

CHAPTER 889

DOCUMENTARY AND RECORD EVIDENCE

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889.01 Publication by state as evidence of laws. Books, pamphlets and other documents purporting to be printed by the state as copies of its statutes, legislative acts and resolutions, senate and assembly journals or orders, rules, regulations or decisions of any of its boards, departments, commissions or agencies, are prima facie evidence that they are such publications as they purport to be, and are correct copies of such statutes, acts, resolutions, journals, orders, rules, regulations and decisions, respectively; and such printed journals of said houses, respectively, are prima facie evidence of their proceedings. Electronic documents purporting to be published by the legislative reference bureau under ss. 35.095 (3) (a), 35.18 (1) (b), and 35.93 as copies of Wisconsin's statutes, legislative acts, or administrative rules are prima facie evidence that they are such publications as they purport to be and are correct copies of such statutes, legislative acts, and administrative rules.

History: 2013 a. 20.

889.02 Publication by other states and United States as evidence of laws and regulations. Books, pamphlets and other documents purporting to be printed by the United States or any state or territory thereof as copies of its statutes, congressional or legislative acts and resolutions or as copies of orders, rules, regulations or decisions of any state or federal board, department, commission or agency, are presumptive evidence of such statutes, acts, resolutions, orders, rules, regulations or decisions.

889.03 Copies certified by state law librarian; fees. Matter contained in any book or pamphlet in the state law library, purporting to be a copy of the opinion of any court, or of any statute, law, act or resolution of any state, territory, the United States, or any foreign country, certified by the state law librarian, is prima facie evidence of the contents of such opinion, statute, law, act or resolution. The fee for such certification is the same as that provided for similar certification by the clerk of the supreme court.

History: 1987 a. 50.

889.04 County and municipal ordinances. Matter entered or recorded in any ordinance, record book, or other format authorized under ss. 59.23 (2) (b), 60.33 (1) and (2), 61.25 (3) and 62.09 (11) (c) or printed in any newspaper, book, pamphlet, or other form purporting to be so published, entered or recorded by any county, town, city or village in this state as a copy of its ordinance, bylaw, resolution or regulation, is prima facie evidence thereof; and after 3 years from the date of such publication, entry or recording such book or pamphlet shall be conclusive proof of the regularity of the adoption and publication of the ordinance, bylaw, resolution or regulation.

History: 1975 c. 114; 1983 a. 532 s. 36; 1995 a. 201; 2013 a. 373.

When the proof of publication of an ordinance offered at trial did not textually conform to the exhibit that was tendered as the ordinance, the city clerk's testimony that the purported ordinance was continuously in the possession of the city's keeper of

documents, along with the clerk's identification of the city's "Record of Council Meetings and Actions" that recited the passage of the ordinance, raised a presumption of regularity. That presumption was conclusive under this section. *City of Lake Geneva v. Smuda*, 75 Wis. 2d 532, 249 N.W.2d 783 (1977).

This section applies only to procedural errors in the adoption process. County board approval of a town zoning ordinance is not part of the adoption process. *Stahl v. Town of Spider Lake*, 149 Wis. 2d 230, 441 N.W.2d 250 (Ct. App. 1989).

In order for a charter ordinance to be entered or recorded under this section, the procedures of s. 66.0101 must be followed, which include a two-thirds vote of approval by the common council, publication of notices, filing of a certified copy with the secretary of state, and a 60-day waiting period to allow a referendum petition to be filed. *Keller v. Kraft*, 2005 WI App 102, 281 Wis. 2d 784, 698 N.W.2d 843, 04-1315.

889.05 Common law of sister states. The unwritten or common law of any state or territory of the United States may be proved by parol evidence, and by the books of reports of cases adjudged in its courts.

889.06 Alien laws. Foreign laws may be proved by parol evidence; but if it shall appear that the law in question is contained in a written statute or code the court may reject any evidence of such law that is not accompanied by a copy thereof.

889.07 Court records and copies. The original records, papers and files in or concerning any action or proceeding of any nature or description in any court of the state, being produced by the legal custodian thereof, shall be receivable in evidence whenever relevant; and a certified copy thereof shall be received with like effect as the original.

889.08 Copies, how certified, presumptions. (1) Whenever a certified copy is allowed by law to be evidence, the copy shall be certified by the legal custodian of the original to have been compared by the custodian with the original, and to be a true copy thereof or a correct transcript therefrom, or to be a photograph of the original. The certificate must be under the custodian's official seal or under the seal of the court, public body or board, whose custodian the custodian is, when the custodian, court, body or board is required to have or keep such seal.

(2) The executive officer, secretary or chief clerk of any state agency, and in agencies headed by one person, the head of the agency or his or her deputy, are, for the purposes of this section and s. 889.09, the legal custodians of the files and records of their agencies. In agencies having divisions, the heads of divisions are also legal custodians of the files and records of their divisions. "State agency" as used herein means the legislature, any officer, board, commission, department or bureau of the state government and the state historical society.

(3) Any certificate purporting to be signed, or signed and sealed, as authorized by law, shall be presumptive evidence that it was signed by the proper officer, and if sealed, that it has the proper seal affixed, except when the law requires an additional certificate of genuineness.

(4) The seal need not be affixed to a copy of a rule or order made by a court, or of any paper filed therein, when such copy is used in the same court or before any officer thereof.

(5) When a certified copy of any record, paper or instrument of any kind is made receivable in evidence such copy shall have the same effect as evidence as the original.

History: 1993 a. 486.

When the defendant's driving record was certified under s. 909.02 (1), the trial court erred in applying certification requirements under s. 889.08 (1). *State v. Leis*, 134 Wis. 2d 441, 397 N.W.2d 498 (Ct. App. 1986).

A copy of an official record may be admitted in evidence if it is certified as correct in accordance with s. 909.02 (4) even though the certification does not comply with s. 889.08 (1). 63 Atty. Gen. 605.

889.09 Certification of nonfiling. (1) Whenever any officer to whom the legal custody of any document belongs shall certify, under his or her official seal if he or she shall have any, that the officer has made diligent examination in his or her office for the document, and that it cannot be found or that the document had not been filed or recorded in his or her office, the certificate shall be presumptive evidence of the fact so certified.

(2) The certificate of the legal custodian of the records of any public licensing officer, board or body that the custodian has made diligent examination of the files and records of the custodian's office and that the custodian can find no record of a license issued to a named person or that none has been issued to such person, specifying the kind of license in question, shall be evidence that none has been issued.

History: 1993 a. 486.

889.10 Official certificates, etc. When a public officer is required or authorized by law to make a certificate or affidavit touching an act performed by the officer or to a fact ascertained by the officer in the course of the officer's official duty and to file or deposit it in a public office such certificate or affidavit when so filed or deposited shall be received as presumptive evidence of the facts therein stated unless its effect is declared by some special provision of law.

History: 1993 a. 486.

889.11 Reporter's transcript as evidence. Any writing certified by the official reporter of any court to have been carefully compared by the reporter with the reporter's minutes of testimony and proceedings taken on any trial or hearing in such court, and to be a true and correct transcript of all or a specified portion of such minutes, and to be a correct statement of the evidence and proceedings had on such trial or hearing, shall be received in evidence with the same effect as the oral testimony of such reporter to the facts so certified.

History: 1993 a. 486.

A partial transcript included in the appeal record by stipulation of the parties could not be considered competent evidence since it did not include a certification by a shorthand reporter. *Fells v. State*, 65 Wis. 2d 525, 223 N.W.2d 507 (1974).

889.13 Transcript of municipal court records. A certified transcript from the original records, papers and files in or concerning any action or proceeding in municipal court is not admissible in evidence outside of the county, unless there is affixed a certificate of the clerk of the circuit court of the county, under seal, that the person who certified the transcript was, at the date thereof, a municipal judge of the county, or other person having legal custody of the books and papers; and if the judgment was rendered by another, that such other was, at the date of the rendition of the judgment, a municipal judge of the county.

History: 1977 c. 305.

Copies of records must be given to any applicant who tenders the proper fee, regardless of the purpose in requesting the copy. 58 Atty. Gen. 67.

889.14 Proof of unrecorded proceedings before municipal judge. The proceedings in any cause had before a municipal judge, not reduced to writing by the municipal judge, nor being the contents of any paper or document produced before the municipal judge, and the contents of any such paper or docu-

ment as shall have been lost or destroyed, may be proved by the oath of the municipal judge.

History: 1985 a. 332.

889.15 Proceedings of other courts as evidence. The records and judicial proceedings of any court of the United States, or of any state or territory or district thereof and of any foreign country, and copies thereof, shall be admissible in evidence in all cases in this state when authenticated or certified in the manner directed by ss. 889.07 and 889.08 or by acts of congress, or the laws of such state, territory or district, or of such foreign country.

889.16 Judgment of foreign justice. A certified copy of the record of the judicial proceedings of any foreign court not of record with a certificate of magistracy affixed, signed and sealed by the clerk of a court of record in the county or district where such proceedings were had, shall be admissible in evidence in all cases.

889.17 Conveyances and record thereof. Every instrument entitled by law to be recorded or filed in the office of a register of deeds, and the record thereof and a certified copy of any such record or of any such filed instrument, is admissible in evidence without further proof thereof, and the record and copies shall have like effect with the original.

889.18 Official records. (1) CHIROPRACTORS. The record by the county clerk of license or certificate under s. 446.02 shall not be evidence on behalf of the licensee or certificate holder without production of the license or certificate or competent evidence from the board or body that issued the same.

(2) COPIES AS EVIDENCE. A certified copy of any written or printed matter preserved pursuant to law in any public office or with any public officer in this state, or of the United States, is admissible in evidence whenever and wherever the original is admissible, and with like effect.

(3) COPIES, DUTY TO MAKE. Any such officer of this state who, when tendered the legal fee therefor and requested to furnish such certified copy, shall unreasonably refuse to comply with such request, shall forfeit not less than \$20 nor more than \$100, one-half to the person prosecuting therefor.

History: Sup. Ct. Order, 59 Wis. 2d R1, R5 (1973).

This section does not make admissible police accident reports that contain hearsay or conclusions. *Wilder v. Classified Risk Ins. Co.* 47 Wis. 2d 286, 177 N.W.2d 109 (1970).

While sub. (2) does not refer to admission into evidence of copies of the official records from other states, other authority admits those documents. *Organ v. State*, 65 Wis. 2d 36, 221 N.W.2d 823 (1974).

A certified copy of an order by the transportation department revoking the defendant's driver's license was admissible under sub. (2). The identity of the defendant as the one whose license had been revoked was prima facie established where the name was not common. *State v. Mullis*, 81 Wis. 2d 454, 260 N.W.2d 696 (1978).

889.19 Pedigree recitals in deeds and wills. Any deed, mortgage, land contract or other conveyance that has been duly recorded in the proper register's office for 20 years, and any will that has been admitted to probate, containing a recital in respect to pedigree, blood relationship, marriage, celibacy, adoption or descent, and being in other respects admissible in evidence, shall be admitted as prima facie evidence that the recital is true.

History: 1999 a. 162.

889.23 Acknowledged writings, evidence. Every written instrument, except promissory notes and bills of exchange, and wills, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate and when so proved and acknowledged shall be competent evidence whenever it is relevant. Any instrument, which is attested but which is not required by law to be witnessed, may be proved as though there were no subscribing witness thereto.

History: Sup. Ct. Order, 59 Wis. 2d R6 (1973).

This section would not permit introduction of a copy of an insurance policy supported by an affidavit since the acknowledgment must be by the signer of the instrument. *Whalen v. State Farm Mut. Auto. Ins. Co.* 51 Wis. 2d 635, 187 N.W.2d 820.

889.24 Conveyance, how proved. When any grantor shall die or depart from or reside out of this state, not having acknowledged the grantor's conveyance, the due execution thereof may be proved by any competent subscribing witness thereto before any court of record; if all the subscribing witnesses to such deed shall be dead or out of this state the same may be proved before any such court by proving the handwriting of the grantor and of any subscribing witness thereto.

History: 1993 a. 486.

889.241 How made when grantor refuses. If any grantor residing in this state refuses to acknowledge his or her conveyance, the grantee or any person claiming under the grantee may apply to the circuit judge in the county where the land lies or where the grantor or any subscribing witness to the conveyance resides. The judge shall then issue a summons to the grantor to appear at a certain time and place before the judge to hear the testimony of the subscribing witnesses to the conveyance. The summons, with a copy of the conveyance annexed, shall be served at least 7 days before the time therein assigned for proving the conveyance. At the time mentioned in the summons or at any time to which the hearing may be adjourned the due execution of the conveyance may be proved by the testimony of one or more of the subscribing witnesses. If the conveyance is proved to the satisfaction of the judge, he or she shall certify the conveyance, and in such certificate the judge shall note the presence or absence of the grantor as the fact may be.

History: 1977 c. 449; 1979 c. 32.

889.242 How, when witnesses dead. If any grantor residing in this state refuses to acknowledge the grantor's conveyance and all the subscribing witnesses thereto are dead or out of the state, it may be proved before any court of record by proving the handwriting of the grantor or of any subscribing witness, upon the court first summoning the grantor to hear the testimony as provided in s. 889.241.

History: 1993 a. 486.

889.243 Witnesses, how subpoenaed; neglect to appear. The court before whom any conveyance may be presented to be proved, as provided in ss. 889.24 to 889.243, may issue subpoenas to the subscribing witnesses or others, as required, to appear and testify touching the execution of such deed, which subpoenas may be served in any part of this state; and

every person so subpoenaed who, without reasonable cause, neglects to appear or refuses to answer on oath touching the matters aforesaid shall be liable to the party injured in the sum of \$100 damages and for such further damages as the party may sustain thereby, and may also be punished as for a contempt by the court.

889.28 Proof of age. The circuit court of any county may, upon application and satisfactory proof made, make a certificate specifying the age, place of birth and parentage of any resident of the county or of any person born in the county. Such certificate or a duplicate or a certified copy thereof, when recorded in the office of the register of deeds, shall be prima facie evidence of the facts therein stated.

History: 1977 c. 449 s. 497; 1993 a. 301.

889.29 Photographic copies of business records as evidence. (1) If any business, institution, or member of a profession or calling in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation, or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process that accurately reproduces or forms a durable medium for so reproducing the original, or to be recorded on an optical disc or in electronic format, the original may be destroyed in the regular course of business, unless its preservation is required by law. Such reproduction or optical disc record, when reduced to comprehensible format and when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction of a record or an enlarged copy of a record generated from an original record stored in optical disc or electronic format is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement, or facsimile, does not preclude admission of the original. No such record is inadmissible solely because it is in electronic format.

(2) This section does not apply to public records.

(3) This section shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it.

History: 1985 a. 180; 1993 a. 172; 1995 a. 27; 2003 a. 294; 2015 a. 196.