

1993 Assembly Bill 564

Date of enactment: **August 20, 1993**  
Date of publication\*: **September 3, 1993**

# 1993 WISCONSIN ACT 35

AN ACT *to repeal* 181.56 (4) and (5) and 181.653; *to renumber and amend* 180.1622 (2); *to amend* 20.575 (1) (g), 180.1530 (1) (a), 180.1530 (1) (b), 180.1531 (2) (c) 1. (intro.), 180.1531 (2) (c) 1. b., 181.09 (3) (b), 181.555, 181.64 and 181.651 (1) (intro.); *to repeal and recreate* 181.10; and *to create* 180.1622 (2) (b), 181.561 to 181.564, 181.651 (5) to (7) and 181.68 (1) (L) and (m) of the statutes, **relating to:** revocation of and reinstatement of a foreign corporation's certificate of authority; to foreign corporation annual report information, to administrative dissolution and reinstatement of a nonstock, nonprofit corporation and to annual reports of a domestic nonstock, nonprofit corporation.

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

**SECTION 1b.** 20.575 (1) (g) of the statutes is amended to read:

20.575 (1) (g) *Program fees.* The amounts in the schedule for the purpose of carrying out general program operations. Except as provided under pars. (gb), (h) and (ka), \$4 of each amount collected under ss. 180.0122 (1) (x) and (y), 181.653 (4), 181.68 (1) (gm), 185.48 (4) and (6) and 185.83 (1) (e) plus 27.5% of the fees collected by the secretary of state, other than fees forwarded by registers of deeds under ss. 409.403 (5) (a), 409.405 (1) and (2) and 409.406 and other than \$2 of the fees collected by the secretary of state for each filing under ss. 409.403 (5) (b), 409.405 (1) and (2) and 409.406 and other than \$4 of each amount collected under ss. 180.0122 (1) (x) and (y), ~~181.653 (4),~~ 181.68 (1) (gm), 185.48 (4) and (6) and 185.83 (1) (e), shall be credited to this appropriation. Notwithstanding s. 20.001 (3) (a), any unencumbered balance at the close of a fiscal year exceeding 10% of the previous fiscal year's expenditures under this appropriation shall lapse to the general fund.

**SECTION 1m.** 180.1530 (1) (a) of the statutes is amended to read:

180.1530 (1) (a) The foreign corporation fails to file its annual report with the secretary of state within 6 4 months after it is due.

**SECTION 2.** 180.1530 (1) (b) of the statutes is amended to read:

180.1530 (1) (b) The foreign corporation does not pay, within 6 4 months after they are due, any fees or penalties due the secretary of state under this chapter.

**SECTION 3.** 180.1531 (2) (c) 1. (intro.) of the statutes is amended to read:

180.1531 (2) (c) 1. (intro.) If a foreign ~~corporation~~ obtained its corporation's certificate of authority ~~within 24 months before the effective date of a certificate of revocation under par. (b) is revoked after December 31, 1991,~~ the secretary of state shall reinstate the certificate of authority ~~of the foreign corporation~~ if the foreign corporation does all of the following within the later of 30 days after the effective date of this subdivision .... [revisor inserts date] or 6 months after the effective date of the certificate of revocation:

**SECTION 4.** 180.1531 (2) (c) 1. b. of the statutes is amended to read:

180.1531 (2) (c) 1. b. Pays any fees or penalties due the secretary of state under ~~this chapter s. 180.1502 (5) (a)~~ or \$5,000, whichever is less.

**SECTION 5.** 180.1622 (2) of the statutes is renumbered 180.1622 (2) (a) and amended to read:

180.1622 (2) (a) Information in the annual report shall be current as of the date on which the annual report is executed on behalf of ~~the a domestic corporation or foreign corporation,~~ except that the information required by

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sub. (1) (f) ~~to (i)~~ and (g) shall be current as of the close of the domestic corporation's ~~or foreign corporation's~~ fiscal year immediately before the date by which the annual report is required to be delivered to the secretary of state.

**SECTION 6.** 180.1622 (2) (b) of the statutes is created to read:

180.1622 (2) (b) Information in the annual report shall be current as of the date on which the annual report is executed on behalf of a foreign corporation, except that the information required by sub. (1) (f) to (i) shall be current as of the date of the close of the foreign corporation's fiscal year in the 12 months ending on the September 30 immediately before the date by which the annual report is required to be delivered to the secretary of state.

**SECTION 6b.** 181.09 (3) (b) of the statutes is amended to read:

181.09 (3) (b) A change made under par. (a) 2. is effective upon the filing of the annual report under s. ~~181.653~~ 181.651.

**SECTION 6d.** 181.10 of the statutes is repealed and recreated to read:

**181.10 Service on corporation.** (1) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(2) Except as provided in sub. (3), if a corporation has no registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office. Service is perfected under this subsection at the earliest of the following:

(a) The date on which the corporation receives the mail.

(b) The date shown on the return receipt, if signed on behalf of the corporation.

(c) Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.

(3) If the address of the corporation's principal office cannot be determined from the records of the secretary of state, the corporation may be served by publishing a class 3 notice, under ch. 985, in the community where the corporation's principal office or registered office, as most recently designated in the records of the secretary of state, is located.

(4) This section does not limit or affect the right to serve any process, notice or demand required or permitted by law to be served on a corporation in any other manner permitted by law.

**SECTION 6f.** 181.555 of the statutes is amended to read:

**181.555 Property omitted from final distribution.** Upon the filing of the articles of dissolution, a certificate of administrative dissolution or of a decree of dissolution, the title to any property inadvertently or otherwise

omitted from the final distribution shall vest in the directors named in the articles or decree of dissolution as trustees for the benefit of the creditors, members and distributees of the corporation as their respective rights and interests may appear. The trustees shall distribute such property or its proceeds to the persons beneficially entitled, and for this purpose a majority of the directors acting as trustees shall have full authority and capacity to collect and administer such property; to adjust and settle any claims against such property; to waive, release or subordinate reversionary rights or interests in real estate, or rights arising out of restrictions or conditions enforceable by the corporation; to sell, assign, or otherwise transfer such property in whole or in part on such terms and conditions as they in their discretion may determine; and to do such other lawful acts as may be necessary or proper for them to execute their trust. In the event any director named in the articles or decree of dissolution shall cease to be a trustee through death, resignation or otherwise, a majority of the surviving trustees or the sole surviving trustee shall have full powers to act under this section. In the event there shall at any time be no trustee or in the event any trustee cannot with reasonable diligence be found, then the circuit court for the county in which the last principal office of the corporation was located shall have power to appoint a trustee or trustees upon application to the court by any person found by the court to have an interest in such property or its disposition. A sole trustee, or a majority of the trustees, may at any time make application to the circuit court of the county where the corporation had its last registered office to have the court liquidate such property pursuant to the jurisdiction of the circuit court to liquidate assets and business of a corporation as provided in this chapter.

**SECTION 6h.** 181.56 (4) and (5) of the statutes are repealed.

**SECTION 6j.** 181.561 to 181.564 of the statutes are created to read:

**181.561 Grounds for administrative dissolution.** The secretary of state may bring a proceeding under s. 181.562 to administratively dissolve a corporation if any of the following occurs:

(1) The corporation does not pay, within one year after they are due, any fees or penalties due the secretary of state under this chapter.

(2) The corporation does not have on file its annual report with the secretary of state within one year after it is due.

(3) The corporation is without a registered agent or registered office in this state for at least one year.

(4) The corporation does not notify the secretary of state within one year that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued.

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(5) The corporation's period of duration stated in its articles of incorporation expires.

**181.562 Procedure for and effect of administrative dissolution.** (1) If the secretary of state determines that one or more grounds exist under s. 181.561 for dissolving a corporation, the secretary of state shall serve the corporation under s. 181.10 with written notice of his or her determination.

(2) (a) Within 60 days after service of the notice is perfected under s. 181.10 (2), the corporation shall correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist.

(b) If the corporation fails to satisfy par. (a), the secretary of state shall administratively dissolve the corporation by signing a certificate of dissolution that recites each ground for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the corporation under s. 181.10.

(3) Sections 181.51, 181.52, 181.555 and 181.65 apply to a corporation that is administratively dissolved.

(4) The corporation's right to the exclusive use of its corporate name terminates on the effective date of its administrative dissolution.

**181.563 Reinstatement following administrative dissolution.** (1) A corporation that is administratively dissolved may apply to the secretary of state for reinstatement within 2 years after the later of January 1, 1994, or the effective date of dissolution. The application shall include all of the following:

(a) The name of the corporation and the effective date of its administrative dissolution.

(b) That each ground for dissolution either did not exist or has been eliminated.

(c) That the corporation's name satisfies s. 181.06.

(2) (a) The secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that complies with par. (b) if the secretary of state determines all of the following:

1. That the application contains the information required by sub. (1) and the information is correct.

2. That all fees and penalties owed by the corporation to the secretary of state have been paid.

(b) The certificate of reinstatement shall state the secretary of state's determination under par. (a) and the effective date of reinstatement. The secretary of state shall file the original of the certificate and serve a copy on the corporation under s. 181.10.

(3) When the reinstatement becomes effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the corporation may resume carrying on its business as if the administrative dissolution had never occurred.

**181.564 Appeal from denial of reinstatement.** (1) If the secretary of state denies a corporation's application

for reinstatement under s. 181.563, the secretary of state shall serve the corporation under s. 181.10 with a written notice that explains each reason for denial.

(2) The corporation may appeal the denial of reinstatement to the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located, within 30 days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the corporation's application for reinstatement and the secretary of state's notice of denial.

(3) The court may order the secretary of state to reinstate the dissolved corporation or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**SECTION 6L.** 181.64 of the statutes is amended to read:

**181.64 Deposits with state treasury.** Upon the voluntary ~~or~~ involuntary or administrative dissolution of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, may be reduced to cash and deposited with the state treasury of this state and shall be paid over without interest to such creditor or member or to his legal representative, upon proof satisfactory to the state treasurer of his right thereto.

**SECTION 6n.** 181.651 (1) (intro.) of the statutes is amended to read:

181.651 (1) (intro.) Each corporation shall file, within the time prescribed by ~~this chapter~~ under sub. (5), an annual report setting forth:

**SECTION 6p.** 181.651 (5) to (7) of the statutes are created to read:

181.651 (5) A corporation shall deliver its annual report to the secretary of state in each year following the calendar year in which the corporation was incorporated, during the calendar year quarter in which the anniversary date of the incorporation occurs.

(6) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting corporation in writing and return the report to it for correction. The notice shall comply with s. 181.10. If the annual report is corrected to contain the information required by this section and delivered to the secretary of state within 30 days after the effective date of the notice determined under s. 181.10 (2), the annual report is timely filed.

(7) An annual report is effective on the date that it is filed by the office of the secretary of state.

**SECTION 6r.** 181.653 of the statutes is repealed.

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**SECTION 6t.** 181.68 (1) (L) and (m) of the statutes are created to read:

181.68 (1) (L) Application for reinstatement following administrative dissolution, \$10.

(m) Certificate of reinstatement, \$10.

**SECTION 7. Initial applicability.** (1) The treatment of sections 180.1530 (1) (a) and (b) and 180.1622 (2) of the statutes and the creation of section 180.1622 (2) (b) of the statutes first apply to an annual report delivered to the secretary of state on January 1, 1994.

(2) The treatment of section 181.563 of the statutes first applies to a request for reinstatement from an invol-

untary dissolution under section 181.56 (4) or (5), 1991 stats., or to a request for reinstatement from an administrative dissolution that is delivered to the office of the secretary of state on the effective date of this subsection.

**SECTION 8f. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) NONSTOCK, NONPROFIT CORPORATION CHANGES. The treatment of sections 20.575 (1) (g), 181.09 (3) (b), 181.10, 181.555, 181.56 (4) and (5), 181.561 to 181.564, 181.64, 181.651 (1) (intro.) and (5) to (7), 181.653 and 181.68 (1) (L) and (m) of the statutes takes effect on January 1, 1994.

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