

TITLE XXIII.
The Family Code.

CHAPTER 245.

MARRIAGE.

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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. (1) 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.

(2) In this chapter "church under his ministry" includes any congregation, parish or place of worship at which any clergyman is located or assigned and also any administrative, missionary, welfare or educational agency, institution or organization affiliated with any religious denomination or society in this state.

(3) In this title "void" means null and void and not voidable.

History: 1961 c. 505.

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.

245.02 Marriageable age; who may contract. (1) Every male person who has attained the full age of 18 years and every female person who has attained the full age of 16 years shall be capable in law of contracting marriage if otherwise competent.

(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 affirma-

tion) 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.

History: 1961 c. 505.

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 or has been a party to an action for divorce in any court in this state, or 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.

Divorced nonresident must abide by Wisconsin regulations governing the issuance of marriage licenses. 55 Atty. Gen. 240.

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

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.

(2) Proof that a person contracting a marriage in another jurisdiction was (a) domiciled in this state within 12 months prior to the marriage, and resumed residence in this state within 18 months after the date of 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 at the time such marriage was contracted the person resided and intended to continue to reside in this state.

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

History: 1961 c. 505.

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 nonresidents 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.

245.06 Antenuptial physical examination and tests. (1) (a) All persons making application for license to marry shall within 20 days prior to such application submit to an examination for the presence of any venereal disease and a Wasserman 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 Wasserman or other standard blood test for syphilis at (name and address 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. 245.07.

(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.

(2) When a person submitting to a Wasserman 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.

245.07 Marriage of person having venereal disease. In the case of an individual whose premarital laboratory test or physical examination results in a positive finding, for a venereal disease, when in the opinion of his attending physician the individual does not have a venereal disease in an infective or communicable stage, the state board of health may review the findings through the state health officer or his duly authorized representative and thereafter the state health officer or his duly authorized representative is empowered to grant a certificate to the county clerk that the individual does not have an infective or communicable venereal disease if such be his best judgment.

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 the parent or guardian (Wisconsin residents) of either of the parties, or 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 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 immediately prior to making such application. The applicant shall retain residence in one county until he has established residence in another for 30 days. 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.

History: 1961 c. 505.

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. The county clerk may issue licenses to persons previously married with the judge's consent, and the judge may then make the determination whether the previous marriage was legal or not. 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 person authorized to accept such applications in the county and state 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 under 30 years of age shall exhibit to the clerk a birth certificate, and all applicants shall submit 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.

History: 1961 c. 505.

245.10 Permission of court required for certain marriages. (1) No Wisconsin resident having minor issue of a prior marriage not in his custody and which he is under obligation to support by any court order or judgment, may marry in this state or elsewhere, without the order of either the court of this state which granted such judgment or support order, or the court having divorce jurisdiction in the county of this state

where such minor issue resides or where the marriage license application is made. No marriage license shall be issued to any such person except upon court order. The court, within 5 days after such permission is sought by verified petition in a special proceeding, shall direct a court hearing to be held in the matter to allow said person to submit proof of his compliance with such prior court obligation. No such order shall be granted, or hearing held, unless both parties to the intended marriage appear, and unless the person, agency, institution, welfare department or other entity having the legal or actual custody of such minor issue is given notice of such proceeding by personal service of a copy of the petition at least 5 days prior to the hearing, except that such appearance or notice may be waived by the court upon good cause shown, and unless a 5-day notice thereof is given to the family court commissioner of the county where such permission is sought, who shall attend such hearing, and to the family court commissioner of the court which granted such divorce judgment. Upon the hearing, if said person submits such proof and makes a showing that such children are not and are not likely to become public charges, the court shall grant such order, a copy of which shall be filed in any prior divorce action of such person in this state affected thereby; otherwise permission for a license shall be withheld until such proof is submitted and such showing is made, but any court order withholding such permission is an appealable order. No county clerk in this state shall issue such license to any person required to comply with this section unless a certified copy of a court order permitting such marriage is filed with said county clerk.

(2) No nonresident of this state, having minor issue of a prior marriage not in his custody and which he is under obligation to support by order or judgment of any court in this state or elsewhere, may marry in this state unless he has complied with the requirements of sub. (1).

(3) If a Wisconsin resident having such support obligations of a minor, as stated in sub. (1), wishes to marry in another state, he must, prior to such marriage, obtain permission of the court under sub. (1), except that in a hearing ordered or held by the court, the other party to the proposed marriage, if domiciled in another state, need not be present at the hearing. If such other party is not present at the hearing, the judge shall within 5 days send a copy of the order of permission to marry, stating the obligations of support, to such party not present.

(4) This section shall have extraterritorial effect outside the state; and s. 245.04 (1) and (2) are applicable hereto. Any marriage contracted without compliance with this section, where such compliance is required, shall be void, whether entered into in this state or elsewhere.

History: 1961 c. 505; 1965 c. 430, 625.

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, the court, if satisfied that the grounds of objection are prima facie valid, shall issue an order to show cause as aforesaid, returnable as the court directs, but not more than 14 days after the date of the order, which shall be served forthwith upon the applicants for the license residing in the state, and upon the clerk before whom the application has been made, and shall operate as a stay upon the issuance of the license until further ordered; if either or both of the applicants are nonresidents of the state the order shall be served forthwith upon the nonresident by publication of a class 1 notice, under ch. 985, in the county wherein the application is pending, and by mailing a copy thereof to the nonresident at the address contained in the application.

(2) If, upon hearing, the court finds that the statements in the application are willfully 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.

History: 1965 c. 252.

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.

(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.

245.13 Form of license. Said license shall be in form substantially as follows:

STATE OF WISCONSIN, }
County of } ss. No,

To any person authorized by the laws of this state to solemnize marriage:

You are hereby authorized at any time not more than thirty days from and after the date hereof, within the state of Wisconsin (not knowing any legal impediment thereto), to join together in marriage in accordance with the laws of this state, A.... B...., aged, and never heretofore married (or married on the day of, A. D., to E.... F...., said E.... F.... having died on the day of, A. D.; or, said A.... B...., having been divorced from said E.... F.... by the court of the of, state of, on the day of, A. D.), and C.... D...., aged, and never heretofore married (or married on the day of, A. D., to G.... H...., said G.... H.... having died on the day of, A. D.; or said C.... D...., having been divorced from said G.... H.... by the court of of the of, state of, on the day of, A. D.), the consent of, the of the said A.... B...., and of, the of the said C.... D...., having been duly given. The issue of this license shall not be deemed to remove or dispense with any legal disability, impediment or prohibition rendering marriage between the parties illegal.

Given under my hand and seal at, state of Wisconsin, this day of, Anno Domini, one thousand nine hundred and

(Seal)
County Clerk.

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.

245.15 Fee to county clerk. Each county clerk shall receive as a fee for each license granted the sum of \$4, of which \$3 shall become a part of the funds of the county, and \$1 shall be paid into the state treasury as reimbursement toward the appropriation made by s. 20.765 (3) (c) to carry out the functions of the council for home and family. The clerk shall also receive a standard notary fee of 50 cents for each license granted which may be retained by him if operating on a fee or part fee basis, but which otherwise shall become part of the funds of the county.

History: 1963 c. 569; 1965 c. 163, 659 s. 23 (4); 1967 c. 26, 291 s. 14.

County clerk may charge only \$4 for of application is completed by another coun-
issuance of marriage license, but may charge ty clerk he is entitled to the notary fee also.
a 50 cent notarial fee in addition. If part 55 Atty. Gen. 239.

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.

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 some county in this state in which is located a church under his ministry, who shall record the same and give a certificate thereof, but any such clergyman, licentiate or appointee who is not a resident of this state is likewise authorized to solemnize marriages in this state upon filing such credentials or proof, together with a letter of sponsorship from a clergyman of the same religious denomination or society who has a church in this state under his ministry, with the clerk of the circuit court of the county in which any such marriage is to be performed, and said clerk 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.

History: 1961 c. 505.

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 the 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....

(3) The blank form for the certificate in each case shall also provide space for the entry of the following items: Information concerning which it shall be the duty of the county clerk to acquire and enter in its proper place on the certificate at the time when the license is issued, the full name, age, color, place of residence, place of birth, occupation, and, if known, the father's name, and mother's name of each of the parties married; the number of times either of the parties may have been previously married and condition of each, whether single, widowed, or divorced; the bride's maiden name, in case she is a widow; together with such other statistical items as may, from time to time, be prescribed by the registrar of vital statistics. The original certificate in each case shall contain the following words: "N. B. This original certificate, legibly and completely filled out with unfading ink, must be returned to the local registrar of vital statistics within three days from the date of marriage. Maximum penalty for noncompliance, \$200."

245.19 Delivery and filing of certificates. (1) The marriage certificates marked "duplicate" and "triplicate," duly signed, shall be given by the officiating person to the persons married by him; and the certificate marked "original," legibly and completely filled out with unfading ink, shall be returned by such officiating person, or, in the case of a marriage ceremony performed without an officiating person, then by the parties to the marriage contract, or either of them, to the register of deeds of the county in which said marriage was performed, or if performed in a city, then to the city health officer within 3 days after the date of said marriage. The marriage license shall be retained by the person who solemnizes the marriage, or in case of a marriage performed without an officiating person, by the parties to the marriage contract, or either of them, to be prima facie evidence of authority to perform the marriage ceremony.

(2) When a marriage is entered into outside of this state and either of the parties resides in Wisconsin, they may file their certificate of marriage with the register of deeds or city health officer, and thereafter that certificate shall be filed, forwarded and recorded as though the marriage had occurred in this state.

245.20 Records and blanks. The state registrar of vital statistics shall prescribe model forms for blank applications, statement, consent of parents, affidavits, licenses and marriage certificates and other such forms as shall be necessary to comply with the provisions of this chapter. The county clerk shall keep in his office among his records, a suitable book to be called the marriage license docket and enter therein a complete record of the applications for, and the issuing of all marriage licenses, and of all other matters which he is required by this chapter to ascertain relative to the rights of any person to

obtain a license. Said marriage license docket shall be open for public inspection or examination at all times during office hours.

State registrar of vital statistics has local registrars and registers of deeds must authority to prescribe format for various use forms prescribed and supplied by state marriage forms enumerated in 245.20 and registrar. 49 Atty. Gen. 49.

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.

See note to 245.24, citing Davidson v. Davidson, 35 W (2d) 401, 151 NW (2d) 53. The voidable void marriage in Wisconsin. 49 MLR 751.

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

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.

Where the wife entered into the New Mexico marriage within the proscribed one-year period from the date of the judgment of divorce, knowing that she could not remarry anywhere within the proscribed period without violating Wisconsin law, she was not entitled to the benefit of this section. *Roddis v. Roddis*, 18 W (2d) 118, 118 NW (2d) 109. A marriage contracted before a prior divorce is granted is voidable, not void. An action for annulment by the wife after removal of the impediment abated with the wife's death and can not be revived by her administrator as an action to recover property. *Davidson v. Davidson*, 35 W (2d) 401, 151 NW (2d) 53.

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.

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 a 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.

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

(f) *Penalty for marriage contracted without required permission of court.* Any person who obtains a marriage license contrary to or in violation of s. 245.10, whether such license is obtained by misrepresentation or otherwise, or whether such marriage is entered into in this state or elsewhere.

(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 heretofore provided; or unless the parties to such marriage declare that they take each other as husband and wife; or without the presence of 2 competent adult witnesses; or, 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 complete 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.

History: 1961 c. 505.

245.31 Action to recover penalties. Any fine or forfeiture imposed under s. 245.30 may be recovered in the same manner as other debts are recovered with the usual

costs, in any court of record in any county in this state in which the defendant may be found.

History: 1963 c. 6.

245.32 Declaration of public policy. It is declared that the provisions of s. 13.53, relating to the council for home and family, are made necessary by critical conditions and trends seriously affecting the family life of many of our citizens and tending to endanger the public welfare, health, and morals, and the peace and security of the people of the state. Such conditions and trends are reflected by:

(1) State department of public welfare statistics indicating that over \$10,000,000 in public funds are expended annually to support families which have become indigent because of marital disruption;

(2) Nationwide surveys showing that 50% of our juvenile delinquents come from broken homes; and

(3) Prison studies revealing that divorced persons have a higher rate of criminal violations than do married persons.

History: 1963 c. 569; 1965 c. 659 s. 24 (14).