

CHAPTER 181.

DOMESTIC CORPORATIONS.

DISSOLUTION AND REORGANIZATION.

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181.01 Insolvency; suspension for a year. Whenever any corporation shall have remained insolvent, or shall have neglected or refused to pay and discharge its notes or other evidences of debt, or shall have suspended its ordinary business for one year, it shall be deemed to have surrendered the rights, privileges and franchises granted or acquired under any law, and shall, in a proper action, be adjudged to be dissolved.

Note: Contributions by an employer to the bankruptcy act. In re Oshkosh Foundry, the unemployment insurance fund is entitled to priority of payment as a tax under 28 F Supp. 412.

181.02 Continuance after dissolution. All corporations whose term of existence shall expire by their own limitation, or which shall be dissolved, shall nevertheless continue to be bodies corporate for 3 years thereafter for the purpose of prosecuting and defending actions, and of enabling them to settle and close up their business, dispose of and convey their property and divide their assets and for no other purpose; and when any corporation shall become so dissolved the directors or managers of the affairs of such corporation at the time of its dissolution shall, subject to the power of courts to make a different provision, continue to act as such during said term of 3 years, with full power to elect officers, fill vacancies in the board of directors, settle its affairs, dispose of and convey all its property, collect the outstanding credits, pay the debts owing by such corporation and the costs of such administration and divide the residue of the money and other property among the stockholders or members thereof. [1945 c. 572]

Note: Although a corporation ceased to exist after dissolution and the lapse of 3 years, its debts were not extinguished, and a creditor could follow its assets into the hands of a transferee if the property was transferred to be applied by the transferee so far as necessary to the payment of the transferor's indebtedness, including the plaintiff's demand, or if the property was transferred for the purpose of hindering, delaying, and defrauding the plaintiff, without the transferor receiving fair value or equivalent for its property and leaving it without any funds or property with which to pay its debts. (Stats. 1939) West Milwaukee v. Bergstrom Mfg. Co., 242 Wis. 137, 7 NW (2d) 587. Where articles of incorporation provide for definite date of termination, amendment for purpose of prolonging life of corporation cannot be filed after date of expiration. (Stats. 1931) 21 Atty. Gen. 536.

181.03 Voluntary dissolution. Any corporation may dissolve by the adoption of a written resolution to that effect, at a meeting of its members called for that purpose, by a vote of two-thirds of the stock, entitled to vote, in the case of stock corporations, and of one-half the members in other corporations; but when a mode of dissolution shall have been provided in the articles of organization, it shall be conducted accordingly. No corporation owning or operating a public utility shall be dissolved, except upon consent of the public service commission to be issued only after hearing by the commission, on at least 30 days' notice given to each municipality in which such utility is operated, and an opportunity to be heard is furnished to all such municipalities and stockholders in such corporation. Duplicate copies of such resolution, with a certificate thereto affixed, signed by the president and secretary, or the corresponding officers, and sealed with the corporate seal, stating the fact and date of the adoption of such resolution; that such is a true copy of the original, the whole number of shares of stock, and of members of such corporation, and the number of members who, or of the shares of stock whose owners, voted for its adoption, and whether or not such corporation owns any real property in this state, and in the case of such ownership, the names of the persons holding stock in said corporation at the time of its dissolution, and the shares or proportional interest of said persons in the corporate property, shall be forwarded to the secretary of state, one copy to be filed by the secretary of state and the other copy to be returned with certificate of the secretary of state attached, showing the date when such copy was filed by the secretary of state, which said copy shall be recorded by the register of deeds of the county in which such corporation is located within 30 days after filing with the secretary of state, and thereupon such corporation shall cease to exist except for the winding up of its affairs. And the

register of deeds shall note on the margin of the record of the articles of incorporation, the volume and page where such resolution is recorded. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such resolution was recorded, and shall be entitled to a fee of 25 cents therefor, to be paid by the person presenting such resolution for record. Whenever the articles of organization shall provide a term to the duration of a corporation it shall cease to exist at the time so fixed. [1945 c. 372]

Note: Railroad corporation may be dissolved under this section. 20 Atty. Gen. 49. Secretary of state may not refuse to accept for filing certificate of dissolution from corporation whose corporate rights and privileges he has declared forfeited under section 180.08 (2). 25 Atty. Gen. 240.

181.04 Title to property after dissolution. (1) Whenever any domestic corporation shall have been dissolved, owning any real property in this state, the resolution of dissolution required by section 181.03 to be recorded with the register of deeds of the county in which such corporation is located, shall be prima facie evidence of the title of said persons in said corporate property.

(2) This section shall not affect the rights of creditors of the corporation, and shall not apply where any court has made disposition of the property, or where the property has been conveyed by the corporation, or distributed among the stockholders, and the conveyance is of record in the office of the register of deeds. [1945 c. 372]

181.05 Purchasers of corporate rights may reorganize. The owner of the rights, powers, privileges and franchises of any domestic corporation, acquired by purchase under a mortgage or judicial sale, may, at any time within two years after such purchase, organize anew by filing articles appropriate to corporations for similar purposes, and thereupon shall have the rights, privileges and franchises which such corporation had at the time of such purchase and sale, and such as are provided by these statutes applicable thereto.

181.06 [Repealed by 1929 c. 92]

181.06 Consolidation or merger of stock corporations. (1) **PROCEDURE FOR MERGER.** Any 2 or more corporations may merge into one of such corporations in the following manner: The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, hereinafter designated the surviving corporation.

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation.

(d) Any change in the articles of organization of the surviving corporation to be effected by such merger.

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(2) **PROCEDURE FOR CONSOLIDATION.** Any 2 or more corporations may consolidate into a new corporation in the following manner: The board of directors of each corporation shall, by resolution adopted by a majority vote of the members of each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, hereinafter designated the new corporation.

(b) The terms and conditions of the proposed consolidation.

(c) The manner and basis of converting the shares of each corporation into shares, or other securities, or obligations of the new corporation.

(d) With respect to the new corporation, all of the statements required to be set forth in articles of organization for corporations organized under chapter 180.

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

(3) **MEETINGS OF SHAREHOLDERS.** The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at either an annual or special meeting of shareholders. Written notice shall be delivered not less than 20 days before such meeting, either personally or by mail, to each shareholder of record entitled to vote at such meeting. Such notice shall state the place, day, hour and purpose of the meeting and that any shareholder must file notice of his objection to the plan at least 48 hours prior to the meeting, as provided in subsection (10) hereof, and shall be accompanied by a copy of a summary of the plan of merger or of consolidation. Such notice may be waived in writing.

(4) **APPROVAL BY SHAREHOLDERS.** At each such meeting, a vote of the shareholders entitled to vote thereat shall be taken on the proposed plan of merger or consolidation.

The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, of each of such corporations, unless any class of shares of any such corporation is entitled to vote as a class in respect thereof. As to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class in respect thereof and of the total outstanding shares entitled to vote at such meeting. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of organization, would entitle such class of shares to vote as a class.

(5) ARTICLES OF MERGER OR CONSOLIDATION. Upon such approval, articles of merger or articles of consolidation shall be executed and verified in duplicate by the president and secretary, or if none, the correspondent officers of each corporation, and shall be sealed with the corporate seal, if there be any, of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation.

(b) As to each corporation, the number of shares outstanding, and the number of shares entitled to vote, and, if the shares of any class are entitled to vote as a class, the designation of each class and the number of outstanding shares thereof entitled to vote.

(c) As to each corporation, the number of shares voted for and against such plan respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(6) FILING ARTICLES. (a) Such duplicate articles of merger or consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles of merger or consolidation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

1. Indorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof.

2. File one of such duplicate originals in his office.

3. Return the other duplicate original to the corporation or its representative.

(b) The secretary of state shall collect a fee of \$25 for filing articles of merger or consolidation.

(c) Such other duplicate original of the articles of merger or consolidation shall be recorded, within 40 days of such filing, in the offices of the register of deeds of the counties of this state in which the respective corporations so consolidating or merging shall have their original articles of organization recorded, and in the county where the merged or consolidated corporation is to be located. The respective registers of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such copy was recorded, and shall be entitled to a fee of 25 cents therefor to be paid by person presenting such duplicate original for record.

(7) EFFECTIVE DATE OF MERGER OR CONSOLIDATION. Upon receipt of the requisite certificates, the certificate of merger or consolidation shall be issued by the secretary of state. The merger or consolidation shall be effected upon the due recording of the duplicate original of the articles of merger or consolidation.

(8) EFFECT OF MERGER OR CONSOLIDATION. When such merger or consolidation has been effected:

(a) The several corporations, parties to the plan of merger or consolidation, shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(b) The separate existence of all corporations, parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(c) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under chapter 180.

(d) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed or be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) In the case of a merger, the articles of organization of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of organization are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organization of corporations organized under chapter 180 shall be deemed to be the articles of organization of the new corporation.

(g) The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the amount thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

(9) MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of this state with respect to foreign corporations if it is to do business in this state, and in every case it shall file with the secretary of state of this state:

1. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

2. An irrevocable appointment of the secretary of state of this state or someone residing within the state as its agent to accept service of process in any such proceeding, and

3. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(c) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

(10) RIGHTS OF DISSENTING SHAREHOLDERS. (a) If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, at least 48 hours prior to the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within 20 days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing said shares, such fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the 20-day period shall be bound by the terms of the merger or consolidation.

(b) If within 30 days after the date on which such merger or consolidation was effected the value of such share is agreed upon between the dissenting shareholder and the surviving or new corporation, payment therefor shall be made within 90 days after the date on which such merger or consolidation was effected upon the surrender of the

certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(c) If within such period of 30 days or any extension thereof the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within 60 days after the expiration of the 30-day period or extension thereof, file a petition in the circuit court of the county in which the surviving or new corporation is located, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of 5 per cent per annum to the date of such judgment. Costs shall be taxed as the court may deem equitable. The judgment shall be payable only upon the surrender to the surviving or new corporation of the certificate representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

(d) The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if the corporation shall abandon the merger or consolidation. Written notice of such abandonment shall be given by the corporation to its stockholders within 30 days after such abandonment.

(11) PENDING ACTIONS SAVED. Any action or proceeding pending by or against any corporation consolidated or merged, may be prosecuted to judgment, as if such consolidation or merger had not taken place, or the corporation resulting from or surviving such consolidation or merger may be substituted in its place. [1947 c. 15]

181.07 Merger; nonstock. (1) **AUTHORITY.** Any two or more corporations organized under the laws of this state, whether under general corporation law or private and local laws, for similar purposes and without capital stock, may consolidate or merge into a single corporation which may be any one of said constituent corporations or a new corporation to be formed by means of such consolidation or merger as shall be specified in the agreement hereinafter required; the directors, or a majority of them, of such corporations as desire to consolidate or merge, may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, and setting forth such other provisions as may be required or permitted by the statutes to be set out in the articles of incorporation, with such other details and provisions as are deemed necessary.

(2) **PROCEDURE.** Said agreement shall be submitted to the members of each constituent corporation at a meeting thereof called separately for the purpose of taking the same into consideration, at which a quorum shall be present, and if the votes of a majority of the members of each such corporation present at said meeting shall be for the adoption of said agreement, then said agreement shall be executed by the officers of each such corporation and a duplicate copy thereof, with certificates thereto affixed executed on behalf of each corporation as provided in section 180.07 and conforming thereto as nearly as may be, shall be filed with the secretary of state and a copy recorded with the register of deeds as in said section provided; and thereupon the said consolidation or merger shall be effective and such record or a certified copy thereof shall be evidence of the act of consolidation or merger of said corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger. [1945 c. 48]

Note: Nonstock co-operative associations organized under the laws of this state may merge under this section. 35 Atty. Gen. 230.