

## CHAPTER 5

## SECRETARY OF STATE

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**5.01 CUSTODIAN OF RECORDS AND STATE SEAL.**

The secretary of state shall be the custodian of the state seal and of all records and documents of the state not expressly required by law to be kept by other state officials.

**History:** (59) *RL s 30*

**5.02 ASSISTANTS.**

The secretary of state shall appoint an assistant secretary of state, who shall perform all the duties of the office when the secretary is absent or disabled. The secretary may also employ a chief clerk, a recording clerk, and a stenographer, who, besides the duties indicated by their titles, shall perform such services in connection with the office as the secretary or the assistant may require.

**History:** (60) *RL s 31; 1986 c 444*

**5.03 CLERK OF GOVERNMENT SURVEYS.**

There is hereby created in the office of the secretary of state the position of clerk of government surveys and documents for the purpose of receiving and for the safe-keeping of all the records and archives of the office of United States surveyor general for the state as soon as they shall be received from the commissioner of the general land office at Washington, D.C. The secretary of state shall maintain a copy of government survey documents for public inspection. The original documents shall be preserved in a climate controlled environment prescribed by the secretary of state. The documents shall be maintained so that they are available for public inspection.

**History:** (61) *1907 c 416 s 1; 1921 c 197 s 1; 1981 c 244 s 1; 1991 c 205 s 1*

**5.04 [Repealed, 1961 c 561 s 17]****5.05 DUTIES OF SECRETARY.**

The secretary of state shall attend at the beginning of each legislative session, to call the members of the house of representatives to order and to preside until a speaker is elected.

**History:** (63) *RL s 32; 1961 c 561 s 1*

**5.06 AMENDMENT TO UNITED STATES CONSTITUTION; RATIFICATION, NOTICE.**

When the legislature shall ratify any amendment to the Constitution of the United States which shall be proposed by Congress, as provided by the Constitution of the United States, it shall be the duty of the secretary of state forthwith to transmit to the administrator of general services of the United States government official notice thereof. Such notice shall include the official certificate of the secretary of state of the

action of the legislature ratifying any such amendment under the hand of the secretary of state and attested by the great seal of the state.

**History:** (64) *Ex1912 c 13 s 1; 1979 c 50 s 1*

### 5.07 OATHS, ACKNOWLEDGMENTS.

The secretary of state shall have power to administer oaths and take acknowledgments and to certify the same, appending the great seal of the state as the seal of office.

**History:** (64-1) *1927 c 60 s 1; 1986 c 444*

#### 5.071 SECRETARY OF STATE'S DUTIES.

The secretary of state shall secure, file, and retain custodial control over a description, photograph, and reproduction proof of the impression of the seal for viewing by the public. The secretary shall also secure and file all historical information pertaining to the reproduction and use of the seal. The department of administration shall respond to any inquiries about duplication of the seal for state agencies.

**History:** *1983 c 119 s 3*

### 5.08 LEGISLATIVE MANUAL.

**Subdivision 1. Preparation.** The secretary of state shall prepare, compile, edit, and distribute for use at each regular legislative session, a convenient manual, properly indexed, and containing: The federal and state constitutions; the acts of Congress relating to the organization of the territory and state; the rules of order and joint rules of the two houses, and lists of their members, committees and employees; the names of all state officials, whether elected or appointed, and of all persons holding office from this state under the national government, including postmasters appointed by the president; the places where the said several officials reside, and the annual compensation of each; and statistical and other information of the kind heretofore published in the legislative manuals.

**Subd. 2. Distribution.** 15,000 copies of the legislative manual shall be printed and distributed as follows:

- (1) up to 25 copies shall be available to each member of the legislature on request;
- (2) 50 copies to the state historical society;
- (3) 25 copies to the state university;
- (4) 60 copies to the state library;

(5) two copies each to the Library of Congress, the Minnesota veterans home, the state universities, the state high schools, the public academies, seminaries, and colleges of the state, and the free public libraries of the state;

(6) one copy each to other state institutions, the elective state officials, the appointed heads of departments, the officers and employees of the legislature, the justices of the supreme court, the judges of the court of appeals and the district court, the senators and representatives in Congress from this state, and the county auditors;

(7) one copy to each public school, to be distributed through the superintendent of each school district; and

- (8) the remainder may be disposed of as the secretary of state deems best.

**History:** *1943 c 337 s 1,2; 1947 c 108 s 1; 1967 c 148 s 2; 1975 c 204 s 65; 1975 c 321 s 2; 1977 c 455 s 67; 1979 c 333 s 59; 1981 c 356 s 252; 1983 c 247 s 4*

### 5.09 LEGISLATIVE MANUAL, STUDENTS' EDITION.

The secretary of state may prepare, compile, edit, and distribute a brief edition of the legislative manual, as provided in section 5.08, suitable for school pupils.

**History:** *1959 c 415 s 1; 1977 c 455 s 68; 1992 c 513 art 3 s 18*

### 5.11 [Repealed, 1984 c 618 s 61]

**5.12 CERTIFICATE; CERTIFIED COPY OF DOCUMENT; FEE.**

The secretary of state shall charge a fee of \$5 for each certificate or certification of a copy of any document filed in the office of the secretary of state. The secretary of state shall charge a fee of \$3 for a copy of an original filing of a corporation, limited partnership, trade or service mark, or for the complete record of a certificate of assumed name. The secretary of state shall charge a fee of \$3 for a copy of any or all subsequent filings of a corporation, limited partnership, or trade or service mark. The secretary of state shall charge a fee of \$1 per page for copies of other non-uniform commercial code documents filed with the secretary of state.

**History:** *3Sp1981 c 2 art 1 s 9; 1988 c 682 s 1*

**5.13** [Repealed, 1988 c 686 art 5 s 10]

**5.14 TRANSACTION SURCHARGE.**

The secretary of state may impose a surcharge of \$10 on each transaction involving over-the-counter expedited service, other than simple copying requests, that takes place at the office of the secretary of state.

**History:** *1987 c 404 s 68; 1992 c 513 art 3 s 19*

**5.15 ACKNOWLEDGMENT OR NOTARIZATION NOT REQUIRED ON DOCUMENTS SUBMITTED TO THE SECRETARY OF STATE; PENALTIES OF PERJURY IMPOSED FOR FALSE OR UNAUTHORIZED SIGNATURES.**

No document submitted to the office of the secretary of state shall be required to be notarized. Signing a document submitted to the secretary of state constitutes "acknowledgment" as defined in section 358.41, clause (2), and "verification upon oath or affirmation" as defined in section 358.41, clause (3). A person who signs a document submitted to the secretary of state without authority to sign that document or who signs the document knowing that the document is false in any material respect is subject to the penalties of perjury set forth in section 609.48.

**History:** *1988 c 682 s 2*

**5.16 CORRECTION OF DOCUMENTS.**

**Subdivision 1. Procedure to correct inaccurate or defective instruments.** Whenever an instrument authorized to be filed with the secretary of state has been filed and is an inaccurate record of the action referred to in the instrument, contains an inaccurate or erroneous statement, or was defectively or erroneously executed, sealed, acknowledged, or verified, the instrument may be corrected by articles of correction. Articles of correction must be signed by the person who executed the original instrument or by a person authorized to sign on behalf of that person. In the case of an entity other than a natural person, the articles of correction must be signed by an authorized person.

**Subd. 2. Articles of correction.** The articles of correction must:

- (1) set forth the name of the person or entity who filed the instrument;
- (2) identify the instrument to be corrected by description and by the date of its filing with the secretary of state;
- (3) identify the inaccuracy, error, or defect to be corrected; and
- (4) set forth a statement in corrected form of the portion of the instrument to be corrected.

**Subd. 3. Filing articles of correction.** The articles of correction shall be delivered to the secretary of state. If the secretary of state finds that the articles of correction conform to law, the secretary of state shall, when all fees have been paid as required by law:

- (1) endorse on the articles of correction the word "filed" and the month, day, and year that the articles are filed; and
- (2) file and record the document in the office of the secretary of state.

**Subd. 4. Effect of filing articles of correction.** After articles of correction have been

filed and recorded in the office of the secretary of state, the instrument as corrected is considered to have been filed on the date the original instrument was filed; except that as to persons adversely affected by the correction, the instrument as corrected is considered to have been filed on the date the articles of correction were filed. A certificate issued by the secretary of state before an instrument is corrected, with respect to the effect of filing the original instrument, is considered to be applicable to the instrument as corrected as of the date the instrument as corrected is considered to have been filed under this section.

Subd. 5. **Fees.** The secretary of state shall collect a fee of \$35 for filing articles of correction.

**History:** 1988 c 682 s 3; 1991 c 205 s 2

### 5.17 SUBSTANTIAL COMPLIANCE.

The secretary of state may accept a filing if the information on the filing is in substantial compliance with the applicable law, even if information on the filing is not identical to equivalent information in the records of the secretary of state.

**History:** 1989 c 236 s 1

5.18 [Repealed, 1989 c 236 s 12]

5.21 [Repealed, 1980 c 615 s 61]

### 5.22 CONTEST OF REGISTRATION OF NAME.

Subdivision 1. **Notice of contest; deposit.** A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state by filing an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the person who subsequently registered the contested name. The notice to the secretary of state must be accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

Subd. 2. **Procedure.** (a) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name on the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days.

(b) If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest.

(c) If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing, the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing under chapter 14.

Subd. 3. **Standard of review.** The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

- (1) the strength or unique nature of the names;
- (2) the similarity of sound, appearance, or meaning of the names;
- (3) the intent of the parties;
- (4) the type of businesses engaged in or to be engaged in by the parties;
- (5) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;
- (6) the nature and quality of goods or services provided by the parties;
- (7) the level of sophistication of potential purchasers of goods or services offered by the parties;

(8) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and

(9) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

**Subd. 4. Decision; enforcement.** The secretary of state shall make a decision for one of the parties within ten days of the hearing and may order that the contested name be changed on the records of the office of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

**Subd. 5. Appeal.** A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

**Subd. 6. Liability.** The office of the secretary of state is not liable for damages incurred as a result of the registration of a name found to be the same or deceptively similar to another name already registered with the office of the secretary of state. The office of the secretary of state is not liable for damages that arise from the decision of the secretary of state in a contest under this section.

**History:** 1989 c 292 s 1

### 5.23 REMOVAL OF DOCUMENTS FROM THE PUBLIC RECORD.

**Subdivision 1. Failure to pay filing fee.** If an instrument authorized to be filed with the secretary of state has been submitted with a draft or other negotiable instrument that is returned without being honored, the secretary may remove the instrument from the public record. The secretary may also pursue collection of the dishonored draft or negotiable instrument and recover the face amount of the draft or negotiable instrument, any service fee, and any additional collection costs incurred to collect the amount. If the draft or negotiable instrument is honored, the instrument must be returned to the public record as of the date the draft or negotiable instrument is honored and the secretary may impose restrictions on the manner of payment that will be accepted for any future filings. This subdivision does not apply to financing statements filed under chapter 336.

**Subd. 2. Failure to pay fee.** If a party enters into a continuing agreement with the secretary of state for the receipt of information or products containing information and payment for services or products is made by a draft or other negotiable instrument that is returned without being honored, the secretary shall immediately terminate the agreement. The secretary may also pursue collection of the dishonored draft or negotiable instrument and recover the face amount of the draft or negotiable instrument and any additional costs incurred to collect the amount. If the draft or negotiable instrument is honored, the agreement may be reinstated and the secretary may impose restrictions on the manner of payment that will be accepted during the course of the agreement.

**Subd. 3. Failure to pay direct access charges.** If a customer who has subscribed with the secretary of state for direct computer access to the secretary's data bases makes payment for information received with a draft or other negotiable instrument that is returned without being honored, the secretary shall immediately terminate the customer's access to the data bases. The secretary may also pursue collection of the dishonored draft or negotiable instrument and recover the face amount of the draft or negotiable instrument and any additional costs incurred to collect the amount. If the draft or negotiable instrument is honored, access may be restored and the secretary may impose restrictions on the methods of payment that will be acceptable.

**Subd. 4. Collection of all amounts.** The secretary of state must collect the face amount of the dishonored draft or negotiable instrument, any service fee, and all costs of collection in every possible instance. Collection must occur whether or not the instrument is returned to the public record or the customer continues to receive the informa-

tion products or access to the data base. Uncollectible drafts must be processed according to applicable Minnesota law.

**History:** 1991 c 205 s 3

#### **5.24 SUPPLEMENTAL FILING AND INFORMATION SERVICES.**

(a) The secretary of state may offer services to the public that supplement filing and information services already authorized by law. The secretary of state may discontinue the supplemental services at any time. The services must be designed to provide the public with a benefit by improving the manner of providing, or by providing an alternative manner of payment for, existing services provided by the secretary of state.

(b) The cost of providing the supplemental services to the public, as determined by the secretary of state, must be recovered from the recipients of the services. The funds collected for the services must be deposited in the uniform commercial code account and are continuously available to the secretary of state for payment of the cost of providing the supplemental services.

**History:** 1991 c 205 s 4