



1995 SENATE BILL 586

February 28, 1996 - Introduced by LAW REVISION COMMITTEE. Referred to Committee on State Government Operations and Corrections.

1 **AN ACT to amend** 19.01 (4) (a), 132.01 (9), 137.01 (1) (b), 180.1006 (5), 180.1422
2 (1) (b) and (c), 180.1422 (2) (a) (intro.) and 2. and (b), 180.1503 (2), 181.67 (1)
3 (a), 183.0104 (1) and 185.82 (1) (a); **to repeal and recreate** 180.1422 (2) (a)
4 (intro.) and 2. and (b), 181.67 (1) (a), 183.0104 (1) and 185.82 (1) (a); and **to**
5 **create** 19.01 (4) (am) and (an) and 181.39 (1m) of the statutes; **relating to:**
6 filing of oaths of members and officers of the assembly and senate, trademark
7 assignments, ineligibility to serve as a notary, articles of amendment for
8 statutory close corporations, reinstatement of corporations following
9 administrative dissolution, including the date of incorporation in certificates of
10 status for foreign corporations, information filed with restated articles of
11 incorporation, including the name of the drafter on documents filed with the
12 secretary of state and the time period within which payment must be received
13 for reservation of name of a limited liability company (suggested as remedial
14 legislation by the secretary of state).

Analysis by the Legislative Reference Bureau

This bill makes a number of changes relating to the responsibilities of the secretary of state's office and, after July 1, 1996, to the duties of the department of financial institutions (DFI). Under 1995 Wisconsin Act 27 (the budget act), many of

the functions of the secretary of state's office are transferred to DFI. The changes made by the bill include the following:

1. Under current law, the oaths of office of members and officers of the legislature must be filed with the office of the secretary of state. Under the bill, instead of filing with the secretary of state's office, the oaths of representatives and assembly officers must be filed with the office of the assembly chief clerk, and the oaths of the senators and senate officers must be filed with the office of the senate chief clerk.

2. Under current law, a person may register a trademark with the office of the secretary of state, if certain requirements are met. This bill provides that a successor to a title to a registered trademark must meet these same requirements.

3. Current law requires the secretary of state to satisfy himself or herself that an applicant for notary public meets certain criteria, including, subject to certain employment discrimination restrictions, whether the applicant has an arrest or conviction record. This bill modifies this provision so that the secretary of state is required to determine that the applicant does not have a record of an arrest or conviction that is substantially related to a notary's duties. The secretary of state may consider the elements and circumstances of an arrest or conviction record in making this determination.

4. Current law requires that an amendment to the articles of incorporation of a corporation be accompanied by a statement that the amendment was adopted in accordance with certain procedures. This bill amends this provision to cover amendments to the articles of incorporation of a statutory close corporation without a board of directors where the amendments were approved by the corporation's shareholders.

5. Current law contains provisions requiring the secretary of state to prepare a certificate of reinstatement if certain criteria are met, including the payment of fees and penalties owed to the secretary of state. In addition to certain other minor changes, the bill requires that the secretary of state issue this certificate, rather than merely prepare it.

6. Under current law, a foreign corporation's application for a certificate of authority to transact business in this state must include a certificate of status from the state or country where the foreign corporation is incorporated. This bill requires that this certificate also include the date that the foreign corporation was incorporated.

7. Under current law, articles of amendment for a nonstock corporation must set forth certain information, such as the name of the corporation, the text of the amendment, the date on which the amendment was adopted, etc. This bill provides that if a nonstock corporation restates its articles of incorporation and this restatement contains an amendment to the articles of incorporation, the corporation must include this same information with the restated articles of incorporation.

8. This bill changes from 10 business days to 15 business days the time period within which the secretary of state must receive the fees required for reservation of the name of a limited liability company or the renewal of a reserved name.

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 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 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.** 19.01 (4) (a) of the statutes is amended to read:

2 19.01 (4) (a) In the office of the secretary of state: Of all members and officers
3 of the legislature; of the governor, lieutenant governor and state superintendent; of
4 the justices, reporter and clerk of the supreme court; of the judges of the court of
5 appeals; of the judges and reporters of the circuit courts; of all notaries public; of
6 every officer, except the secretary of state, state treasurer, district attorney and
7 attorney general, whose compensation is paid in whole or in part out of the state
8 treasury, including every member or appointee of a board or commission whose
9 compensation is so paid; and of every deputy or assistant of an officer who files with
10 the secretary of state;

NOTE: This SECTION deletes the requirement that the oaths of office of members of the legislature be filed with the secretary of state.

11 **SECTION 2.** 19.01 (4) (am) and (an) of the statutes are created to read:

12 19.01 (4) (am) In the office of the chief clerk of the assembly: Of all members
13 and officers of the assembly;

14 (an) In the office of the chief clerk of the senate: Of all members and officers of
15 the senate;

NOTE: This SECTION provides that the oaths of members and officers of the legislature will be filed with the chief clerk of the appropriate house.

16 **SECTION 3.** 132.01 (9) of the statutes is amended to read:

1 132.01 (9) Title to any registration hereunder shall pass to any person, firm or
2 corporation succeeding to the registrant's business to which such registration
3 pertains. Written assignments of any such registration from a registrant to such a
4 successor who meets the requirements of sub. (1) may be filed with and shall be
5 recorded by the secretary of state upon payment of the fee specified in sub. (3). When
6 such assignment is recorded, a new registration shall be entered in the name of the
7 assignee, and on such registration and any subsequent certificates or registration of
8 an assigned registration the secretary of state shall show the previous ownership
9 and dates of assignment thereof.

NOTE: Under current s. 132.01 (1), any person, firm, partnership, corporation, association or union may register a "trademark" with the office of the secretary of state. The privilege is limited to residents of Wisconsin and any other state and to foreign corporations "duly licensed to transact business" in Wisconsin. This SECTION amends s. 132.01 (9) to provide that a successor to title to a registered trademark must also meet the requirements of s. 132.01 (1).

10 **SECTION 4.** 137.01 (1) (b) of the statutes is amended to read:

11 137.01 (1) (b) The secretary of state shall satisfy himself or herself that the
12 applicant has the equivalent of an 8th grade education, is familiar with the duties
13 and responsibilities of a notary public and, subject to ss. 111.321, 111.322 and
14 111.335, does not have an arrest or conviction record that is substantially or directly
15 related to a notary's duties. The secretary of state may consider the elements and
16 circumstances of an arrest or conviction record in determining if it is substantially
17 or directly related to a notary's duties.

NOTE: Under current s. 137.01 (b), the secretary of state must be satisfied that an applicant does not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335 of the statutes. These statutes relate to prohibiting discrimination in employment and licensing and discrimination based on arrest records. If a conviction is for a felony, misdemeanor or other offense, the circumstances of which "substantially relate" to the circumstances of the particular job or licensed activity, it is not "employment discrimination" to refuse to employ or license the person. This SECTION makes it clear that the secretary of state shall review the elements and circumstances of the arrest and conviction to determine whether the act for which the person was convicted substantially relates to the activities of a notary.

1 **SECTION 5.** 180.1006 (5) of the statutes is amended to read:

2 180.1006 (5) A statement that the amendment was adopted in accordance with
3 s. 180.1002, 180.1003 or 180.1005, whichever is the case, or a statement that the
4 corporation is a statutory close corporation without a board of directors and that the
5 amendment was duly approved by the shareholders.

NOTE: A corporation that amends its articles of incorporation must include in its filing with the secretary of state a statement that the amendment was adopted in accordance with applicable statutes. Generally, s. 180.1821 (1) (c) authorizes a statutory close corporation without a board of directors to file a statement that an action was approved by its shareholders whenever an instrument to be filed with a governmental agency must contain a statement that the action was approved by the corporation's board of directors. This SECTION conforms s. 180.1006 (5) to the general statutory provision.

6 **SECTION 6.** 180.1422 (1) (b) and (c) of the statutes are amended to read:

7 180.1422 (1) (b) ~~That~~ A statement that each ground for dissolution either did
8 not exist or has been eliminated.

9 (c) ~~That~~ A statement that the corporation's name satisfies s. 180.0401.

NOTE: This SECTION corrects grammatical errors in s. 180.1422 (1) (b) and (c).

10 **SECTION 7.** 180.1422 (2) (a) (intro.) and 2. and (b) of the statutes are amended
11 to read:

12 180.1422 (2) (a) (intro.) The secretary of state shall cancel the certificate of
13 dissolution and ~~prepare~~ issue a certificate of reinstatement that complies with par.

14 (b) if the secretary of state determines all of the following:

15 2. That all fees and penalties owed by the corporation to the secretary of state
16 under this chapter have been paid.

17 (b) The certificate of reinstatement shall state the secretary of state's
18 determination under par. (a) and the effective date of reinstatement. The secretary
19 of state shall file ~~the original of~~ the certificate and return mail a copy to the
20 corporation or its representative.

1 **SECTION 8.** 180.1422 (2) (a) (intro.) and 2. and (b) of the statutes, as affected by
2 1995 Wisconsin Acts 27 and (this act), are repealed and recreated to read:

3 180.1422 **(2)** (a) (intro.) The department shall cancel the certificate of
4 dissolution and issue a certificate of reinstatement that complies with par. (b) if the
5 department determines all of the following:

6 2. That all fees and penalties owed by the corporation to the department under
7 this chapter have been paid.

8 (b) The certificate of reinstatement shall state the department's determination
9 under par. (a) and the effective date of reinstatement. The department shall file the
10 certificate and mail a copy to the corporation or its representative.

NOTE: This SECTION and the previous SECTION require the secretary of state to issue a certificate of reinstatement rather than merely to prepare it. They also provide that the corporation must have paid only the fees and penalties required by ch. 180 to the secretary of state. This change is constituent with s. 180.0125 (2) (b), which prohibits the secretary of state from filing documents relating to corporations until fees required under ch. 180 are paid. The substitution of "mail" for "return" is made because no certificate is sent to the secretary of state for him or her to "return". The certificate of reinstatement is prepared by the secretary of state, not the applicant. The SECTIONS also reflect the transfer of certain functions from the secretary of state to the department of financial institutions, effective July 1, 1996.

11 **SECTION 9.** 180.1503 (2) of the statutes is amended to read:

12 180.1503 **(2)** The foreign corporation shall deliver with the completed
13 application a certificate of status, or similar document, duly authenticated by the
14 secretary of state or other official having custody of corporate records in the state or
15 country under whose law it is incorporated. The certificate shall be dated no earlier
16 than 60 days before its delivery and shall include the date of incorporation of the
17 foreign corporation.

NOTE: Under s. 180.1503, a foreign certificate of authority application and certificate of status from a state or country where the foreign corporation is incorporated must be filed with an application for a certificate of authority to transact business in Wisconsin. This SECTION requires the certificate of status to contain the date of incorporation of the foreign corporation.

1 **SECTION 10.** 181.39 (1m) of the statutes is created to read:

2 181.39 (1m) If restated articles of incorporation amend the articles of
3 incorporation, the corporation shall include a certificate setting forth all of the
4 following:

5 (a) A statement that the restated articles amend the articles of incorporation.

6 (b) The information required by s. 181.37 (1) to (6).

NOTE: A corporation may adopt restated articles of incorporation consisting of its articles of incorporation as amended to date. Under s. 181.37, a corporation may amend its articles of incorporation and the articles of amendment must contain the information required by s. 181.37 (1) to (6). This SECTION provides that the information filed with restated articles of incorporation is the same as that for amended articles of incorporation.

7 **SECTION 11.** 181.67 (1) (a) of the statutes is amended to read:

8 181.67 (1) (a) Separate originals of the document for the secretary of state and
9 for the register of deeds of each county in which the document is required to be
10 recorded. The document shall contain the name of the drafter if required by s. 14.38
11 (14).

12 **SECTION 12.** 181.67 (1) (a) of the statutes, as affected by 1995 Wisconsin Acts
13 27 and (this act), is repealed and recreated to read:

14 181.67 (1) (a) Separate originals of the document for the department and for
15 the register of deeds of each county in which the document is required to be recorded.
16 The document shall contain the name of the drafter if required by s. 14.38 (14).

NOTE: Under s. 14.38 (14), certain documents filed with the secretary of state under chs. 179 to 181, 183, 185 and 187 must contain the name of the drafter of the document. This SECTION and the previous SECTION add a reference to that requirement to s. 181.67 (1) which relates to filing documents of nonstock corporations with the secretary of state. These SECTIONS also reflect the transfer of certain functions from the secretary of state to the department of financial institutions, effective July 1, 1996.

17 **SECTION 13.** 183.0104 (1) of the statutes is amended to read:

18 183.0104 (1) A person may reserve the exclusive use of a limited liability
19 company name, including a fictitious name for a foreign limited liability company

1 whose name is not available, by delivering an application to the secretary of state for
2 filing or by making a telephone application. The application shall include the
3 applicant's name and address and the name proposed to be reserved. If the secretary
4 of state finds that the name applied for under this subsection is available, the
5 secretary of state shall reserve the name for the applicant's exclusive use for a
6 120-day period, which may be renewed by the applicant or a transferee under sub.
7 (2) from time to time. If an application to reserve a name or to renew a reserved name
8 is made by telephone, the secretary of state shall cancel the reservation or renewal
9 if the secretary of state does not receive the fee required under s. 183.0114 (1) (e) or
10 (f) within ~~10~~ 15 business days after the day on which the application is made.

11 **SECTION 14.** 183.0104 (1) of the statutes, as affected by 1995 Wisconsin Acts
12 27 and (this act), is repealed and recreated to read:

13 183.0104 (1) A person may reserve the exclusive use of a limited liability
14 company name, including a fictitious name for a foreign limited liability company
15 whose name is not available, by delivering an application to the department for filing
16 or by making a telephone application. The application shall include the applicant's
17 name and address and the name proposed to be reserved. If the department finds
18 that the name applied for under this subsection is available, the department shall
19 reserve the name for the applicant's exclusive use for a 120-day period, which may
20 be renewed by the applicant or a transferee under sub. (2) from time to time. If an
21 application to reserve a name or to renew a reserved name is made by telephone, the
22 department shall cancel the reservation or renewal if the department does not
23 receive the fee required under s. 183.0114 (1) (e) or (f) within 15 business days after
24 the day on which the application is made.

