

1989 Assembly Bill 533

Date of enactment: February 23, 1990

Date of publication*: March 9, 1990

1989 WISCONSIN ACT 123

AN ACT to repeal 181.68 (4); to amend 20.575 (1) (g), 132.01 (7), 132.04 (3), 132.11, 180.793 (2) and (4), 180.87 (1) (j) and (p), 181.31 (1) (i), 181.653 (4), 181.68 (1) (gm), 185.48 (4) and (6), 185.83 (1) (e), 409.403 (5) (a) 1, 409.403 (5) (b) 1, 409.403 (8), 409.404 (3) (a) to (c), 409.405 (1), 409.405 (2), 409.406, 409.407 (2) and 706.07 (3) (a) 4; to repeal and recreate 132.01 (6); and to create 14.38 (9m), 59.51 (20), 409.403 (5) (a) 1m, 409.403 (5) (b) 1m and 409.405 (1m) of the statutes, relating to: increasing the secretary of state's filing fee for marks of ownership on containers and for brands of beverages, changing the effective period of registrations and registration renewals of marks and brands of beverages, fees for filing certain documents with the secretary of state, changes to the laws regarding financing statements, the address requirements for incorporators, and certifications by the secretary of state (suggested as remedial legislation by the secretary of state).

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the secretary of state and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of this bill, the law revision committee has determined that this bill makes minor substantive changes in the statutes and that these changes are desirable as a matter of public policy.

SECTION 1. 14.38 (9m) of the statutes is created to read:

14.38 (9m) SIGNATURES. Receive and file the signature and an impression of the official seal or rubber stamp of all county clerks and registers of deeds, and upon request certify to the authenticity of that signature and official seal or rubber stamp and charge therefor the statutory fee.

NOTE: Currently, the office of the secretary of state has the authority under s. 137.01 (6) (a), stats., to certify to the official qualifications and to the authenticity of the signatures and seals of notary publics. In processing requests for certification of signatures on documents to be filed in a foreign country, the office frequently receives documents signed by registers of deeds or county clerks, but not specifically notarized by them. The secretary of state must return the documents to the customer for signature by a notary public, after which, upon resubmittal, the document can be certified as signed and

sealed by a notary public by verifying the signature and seal of the notary against copies on file in the office of the secretary of state.

This bill will permit the secretary of state to certify documents on the basis of the signature of the register of deeds or county clerk, and will allow the office of the secretary of state to better fulfill its obligations, in a timely manner, as the designated authenticating officer in this state pursuant to the terms of the "1961 Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents" entered into by the United States on October 15, 1981.

SECTION 2. 20.575 (1) (g) of the statutes, as affected by 1989 Wisconsin Act 31, 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), not to exceed \$4, as determined by the secretary of state, of each amount collected under ss. 180.793 (2) and (4), 180.87 (1) (j) and (p), 181.653 (4), 181.68 (1) (gm), 185.48 (4) and (6) and 185.83 (1) (e) plus 23% 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 an amount not to exceed \$4 of each amount collected under ss. 180.793 (2) and (4),

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180.87 (1) (j) and (p), 181.653 (4), 181.68 (1) (gm), 185.48 (4) and (6) and 185.83 (1) (e), shall be credited to this appropriation.

NOTE: See the NOTE following the treatment of s. 185.83 (1) (e) in this bill.

SECTION 3. 59.51 (20) of the statutes is created to read:

59.51 (20) Upon commencement of each term, file his or her signature and the impression of his or her official seal or rubber stamp in the office of the secretary of state.

NOTE: See NOTE following the treatment of s. 14.38 (9m) in this bill.

SECTION 4. 132.01 (6) of the statutes is repealed and recreated to read:

132.01 (6) (a) A registration recorded or renewed under this section or s. 132.04 or 132.11 before the effective date of this paragraph [revisor inserts date], is effective for 20 years. A registration may be renewed on or after the effective date of this paragraph [revisor inserts date], for 10-year periods upon application to the secretary of state and payment of the same fee required for a registration. Application for renewal shall be made within 6 months before the expiration of the 20-year registration period or 10-year renewal period specified in this paragraph.

(b) A registration recorded under this section or s. 132.04 or 132.11 on or after the effective date of this paragraph [revisor inserts date], is effective for 10 years. A registration may be renewed for 10-year periods upon application to the secretary of state and payment of the same fee required for a registration. Application for renewal shall be made within 6 months before the expiration of the 10-year period specified in this paragraph.

SECTION 5. 132.01 (7) of the statutes is amended to read:

132.01 (7) The secretary of state shall cancel from his or her register all registrations more than 20 years old and not renewed in accordance with any registration that is not effective under sub. (6) and also any registration to the extent to which the final judgment in any court of competent jurisdiction shall find that the registration has been abandoned or that the registrant does not have the right to the exclusive use thereof.

NOTE: All states have a 10-year trademark registration period, except Oregon (5-year term), West Virginia (perpetual term) and Wisconsin (20-year term). Wisconsin's 20-year term has resulted in numerous trademark registrations remaining in the "current" file many years after a business is defunct. Decreasing the registration term from 20 years to 10 years would yield more realistic records and would allow more choices for new businesses seeking a name or trademark.

It is difficult to predict the estimated increase, if any, in the number of renewal registrations resulting from a 10-year registration period versus the 20-year period now in effect. In fiscal year 1988, 2,030 trademark registrations were filed; 1.9%, or 39, were renewal registrations. Therefore, it is not

expected that a substantial number of additional reregistrations will be required.

SECTION 6. 132.04 (3) of the statutes is amended to read:

132.04 (3) The secretary of state shall receive a fee of \$10 \$15 and the register of deeds shall receive a fee of \$1 for each statement and certificate of publication filed and shall also receive a fee of \$1 for each certified copy of such statement and certificate of publication, to be paid for by the person filing or applying for the same.

SECTION 7. 132.11 of the statutes is amended to read:

132.11 Record of brands, etc. The secretary of state shall, on application by any person, or firm domiciled in this state or by any corporation created under the laws thereof, or by a foreign corporation licensed to do business therein and engaged in the manufacture or sale of ale, porter, lager beer, soda water, mineral water or other beverages put up in packages, record in a book kept for that purpose a description of the names, brand or trademark used by such person, firm or corporation for marking the casks, barrels, kegs, bottles, jugs, fountains, boxes or other packages containing such beverage. Before any such record shall be made there shall be paid said secretary a fee of \$10 \$15 for each and every such description of name, brand or trademark which he is requested to have recorded. Nothing elsewhere in this chapter contained is intended to be contrary to or to control or modify the provisions of this section.

NOTE: The registration described in s. 132.04 (3) concerns names, brands, designs, trademarks, devices or other marks of ownership on containers. Names, brands or trademarks of beverages may be registered under s. 132.11. Both filings are accomplished by use of the form submitted for registration of a trademark or label under s. 132.01, stats. The filing fee designated in that section is \$15.

This amendment standardizes the filing fee for all trademark registrations. This amendment will not affect filers because in current practice these types of registrations are submitted with a \$15 filing fee under s. 132.01, stats.

SECTION 8. 180.793 (2) and (4) of the statutes are amended to read:

180.793 (2) Any such report not filed as required by sub. (1) may be filed only upon payment to the secretary of state of not to exceed \$26.

(4) The corporation may be restored to good standing by delivering to the secretary of state a current annual report conforming to the requirements of law and by paying to the secretary of state the not to exceed \$26 late filing fee plus not to exceed \$15 for each calendar year or part of a calendar year during which the corporation has not been in good standing, not exceeding a total of \$176.

SECTION 9. 180.87 (1) (j) and (p) of the statutes are amended to read:

180.87 (1) (j) Filing an annual report of a foreign corporation not to exceed \$30, and in case the annual report shows that the corporation employs in this state capital in excess of the amount of capital on which a fee has previously been paid, computed as provided in s. 180.813,

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an additional fee which, with previous payments made on account of capital employed in this state, will amount to \$1.25 for each \$1,000 or fraction thereof of the excess.

(p) Filing an annual report of a domestic corporation, ~~not to exceed \$15.~~

NOTE: See the NOTE following the treatment of s. 185.83 (1) (e) in this bill.

SECTION 10. 181.31 (1) (i) of the statutes is amended to read:

181.31 (1) (i) The name and address, including the street and street number, if any, of each incorporator.

NOTE: This change will make consistent the address requirements for incorporators of nonstock corporations and ch. 180, stats., business corporations.

No fiscal impact will result from this change.

SECTION 11. 181.653 (4) of the statutes is amended to read:

181.653 (4) The corporation may be restored to good standing by delivering to the secretary of state a current annual report conforming to the requirements of law and by paying to the secretary of state the ~~not to exceed \$21~~ late filing fee plus ~~not to exceed \$10~~ for each calendar year or part of a calendar year during which the corporation has not been in good standing, not exceeding a total of \$121.

SECTION 12. 181.68 (1) (gm) of the statutes is amended to read:

181.68 (1) (gm) Filing an annual report of a domestic corporation, ~~not to exceed \$10;~~

SECTION 13. 181.68 (4) of the statutes is repealed.

SECTION 14. 185.48 (4) and (6) of the statutes are amended to read:

185.48 (4) Any report not filed as required by sub. (3) may be filed only upon payment to the secretary of state of ~~not to exceed \$26.~~

(6) The cooperative may be restored to good standing by delivering to the secretary of state a current annual report and by paying the ~~not to exceed \$26~~ late filing fee plus ~~not to exceed \$15~~ for each calendar year or part thereof during which it was not in good standing, not exceeding a total of \$176.

SECTION 15. 185.83 (1) (e) of the statutes is amended to read:

185.83 (1) (e) Filing an annual report of a cooperative, ~~not to exceed \$15.~~

NOTE: 1985 Wisconsin Act 338 made any increase in annual report fees contingent upon approval by the joint committee on finance under ss. 16.505 and 16.515, stats. 1985 Wisconsin Act 338 gave the joint committee on finance authority to increase the fees by up to \$4. On October 2, 1986, the joint committee on finance authorized a \$4 increase in these fees and, consequently, the "not to exceed" language is eliminated to more clearly specify the annual report fees.

SECTION 16. 409.403 (5) (a) 1. of the statutes is amended to read:

409.403 (5) (a) 1. The fee for filing and indexing and for stamping a copy furnished by the secured party to

show the date and place of filing for an original financing statement is \$6 if the statement is in the standard form prescribed by the secretary of state and otherwise is an additional \$2 per page, plus in each case, if the financing statement is subject to s. 409.402 (5), \$1. The fee for each name more than one required to be indexed is \$2. The secured party may show a trade name for any person and an extra indexing fee of \$2 shall be paid with respect thereto. ~~These fees include fees for processing the termination statement.~~

SECTION 17. 409.403 (5) (a) 1m of the statutes is created to read:

409.403 (5) (a) 1m. If the fees under subd. 1 are paid, there is no fee for processing the termination statement.

SECTION 18. 409.403 (5) (b) 1. of the statutes is amended to read:

409.403 (5) (b) 1. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement is \$6 if the statement is in the standard form prescribed by the secretary of state and otherwise is an additional \$2 per page. The fee for each name more than one required to be indexed is \$2. The secured party may show a trade name for any person and an extra indexing fee of \$2 shall be paid with respect thereto. ~~These fees include fees for processing the termination statement.~~

SECTION 19. 409.403 (5) (b) 1m of the statutes is created to read:

409.403 (5) (b) 1m. If the fees under subd. 1 are paid, there is no fee for processing the termination statement.

NOTE: See the NOTE following the treatment of s. 409.404 (3) (c) in this bill.

SECTION 20. 409.403 (8) of the statutes is amended to read:

409.403 (8) A separate amendment, continuation statement, termination statement, statement of assignment or statement of release shall be filed for each original financing statement to be affected.

NOTE: This amendment clarifies that the original filing of a financing statement is the only statement which may be amended, continued, terminated, assigned or released.

SECTION 21. 409.404 (3) (a) to (c) of the statutes are amended to read:

409.404 (3) (a) *Fees for filing a termination statement with the office of the register of deeds.* There is no fee for a termination statement that is filed with the office of the register of deeds and there is no fee for indexing any name in connection with the termination process if fees are paid under s. 409.403 (5) (a) 1., or if the fees were paid under s. 409.405 (1) on or after September 1, 1985.

(b) *Fees for filing a termination statement with the office of the secretary of state.* There is no fee for a termination statement which is filed with the office of the secretary of state and there is no fee for indexing any name in connection with the termination process if fees

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are paid under s. 409.403 (5) (b) 1., or if the fees were paid under s. 409.405 (1) on or after January 1, 1978.

(c) *Transition provision requiring fees for filing certain termination statements.* If fees are not paid by a secured party under s. 409.403 (5) (a) 1. or (b) 1., and if the secured party is filing a termination statement in the standard form prescribed by the secretary of state, the fee for filing and indexing the termination statement with the office of the register of deeds or the office of the secretary of state is \$2, and, if not in the standard form, the fee is \$4, plus, in each case, an additional fee of \$1 for each name other than the first name against which the termination statement is required to be indexed and an additional fee of \$1 for each statement of termination filed in the office of the register of deeds subject to s. 409.402 (5).

NOTE: Under the current ch. 409, stats., original financing statements [s. 409.403 (5) (a) 1.], continuations of an original statement [s. 409.403 (5) (a) 2.], and amendments to an original statement [s. 409.403 (5) (a) 2.], whenever they cover collateral such as timber to be cut, minerals, oil and gas, are required to be filed not only in the local register of deeds uniform commercial code records, but also in its real estate records [s. 409.402 (5)]. A \$1 filing fee is provided by statute for this additional filing. However, there is no such additional filing fee provided for assignment, release, and termination statements which are also subject to s. 409.402 (5) and required to be filed in the real estate records of the register of deeds office. The exclusion of the extra \$1 register of deeds filing fee from ss. 409.404 (3) (c), 409.405 (1) and (2) and 409.406 relating to, respectively, terminations, assignments, and releases, apparently was an oversight, for there appears to be no reason for treating those types of statements differently than any others subject to a s. 409.402 (5) filing. The same amount of work is required to file these documents as it is for those documents for which the \$1 fee is already provided.

It has come to the secretary of state's attention that some registers of deeds charge these additional filing fees under other statutory authority when filing assignments, releases, and terminations in their real estate records. Therefore, this proposal creates a uniform fee structure for original financing statements. The amendment applies the additional \$1 filing fee to all original financing statements and documents affecting an original statement filed subject to s. 409.402 (5) and required to be filed in the registers' of deeds real estate records.

SECTION 22. 409.405 (1) of the statutes is amended to read:

409.405 (1) A An original financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in s. 409.403 (4). The fee for filing, indexing and ~~furnishing filing data stamping a copy furnished by the secured party to show the date and place of filing~~ for a an original financing statement so indicating an assignment is \$4 ~~\$6~~ if the statement is in the standard form prescribed by the secretary of state and otherwise is an additional \$1 \$2 per page, plus in each

~~case an additional fee of \$1, if the financing statement is subject to s. 409.402 (5), \$1. The fee for each name more than one against which the financing statement is required to be indexed is \$2. The secured party may show a trade name for any person if the secured party pays an additional indexing fee of \$2.~~ A register of deeds shall forward \$2 to the office of the secretary of state for each original financing statement indicating an assignment of a security interest that is filed with the office of the register of deeds.

SECTION 23. 409.405 (1m) of the statutes is created to read:

409.405 (1m) If the fees under sub. (1) are paid, there is no fee for processing the termination statement.

NOTE: The fee increase from \$4 to \$6, for filing with the secretary of state and the registers of deeds an original financing statement disclosing an assignment, will make these filings uniform with filing original financing statements under s. 409.403 (5) (a) 1. and (b) 1. It is anticipated that there will be no revenue impact because under current practice these assignments are filed for a \$6 fee established under s. 409.403 (5) (a) 1.

The remaining revisions relating to fees for additional pages and for trade names in uniform commercial code statements will make this section uniform with other ch. 409 statutes sections regarding original financing statement, continuations, and amendments.

Also, see the NOTE following the treatment of s. 409.404 (3) (c) in this bill.

SECTION 24. 409.405 (2) of the statutes is amended to read:

409.405 (2) A secured party may assign of record all or part of his or her rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. The officer shall note the assignment on the index of the financing statement, or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like, including oil and gas, or accounts subject to s. 409.103 (5), the officer shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, the officer shall index the assignment of the financing statement under the name of the assignee. The fee for filing, indexing and furnishing filing data about such a separate statement of assignment is \$4 if the statement is in the standard form prescribed by the secretary of state and otherwise is \$6, ~~plus in.~~ In each

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case an additional fee of \$1 for each name more than one against which the statement of assignment is required to be indexed and for each statement of assignment filed in the office of the register of deeds subject to s. 409.402 (5). A register of deeds shall forward \$2 to the office of the secretary of state for each statement of assignment filed with the office of the register of deeds. Notwithstanding this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing under s. 409.402 (6) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than chs. 401 to 409.

NOTE: See the NOTE following the treatment of s. 409.404

(3) (c) in this bill.

SECTION 25. 409.406 of the statutes is amended to read:

409.406 Release of collateral; duties of filing officer; fees. A secured party of record may by his or her signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with s. 409.405 (2), including payment of the required fee. Upon presentation of such a statement of release to the filing officer, the officer shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The fee for filing and noting such a statement of release is \$4 if the statement is in the standard form prescribed by the secretary of state and otherwise is \$6, ~~plus in.~~ In each case an additional fee of \$1 for each name more than one against which the statement of release is required to be indexed and for each statement of release filed in the office of the register of deeds subject to s. 409.402 (5). A register of deeds shall forward \$2 to the office of the secretary of state for each statement of release filed with the office of the register of deeds.

NOTE: See the NOTE following the treatment of s. 409.404

(3) (c) in this bill.

SECTION 26. 409.407 (2) of the statutes is amended to read:

409.407 (2) ORAL REQUEST FOR INFORMATION FROM FILING OFFICER; ISSUANCE OF CERTIFICATE; FEES. (a) Upon the oral request of any person, the filing officer shall disclose orally at the time of the request or as soon thereafter as possible any presently effective statement ~~filed or continued within the preceding 6 years~~ naming a particular debtor and if there is such a statement, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The fee for such information may not exceed \$5, plus \$1 for each statement disclosed. Upon the further oral request for a copy of a statement disclosed orally, the filing officer shall furnish a copy for an additional fee of \$1 per page.

(b) Upon request of any person, the filing officer shall issue a certificate showing whether there is on file on the date and hour stated therein, any presently effective statement ~~filed or continued within the preceding 6 years~~ naming a particular debtor and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate is \$5, plus \$1 for each statement reported therein. Upon request the filing officer shall furnish a certified copy of any filed statement for a uniform fee of \$1 for each page of the copied statement plus 50 cents for the certificate.

NOTE: The reference to the preceding 6-year period has served no apparent purpose since the deletion of the section regarding stated maturity dates in 1973. An original financing statement is effective for 5 years and, if continued, remains effective for another 5 years; a federal tax lien under s. 779.97 (4) (d), stats., is effective for 7 years and 60 days, unless refiled within that time; and a financing statement listing a transmitting utility is effective until terminated. The uniform commercial code division does not limit its search to those statements filed or continued within a 6-year time period but, rather, the search includes all "presently effective" filings.

SECTION 27. 706.07 (3) (a) 4. of the statutes is amended to read:

706.07 (3) (a) 4. A register of deeds or deputy register of deeds;

NOTE: See the NOTE following the treatment of s. 14.38 (9m) in this bill.

SECTION 28. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 132.01 (6) and (7) of the statutes takes effect on the first day of the 2nd month beginning after publication.