

## 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 safekeeping 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#### 5.04 [Repealed, 1961 c 561 s 17]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 CERTIFICATES AND CERTIFICATIONS.**

**Subdivision 1. Fees.** 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 nonuniform commercial code documents filed with the secretary of state.

**Subd. 2. Certificate of good standing.** Upon payment of the proper fee, the secretary of state shall issue a certificate of good standing to a person when a business entity is in good standing as defined in section 5.26.

**Subd. 3. Certificate of not in good standing.** Upon payment of the proper fee, the secretary of state shall issue a certificate of not in good standing to a person when a business entity is not in good standing as defined in section 5.26.

**Subd. 4. Certificate of registration.** Upon payment of the proper fee, the secretary of state shall issue a certificate of registration to a person when a business filing with the secretary has been made that does not create a separate legal entity.

**History:** 3Sp1981 c 2 art 1 s 9; 1988 c 682 s 1; 1997 c 137 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 \$20 on each transaction involving over-the-counter expedited service that takes place at the office of the secretary of state.

**History:** 1987 c 404 s 68; 1992 c 513 art 3 s 19; 1995 c 224 s 48

#### **5.15 ACKNOWLEDGMENT OR NOTARIZATION ON DOCUMENTS; PENALTIES OF PERJURY.**

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. However, the secretary will not accept a contest between persons registered under sections 333.001 to 333.06. 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; 1995 c 128 art 3 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 payment order or item that is rejected or dishonored, the secretary must remove the instrument from the public record. The secretary may also pursue collection of the rejected or dishonored payment order or item and recover the face amount of the payment order or item, any service fee, and any additional collection costs incurred to collect the amount. If the payment order or item is honored, the instrument must be returned to the public record as of the date the payment order or item 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 payment order or item that is rejected or dishonored, the secretary shall immediately terminate the agreement. The secretary may also pursue collection of the rejected or dishonored payment order or item and recover the face amount of the payment order or item and any additional costs incurred to collect the amount. If the payment order or item 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 databases makes payment for information received with a payment order or item that is rejected or dishonored, the secretary shall immediately terminate the customer's access to the databases. The secretary may also pursue collection of the rejected or dishonored payment order or item and recover the face amount of the payment order or item and any additional costs incurred to collect the amount. If the payment order or item 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 rejected or dishonored payment order or item, 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 information products or access to the database. Uncollectible payment orders and items must be processed according to applicable Minnesota law.

**History:** 1991 c 205 s 3; 1997 c 137 s 2

**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.

**5.25 SERVICE OF PROCESS.**

**Subdivision 1. Who may be served.** A process, notice, or demand required or permitted by law to be served upon an entity governed by chapter 221, 302A, 303, 317A, 322A, 322B, 323, 330, 540, or 543 may be served on: (1) the registered agent, if any; (2) if no agent has been appointed then on an officer, manager, or partner of the entity; or (3) if no agent, officer, manager, or partner can be found at the address on file with the secretary of state, the secretary of state as provided in this section.

**Subd. 2. Service on motor carriers and unions, groups, or associations.** When service of process is to be made on the secretary of state according to section 221.67 or 540.152, the procedure in this subdivision applies. Service must be made by filing the process, notice, or demand with the secretary of state along with the payment of a fee of \$35. Within ten days of the filing with the secretary of state, a copy of the process, notice, or demand shall be sent to the defendant's last known address by the person who caused it to be served on the secretary of state.

**Subd. 3. Service on certain business entities; auctioneers.** When service of process is to be made on the secretary of state for entities governed by chapter 302A, 317A, 322A, 322B, 323, 330, or 543, the procedure in this subdivision applies. Service must be made by filing with the secretary of state two copies of the process, notice, or demand along with payment of a \$35 fee.

**Subd. 4. Service on foreign corporation.** (a) Service of a process, notice, or demand may be made on a foreign corporation authorized to transact business in this state by delivering to and leaving with the secretary of state, or with an authorized deputy or clerk in the secretary of state's office, two copies of it and a fee of \$50 in the following circumstances: (1) if the foreign corporation fails to appoint or maintain in this state a registered agent upon whom service of process may be had; (2) whenever a registered agent cannot be found at its registered office in this state, as shown by the return of the sheriff of the county in which the registered office is situated, or by an affidavit of attempted service by a person not a party; (3) whenever a corporation withdraws from the state; or (4) whenever the certificate of authority of a foreign corporation is revoked or canceled.

However, after a foreign corporation withdraws from the state, according to section 303.16, service upon the corporation may be made according to this section only when based upon a liability or obligation of the corporation incurred within this state or arising out of any business done in this state by the corporation before the issuance of a certificate of withdrawal.

(b) A foreign corporation is considered to be doing business in Minnesota if it makes a contract with a resident of Minnesota to be performed in whole or in part by either party in Minnesota, or if it commits a tort in whole or in part in Minnesota against a resident of Minnesota. These acts are considered to be equivalent to the appointment by the foreign corporation of the secretary of state of Minnesota and successors to be its true and lawful attorney upon whom may be served all lawful process in actions or proceedings against the foreign corporation arising from or growing out of the contract or tort. Process must be served in duplicate upon the secretary of state, together with the address to which service is to be sent and a fee of \$50. The making of the contract or the committing of the tort is considered to be the agree-

ment of the foreign corporation that any process against it which is so served upon the secretary of state has the same legal force and effect as if served personally on it within the state of Minnesota.

**Subd. 5. Service on dissolved, withdrawn, or revoked business entity.** (a) Process, notice, or demand may be served on a dissolved, withdrawn, or revoked business entity that was governed by chapter 302A, 303, 317A, 322A, 322B, or 323 as provided in this subdivision. The court shall determine if service is proper.

(b) If a business entity has voluntarily dissolved or has withdrawn its request for authority to transact business in this state, or a court has entered a decree of dissolution or revocation of authority to do business, service must be made according to subdivision 3 or 4, so long as claims are not barred under the provisions of the chapter that governed the business entity.

(c) If a business entity has been involuntarily dissolved or its authority to transact business in this state has been revoked, service must be made according to subdivision 3 or 4.

**Subd. 6. Duties of secretary of state.** In the case of service of process according to subdivision 3 or 4, the secretary of state shall immediately cause one copy of a service of process to be forwarded by certified mail addressed to the business entity:

(1) in care of the agent of the business entity, at its registered office in this state as it appears in the records of the secretary of state;

(2) at the address designated in the application for withdrawal, if the business entity has withdrawn from this state in the manner provided by law;

(3) at the address provided by the party submitting the document for service of process if the business entity's authority to do business in this state has been revoked; or

(4) at the address provided by the party submitting the document for service of process if the business entity has never been authorized to do business in this state.

**Subd. 7. Time to answer.** If a summons is to be served upon the secretary of state according to subdivision 3 or 4, the business entity so served has 30 days from the date of mailing by the secretary of state in which to answer the complaint.

**Subd. 8. Other methods of service.** Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a business entity in another manner.

**History:** 1995 c 128 art 1 s 1; 1997 c 137 s 3

## 5.26 GOOD STANDING.

**Subdivision 1. Definition.** "Good standing" means that a business entity has complied with all of the filing and registration requirements with the office of the secretary of state described in the entity's governing chapter.

**Subd. 2. Effect of status.** (a) When a business entity is in good standing it may amend its organizing document that is on file with the secretary of state.

(b) When a business entity is in good standing, the secretary of state shall issue a certificate of good standing as described in section 5.12.

(c) A business entity that is not in good standing may participate in a merger where it does not survive the merger transaction or may dissolve or terminate its existence. It may not amend its organizing document or file other documents with the secretary of state, other than documents required to return the business entity to good standing.

(d) When a business entity is not in good standing, the secretary of state shall issue a certificate of not in good standing as described in section 5.12. The secretary of state shall not issue a certificate of good standing with respect to a business entity that is not in good standing.

**Subd. 3. Reinstatement.** Reinstatement of good standing is controlled by the provisions of the chapter that governs the business entity.

**History:** 1997 c 137 s 4