

## CHAPTER 226.

## FOREIGN CORPORATIONS.

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**226.01 Definition.** For the purposes of this chapter the term "foreign corporation" includes all corporations, associations and joint stock companies organized otherwise than under the laws of this state, except railroad corporations, or associations created solely for religious or charitable purposes, insurance companies and fraternal or beneficiary corporations, societies, orders and associations furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, building and loan associations and corporations not organized or conducted for profit.

**226.02 Foreign corporations, admission.** (1) **ARTICLES FILED.** No foreign corporation shall transact business or acquire, hold, or dispose of property in this state until it shall have filed in the office of the secretary of state a copy of its charter, articles of association or incorporation and all amendments thereto certified by the proper officer of the state wherein the corporation was organized, and shall have been licensed in this state. In case the laws of such state do not require the charter, articles of association or incorporation be filed in the office of the secretary of state, then there shall be attached to said copy the further certificate of the secretary of that state that said officer is the proper officer to certify to said articles of association or incorporation.

(2) **EXCEPTION TO LICENSE REQUIREMENT.** Any foreign corporation may without being licensed to do business in this state loan money here, and take, acquire, hold and enforce notes, bonds, mortgages or trust deeds given to represent or secure money so loaned or for other lawful consideration, and all such notes, bonds, mortgages or trust deeds which shall be taken, acquired or held by any such foreign corporation shall be as enforceable as though it were an individual, including the right to acquire the mortgaged property upon foreclosure, or in virtue of the provisions of the mortgage or trust deed, and to dispose of the same; provided, that any such corporation which shall transact the business above provided for shall first file with the secretary of state a statement signed by its president, secretary, treasurer or general manager that it constitutes the secretary of state its attorney for the service of process as provided in paragraph (f) of subsection (3) of this section; provided, that nothing herein contained shall be construed as authorizing any foreign corporation to transact the business of a bank or trust company.

(3) **STATEMENT FILED; ATTORNEY FOR SERVICE OF PROCESS.** A foreign corporation desiring a license shall also file with the secretary of state a sworn statement by its president, secretary, treasurer or general manager stating:

(a) Its name and the location of its principal office or place of business without this state, and, in case said corporation is to have any place of business or principal office within this state, the location thereof.

(b) The names and addresses of its officers, and of the agent or manager of said corporation who may represent it in this state.

(c) The amount of paid in capital and the number and value of shares of capital stock issued without par value. The value of capital stock without par value, for the purpose of such statement and for the purpose of computing filing fees shall be taken as the amount by which the entire property of said corporation shall exceed its liabilities other than such capital stock without par value, but each share of capital stock without par value shall be deemed to be of the value of not less than ten dollars.

(d) The nature of the business to be transacted in this state.

(e) The proportion of its capital which is represented in this state by its property to be located or to be acquired herein and by its business to be transacted herein. In determining said proportion of the capital the estimated amount of property to be located

in this state or to be acquired herein and of the business to be transacted during the year immediately succeeding the filing of its charter or articles of association or incorporation compared to its total property and business for said period shall control.

(f) Shall constitute and appoint the secretary of state its true and lawful attorney upon whom the summons, notices, pleadings or process in any action or proceeding against it may be served in respect to any liability arising out of any business, contract or transaction in this state, and stipulate that service thereof upon the secretary of state, or his assistant, shall be accepted irrevocably as a valid service upon it, and that such appointment and stipulation shall continue in force irrevocably so long as any liability of such corporation remains outstanding in this state. In lieu of the appointment of the secretary of state as its attorney any foreign corporation may file in the office of the secretary of state a designation of someone residing within the state and the place of business or residence of such person upon whom such notice and process may be served, and may change such designation from time to time. A copy of such designation, duly certified by the secretary of state, shall be sufficient evidence of such appointment. Foreign corporations complying herewith shall be deemed to have been within this state from the date of compliance whether such date be prior or subsequent to the enactment of this provision. Any person who has been designated by a foreign corporation as such attorney may file with the secretary of state a signed statement that he is unwilling to continue to act as the attorney for the service of process on such corporation. Upon the filing of such statement, in the office of the secretary of state, the capacity of such person as such attorney shall terminate and the secretary of state shall forthwith give written notice by mail to such corporation of the filing of such statement and the effect thereof, which notice shall be addressed to such corporation at its principal office. The designation of attorney for service of process shall stipulate that service upon the secretary of state or his assistant shall be valid service upon the corporation in case of the death, resignation, removal or absence of such attorney from the state. Such notice or process may be served upon the person so designated, or, in the event that no such person is designated, then upon the secretary of state, and such service shall be a valid service upon such corporation.

(g) When such corporation was authorized to do business in the state wherein incorporated and whether now so authorized.

(h) That as a condition of its being permitted to begin or continue doing business in this state, it will comply with all the laws of the state applicable to foreign corporations.

(i) That it has not violated any of the provisions of section 226.07 of the Wisconsin Statutes.

(4) FILING FEES. Such corporation shall pay the secretary of state, upon filing its articles of association or incorporation, a fee of twenty-five dollars, and one dollar for every one thousand dollars of its capital exceeding twenty-five thousand dollars employed or to be employed in this state, as shown by its sworn statement.

(5) AMENDMENTS TO ARTICLES, INCREASE OF CAPITAL. All amendments to the articles of association or incorporation made subsequent to the first filing with the secretary of state shall be certified and filed in the same manner as were the articles of association or incorporation within sixty days after they have been filed with the proper officer of the home state. For filing such amendment the corporation shall pay to the secretary of state a fee of ten dollars. In case the amendment is filed after the expiration of said sixty days the corporation shall pay to the secretary of state a penalty of twenty-five dollars.

(6) CHANGE OF OFFICERS. Whenever any change is made in the directors or other officers of such corporation, the names and addresses of the new officers shall be filed with the secretary of state within twenty days after such change.

(7) SERVICE ON CORPORATION. Service of summons, notice, pleading or process upon foreign corporations which have been licensed under this chapter may be by delivering to the secretary of state two copies, one copy to be filed by him, and the second copy to be forwarded by mail forthwith, postage prepaid, and directed to such corporation at its principal place of business in the United States, as shown by the last statement on file in his department, and by paying a fee of two dollars to the secretary of state.

(8) ABSENCE OF ARTICLES. In case any corporation shall not have articles of incorporation, organization or association, it shall file in the office of the secretary of state the sworn statement required of other foreign corporations, and shall include a statement to the effect that such corporation has no articles of incorporation, organization or association. Such corporation shall file an annual report, as required of other corporations, and shall pay the same fees and be subject to the same penalties.

(9) LIABILITIES, CONTRACTS WHEN VOID. Foreign corporations and the officers and agents thereof doing business in this state shall be subjected to all the liabilities and restrictions that are imposed upon domestic corporations of like character, and shall have

no other or greater powers. Every contract made by or on behalf of any such foreign corporations, affecting its liability or relating to property within this state, before it shall have complied with the provisions of this section, shall be void on its behalf and on behalf of its assigns, but shall be enforceable against it or them.

(10) **FORFEITURE.** The failure to comply with any of the provisions of this section and section 226.04 shall subject the corporation or any agent, officer or person acting for it in this state to a forfeiture of five hundred dollars. Such penalty shall not attach where a specific penalty is provided.

**Cross Reference:** See 330.22 for one-year statute of limitation to cure titles which are defective because the grantees or purchasers were foreign corporations not licensed in Wisconsin when the titles were acquired by such corporations.

**226.025 Qualification of foreign utility holding companies; exceptions.** (1) Within the meaning of this chapter, every foreign corporation shall be deemed to be doing business within the state if, directly or indirectly, through agents, trustees or any other means, it furnishes to any affiliated public utility for use in intrastate operations in this state, any or all of the following: (a) Any managerial, supervisory, engineering, legal, accounting or financial service; (b) any equipment, facilities or commodities, by sale, lease, exchange, conveyance, license or similar arrangement.

(2) Within the meaning of this section the term "affiliated" shall have the same meaning as the term "affiliated interests" as defined in chapter 196: Provided, however, that the mere ownership of stock and receipt of dividends thereon shall not constitute doing business. This section shall not have the effect of imposing upon the corporation described in said section a duty to pay fees. The provisions of this section shall apply to interstate commerce only so far as the constitution and laws of the United States permit.

(3) The appointment of the secretary of state or the designation of a resident agent as attorney for the service of summons, notice, pleadings or process under paragraph (f) of subsection (3) of section 226.02 shall be applicable only to actions or proceedings against the foreign corporations described in this section (unless such corporations have been admitted to this state for purposes other than those mentioned in this section) where the cause of action or proceeding arises out of transactions between such foreign corporations and public utilities operating in this state with which such foreign corporations are affiliated; and to actions or proceedings by or before the public service commission involving the transactions described in subsection (1) herein, or involving the relation between such foreign corporations and public utilities operating in this state with which they are affiliated.

**226.03 License.** The secretary of state shall, upon being satisfied that a foreign corporation has fully complied with the requirements and provisions of law governing such corporations, deliver to such corporation a license to transact business in this state, which license shall continue in force until revoked. And such license shall contain the conditions upon which such foreign corporation is permitted to do business in this state. The secretary of state shall not issue such license to any foreign corporation unless its name is such as to distinguish it from any other corporation authorized to do business in this state. The license may be revoked for failure of the licensee to comply with the laws applicable to foreign corporations.

**226.04 Annual report.** (1) **CONTENTS, FILING FEES.** Every foreign corporation transacting business in this state shall annually, between the first day of January and the first day of April, file with the secretary of state a report signed by its president, secretary, treasurer or general manager as of the first day of January, which shall state:

(a) Its name and the location of its principal office or place of business without this state, and its place of business or principal office within this state.

(b) The names and addresses of its officers and of the agent or manager who represents it in this state.

(c) The nature of the business transacted in this state during the year preceding.

(d) The amount of capital paid in money, property or services, and the number and value of shares of capital stock without par value. The value of capital stock without par value for purposes of such statement and for the purpose of computing filing fees shall be the amount by which the entire property of said corporation shall exceed its liabilities other than such capital stock without par value, but each share of capital stock without par value shall be deemed to be of the value of not less than ten dollars.

(e) The proportion of the capital represented in Wisconsin by its property located and business transacted therein during the preceding year. The proportion of capital employed in the state shall be computed by taking the gross business of the corporation in the state and add the same to the value of its property located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist

of its total gross business of said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he may deem proper in order to determine the accuracy of the report submitted; the additional information so obtained shall not be a public record. The information required by this paragraph may be furnished on the basis of the last preceding fiscal year.

(f) The corporation shall pay a fee of two dollars for filing such report, and, in case said report shows that it employs in this state capital in excess of twenty-five thousand dollars, it shall pay an additional fee which with previous payments will amount to one dollar for each one thousand dollars of such excess.

(g) That it has not violated any of the provisions of section 226.07.

(2) **EFFECT OF FAILURE TO FILE.** In case of failure to file said report in the time above stated, the corporation shall pay to the secretary of state a penalty of twenty-five dollars if the same is filed before June first. In case said report is not filed by June first the license issued to said corporation shall be void and the secretary of state shall enter such forfeit in his records.

(3) **RESTORATION OF LICENSE.** The secretary of state may rescind such forfeiture of license and annul all disabilities consequent therefrom, on presentation of an affidavit of the president and secretary of the corporation, to the effect that such corporation has not suspended its ordinary and lawful business, or that the corporation at the time the forfeiture was declared held interests in real estate. The secretary of state may demand such other and further proof as he may deem necessary. For rescinding such forfeiture said corporation shall pay to the secretary of state a fee of twenty-five dollars.

**226.05 Bank deposits by nonresidents, taxation evidence.** The making and maintaining of deposits and checking or other accounts by a nonresident of this state or by a foreign corporation in any bank, either state or national, or in any trust company in this state, shall not be considered as doing business or acquiring, holding or disposing of property in this state, nor considered a factor in determining whether such person or corporation is doing business in this state, or in determining the situs of the property or income of such corporation or person for taxation purposes.

**226.06 Stock subscriptions to unlicensed corporations not enforceable.** No foreign corporation and no receiver, assignee, trustee or officer thereof, however appointed, shall maintain any action in any of the courts of this state upon any subscription for stock or stock liability or assessment, however imposed, against any citizen or resident of Wisconsin, if such subscription was made or the stock sold or delivered within this state, and such corporation had not, at the time of taking such subscription or selling said stock, a license to transact business in this state. This section shall not apply where the person subscribing for or purchasing the stock shall have received dividends thereon or shall have acted as an officer of the corporation.

**226.07 Combinations and trusts.** Any foreign corporation which shall enter into any combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall, upon proof thereof, in any court of competent jurisdiction, have its license or authority to do business in this state canceled and annulled.

[226.08 *Stats. 1929 repealed by 1931 c. 97 s. 12*]

**Cross Reference:** See 133.08 for construction of 226.07 in regard to collective bargaining.

**226.09 Ouster.** Upon complaint and evidence which shall satisfy the attorney-general that any foreign corporation has violated section 226.07, he shall forthwith bring an action in the name of the state in any circuit court to have the license of such corporation to do business in this state annulled and to oust it from this state. The provisions of section 133.24 shall extend to all proceedings under this section.

[226.10 *Stats. 1929 repealed by 1931 c. 223 s. 1*]

**226.11 Suits by and against foreign corporations; exception.** A corporation created by or under the laws of any other state or country or of the United States may prosecute or defend an action or proceeding in the courts of this state in the same manner as corporations created under the laws of this state, except as otherwise specially prescribed by law. But such foreign corporation cannot maintain an action founded upon an act or

upon any liability or obligation, express or implied, arising out of, or made, or entered into in consideration of any act which the laws of this state forbid a corporation or any association of individuals to do, without express authority of law.

**226.12 Liability of inactive foreign corporation.** An action for the recovery of money may be commenced and prosecuted against a foreign corporation although such corporation may have ceased to act as a corporation in the same manner as though it had not so ceased to act; and the judgment may be enforced against property in this state which such corporation has any interest in or would have an interest in had the same not ceased to act as aforesaid, whether held or controlled by it or by a trustee, assignee, agent or other person for the use and benefit in whole or in part of such corporation or the creditors thereof or both.

**226.13 Plaintiff's lien.** The plaintiff in such action shall, to the extent of the final judgment therein, have a lien upon all such property and interests aforesaid from the time of the filing of the complaint in such action, unless such corporation shall file with the clerk an undertaking, in double the amount claimed to be due to the plaintiff, executed by two or more sureties in its behalf, resident freeholders of this state, to the effect that the corporation will satisfy the final judgment that may be recovered in favor of such plaintiff in such action within sixty days from the rendition thereof. Such undertaking shall be of no effect unless accompanied by the affidavit of the sureties as provided in section 274.29, and such sureties, upon being excepted to, must justify in like manner as there directed.

**226.14 Common law trusts, domestic and alien.** (1) No common law trust organized in this state, and no such trust formed or organized under or by authority of the laws of any state or foreign jurisdiction, for the purpose of doing business under a declaration of trust which shall have issued to five or more persons, or which shall sell or propose to sell beneficial interests, certificates or memberships therein, shall transact business, or acquire, hold or dispose of property in this state until the trustees named in said declaration of trust shall have caused to be filed in the office of the secretary of state the original declaration of trust, or a true copy thereof, and all amendments which may be made, verified as such by the affidavits of two of the signers thereof. A like verified copy of the declaration and such amendments, and a certificate of the secretary of state, showing the date when such declaration was filed and accepted by him, within thirty days of such filing and acceptance, shall be recorded with the register of deeds of the county in which such trust has its principal office or place of business in this state. No such trust shall transact business in this state until such declaration or such copy thereof be left for record. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded and shall be entitled to a fee of twenty-five cents therefor, to be paid by the person presenting such papers for record. Upon receipt of such certificate the secretary of state shall issue to said trustees a certificate of filing.

(2) The principal office or principal place of business of every such trust formed or organized in this state shall be kept and maintained in this state.

(3) Every such trust shall pay to the secretary of state a filing fee of twenty-five dollars, and ten dollars for each subsequent amendment, together with a further fee of one dollar for each one thousand dollars of beneficial certificates sold or offered for sale in this state.

(4) Every such trust shall file in the office of the secretary of state a verified statement on or before the first day of March in each and every calendar year, showing the names and addresses of each of the trustees; the amount and nature of the assets and liabilities of such trust, and the income and disbursements of such trust; the amount actually paid for such assets in money, property and services; the nature of the business transacted during the preceding year; in what states such trust is operating; the amount and number of beneficial certificates sold in this state, or elsewhere; a statement as to the total amount of beneficial certificates outstanding; and a statement as to the amount of profits or losses for the preceding calendar year ending as of December thirty-first.

(5) Every such trust shall file in the office of the secretary of state the name of the trustee or trustees resident in this state upon whom service may be made, for and on behalf of said trust; or in the event that none of such trustees reside in this state, then a statement shall be duly filed by the trustees appointing the secretary of state as the agent to accept service of process in this state, which appointment shall continue so long as such trust shall have any liabilities outstanding in this state.

(6) No such trust shall issue any beneficial or participating certificates in excess of the fair net value of the property and assets owned by such trust, nor except in consideration of money or labor, or property, estimated at its true money value, actually received by the

trustees, equal to the par value thereof, nor any bonds or other evidences of indebtedness, except for money or for labor, or property, estimated at its true money value, actually received by it, and all beneficial certificates or bonds issued contrary to the provisions of law shall be voidable at the election of the holder or holders thereof.

(7) No such trust shall issue, sell or dispose of any beneficial certificates in this state unless there shall have been printed thereon, in plain legible type, of a size not less than pica, the words "THIS IS NOT A CORPORATION" and "COMMON LAW TRUST. BENEFICIAL CERTIFICATE." or "TRUST ORGANIZED UNDER THE LAWS OF THE STATE OF (naming said state), BENEFICIAL CERTIFICATE." as the case may be.

(8) Every such trust issuing or selling, or offering for sale, beneficial certificates in this state, shall be subject to the restrictions and limitations provided in chapter 189 of the statutes.

(9) Every contract made by or on behalf of such trust affecting the personal liability thereof, or relating to property within this state, before it shall have complied with the provisions of this section, shall be wholly void on its behalf, or on behalf of its assigns; but shall be enforceable against such trust, and the trustees named in said declaration of trust shall be individually liable therefor.

(10) Every such trust shall be subject to all provisions of law relating to the payment of taxes by general corporations, foreign or domestic, as the case may be.

(11) Every such trust shall file and record with the declaration of trust, or a verified copy thereof, a statement in writing of the name or title of such trust and its post-office address, which statement shall be signed by all of the trustees. Such name or title shall be "The . . . Common Law Trust," the blank space to be used for insertion of proper words of description or identification of such trust. The name of such trust shall be such as to distinguish it from any other trust, company, or corporation organized under the laws of this state or licensed or permitted to transact business in this state. Such trust may sue and be sued in and under such name or title, and its property may be subjected to payment and discharge of the obligations and liabilities of such trust the same as though it were a corporation. Service of notice or process upon one or more of such trustees, or upon the duly authorized agent in that behalf of said trust, shall be sufficient to bind such trust and of the same effect as though each and all of such trustees had been notified or served.