



## 1995 SENATE BILL 484

January 16, 1996 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on Education and Financial Institutions.

1     **AN ACT to amend** 551.23 (13), 551.23 (14), 551.32 (1) (c) 2., 551.34 (1) (m), 551.34  
2           (7) and 553.51 (4); and **to repeal and recreate** 551.32 (1) (c) 2., 551.34 (1) (m)  
3           and 553.51 (4) of the statutes; **relating to:** exempting share exchanges from  
4           registration under the Wisconsin uniform securities law, exempting share  
5           splits and share dividends of business trusts from registration under the  
6           Wisconsin uniform securities law, the effective date of licenses after requests  
7           for information by the commissioner of securities, notice of revocations or  
8           denials of licenses by the commissioner of securities, notice to a franchise  
9           purchaser of registration and anti-fraud violations and misrepresentations to  
10          representatives of the commissioner of securities (suggested as remedial  
11          legislation by the office of the commissioner of securities).

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### ***Analysis by the Legislative Reference Bureau***

This bill makes a number of changes to this state's securities laws. These laws are currently administered by the commissioner of securities; after July 1, 1996, these laws will be administered by the division of securities (division) in the department of financial institutions. The changes made by the bill include the following:

1. Current law exempts from the securities registration requirements certain transactions involving mergers, consolidations and reclassification of securities. This bill amends this exemption to include "share exchanges". A share exchange is a transaction in which a corporation acquires all of the outstanding shares of one or more classes or series of another corporation.

2. Current law exempts from the securities registration requirements certain stock splits and stock dividends by a corporation. This bill amends this exemption to include comparable activities by a business trust.

3. Under current law, applications for a broker-dealer, agent or investment adviser license generally take effect 30 days after the application is filed unless a proceeding for denial of the license is pending or unless certain other provisions apply. One of these provisions provides that, if the division requests additional information relating to the application, the license is effective 30 days after the additional information is filed. This bill amends this provision so that, if the division requests additional information, the license is not effective until 30 days after the information is filed in response to that written request or to any subsequent written request for information by the division that is made within 30 days after a response to a request for additional information.

4. Current law provides that the division may summarily revoke a license, or deny an application for a license, to act as a broker-dealer, agent or investment adviser, if the division finds that the licensee or applicant has ceased to exist or to do business, has been adjudicated mentally incompetent, or cannot be located after reasonable search. This bill provides that, in these situations, no prior notice to the applicant or licensee is necessary prior to revoking or denying the license.

5. Current law limits liability under certain franchise registration or antifraud requirements to actions brought within 3 years of the violation or 90 days after delivery of a written notice to the franchisee disclosing the violation, whichever expires first. This provision does not specify from whom the notice is to be sent. This bill provides that the written notice must be from, or on behalf of, the person against whom the action is maintained.

For further information, see the NOTES provided by the law revision committee of the joint legislative council.

***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 office of the commissioner of securities and introduced by the law revision committee under s. 13.83 (1) (c) 4., stats. After careful consideration of the various provisions of the 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.

1           **SECTION 1.** 551.23 (13) of the statutes is amended to read:

2           551.23 (13) Any transaction incident to a class vote by stockholders, pursuant  
3 to the articles of incorporation or the applicable corporation statute, on a merger,  
4 consolidation, share exchange, reclassification of securities, or sale of corporate  
5 assets in consideration of the issuance of securities of another corporation; or any

1 transaction incident to a judicially approved reorganization in which a security is  
2 issued in exchange for one or more outstanding securities, claims or property  
3 interests, or partly in such exchange and partly for cash.

NOTE: This SECTION adds a "share exchange" to the list of transactions, mergers and consolidations of corporations that qualify for exemption from registration under the Wisconsin uniform securities law. 1989 Wisconsin Act 303 recodified ch. 180, relating to business corporations, effective January 1, 1991. Section 180.1102, as created by Act 303, included "share exchanges" in subch. XI, related to mergers of corporations. The share exchange must be pursuant to a class vote by shareholders.

4 **SECTION 2.** 551.23 (14) of the statutes is amended to read:

5 551.23 (14) Any stock split and any stock dividend by a corporation, and any  
6 share split or share dividend by a business trust, whether the corporation or business  
7 trust distributing the dividend is the issuer of the ~~stock~~ or not, if nothing of value is  
8 given ~~by stockholders~~ for the dividend other than the surrender of a right to a cash  
9 or property dividend when each stockholder or shareholder may elect to take the  
10 dividend in cash or property or in stock or shares.

NOTE: A share of a beneficial interest in a business trust is defined as a "security" by s. 551.02 (13) (a). This SECTION includes "share splits" and "share dividends" by business trusts in an exemption from registration under the Wisconsin uniform securities law. Currently, stock splits and stock dividends of corporations are exempt from registration. The amendment will extend this exemption to comparable activities by business trusts.

11 **SECTION 3.** 551.32 (1) (c) 2. of the statutes is amended to read:

12 551.32 (1) (c) 2. If the commissioner makes a written request for additional  
13 information relevant to the application within 30 days after the application is filed,  
14 the licensing is not effective until 30 days after the information is filed in response  
15 to that written request or in response to any subsequent written request for  
16 information by the commissioner within 30 days after a response to a written request  
17 is filed;

18 **SECTION 4.** 551.32 (1) (c) 2. of the statutes, as affected by 1995 Wisconsin Acts  
19 27 and .... (this act), is repealed and recreated to read:

1           551.32 (1) (c) 2. If the division makes a written request for additional  
2 information relevant to the application within 30 days after the application is filed,  
3 the licensing is not effective until 30 days after the information is filed in response  
4 to that written request or in response to any subsequent written request for  
5 information by the division within 30 days after a response to a written request is  
6 filed;

NOTE: Current law provides that the commissioner of securities may request additional information relevant to an application for a license and the license is effective 30 days after that response is received. This SECTION and the previous SECTION provide that if the commissioner makes another request for additional information, the license will not be effective until 30 days after that information is received.

7           **SECTION 5.** 551.34 (1) (m) of the statutes is amended to read:

8           551.34 (1) (m) Has made any material misrepresentation to or withheld or  
9 concealed any material fact from the commissioner or any of his or her  
10 representatives, or has refused to furnish information reasonably requested by the  
11 commissioner or any of his or her representatives; or

12           **SECTION 6.** 551.34 (1) (m) of the statutes, as affected by 1995 Wisconsin Acts  
13 27 and .... (this act), is repealed and recreated to read:

14           551.34 (1) (m) Has made any material misrepresentation to or withheld or  
15 concealed any material fact from the division, or has refused to furnish information  
16 reasonably requested by the division; or

NOTE: This SECTION and the previous SECTION add to the grounds for denial, suspension or revocation of a license the refusal to furnish information that is reasonably requested by representatives of the commissioner. The provision currently punishes a material misrepresentation to, and withholding or concealing any material fact from, the commissioner or his or her representatives and refusing to furnish information to the commissioner. The change will make the provision internally consistent.

17           **SECTION 7.** 551.34 (7) of the statutes is amended to read:

18           551.34 (7) No order may be entered under this section except under sub. (4) or  
19 (5) without appropriate prior notice to the applicant or licensee, as well as the

1 employer or prospective employer if the applicant or licensee is an agent. In cases  
2 of denial orders written findings of fact and conclusions of law are required only if  
3 requested by the applicant.

NOTE: Currently, s. 551.34 (4) and (5) authorize the commissioner of securities to summarily issue an order revoking a license or denying an application without providing prior notice to the licensee or applicant. However, current s. 551.34 (7) provides that no order may be entered except under s. 551.34 (4), without prior notice. The change made by this SECTION adds a cross-reference to s. 551.34 (5) to this provision to reflect the existence of the 2nd exception.

4 **SECTION 8.** 553.51 (4) of the statutes is amended to read:

5 553.51 (4) No action may be maintained against any person to enforce any  
6 liability under this section unless brought before the expiration of 3 years after the  
7 act or transaction constituting the violation upon which the liability is based or 90  
8 days after delivery to the franchisee of a written notice disclosing any violation of s.  
9 553.21 or 553.41, which notice from or on behalf of that person shall be approved as  
10 to form by the commissioner, whichever first expires.

11 **SECTION 9.** 553.51 (4) of the statutes, as affected by 1995 Wisconsin Acts 27 and  
12 .... (this act), is repealed and recreated to read:

13 553.51 (4) No action may be maintained against any person to enforce any  
14 liability under this section unless brought before the expiration of 3 years after the  
15 act or transaction constituting the violation upon which the liability is based or 90  
16 days after delivery to the franchisee of a written notice disclosing any violation of s.  
17 553.21 or 553.41, which notice from or on behalf of that person shall be approved as  
18 to form by the division, whichever first expires.

NOTE: Current s. 553.51 (4) does not specify from whom a notice must be sent to a franchise purchaser that there has been a violation of franchise registration or anti-fraud requirements. Since the statute contains a 90-day period in which to bring an action to enforce liability for these violations, it is unclear under the statute on what notice begins the running of the statute of limitations. The change made by this SECTION and the previous SECTION provide that the written notice must be from or on behalf of the person upon whom civil liability may be imposed.

