



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-0721/7  
ARG:wlj&cjs:ph

DOA:.....Waterman, BB0145 - Transfer notary and trademark functions  
from Secretary of State to DFI

**FOR 2011-13 BUDGET -- NOT READY FOR INTRODUCTION**

**AN ACT ...; relating to:** the budget.

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*Analysis by the Legislative Reference Bureau*

**COMMERCE AND ECONOMIC DEVELOPMENT**

**FINANCIAL INSTITUTIONS**

Under current law, a person may file an application to be a notary public with the Office of the Secretary of State (SOS). If the SOS determines that the applicant is qualified, the SOS issues a certificate of appointment and the person's commission as a notary public is valid for four years. However, for a person licensed to practice law, the commission as a notary public is permanent.

This bill transfers notary public functions from the Office of the SOS to DFI.

Under current law, a person may file for state trademark or service mark registration with the Office of the SOS. If applicable requirements are met, the SOS issues a certificate of registration of the mark. The SOS must also keep a record of brands used on beverage containers for which the SOS has received an application to record the brand. A lodge, fraternal society, or similar organization may also register with the SOS its identifying information, including its name, motto, emblem, or other insignia, and the SOS must keep a properly indexed file of these registrations.

This bill transfers these trademark and similar functions from the Office of the SOS to DFI.

Under current law, \$200,000 is transferred annually from a DFI appropriation for general program operations to an appropriation of the Office of the SOS for general program operations. This bill increases the amount of the transfer to \$325,000 annually.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

\*\*\*\*NOTE: This is reconciled s. 20.144 (1) (g). This SECTION has been affected by drafts with the following LRB numbers: LRB-0664 and LRB-0721.

**SECTION 1.** 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 par. (ka), all amounts received by the secretary of state, including fees under ~~ch. 132 and subch. I of ch. 137 s. 137.02~~ and all moneys transferred from the appropriation under s. 20.144 (1) (g), 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 that fiscal year's expenditures under this appropriation shall lapse to the general fund.

**SECTION 2.** 100.14 (2) of the statutes is amended to read:

100.14 (2) The secretary of state department of financial institutions shall, upon application of the department of agriculture, trade and consumer protection, record any such label or trademark under ss. 132.01 to 132.11. The department of agriculture, trade and consumer protection shall be entitled to protect such label or trademark under said sections and in any other manner authorized by law.

**SECTION 3.** 132.001 (1m) of the statutes is created to read:

132.001 (1m) "Department" means the department of financial institutions.

**SECTION 4.** 132.01 (1) of the statutes is amended to read:

132.01 (1) Any person, firm, partnership, corporation, association, or union of workingmen, which has heretofore adopted or used or shall hereafter adopt or use any mark for the purpose of designating, making known, or distinguishing any goods, wares, merchandise, service, business, or other product of labor or manufacture as having been made, manufactured, produced, prepared, packed, or put on sale by such person, firm, partnership, corporation, association, or union of workingmen, or by a member or members thereof, he, she, or they, if residents of this or any other state of the United States, and such foreign corporations as may have been duly licensed to transact business in the state of Wisconsin, may file an original, a copy, or photographs, or cuts with specifications of the same for record ~~in the office of the secretary of state~~ with the department, by leaving 2 such originals, copies, photographs, or cuts with specifications, the same being counterparts, facsimiles, or drawings thereof, with ~~said secretary~~ the department and by filing therewith a sworn statement, in such form as may be prescribed by the ~~secretary of state~~ department, specifying the name of the person, firm, partnership, corporation, association, or union of workingmen, on whose behalf such mark is to be filed, the class of merchandise and a separate description of the goods to which the same has been or is intended to be appropriated, the residence, location, or place of business of such party, that the party, on whose behalf such mark is to be filed, has the right to the use of the same, and that no other person, or persons, firm, partnership, corporation, association, or union of workingmen has such right either in the identical form or in any such near resemblance thereto as may be calculated to deceive, and that the originals, copies, photographs, or cuts, counterparts, facsimiles, or drawings filed therewith are correct.

**SECTION 5.** 132.01 (3) of the statutes is amended to read:

132.01 (3) For an original or renewal registration, or the recording of an assignment, there shall be paid to the ~~secretary of state~~ department the fee of \$15.

**SECTION 6.** 132.01 (5) of the statutes is amended to read:

132.01 (5) The ~~secretary of state~~ department may not register any mark which consists of or comprises a replica or simulation of the flag, coat of arms, or insignia of the United States of America, or of any state or municipality or any foreign nation.

**SECTION 7.** 132.01 (6) of the statutes is amended to read:

132.01 (6) (a) A registration recorded or renewed under this section or s. 132.04 or 132.11 before May 1, 1990, is effective for 20 years. A registration may be renewed on or after May 1, 1990, for 10-year periods upon application to the ~~secretary of state~~ department 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 May 1, 1990, is effective for 10 years. A registration may be renewed for 10-year periods upon application to the ~~secretary of state~~ department 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 8.** 132.01 (7) (intro.) of the statutes is amended to read:

132.01 (7) (intro.) The ~~secretary of state~~ department shall do all of the following:

**SECTION 9.** 132.01 (7) (b) of the statutes is amended to read:

132.01 (7) (b) Cancel from his or her register a registration of a mark under this section upon the request of the registrant of the mark. The ~~secretary of state~~ department may not charge a fee for canceling a registration under this paragraph.

**SECTION 10.** 132.01 (8) of the statutes is amended to read:

132.01 (8) Any person, firm, partnership, corporation, association or union who claims a right to the use of subject matter conflicting with any registration by another may bring action against such other in the circuit court for the county in which such other resides, or in the circuit court for Dane County, and in any such action the right to the use and registration of such subject matter shall be determined as between the parties, and registration shall be granted or withheld or canceled by the ~~secretary of state~~ department in accordance with the final judgment in any such action. Nonuser for a period of at least 2 years continuing to the date of commencement of any action in which abandonment is in issue shall be prima facie evidence of abandonment to the extent of such nonuser.

**SECTION 11.** 132.01 (9) of the statutes is amended to read:

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

**SECTION 12.** 132.031 of the statutes is amended to read:

**132.031 Certificate; evidence.** The ~~secretary of state~~ department shall deliver to the person, corporation, association or union so filing or causing to be filed any such mark, or any assignment of such subject matter previously registered, or

to any person, corporation, association or union renewing a registration, as many duly attested certificates of the registration or renewal of the same as may be desired. Any such certificate shall, in all suits and prosecutions arising out of or depending upon any rights claimed under such mark, be prima facie evidence of the adoption thereof and of the facts prerequisite to registrations thereof as required by s. 132.01.

**SECTION 13.** 132.04 (1) of the statutes is amended to read:

132.04 (1) Any person who is the owner of cans, tubs, firkins, boxes, bottles, casks, barrels, kegs, cartons, tanks, fountains, vessels or containers with his or her names, brands, designs, trademarks, devices or other marks of ownership stamped, impressed, labeled, blown in or otherwise marked thereon, may file with the ~~secretary of state~~ department and record with the register of deeds of any county in which the person has his or her principal place of business, a written statement or description verified by affidavit of the owner or his or her agent, of the names, brands, designs, trademarks, devices or other marks of ownership used by him or her, and of the articles upon which they are used, or if the principal place of business is outside the state, then a written statement or verified description may be recorded with the register of deeds of any county. The statement shall be published as a class 3 notice, under ch. 985, in the county, and a copy of the publication, proved as provided in s. 985.12, shall also be filed with the ~~secretary of state~~ department and recorded with the register of deeds.

**SECTION 14.** 132.04 (2) of the statutes is amended to read:

132.04 (2) All such written statements or descriptions and all such certificates of publication so filed or recorded shall be subject at all reasonable hours to public inspection. The ~~secretary of state~~ department and the register of deeds shall deliver to all applicants certified copies of all such written statements or descriptions or

names, brands, designs, trademarks, devices, or other marks of ownership and of all certificates of publication filed or recorded with them and such certified copies shall be admissible in evidence in all prosecutions under ss. 132.04 to 132.08, and shall be prima facie evidence that this section has been complied with, and of the title of the owner named therein to the property upon which the name, brand, design, trademark, device, or other marks of ownership of the owner appear as described therein.

**SECTION 15.** 132.04 (3) of the statutes is amended to read:

132.04 (3) The ~~secretary of state~~ department shall receive a fee of \$15 and the register of deeds shall receive the fee specified in s. 59.43 (2) (ag) or (e) for each statement and certificate of publication filed or recorded and shall also receive the fee specified in s. 59.43 (2) (b) for each certified copy of such statement and certificate of publication, to be paid for by the person filing, recording or applying for the same.

**SECTION 16.** 132.04 (4) of the statutes is amended to read:

132.04 (4) (a) The ~~secretary of state~~ department and register of deeds shall cancel a statement or description under this section upon the request of the person named in the records of the ~~secretary of state~~ department or register of deeds as the owner of marks of ownership described in the statement or description.

(b) The ~~secretary of state~~ department and register of deeds may not charge a fee for canceling a statement or description under par. (a).

**SECTION 17.** 132.11 (1) (intro.) of the statutes is amended to read:

132.11 (1) (intro.) The ~~secretary of state~~ department shall do all of the following:

**SECTION 18.** 132.11 (1) (c) of the statutes is amended to read:

**SECTION 18**

132.11 (1) (c) Cancel the description of a name, brand or trademark recorded under par. (a) upon the request of the person, firm or corporation named in the records of the ~~secretary of state~~ department as the owner of the name, brand or trademark. The ~~secretary of state~~ department may not charge a fee for canceling a description under this paragraph.

**SECTION 19.** 132.16 (1m) of the statutes is amended to read:

132.16 (1m) Any organization may register, ~~in the office of the secretary of state,~~ with the department a facsimile, duplicate, or description of any of the organization's identifying information and may, by reregistration, alter or cancel the organization's identifying information.

**SECTION 20.** 132.16 (2) of the statutes is amended to read:

132.16 (2) Application for registration or reregistration under sub. (1m) shall be made by the organization's chief officer or officers upon forms provided by the ~~secretary of state~~ department. The registration shall be for the use, benefit, and on behalf of the organization and the organization's current and future individual members throughout this state.

**SECTION 21.** 132.16 (3) of the statutes is amended to read:

132.16 (3) The ~~secretary of state~~ department shall keep a properly indexed file of all registrations under this section, which shall also show any alterations or cancelations by reregistration.

**SECTION 22.** 132.16 (5) of the statutes is amended to read:

132.16 (5) Upon granting registration under this section, the ~~secretary of state~~ department shall issue ~~his or her~~ a certificate to the petitioners, setting forth the fact of the registration.

**SECTION 23.** 132.16 (6) of the statutes is amended to read:



132.16 (6) The fees of the ~~secretary of state~~ department for registration or reregistration under this section, searches made by the ~~secretary of state~~ department, and certificates issued by the ~~secretary of state~~ department under this section, shall be the same as provided by law for similar services. The fees collected under this section shall be paid by the ~~secretary of state~~ department into the state treasury.

**SECTION 24.** 137.01 (1) (a) of the statutes is amended to read:

137.01 (1) (a) The governor shall appoint notaries public who shall be United States residents and at least 18 years of age. Applicants who are not attorneys shall file an application with the ~~secretary of state~~ department of financial institutions and pay a \$20 fee.

**SECTION 25.** 137.01 (1) (b) of the statutes is amended to read:

137.01 (1) (b) The secretary of state financial institutions shall satisfy himself or herself that the applicant has the equivalent of an 8th grade education, is familiar with the duties and responsibilities of a notary public and, subject to ss. 111.321, 111.322 and 111.335, does not have an arrest or conviction record.

**SECTION 26.** 137.01 (1) (d) of the statutes is amended to read:

137.01 (1) (d) Qualified applicants shall be notified by the ~~secretary of state~~ department of financial institutions to take and file the official oath and execute and file an official bond in the sum of \$500, with a surety executed by a surety company and approved by the secretary of state financial institutions.

**SECTION 27.** 137.01 (1) (e) of the statutes is amended to read:

137.01 (1) (e) The qualified applicant shall file his or her signature, post-office address and an impression of his or her official seal, or imprint of his or her official rubber stamp with the ~~secretary of state~~ department of financial institutions.

**SECTION 28.** 137.01 (1) (g) of the statutes is amended to read:

137.01 (1) (g) At least 30 days before the expiration of a commission the ~~secretary of state~~ department of financial institutions shall mail notice of the expiration date to the holder of a commission.

**SECTION 29.** 137.01 (2) (a) of the statutes is amended to read:

137.01 (2) (a) Except as provided in par. (am), any United States resident who is licensed to practice law in this state is entitled to a permanent commission as a notary public upon application to the ~~secretary of state~~ department of financial institutions and payment of a \$50 fee. The application shall include a certificate of good standing from the supreme court, the signature and post-office address of the applicant and an impression of the applicant's official seal, or imprint of the applicant's official rubber stamp.

**SECTION 30.** 137.01 (2) (am) of the statutes is amended to read:

137.01 (2) (am) If a United States resident has his or her license to practice law in this state suspended or revoked, upon reinstatement of his or her license to practice law in this state, the person may be entitled to receive a certificate of appointment as a notary public for a term of 4 years. An eligible notary appointed under this paragraph is entitled to reappointment for 4-year increments. At least 30 days before the expiration of a commission under this paragraph the ~~secretary of state~~ department of financial institutions shall mail notice of the expiration date to the holder of the commission.

**SECTION 31.** 137.01 (2) (b) of the statutes is amended to read:

137.01 (2) (b) The secretary of state financial institutions shall issue a certificate of appointment as a notary public to persons who qualify under the

requirements of this subsection. The certificate shall state that the notary commission is permanent or is for 4 years.

**SECTION 32.** 137.01 (2) (c) of the statutes is amended to read:

137.01 (2) (c) The supreme court shall file with the ~~secretary of state~~ department of financial institutions notice of the surrender, suspension or revocation of the license to practice law of any attorney who holds a permanent commission as a notary public. Such notice shall be deemed a revocation of said commission.

**SECTION 33.** 137.01 (6) (a) of the statutes is amended to read:

137.01 (6) (a) The secretary of state financial institutions may certify to the official qualifications of any notary public and to the genuineness of the notary public's signature and seal or rubber stamp.

**SECTION 34.** 137.01 (6m) of the statutes is amended to read:

137.01 (6m) CHANGE OF RESIDENCE. A notary public does not vacate his or her office by reason of his or her change of residence within the United States. Written notice of any change of address shall be given to the ~~secretary of state~~ department of financial institutions within 10 days of the change.

**SECTION 35.** 137.01 (7) of the statutes is amended to read:

137.01 (7) OFFICIAL RECORDS TO BE FILED. When any notary public ceases to hold office, the notary public, or in case of the notary public's death the notary public's personal representative, shall deposit the notary public's official records and papers ~~in the office of the secretary of state~~ with the department of financial institutions. If the notary or personal representative, after the records and papers come to his or her hands, neglects for 3 months to deposit them, he or she shall forfeit not less than \$50 nor more than \$500. If any person knowingly destroys, defaces, or conceals any records or papers of any notary public, the person shall forfeit not less than \$50 nor

more than \$500, and shall be liable for all damages resulting to the party injured. The ~~secretary of state~~ department of financial institutions shall receive and safely keep all such papers and records.

**SECTION 9142. Nonstatutory provisions; Secretary of State.**

(1) TRANSFER OF TRADEMARK AND NOTARY FUNCTIONS TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS; TRANSITIONAL PROVISIONS.

(a) *Definitions.* In this subsection:

1. "Department" means the department of financial institutions.
2. "Office" means the office of the secretary of state.
3. "Relating to the office's trademark or notary functions" means relating to the office's functions and duties under section 137.01, 2009 stats., or chapter 132, 2009 stats.

(b) *Assets and liabilities.* On the effective date of this paragraph, the assets and liabilities of the office relating to the office's trademark or notary functions shall become the assets and liabilities of the department.

(c) *Staff.*

1. On the effective date of this subdivision, 1.0 FTE PR position relating to the office's trademark or notary functions and the incumbent employee, identified by the secretary of administration, holding that position in the office are transferred to the department.

2. The employee transferred under subdivision 1. to the division has all of the rights and the same status under subchapter V of chapter 111 and chapter 230 of the statutes in the division that he or she enjoyed in the office immediately before the transfer. Notwithstanding section 230.28 (4) of the statutes, the employee so

transferred who has attained permanent status in class is not required to serve a probationary period.

3. On the effective date of this subdivision, the remaining 1.0 FTE PR position of the office relating to the office's trademark or notary functions not transferred under subdivision 1. is deauthorized.

(d) *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the office relating to the office's trademark or notary functions is transferred to the department.

(e) *Contracts.* All contracts entered into by the office, in effect on the effective date of this paragraph, relating to the office's trademark or notary functions remain in effect and are transferred to the department. The department shall carry out any obligations under such a contract until the contract is modified or rescinded by the department to the extent allowed under the contract.

(f) *Rules and orders.*

1. All rules promulgated by the office relating to the office's trademark or notary functions that are in effect on the effective date of this subdivision remain in effect until their specified expiration dates or until amended or repealed by the department.

2. All orders issued by the office relating to the office's trademark or notary functions that are in effect on the effective date of this subdivision remain in effect until their specified expiration dates or until modified or rescinded by the department.

(g) *Pending matters.* Any matter relating to the office's trademark or notary functions pending with the office on the effective date of this paragraph is transferred to the department, and all materials submitted to or actions taken by the

office with respect to the pending matter are considered as having been submitted to or taken by the department.

(h) *Department of administration to arbitrate disputes.* In the case of disagreement between the secretary of financial institutions and the secretary of state with respect to any matter specified in paragraph (c), (d), (e), (f), or (g), the department of administration shall determine the matter and shall develop a plan for an orderly transfer.

(END)