



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

**Committee on Insurance, Securities and
Corporate Policy...**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 3-12-96
 Moved by Underheim Seconded by Baldus
 AB 923 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____

*LRB 3906/1
 Underheim*

A/S Amdt LRB 3906/1
 A/S Amdt _____ to A/S Amdt _____
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- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	✓			
2.	Rep. William Lorge, Vice-Chair	✓			
3.	Rep. Gregg Underheim	✓			
4.	Rep. Robin Kreibich	✓			
5.	Rep. Mary Lazich	✓			
6.	Rep. Tim Hoven	✓			
7.	Rep. Frank Lasee	✓			
8.	Rep. Mark Green	✓			
9.	Rep. Al Baldus	✓			
10.	Rep. Barbara Notestein	✓			
11.	Rep. Judy Robson	✓			
12.	Rep. David Cullen				
13.	Rep. Robert Ziegelbauer	✓			
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Totals		12			

MOTION CARRIED MOTION FAILED

Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 3-12-96
 Moved by Green Seconded by Baldus
 AB 923 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____
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- Be recommended for:
- Passage
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 - Adoption
 - Rejection
 - Indefinite Postponement
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 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	✓			
2.	Rep. William Lorge, Vice-Chair	✓			
3.	Rep. Gregg Underheim	✓			
4.	Rep. Robin Kreibich	✓			
5.	Rep. Mary Lazich	✓			
6.	Rep. Tim Hoven	✓			
7.	Rep. Frank Lasee	✓			
8.	Rep. Mark Green	✓			
9.	Rep. Al Baldus	✓			
10.	Rep. Barbara Notestein	✓			
11.	Rep. Judy Robson	✓			
12.	Rep. David Cullen				
13.	Rep. Robert Ziegelbauer	✓			
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Totals		12			

MOTION CARRIED MOTION FAILED

Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 3-12-96
 Moved by Green Seconded by Underheim
 AB 923 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____
 A/S Amdt _____
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- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	✓			
2.	Rep. William Lorge, Vice-Chair	✓			
3.	Rep. Gregg Underheim	✓			
4.	Rep. Robin Kreibich	✓			
5.	Rep. Mary Lazich	✓			
6.	Rep. Tim Hoven	✓			
7.	Rep. Frank Lasee	✓			
8.	Rep. Mark Green	✓			
9.	Rep. Al Baldus	✓			
10.	Rep. Barbara Notestein	✓			
11.	Rep. Judy Robson	✓			
12.	Rep. David Cullen				
13.	Rep. Robert Ziegelbauer	✓			
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Totals		17			

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Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 3-12-96
 Moved by Lorge Seconded by Baldus
 AB 923 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
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- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	✓			
2.	Rep. William Lorge, Vice-Chair	✓			
3.	Rep. Gregg Underheim	✓			
4.	Rep. Robin Kreibich	✓			
5.	Rep. Mary Lazich	✓			
6.	Rep. Tim Hoven	✓			
7.	Rep. Frank Lasee	✓			
8.	Rep. Mark Green	✓			
9.	Rep. Al Baldus	✓			
10.	Rep. Barbara Notestein	✓			
11.	Rep. Judy Robson	✓			
12.	Rep. David Cullen				
13.	Rep. Robert Ziegelbauer	✓			
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Totals		12			

MOTION CARRIED MOTION FAILED

Assembly Committee on Insurance, Securities, and Corporate Policy

DATE 3-17-96
 Moved by Underheim Seconded by Kreibich
 AB 923 SB _____ Clearinghouse Rule _____
 AJR _____ SJR _____ Appointment _____
 A _____ SR _____ Other _____
 A/S Amdt _____
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- Be recommended for:
- Passage *as amended*
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

	Committee Member	Aye	No	Absent	Not Voting
1.	Rep. Sheryl Albers, Chair	✓			
2.	Rep. William Lorge, Vice-Chair	✓			
3.	Rep. Gregg Underheim	✓			
4.	Rep. Robin Kreibich	✓			
5.	Rep. Mary Lazich	✓			
6.	Rep. Tim Hoven	✓			
7.	Rep. Frank Lasee	✓			
8.	Rep. Mark Green	✓			
9.	Rep. Al Baldus	✓			
10.	Rep. Barbara Notestein	✓			
11.	Rep. Judy Robson	✓			
12.	Rep. David Cullen				
13.	Rep. Robert Ziegelbauer	✓			
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18.					
Totals		17			

MOTION CARRIED MOTION FAILED



WISCONSIN STATE LEGISLATURE





**STATE BAR
OF WISCONSIN**

P.O. Box 7158, Madison, WI 53707-7158

(608) 257-3838

FAX (608) 257-5502

MEMORANDUM

Date: February 22, 1996

To: Members of the Assembly Insurance, Securities and Corporate Policy Committee

From: George C. Brown
Public Affairs Director

Subject: AB 923 (LRB-5199/1) - the Business Law Update Bill

This bill provides a general update to Wisconsin corporation and limited liability company laws and clarifies the statutes by repealing antiquated or conflicting laws dealing with actions by or against corporations. The following provides a general overview of the various provisions in this bill. A more detailed explanation can be found in the Legislative Reference Bureau analysis at the beginning of the bill.

Corporation Law. Wisconsin corporation laws are updated by:

- 1) bringing the service corporation liability statute in line with limited liability company and limited liability partnership statutes;
- 2) repealing antiquated or conflicting statutes dealing with corporations that are dealt with more effectively in the revised Wisconsin business corporation law (the current Chapter 180, approved by the Legislature in 1989 Wisconsin Act 303).
- 3) allowing shareholders whose shares are held in trust, or their nominee, to inspect corporation records;
- 4) clarifying that a shareholder distribution does not change the validity or priority of a security interest created to secure indebtedness;
- 5) allowing a shareholder to waive a notice required under state law, articles of incorporation, or corporate bylaws at any time, rather than only before or after the date stated in the notice;

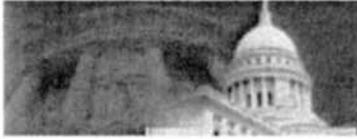
Limited Liability Company Law. This bill serves as a trailer bill to the limited liability company law that the Legislature passed unanimously last session. It both corrects drafting errors made in the original bill and makes additional improvements in Wisconsin's law. **The corrected drafting errors include:**

- 1) allowing real estate brokers or salespersons to organize as LLCs.
- 2) allowing partnerships to become an LLC without their real estate transfers, under strictly set circumstances, being subject to the real estate transfer fee;
- 3) repealing requirements that LLCs show in their annual reports filed with the Secretary of State that they have engaged in the restraint of trade (LLCs do not file annual reports);
- 4) allowing the Secretary of State to accept a fee for expediting LLC applications;

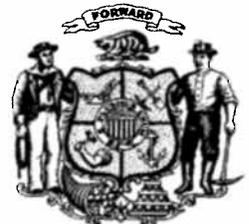
The updates to Wisconsin's limited liability company law:

- 5) clarify when a member's interest in an LLC is or is not a security;
- 6) equalize tax treatment of LLCs by extending the income tax credit for income and franchise taxes paid in other states to members of an LLC, just as permitted for corporate shareholders of an S-corporation;
- 7) delete requirements that LLCs have two or more members, thereby permitting one member LLCs;
- 8) simplify red tape by not requiring LLCs to keep powers of attorney at the principal place of business and allowing LLC articles of incorporation to have a delayed effective date;
- 9) allow indemnification of the LLC for liabilities in certain circumstances and adds a definition of liability to the indemnification provisions;
- 10) prevent managers from bringing derivative suits against the LLC they manage.

If you have any questions, please call me at the State Bar Center, 250-6128.



WISCONSIN STATE LEGISLATURE



Remarks on Assembly Bill 923
State Representative Sheryl Albers

Assembly Insurance, Securities and Corporate Policy Committee
February 22, 1996

AB 923 serves two purposes:

- it is a trailer bill to the Limited Liability Company bill that was passed unanimously by both houses of the Legislature last session;
- and it provides an update to Wisconsin's general business laws, found primarily in Chapter 180 of the statutes.

One of the challenges we face as policymakers is to create laws that provide balance. In the case of Wisconsin business laws, we must create a level playing field upon which all businesses can compete so we don't create an advantage for one business group against another. We must create a balance between the needs of business and the needs of consumers. In addition, because of the continued competition between states to create favorable business climates, we must constantly be aware of activities in other states that can have an impact on business and jobs in Wisconsin.

AB 923 helps Wisconsin face these challenges.

AB 923 simplifies business practices:

- by not requiring LLCs to keep powers of attorney at their places of business;
- by allowing LLC articles of incorporation to have a delayed effective date (rather than having to start their business the day the papers are filed) so that owners can get their business papers filed and begin their business when they deem it appropriate;
- bringing service corporation liability practices in line with limited liability company and limited liability partnership statutes;
- by allowing for one member LLCs, rather than the current requirement that there be two member LLCs.

It provides further protections for consumers and shareholders:

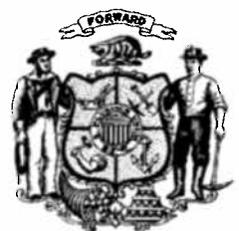
- by allowing shareholder's trustees to inspect corporation records;
 - by repealing statutes that are antiquated or conflict with more modern statutes that allow the state to bring actions against companies that are bad actors;
 - by clarifying the statutes about when an LLC is a security so that the Securities Commissioner can take action against fraudulent activity by a company;
- by preventing managers from bringing derivative suits against LLCs that they manage.

AB 923 brings fairness to Wisconsin's business laws by:

- correcting drafting mistakes in the original LLC law so that real estate brokers can use LLCs and so that partnerships which become LLCs do not have to pay a real estate transfer fee when the LLC is made up of the same people and the same property as the partnership;
- equalizing the tax treatment of LLCs and S-corporations, so that a Wisconsin resident who is part owner of an LLC which is taxed in another state receives the same tax treatment as does a part owner of an S-corporation in another state.



WISCONSIN STATE LEGISLATURE





State of Wisconsin • DEPARTMENT OF REVENUE

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-8466 • FAX (608) 266-5718

Tommy G. Thompson
Governor

Mark D. Bugher
Secretary of Revenue

February 23, 1996

The Honorable Sheryl Albers
State Representative
State Capitol, Room 127 West
Madison, WI 53708

Dear Representative Albers:

I am writing in reference to Assembly Bill 923, a proposal to modify the regulation of limited liability companies, or LLCs. The Department of Revenue has several concerns with AB 923 as introduced. Because the Assembly Committee on Insurance, Securities, and Corporate Policy is holding a public hearing on this bill, I am writing to outline our concerns to you and members of the committee.

Our concerns with AB 923 are of three types. First, we disagree with the creation of an income tax credit. If this provision remains on the bill, it requires correction on two technical points if the proposal is to be equitable. Second, we are concerned about the effect of the bill on the equity and clarity of the real estate transfer fee. Finally, we are very concerned about the potential fiscal impact of AB 923 as it affects the real estate transfer fee.

Currently individuals, estates, and trusts that are partners in multistate partnerships are not allowed to claim a credit for taxes if the partnership itself is subject to tax by another state but the partner is not personally subject to tax in the state. The Department sees no reason why such a credit should be allowed to members of LLCs treated as partnerships. We would suggest that the bill be amended to remove this credit.

If the credit remains, the two points that require technical correction are:

1. Section 71.07 (7)(b) does not specifically limit the credit to state taxes paid by LLCs treated as partnerships. Without this clarification, an individual may try to claim credit for taxes paid to other states by an LLC taxable as a corporation, even though the LLC is subject to Wisconsin tax only on the income attributable to Wisconsin. The bill should be amended to clarify that individuals, estates, and trusts may claim the credit only for taxes paid by LLCs treated as partnerships.
2. Since members of LLCs treated as partnerships are already allowed to deduct state franchise and income taxes paid by the LLC, allowing the members of the LLC to claim a credit for these same taxes would provide a double tax benefit. The bill should amend s. 71.21 to deny LLCs treated as partnerships any ability to claim a

The Honorable Sheryl Albers
February 23, 1996
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deduction for state franchise and income taxes paid. This would conform the treatment of taxes paid by LLCs treated as partnerships to the treatment of taxes paid by tax-option corporations. Wis. Stats. 71.34 (1)(ag) can provide sample language for this correction.

These technical points have previously been discussed with advocates of the bill, who have indicated they are willing to accept our recommended changes. However, even though we communicated our concerns to the bill advocates quite some time ago, AB 923 does not incorporate the changes we suggested. As I indicated earlier, the Department questions the policy rationale of the credit, and would prefer that it be removed entirely.

The Department is concerned about the effect of AB 923 on the equity and clarity of the real estate transfer fee. In recent years, legislation has been enacted to allow for the creation of new types of business entities. This has resulted in several specific situations in which the real estate transfer fee is not applied to land transfers. The many changes to the laws governing this fee, as well as court interpretations, have resulted in a confusing and seemingly inequitable situation, where similar transfers are treated differently based on the particular circumstances of the transfer and not on the nature of the transfer.

Transitions by businesses from one type of organizational structure to another have significant ramifications to a business' operational, legal, and tax status. The Department believes that such transitions are from one type of entity to another, and thus transfers of real property accompanying these transitions are subject to the real estate transfer fee. The additional exemption from the real estate transfer fee created in AB 923 would only exacerbate a complicated package of existing law regarding real estate transfers.

In addition to these issues, the Department believes that AB 923 may have a significant negative fiscal effect. We are currently working on the fiscal note for the bill, but we have not had sufficient time to complete it.

It has been suggested that the Department has overestimated the effect on tax collections of LLC legislation. Actually, the reverse is the case: the rate of LLC formation has far exceeded the rate that we anticipated. In our fiscal note for 1993 Assembly Bill 820, the bill authorizing LLCs in Wisconsin that was enacted as 1993 Wisconsin Act 112 in December 1993, the Department of Revenue estimated 620 LLCs would be formed in 1994, 870 in 1995 and 1,325 in 1996--estimates that were criticized as too high. Actual filings indicate that the number of domestic LLCs formed and of foreign LLCs licensed to do business in Wisconsin was 2,360 in 1994 and 3,473 in 1995. The actual number of LLCs filing by the end of 1995 was 5,833, compared to our estimate of 1,490.

Apparently, the limited liability company is a very attractive form of business organization. About one-quarter of newly-organized for-profit businesses are selecting LLC organization, and by

The Honorable Sheryl Albers
February 23, 1996
Page 3

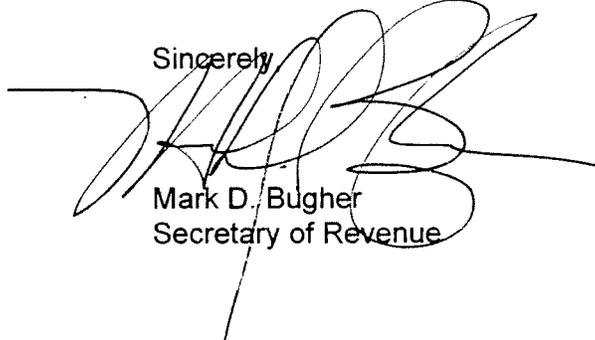
the end of 1996, it is quite possible that the number of LLCs in Wisconsin will exceed 10,000--considerably higher than the 2,815 estimated by the Department. With that many LLCs, no one should be surprised if legislation that affects the tax treatment of their members has a nontrivial effect.

It is our responsibility when we prepare fiscal estimates of legislation to provide the best information to the decision makers who are considering that legislation. We take that responsibility very seriously--so seriously that, when we learn our estimates are based on incorrect data or we find alternative data that permit a better estimate, we correct or revise our fiscal notes, even when it is embarrassing for us to do so.

We are finding that is not easy to estimate the fiscal impacts of AB 923, given the paucity of financial information on LLCs. However, if we are able to generate a number, it will be the best estimate of the cost of the legislation that available resources permit.

The Department of Revenue intends to complete a fiscal estimate on AB 923 as soon as possible. In addition, we would be happy to work with you and others in improving AB 923 before it is acted upon. Please feel free to contact me if I can be of further assistance.

Sincerely

A large, stylized handwritten signature in black ink, appearing to read 'M. Bugher', is written over the typed name and title.

Mark D. Bugher
Secretary of Revenue

JR:skr
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cc: Members, Assembly Committee on Insurance, Securities and Corporate Policy