

Summary of Benefits Available to Married Couples Under Wisconsin State Law

At the request of Human Rights Campaign, we have prepared the following summary of benefits and privileges that are available to married couples under the law of the State of Wisconsin. To compile this summary, we followed an approach similar to that outlined in the General Accounting Office's January 1997 report on federal laws in which marital status is a factor. *See* General Accounting Office, DEFENSE OF MARRIAGE ACT, GAO Report No. OGC-97-16 (Jan. 31, 1997), *available at* <http://www.gao.gov/archive/1997/og97016.pdf>.

Specifically, an attorney conducted an electronic search of a database of Wisconsin statutes, using search terms designed to elicit statutory provisions related to marital status: the terms included words and stems such as "spouse," "husband," "wife," "widow!", and "marr!". Attorneys then reviewed the search results, eliminating non-responsive provisions (such as agricultural statutes relating to husbandry and provisions on the licensing of marriage and family therapists). Finally, attorneys read the relevant provisions in context and summarized as concisely as possible the particular benefit or privilege that each provision confers on married couples.

As the General Accounting Office noted in the cover letter to its January 1997 report, an electronic search process has inherent limitations. The results of a keyword search are not likely to identify every individual law in the Wisconsin code that may have some relation to marriage; we are confident, however, that this summary includes the principal programs and mechanisms through which the State of Wisconsin confers benefits on married couples. A still more comprehensive list might be generated from reading the entire Wisconsin Code from start to finish, but such a list probably would not include significantly more information than this summary.

Finally, this summary strikes a balance between presenting the information in a concise and useful way, on the one hand, and providing an exhaustive explanation of any additional criteria or limitations on eligibility for the various benefits. A summary such as this invariably involves a certain degree of generalization and simplification, but we have tried to ensure that the summary does not significantly overstate or understate the actual effects of a particular provision. Where there are significant criteria or strings attached to certain benefits, they are noted.

I. Spousal and Dependent Support Benefits

- Unremarried surviving spouses of deceased veterans are eligible for loans under the state veterans housing loan program. § 45.33(c)
- Unremarried spouses of veterans who died on active duty are eligible to receive short-term assistance for subsistence and health care. § 45.40(2m)
- Unremarried surviving spouses of deceased veterans are eligible for personal loans from the state of up to \$25,000. § 45.42(2)

- Spouses and surviving spouses of veterans are eligible for admittance to veterans homes. § 45.51(2)
- A court has discretion to deny the state recovery of public assistance benefits wrongfully obtained by a deceased recipient, if the recipient has a surviving spouse. § 49.08, § 49.195(1)
- Aid to Families with Dependent Children (AFDC) benefits can include benefits for spouses of persons on whom a child is dependent. § 49.19(1)(c)(2)
- A spouse of an institutionalized person is entitled to a monthly income allowance drawn from the available income of the institutionalized spouse. § 49.455(4)(b)
- A transfer of assets from an institutionalized spouse to a non-institutionalized spouse is exempted from rules that would, on the basis of the asset transfer, make the institutionalized spouse ineligible for public assistance. § 49.455(6)(a)
- Aid can be granted to the mother or stepmother of a dependent child if she is the wife of a husband who (a) is incapacitated or incarcerated, or (b) has abandoned her. § 49.19(4)(d)
- In the case of the death of an employee to whom wages are due, the decedent's spouse has first priority to receive the wages due. § 109.03(3)
- No assignment of the wages of a married person is valid unless the assignment is signed by the person's spouse. § 241.09
- An individual can issue an annuity to a person who is a relative by blood or marriage. § 615.03(1)(c)
- State law provides for the creation of marital bank accounts, as to which a surviving spouse has a right to fifty percent of the value of the account upon the death of the other spouse. § 705.04(2m)
- If a person fails to provide for support of his or her spouse, the spouse may file an action to compel support. § 767.08(2)
- Property acquired by one party to a marriage by gift or inheritance is ordinarily not subject to being divided with the other spouse, but the non-owning spouse may ask the court to divide such property if the failure to do so will cause hardship. § 767.255(2)(b)
- A court may require one former spouse to pay maintenance payments to the other. § 767.26
- If a person abandons his or her spouse, the county in which the abandoned spouse resides may seize the other spouse's property and sell it for the benefit of the abandoned spouse. § 767.42

- A guardian of a veteran’s income or estate cannot apply any portion of the assets to support or maintenance of any person, other than the veteran, or a spouse, or a child, except by order of the court. § 880.16(14)
- An adult family member (such as a spouse or other relative by blood or adoption) of an incapacitated individual may receive transfers of property for the use and benefit of the incapacitated individual. § 880.83(1)

II. Health Insurance Benefits

- Surviving spouses of deceased or retired state employees have the same right to health insurance coverage as did the deceased or retired state employee. § 40.02(25)(b)
- Eligible state employees can purchase long-term care insurance for spouses. § 40.55(1)
- States and local governmental units are authorized to provide for the payment of premiums for hospital, surgical, and other health insurance for employees and their spouses. § 66.0137(5)
- An employee can use family and medical leave (up to six weeks in a twelve-month period) to care for a spouse with a serious health condition; “spouse” is specifically defined to mean a legal husband or wife. § 103.10(3)(b)
- Health insurance premium subsidies, and medical leave premium subsidies, are available for state residents who suffer from HIV, and the subsidies can be applied to premiums for coverage that includes spouses and dependents. § 252.16(4), § 252.17(4)
- Fraternal benefit societies are authorized to provide insurance to the spouses of their employees. § 614.10(2)
- Former spouses can elect to continue receiving health insurance that they previously received through spouses who were members of a covered group or holders of individual policies. § 632.897(2)(b), § 632.897(9)(b)

III. Other Insurance Benefits

- In the absence of a written designation of a beneficiary, a widow or widower is the first-priority beneficiary under the public employee trust fund. § 40.02(8)(a)(2)
- Surviving spouses of employees in protective occupations who die as a result of on-the-job injuries are entitled to monthly benefit payments. § 40.65(7)(am)
- Individuals who are related by marriage to persons serving in international public service can obtain insurance on their spouses’ health and life without the consent of the overseas spouse. § 631.07(3)

- Insurers offering group health benefit plans are required to establish special enrollment periods to allow persons who marry coverage-eligible individuals, and the spouses of individuals who are otherwise eligible, to enroll. § 632.746(7)(a)

IV. Workers Compensation Benefits

- For purposes of death benefits in the worker's compensation program, no person is considered a dependent unless the person is a spouse, unremarried former spouse, lineal descendant, lineal ancestor, brother, sister, or other family member by blood or adoption. § 102.51(2)

V. Wrongful Death Benefits

- Any amount recovered in a wrongful death action is paid to the decedent's surviving spouse and minor children, and if none, to the decedent's lineal heirs or brothers and sisters. § 895.04
- The state department of justice may award benefits to dependents (including spouses, but the definition does not include same-sex couples) of victims of certain crimes. § 949.05(1)(c)

VI. Income Tax Benefits

- Some of the amount paid by self-employed persons for medical insurance for spouses is deducted from adjusted gross income for state income tax purposes. § 71.05(6)(b)(19)
- Some of the amount paid by employees for medical insurance for spouses, if the employer has not provided insurance coverage, is deducted from adjusted gross income for state income tax purposes. § 71.05(6)(b)(20), § 71.05(6)(b)(35)
- Some of the amount paid by a person for long-term care insurance for a spouse is deducted from adjusted gross income for state income tax purposes. § 71.05(6)(b)(26)
- Some of the amount paid by a person who has no employer and no self-employment income for medical insurance for a spouse is deducted from adjusted gross income for state income tax purposes. § 71.05(6)(b)(36)
- A personal exemption of \$700 is available to a taxpayer and an additional personal exemption of \$700 is available for the taxpayer's spouse, unless the spouse files separately or as head of household. § 71.05(23)(b)
- A supplemental personal exemption of \$250 is available to a taxpayer if the taxpayer has reached age 65, and the same supplemental personal exemption is available to the taxpayer's spouse if the spouse has reached age 65, unless the spouse files separately or as head of household. § 71.05(23)(b)

- The Wisconsin “married persons credit” allows married persons filing a joint tax return to claim a credit of 3% of the earned income of the spouse with the lower earned income, up to a total of \$480, against state income tax owed. § 71.07(6)
- Unremarried surviving spouses of veterans can claim a credit, in the amount of their property taxes paid, against state income tax owed. § 71.07(6e)
- In calculating withholding exemptions for state income tax, a married employee is entitled to an exemption for a spouse (unless the spouse has claimed the exemption himself or herself). § 71.66(2)(b)
- When an income tax refund is payable to a person who has died, the refund is paid to the personal representative; if there is no such representative, a surviving spouse has first priority to receive the refund (followed by the decedent’s child, parent, and brother or sister). § 71.75(10)
- The spouse or former spouse of a person to whom a refund is owed (due to overpayment of income taxes) may claim the refund upon a showing that the overpayment was non-marital property of the claimant. § 71.80(3)
- A spouse is included among the persons eligible to appeal a notice of additional assessment, refund, denial of refund, or adjustment of credit, even if the spouses filed separately rather than jointly. § 71.87, § 71.88
- Certain gains from the sale of business assets, or of assets used in farming, are subtracted from adjusted gross income for state income tax purposes if the sale is to a person to whom the taxpayer is closely related by blood, marriage, or adoption. § 71.05(6)(b)(25)

VII. Transfer-of-Home Benefits

- The department of social services cannot enforce a lien on a decedent’s home (to pay for costs owed the state for long-term community support services) if the decedent has a surviving spouse. § 46.27(7g)(6)
- The department of social services cannot obtain a lien on the home of a nursing home patient (to pay for costs owed for nursing home care) if the patient’s spouse is living in the home. § 49.496(2)(b)
- Conveyances of real estate between a husband and wife are exempt from the state’s real estate transfer fee. § 77.25(8m)
- A transfer of a manufactured home from a decedent to a surviving spouse is not subject to the otherwise applicable title fee. § 101.9208(1)(dm)
- A judgment lien does not attach to property that is held by the spouse or former spouse of a judgment debtor unless special circumstances exist. § 806.15(4)

- When the department of health obtains a lien on a decedent's home to recover the costs of medical care provided to the decedent, the department cannot enforce the lien by foreclosure if the decedent is survived by a spouse. § 867.035(2m)

VIII. Joint Tenancy Benefits

- A joint tenancy is presumed where the individuals named in a title or the buyers or sellers of property are husband and wife. § 700.19(2)

IX. Marital Property Benefits

- Spouses are entitled to claim exemptions when marital property is subject to levy, execution, or sale in satisfaction of consumer debt. § 425.106(2)
- All property of spouses is presumed to be marital property. § 766.31(2)
- Only spouses may be parties to a marital property agreement, and a marital property agreement is enforceable without consideration. § 766.58(1)
- Spouses may execute an individual property classification agreement to classify all the property of the spouses as the individual property of the owner. § 766.587(1)
- Spouses may execute a terminable marital property classification agreement to classify the property of the spouses as marital property. § 766.588(1)
- If property is designated as "survivorship marital property," the ownership rights of that property vest solely in the surviving spouse by nontestamentary disposition upon the death of the other spouse. § 766.60(5)
- A joint tenancy given to spouses by a third party is deemed survivorship marital property. § 766.60(4)(b)(2)
- A real estate mortgage, security interest, or lien on the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse, but the surviving spouse takes the property subject to the mortgage, security interest, or lien. § 766.60(5)(b)
- A judgment lien on the interest of a spouse in survivorship marital property does not defeat the right of survivorship on the death of the spouse. § 766.60(5)(c)
- A homestead held exclusively between two spouses, with no third party, is deemed survivorship marital property by statute. § 766.605
- The ownership interest and proceeds of a life insurance policy owned by one spouse are generally deemed marital property. § 766.61(3)(a)

- A deferred employment benefit attributable to the employment of a spouse after marriage is generally deemed marital property. § 766.62(1)
- Application by one spouse of substantial labor, effort, inventiveness, skill, creativity or managerial activity to the other spouse's property other than marital property can reclassify that property as marital property. § 766.63(2)
- A spouse can bring a claim for breach of the duty of good faith imposed on the other spouse if the breach causes damage to the claimant spouse's property. § 766.70(1)
- Upon request of a spouse, a court may order an accounting of the spouses' property and obligations and may order the name of the requesting spouse added to documents reflecting ownership of marital property. § 766.70(2), § 766.70(3)
- If marital property has been or is likely to be substantially injured by a spouse's gross mismanagement, waste, or absence, the other spouse may seek a court order to limit the offending spouse's management and control rights in marital property or to change the classification of marital property (among other remedies). § 766.70(4)
- When marital property is used to satisfy a spouse's individual obligation, the non-obligated spouse may seek a court order under which he or she takes title to marital property, of equal value, as individual property. § 766.70(5)
- If a gift of marital property valued at over a certain reasonable amount is given by one spouse to a third party without the other spouse's consent, the non-consenting spouse may sue to recover the property or for a compensatory judgment. § 766.70(6)
- A surviving spouse may purchase a decedent spouse's interest in a life insurance policy or deferred employment benefit plan if all or part of the plan is included in the decedent spouse's estate. § 766.70(7)
- After dissolution of a marriage, each spouse owns an undivided one-half interest in marital property as a tenant in common, unless the parties provide otherwise by agreement. § 766.75
- Where marital property is eligible to an exemption from execution to enforce a judgment, each spouse is entitled to claim an exemption. § 815.18(8)
- A surviving spouse may petition the court for a summary confirmation of his or her interest in property owned by the decedent. § 867.046(1m)

X. Adoption and Child-Rearing

- A child may be adopted by a husband and wife, or by the husband or wife of a person who is the child's parent, or by an unmarried person. § 48.82(1)(a)

- When a married woman is artificially inseminated with the consent of her husband, the husband is considered the natural father of a child conceived. § 891.40
- A man is presumed to be the natural father of a child if he and the child's natural mother are married to each other and the child is conceived or born after the marriage (and no decree of separation or divorce had been granted before the child's birth). § 891.41

XI. Medical Treatment Decisionmaking

- A spouse has first priority in making the decision to admit an incapacitated individual to a nursing facility or a hospice. § 50.06(3), § 50.94(3)
- Spouses can receive medical records relating to treatment of the other spouse. § 51.30(4)(b)(12), (20)

XII. Benefits and Privileges in the Legal Process

- Spouses of crime victims are entitled to notification when the perpetrators are transferred to community residential confinement or to the intensive sanctions program, or when the perpetrator escapes from prison, or when an inmate is scheduled to be released after serving a prison sentence, or if an inmate is paroled. § 301.046, § 301.048, § 301.38, § 301.46, §302.105, § 304.06
- Spouses of crime victims are entitled to notification when perpetrators apply for pardons. § 304.09(1)
- In a suit affecting an interest in marital property, a non-party spouse may join in the suit. § 803.04(3)
- The "husband-wife privilege" confers upon a person the right to prevent his or her spouse from testifying as to any private communication between them during their marriage. § 905.05
- A spouse is among the members of a deceased crime victim's family whom the district attorney is required to make best efforts to notify when the defendant, after being committed to an institution following a verdict of not guilty for reasons of mental disease or defect, is conditionally released, or if the commitment is terminated or discharged. § 971.17(4m), § 971.17(6m)
- A spouse is among the members of a deceased crime victim's family whom the district attorney is required to make best efforts to notify when a defendant in the crime is placed on supervised release. § 980.11(2)

XIII. Probate Benefits

- The surviving spouse of an intestate decedent, who has no surviving children or only had children with the surviving spouse, receives the decedent's entire estate. § 852.01(a)(1)
- The surviving spouse of an intestate decedent, who has surviving children from outside that marriage, receives one-half of the decedent's individual property. § 852.01(a)(2)
- A surviving spouse is entitled to a deceased spouse's entire marital property interest in a home that the surviving spouse occupies or intends to occupy if the decedent did not specifically assign that interest to a third party or if the decedent was intestate. § 862.21(2) and § 862.21(3)
- Subject to exceptions, the surviving spouse of a testator, who executed a will prior to the marriage, is entitled to receive a share of the testator's estate. § 853.11(2)
- A surviving spouse may disclaim a deceased spouse's interest in survivorship marital property. § 854.13(2)(c)
- A surviving spouse may seek the classification of the deceased spouse's property as marital property to assist in the management and control of marital property. § 857.01
- Upon the death of a spouse, the surviving spouse retains his or her undivided, one-half interest in each item of marital property. § 861.01(1)
- To the extent that marital property includes damages for loss of future income arising from a personal injury claim of the surviving spouse, the surviving spouse is entitled to receive as individual property that portion of the award that represents an income substitute after the death of the other spouse. § 861.01(3)
- A surviving spouse has the right to elect against the deceased spouse's will to receive up to fifty percent of the deferred marital property estate. § 861.02(1)
- A surviving spouse has the right to elect against the will of a nondomiciliary decedent and take a portion of any real property in the state of Wisconsin as if the property were located in the decedent's domiciliary. § 861.20(1)
- If a nondomiciliary married person who owns real property in the state of Wisconsin dies intestate then the surviving spouse has the same right to the property under intestate succession as if the property were located in the decedent's home state. § 861.20(2)
- A surviving spouse is eligible to receive an allowance for support while the deceased spouse's estate is being administered. § 861.31, § 861.35(1m)
- A surviving spouse may file with the courts a written selection of up to \$3,000 in specific personal property of the deceased spouse not otherwise bequeathed. § 861.33(1)

- A surviving spouse may petition the court to set aside from the claims of creditors an amount of property up to \$10,000 in value, if it appears the assets from the deceased spouse's estate are insufficient to pay all claims and still leave property to the surviving spouse. § 861.41(1)
- Summary probate procedures are available for small estates (net assets less than \$50,000) if the decedent is survived by a spouse or a minor child; property in the estate not otherwise assigned is assigned to the surviving spouse or minor child. § 867.01(1), § 867.01(3)(f)

XIV. Miscellaneous Benefits

- Spouses of political candidates are exempted from certain contribution limits to the candidate spouse's campaign. § 11.26
- Spouses of persons called into active state service (e.g. in the National Guard) have protections from eviction during the period of the spouse's service. § 21.75(11)
- The expiration date of a power of attorney executed by a service member who is subsequently declared missing is extended, if the power of attorney designates a spouse or named relative. § 21.75(21)
- Combined husband and wife resident fishing licenses are available. § 29.219(4)
- Surviving spouses automatically receive title to boats owned by the decedent spouse. § 30.541(d)
- Spouses of nonresident members of the armed forces are exempted from paying nonresident tuition at the University of Wisconsin. § 36.27(2)(b)
- Surviving spouses of ambulance drivers, correctional officers, firefighters, EMS technicians, or law enforcement officers killed in the line of duty are entitled to fee remission at the University of Wisconsin and the technical college system. § 36.27(3m)(b), § 38.24(5)
- Spouses of certain veterans are entitled to fee remission at the University of Wisconsin and the technical college system. § 36.27(3n)(b), § 38.24(7)
- Surviving spouses of Wisconsin veterans are, upon their death, eligible for burial in Wisconsin veterans cemeteries. § 45.61(2)
- Burial allowances are available for the spouses of Wisconsin veterans who die without leaving sufficient means to defray the expenses of a decent burial. § 45.84(1)
- The department of social services cannot recover from the estate of a nursing home patient (to pay for costs owed for nursing home care) if the patient has a surviving spouse. § 49.496(3)(b)

- Spouses who are both residents of the same nursing facility are entitled to share a room. § 50.09(1)(f)
- Veterans and their spouses are entitled to preferences in seeking jobs in city police and fire departments, and in seeking county, city, and municipal civil service jobs. § 62.13(4)(d), § 63.08(1)(f), § 63.37, § 66.0509
- Sales of certain vehicles, aircraft, and boats to spouses are exempt from the state's sales tax. § 77.54(7)(b)
- Only a spouse or a child can be a "designated family member" under a provision that requires motor fuel dealership agreements to include provisions allowing ownership of the dealership to pass from a decedent owner to a designated family member. § 100.51
- Spouses of Wisconsin residents over 60 years old are entitled to participate in a nutritional improvement program (school lunch program) for the elderly. § 115.345(9)
- If a holder of a license to sell alcoholic beverages becomes disabled, the licensing municipality may transfer the license to the licensee's spouse. § 125.04(12)(b)
- If a power of attorney for health care is executed in favor of a spouse, the power of attorney automatically becomes invalid if the marriage is annulled or ends in divorce. § 155.40(2)
- A husband or a wife has priority over a "friend" in consenting for an autopsy to be performed on the body of a deceased person. § 157.05
- Spouses, children, parents and grandparents of a decedent have priority over the decedent's designated health care agent (such as a same-sex partner) in deciding whether to make anatomical gifts. § 157.06(3)(a)
- Shares of a statutory close corporation may be transferred to a spouse without obtaining the written consent of other shareholders. § 180.1805(3)
- Spouses of veterans are given preferences in hiring for the state civil service. § 230.16(7)(a)
- Spouses of elderly or disabled homeowners are recognized as having ownership interests in their homes for purposes of a state program that provides loan assistance to the elderly for payment of property taxes. § 234.622(1), (3m)
- If a Wisconsin basic power of attorney for property and finances is executed in favor of a spouse, the power of attorney automatically becomes invalid if the marriage is annulled or ends in divorce. § 243.10(7)
- A state permit for operating a hotel, restaurant, or vending machine can be transferred from the holder to a spouse or other "immediate family member." § 254.64(4)

- When a spouse of an inmate in a minimum-security institution is ill, the inmate may be allowed to visit the spouse. § 303.068(1)
- When a person has received a special license plate commemorating service in the military, a surviving spouse of that person may apply to retain the plate after the person's death. § 341.14(8)
- Supplemental title fees for the transfer of vehicles' titles are waived when a transfer is from a decedent to a surviving spouse. § 342.14(3m)
- Surviving spouses may automatically receive title to vehicles owned by the decedent spouse. § 342.17(4)(b)
- Medical information about an individual is protected from disclosure if it is obtained from the individual or the individual's spouse. § 610.70(f)
- Any person who lives in Wisconsin (and intends to continue doing so) who travels outside Wisconsin to contract a marriage that is invalid under the laws of Wisconsin is subject to a fine of up to \$10,000 and imprisonment for up to 9 months. § 765.30(1)
- The surviving spouse of the deceased parent of a minor child (i.e. a stepparent) may petition for visitation privileges with respect to the child. § 880.155(1)
- An individual may be charged with a felony for harming or threatening the spouse or other family member (definition does not include same-sex couples) of a judge or department of revenue employee. § 940.203, § 940.205
- An individual may be charged with a felony for causing or threatening to cause damage to property that belongs to the spouse or other family member (definition does not include same-sex couples) of a judge or department of revenue employee. § 943.013, § 943.015
- The generally applicable law that makes it a crime to harbor or aid a felon does not apply to the felon's spouse. § 946.47(3)
- Where an individual dies as a result of a homicide or under accidental or suspicious circumstances, if an autopsy is not performed, a spouse (or parent, child, or sibling) of the decedent may request that the coroner gather certain evidence, and the coroner may gather such evidence only if the spouse, parent(s), child(ren), and sibling(s) do not object. § 979.01(3m)