails to answer or withdraws his answer before trial; also, when the defendant interposes

a counterclaim and the plaintiff thereupon neither supports his complaint nor opposes the counterclaim by proof; and when *otherwise requested by the court* * * *.

247.15 DEFAULT ACTIONS; FAMILY COURT COMMISSIONER TO APPEAR. (1) No * * * *judgment* in any action in which * * * *the family court commissioner* is required by s. 247.081 (3) (a) or 247.14 to appear or otherwise discharge his duties under this chapter shall be granted until such * * * *commissioner* in behalf of the public has made a fair and impartial investigation of the case and fully advised the court as to the merits of the case and the rights and interests of the parties and * * * the public * * * *and the efforts made toward reconciliation of the parties or the reason such reconciliation attempt has not been made.* Such * * * *family court commissioner* is empowered to cause witnesses to be subpoenaed on behalf of the state when in his judgment their testimony is necessary to fully advise the court as to the merits of the case and as to the rights and interests of the parties and of the public. The fees of such witnesses shall be paid out of the county treasury as fees of witnesses in criminal cases are paid. The court may * * * *order* that such fees be repaid to the county by one of the parties to the action, in which case it shall be the duty of the * * * *family court commissioner to enforce such order.*

(2) *Except as otherwise provided under ss. 247.081 (3) (a) and 247.14,* in any county having a population of 500,000 or more in any action for divorce or for the annulment of a marriage in which the defendant has appeared and has interposed an answer or an answer and counterclaim and in which one of the parties thereto informs the court that he or she will not oppose the prayer of the other party and if the court is satisfied from the facts submitted that the withdrawal of such opposition is done in good faith and without collusion, the court may then order such action to be tried as a default without the presence or appearance of the * * * *family court commissioner.*

247.16 FAMILY COURT COMMISSIONER OR LAW PARTNER; WHEN INTERESTED; PROCEDURE. Neither such * * * *family court commissioner* nor his partner or partners shall appear in any action * * * *affecting marriage* * * * in any court held in the county in which he shall be acting, except when authorized to appear by s. 247.14. In case he or his partner shall be in any way interested in such action, the presiding judge shall appoint some reputable attorney to perform the services enjoined upon such * * * *family court commissioner* and such attorney, so appointed, shall take and file the oath and receive the compensation provided by law.

SECTION 62. 247.17 (1) of the statutes is repealed.

SECTION 63. 247.17 (2) of the statutes is renumbered 247.17 and amended to read:

247.17 FAMILY COURT COMMISSIONER; FEES; SALARY. In counties having a population of less than * * * *500,000,* the county board * * * *shall* by resolution provide an annual salary for the * * * *family court commissioner whether he is on a full or part-time basis and may furnish an office with necessary office furnishings, supplies and stenographic services and may also by resolution prescribe such other duties to be performed by him* * * * not in conflict with his duties as * * * *family court commissioner.*

SECTION 64. 247.18 of the statutes is amended to read:

247.18 (1) No * * * *judgment of annulment* * * * , divorce * * * or legal separation shall be granted in any action in which the defendant

does not appear and defend the same in good faith unless the cause is shown by affirmative proof aside from any admission to the plaintiff on the part of the defendant.

(2) No judgment of * * * annulment, *divorce or legal separation* shall be granted on the testimony of the party, unless the * * * grounds * * * *therefor and required residence are corroborated, by testimony other than by the parties except cruel and inhuman treatment* * * * when no corroborating evidence is available. *No stipulation by the parties shall satisfy the requirements of this subsection.*

SECTION 65. 247.20, 247.21 and 247.22 (1) and (2) of the statutes are amended to read:

247.20 The court, upon granting a divorce * * * *in which alimony jurisdiction is terminated*, may allow the wife to resume her maiden name or the name of a former deceased husband * * * *unless there are children of the marriage as to whom the parental rights of the wife have not been terminated.*

247.21 FOREIGN DECREES; COMITY OF STATES; DIVORCE ABROAD TO CIRCUMVENT LAWS. Full faith and credit shall be given in all the courts of this state to a * * * *judgment* of annulment of marriage * * *, *divorce or legal separation* by a court of competent jurisdiction in another state, territory or possession of the United States, when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in ss. 247.05 and 247.06. Nothing herein contained shall be construed to limit the power of any court to give such effect to a * * * *judgment* of annulment * * *, *divorce or legal separation*, by a court of a foreign country as may be justified by the rules of international comity * * *. *No person domiciled in this state shall go into another state, territory or country for the purpose of obtaining a * * * judgment of annulment, divorce or legal separation for a cause which occurred while the parties resided in this state, or for a cause which is not ground for annulment, divorce or legal separation under the laws of this state * * * and a judgment so obtained shall be of no force or effect in this state.*

247.22 (1) A divorce * * * obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced.

(2) Proof that a person obtaining a divorce * * * in another jurisdiction was (a) domiciled in this state within 12 months prior to the commencement of the proceeding therefor, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

SECTION 66. 247.23 to 247.27 of the statutes are amended to read:

247.23 In every action to affirm or annul a marriage or for a divorce *or legal separation* or * * * *to compel support by husband*, the court * * * *or family court commissioner* may, during the pendency thereof, make such orders concerning the care, custody and suitable maintenance of the minor children * * *, *requiring* the husband to pay such sums for the support of the wife and the minor children in her custody and * * * *enabling* her to carry on or defend the action, and in relation to the

persons or property of the parties as in its discretion shall be deemed * * * *just and reasonable* and may prohibit * * * *either spouse* from imposing any restraint on * * * *the personal liberty of the other*.

247.24 In rendering a judgment of * * * *annulment, divorce* * * * *or legal separation*, the court may make such further provisions therein as it * * * *deems just and* * * * *reasonable* concerning the care, custody, maintenance and education of the minor children of the parties, and give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child shall demand it, and if the court * * * *finds* that neither of the parents is a fit and proper person to have the care and custody of any such child, *may declare such child a dependent and* give the care and custody of such child to a relative (as defined in ch. 48) of the child, a county agency specified in s. 48.56 (1), a licensed child welfare agency, or the state department of public welfare. *The charges for such care shall be pursuant to the procedure under s. 48.27.* Whenever the welfare of any such child will be promoted thereby, the court granting such * * * *judgment* shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent, relative or agency, provided that no order changing the custody of any child shall be entered until after notice of such application shall have been given the parents of such child, if they can be found, and also to the relative or agency that then has the custody of such child.

247.25 The court may from time to time afterwards, on the petition of either of the parties *and upon notice to the family court commissioner*, revise and alter such judgment concerning the care, custody, maintenance and education of *any of* the children, * * * and make a new judgment concerning the same as the circumstances of the parents and the benefit of the children shall require.

247.26 Upon every *judgment of divorce* * * * *or legal separation* for any cause excepting that of adultery committed by the wife, * * * the court may, *subject to s. 247.20*, further adjudge to the wife such alimony out of the * * * *property or income* of the husband, for her support and maintenance, and such allowance for the support, maintenance and education of the minor children committed to her care and custody as it * * * *deems just and reasonable* * * *. The court may *also* finally divide and distribute the estate, both real and personal, of the husband, and so much of the estate of the wife as * * * *has* been derived from the husband, between the parties and divest and transfer the title of any thereof accordingly, *after having* * * * *given* due regard to the legal and equitable rights of each party, the ability of the husband, the special estate of the wife, the character and situation of the parties and all the circumstances of the case; but no such final division shall impair the power of the court in respect to revision of allowances for minor children under s. 247.25. No such judgment shall divest or transfer title to real estate unless such judgment or a certified copy thereof is recorded in the office of the register of deeds of the county in which such real estate is situated.

247.27 When a divorce *or legal separation* shall be adjudged for a cause or fault committed by the wife and the care, custody and maintenance of *any of* their minor children * * * shall be * * * *awarded* to the husband the court may adjudge to the husband, out of the separate

* * * *property or income* of the wife, such sums for the support and education of * * * *any of the* minor children as it * * * *deems* just and reasonable, considering the ability of the parties and all the other circumstances of the case.

SECTION 67. 247.28 of the statutes is repealed and recreated to read:

247.28 MAINTENANCE, CUSTODY AND SUPPORT WHEN DIVORCE OR SEPARATION DENIED. In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make such order for the custody of any of the minor children and for the maintenance of the wife and support of such children by the husband and out of his property or income, and may further make such order for the support of any child by the wife or out of her separate property or income, as the nature of the case may render just and reasonable.

SECTION 68. 247.29 (1) of the statutes is amended to read:

247.29 ALIMONY, CLERK OF COURT, FAMILY COURT COMMISSIONER, FEES AND COMPENSATION. (1) All orders or judgments providing for * * * *temporary or permanent* alimony or support of children shall direct the payment of all such sums to the clerk of the court for the use of the person * * * *for* whom the same has been awarded. A party securing an order for temporary alimony or support money shall forthwith file said order, together with all pleadings in the action, with the clerk of the court. Said clerk shall disburse the money so received pursuant to said judgment * * * *or* order and take receipts therefor. All moneys received or disbursed * * * *under this section* shall be entered in a record book kept by said clerk, which shall be open to the inspection of the parties to the action or of their attorneys. If the alimony or support money adjudged or ordered to be paid shall not be paid to the clerk at the time provided in said judgment or order, the clerk and the * * * *family court commissioner* of said county shall take such proceedings as shall be directed by the court or * * * *a judge of the family court branch* to secure the payment of such sum. Copies of any order issued to compel such payment shall be * * * *mailed* to counsel who represented * * * *each party* * * * *when such* alimony or support money was awarded. In case any fees of officers in any of said proceedings * * * including the compensation of the * * * *family court commissioner* at the rate of * * * *\$50 per day unless such commissioner is on a salaried basis*, be not collected from the person proceeded against, the same shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the clerk of the court.

SECTION 69. 247.30 to 247.35 of the statutes are amended to read:

247.30 In all cases where alimony or other allowance shall be adjudged to the wife or for the * * * *support* or education of the children the court may provide that the same shall be paid in such sums and at such times as shall be deemed expedient, and may impose the same as a charge upon any specific real estate of the party liable or may require sufficient security to be given for * * * *payment* * * * according to the judgment; and upon neglect or refusal to give such security or *upon* the failure to pay such alimony or allowance the court may enforce the payment thereof by execution or *under s. 295.03* or otherwise as in other cases. No such judgment shall become effectual as a charge upon specific real estate until the judgment or a certified copy thereof is recorded in the office of the register of deeds in the county in which the real estate is situated.

247.31 The court may also appoint a trustee, when deemed expedient, to receive any money adjudged to the wife upon trust, to invest the same and pay over the income thereof for her maintenance or the * * * support and education of any of the minor children * * *, or to pay over the principal sum in such proportions and at such times as the court * * * directs. The trustee shall give such bond, with such sureties as the court * * * requires, for the faithful performance of his trust.

247.32 After a judgment providing for alimony or other allowance for the wife and children, or either of them, or for the appointment of trustees as aforesaid the court may, from time to time, on the petition of either of the parties and upon notice to the family court commissioner, revise and alter such judgment respecting the amount of such alimony or allowance and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property so held in trust, and may make any judgment respecting any of the said matters which such court might have made in the original action. But when a final division of the property shall have been made under * * * s. 247.26 no other provisions shall be thereafter made for the wife.

247.33 JUDGMENT FOR LEGAL SEPARATION; REVOCATION. In all cases of * * * legal separation for any of the causes specified in s. 247.07, the court may decree a separation * * * for a limited time or forever, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation * * * of the * * * judgment; and upon such application the court shall make such order as may be just and reasonable.

247.34 Upon rendering a judgment * * * of annulment the court may make provision for restoring to the wife the whole or such part, as it * * * deems just and reasonable, of any * * * property which the husband may have received from her or the value thereof, and may compel him to disclose what * * * property he * * * has received and how the same has been disposed of. The court may in like manner provide for the restoration to the husband of any property which he has transferred to his wife.

247.35 LIMIT OF JUDGMENT AFFECTING PROPERTY. No judgment * * * of annulment, divorce or legal separation shall in any way affect the right of a wife to the possession and control of her separate property, real or personal, except as provided in this chapter; and nothing contained in this chapter shall authorize the court to divest any party of his title in any real estate further than is expressly provided * * * therein.

SECTION 70. 247.36 and 247.37 (1) of the statutes are repealed and recreated to read:

247.36 DOWER AND CURTESY RIGHTS. When a judgment of divorce is granted, and also when the court, upon granting a legal separation, makes a final division of the estate under s. 247.26, neither party shall be entitled to dower or curtesy in any lands of the other.

247.37 EFFECT OF JUDGMENT OF DIVORCE. (1) (a) When a judgment of divorce is granted it shall not be effective so far as it affects the marital status of the parties until the expiration of one year from the date of the granting of such judgment, except that it shall immediately bar the parties from cohabitation together and except that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately

before such death. The written judgment shall include the substance of the preceding language; and if the court orders alimony or other allowances for the wife or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under s. 295.03 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the prevailing party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the action has been uncontested, they shall first be submitted to opposing counsel, if any, and to the family court commissioner for notation of approval thereon before submission of the same to the court.

(b) At the time of filing any judgment for a divorce or legal separation, the attorney for the prevailing party shall present to the clerk of court 2 true copies thereof in addition to the original judgment, and until such copies are presented the clerk may refuse to accept such judgment for filing. After the judgment is filed, the clerk shall mail a copy forthwith to each party to the action at his last known address, and the court record shall show such mailing.

SECTION 71. 247.37 (2), (3) and (4) and 247.375 (1) of the statutes are amended to read:

247.37 (2) So far as said judgment * * * affects the *marital* status of the parties the court shall have power to vacate or modify the same for sufficient cause shown, upon its own motion, or upon the application of either party to the action, at any time within one year from the granting of such judgment * * *, provided both parties are then living. But no such judgment * * * shall be vacated or modified without the service of notice of motion, or order to show cause on the * * * *family court commissioner*, and on the parties to the action, if they be found. The court may direct the * * * *family court commissioner* or appoint some other attorney, to bring appropriate proceedings for the vacation of said judgment * * *. The compensation of the * * * *family court commissioner when not on a salaried basis* or other attorney for performing such services shall be at the rate of * * * \$50 per day, * * * *which shall* be paid out of the county treasury upon order of the presiding judge and the certificate of the clerk of the court. If the judgment * * * shall be vacated it shall restore the parties to the marital relation that existed before the granting of such judgment * * *. If after vacation of the judgment * * * either of the parties shall bring an action in this state for divorce against the other the court may order the * * * *plaintiff* in such action to reimburse the county the amount paid by it to the * * * *family court commissioner* or other attorney in connection with such vacation proceedings.

(3) It * * * is the duty of every judge, who * * * *grants* a judgment * * * of divorce, to inform the parties appearing in court that the judgment * * *, so far as it affects the *marital* status of the parties *except to bar cohabitation*, will not become effective until one year from the date when such judgment * * * is granted.

(4) Such judgment * * *, or any provision of the same, may be reviewed by an appeal taken within one year from the date when such judgment * * * was granted. At the expiration of such year, such judgment * * * shall become final and conclusive without further proceedings, unless an appeal * * * is pending, or the court, for sufficient cause shown, upon its own motion, *or that of the family court commis-*

sioner, or upon the application of a party to the action, shall otherwise order before the expiration of said period. If an appeal * * * is pending at the expiration of said year, such judgment * * * shall not become final and conclusive until said appeal * * * has been finally determined.

247.375 (1) Between the date of a judgment of divorce and the date on which it becomes final, a party to whom real estate has been awarded pursuant to s. 247.26 may apply to the court by verified petition for an order authorizing him or her to sell, mortgage, lease or otherwise dispose of such real estate free of any claim or interest of the opposite party. The court or presiding judge shall thereupon enter an order fixing a time for hearing such petition, which shall be not more than 60 days nor less than 10 days from the filing thereof. At least 8 days prior to the date fixed for hearing, a copy of the petition and order shall be served on the opposite party and the * * * *family court commissioner*, in the manner prescribed by law for the service of a summons. The opposite party or the * * * *family court commissioner* may answer the petition and present evidence at the hearing in opposition thereto.

SECTION 72. 247.39 of the statutes is repealed and recreated to read:

247.39 ALIMONY OR OTHER ALLOWANCE PENDING APPEAL. Alimony or other allowances for the wife or children when an appeal of a divorce or legal separation action is pending before the supreme court may be allowed under s. 251.431.

SECTION 73. Chapter 248 of the statutes is created to read:

CHAPTER 248.

ACTIONS ABOLISHED.

248.01 ACTIONS FOR BREACH OF PROMISE ABOLISHED. All causes of action for breach of contract to marry are hereby abolished, except that this section shall not apply to contracts now existing or to causes of action which heretofore accrued.

248.02 PURPOSE. No act hereafter done within this state shall operate to give rise, either within or without this state, to any of the causes of action abolished by this chapter. No contract to marry, which shall hereafter be made in this state, shall operate to give rise, either within or without this state, to any cause of action for breach thereof, and any such acts and contracts are hereby rendered ineffective to support or give rise to any such causes of action, within or without this state.

248.03 UNLAWFUL TO FILE OR THREATEN ACTIONS BARRED. It is unlawful for any person, either as a party or attorney, to commence, or threaten to commence, in any court in this state, any action, or to serve and file in such court or threaten to so do any process, pleading or paper, setting forth or seeking to recover a sum of money upon any cause of action abolished or barred by this chapter, whether such cause of action arose within or without this state.

248.04 TIME FOR FILING ACTIONS. All actions for breach of contract, now existing, to marry shall be commenced, and the process, pleading or paper setting forth the same filed, within 6 months of the effective date of this section (1959) and, if not so commenced and filed, shall thereafter be barred.

248.05 CONTRACTS EXECUTED AS TO SUCH CLAIMS BARRED. (1) All contracts and instruments of every kind, which may hereafter be executed in this state in payment, satisfaction, settlement, or

compromise of any claim or cause of action abolished or barred by this chapter, whether such claim or cause of action arose within or without this state, are declared to be contrary to the public policy of this state and void.

(2) No person shall cause, induce or procure any person to execute such contract or instrument, or to give, pay, transfer or deliver any money or thing of value in payment, satisfaction, settlement, or compromise of any such claim or cause of action, or to receive, take, or accept any such money or thing of value in such payment, satisfaction, settlement, or compromise.

(3) No person, either as a party or attorney, shall commence or cause to be commenced, in any court in this state, any proceeding or action seeking to enforce or recover upon such contract or instrument, knowing it to be such, whether the same has been executed within or without this state.

(4) This section shall not apply to the payment, satisfaction, settlement, or compromise of any causes of action which are not abolished or barred by this chapter, on any contracts or instruments heretofore executed, or to the bona fide holder in due course of any negotiable instrument which may be executed hereafter.

248.06 ACTIONS FOR RECOVERY OF PROPERTY PROCURED BY FRAUD; CORROBORATION REQUIRED. Actions for the recovery of property received by one party from the other after the alleged contract to marry and before the breach thereof, which was procured by such party by his or her fraud in representing to the other that he or she intended to marry the other and not to breach the contract to marry, are not barred by this chapter; but such actions must be commenced within one year after the breach of the contract to marry and the cause must be shown by affirmative proof aside from the testimony of the party seeking the recovery.

248.07 PENALTY. Any person who violates any provision of this chapter may be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than one year, or both.

248.08 CONSTRUCTION. This chapter shall be liberally construed to effectuate the object thereof.

SECTION 74. 252.016 (4) (a) (intro. par.) and 1, (c) and (e) and (5) of the statutes are amended to read:

252.016 (4) DEPARTMENT OF FAMILY CONCILIATION. (a) (intro. par.) There is created a department of * * * *family* conciliation. Said department shall be under the direction and supervision of a director of * * * *family* conciliation. Said director * * *, through his respective assistants, shall:

1. Receive all * * * *marital* complaints and make a proper disposition thereof;

(c) Said department of * * * *family* conciliation shall have such men and women investigators as may from time to time be authorized by the county board of supervisors of such county. Said investigators shall be appointed by the joint action of the judges of the family court branches of the circuit court under the laws governing civil service in such county.

(e) The county board of supervisors of such county shall provide for such assistants, stenographic and otherwise, as shall be necessary to assist the director of * * * *family* conciliation in carrying out the purpose of subs. (4) to (6) particularly in regard to the proper disposal of * * * *marital* complaints. Such director and all other persons in said

department shall be appointed by the judges of the family court branches of the circuit court under the laws governing civil service in such county, except in cases otherwise expressly provided for.

(5) The board of supervisors of said county shall furnish said courts and said department of * * * *family* conciliation, the judges, officers and employes thereof with suitable accommodations, adequately centralized and consolidated, and with the necessary furniture and supplies and make provision for its necessary expenses and operation.

SECTION 75. 328.39 of the statutes is amended to read:

328.39 (1) (a) Whenever it is established in an action or proceeding that a child was born to a woman while she was the lawful wife of a specified man, any party asserting * * * in such action or proceeding * * * that the husband was not the father of the child *shall have the burden of proving that assertion by a clear and satisfactory preponderance of the evidence.* In all such actions or proceedings the husband and the wife are competent to testify as witnesses to the facts. The court or judge shall in such cases order the child made a party and shall appoint a guardian ad litem to appear for and represent the child whose paternity is questioned.

(b) In * * * actions *affecting marriage*, in which the question of * * * *paternity* is raised, and in * * * *paternity* proceedings, the court upon being satisfied that the parties to the action are unable to adequately compensate any *such* guardian ad litem for his services and expenses, * * * shall then make an order specifying the guardian's fee and expenses, which fee and expenses shall be paid as provided in s. 957.26.

(2) The mother of the child shall not be excused or privileged from testifying fully in any action or proceeding mentioned in sub. (1) in which the legitimacy of * * * *such* child * * * is involved or in issue, when ordered to testify by a court of record or any judge thereof; but she shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which she so testifies or produces evidence, except for perjury committed in giving such testimony.

(3) Whenever any court pursuant to this section shall adjudge a child *to have been born * * * out of wedlock * * **, the clerk of court shall report the facts to the state registrar, who shall issue a new birth certificate showing the correct facts as found by the court, and shall dispose of the original, with the court's report attached, as provided in s. 69.33 (5). He shall notify local registrars as provided in s. 69.33 (6). *If the husband is a party to the action and the court makes a finding as to whether or not the husband is the father of the child, such finding shall be conclusive in all other courts of this state.*

SECTION 76. This act shall take effect January 1, 1960.

Approved October 28, 1959.