

CHAPTER 181

NONSTOCK CORPORATIONS

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181.01 Title. This chapter shall be known and may be cited as "The Wisconsin Nonstock Corporation Law".

181.02 Definitions. As used in this chapter, unless the context otherwise requires the term:

(1) "Articles of incorporation" includes the original articles of incorporation, or special law or charter corresponding thereto, and all amendments, and includes restated articles of incorporation.

(2) "Board of directors" means the group of persons vested with the management of the affairs of the corporation, irrespective of the name by which such group is designated.

(3) "By-laws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(4) "Corporation" or "domestic corporation" means a nonstock nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(5) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(6) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(7) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or by-laws. Persons, corporations organized under any law, whether stock or nonstock, partnerships and associations may be members.

(8) "Nonprofit corporation" means a corporation, no part of the income of which is distributable to its members, directors or officers.

(9) "Nonstock corporation" means a corporation without capital stock.

History: 1983 a. 189.

181.03 Purposes. Corporations may be organized under this chapter for any lawful purpose whatever, except banking, insurance, and building or operating public railroads, but subject always to provisions elsewhere in the statutes relating

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to the organization of specified kinds or classes of corporations.

181.04 General powers. Each corporation, when no inconsistent provision is made by law or by its articles of incorporation, shall have power:

- (1) To exist perpetually.
- (2) To sue and be sued, complain and defend, in its corporate name.
- (3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
- (5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations, however or wherever organized, and of associations, trusts, partnerships, or individuals, or of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof.
- (7) To make contracts, including guarantees, and incur liabilities; to borrow money at such rates of interest as the corporation may determine; to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
- (8) To invest its funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.
- (9) To conduct its business and affairs, carry on its operations, and have offices and exercise the powers granted by this chapter within or without this state.
- (10) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.
- (11) To make and alter by-laws not inconsistent with its articles of incorporation or with the laws of this state, for the administration and the regulation of the affairs of the corporation.
- (12) To make donations for the public welfare or for charitable, scientific, educational or religious purposes.
- (13) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.
- (14) To cease its corporate activities and surrender its corporate franchise.
- (15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive plans for directors, officers and employes of the corporation and its subsidiaries.
- (16) To have and exercise all powers necessary or convenient to effect its purposes.

History: 1973 c. 128.

Revisions of the nonstock corporation law. Hardy, 1974 WBB No. 3.

181.041 Definitions applicable to indemnification and insurance provisions. In ss. 181.041 to 181.053:

(1) "Corporation" means a domestic corporation and any domestic or foreign predecessor of a domestic corporation where the predecessor corporation's existence ceased upon the consummation of a merger or other transaction.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a corporation.

(b) A natural person who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another corporation or foreign corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a corporation, is or was serving an employe benefit plan because his or her duties to the corporation also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the corporation or by any other person.

History: 1987 a. 13.

181.042 Mandatory indemnification. (1) A corporation shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the corporation.

(2) (a) In cases not included under sub. (1), a corporation shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the corporation, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the corporation and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the corporation or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 181.043.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that

indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the corporation.

(4) (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 181.045.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the corporation, in connection with the same proceeding.

History: 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.

181.043 Determination of right to indemnification. Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the corporation, the director or officer seeking indemnification under s. 181.042 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of members as provided in s. 181.17, if there are members having voting rights. Membership rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 181.049.

(6) By any other method provided for in any additional right to indemnification permitted under s. 181.047.

History: 1987 a. 13.

181.044 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a corporation may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the corporation with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the corporation.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the corporation, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 181.043 that indemnification under s. 181.042 (2) is not required and that indemnification is not ordered by a court under s. 181.049 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to

repay the allowance. The undertaking may be secured or unsecured.

History: 1987 a. 13.

181.045 Corporation may limit indemnification. (1) A corporation's obligations to indemnify under s. 181.042 may be limited as follows:

(a) If the corporation is incorporated on or after June 13, 1987, by the articles of incorporation, including any amendments or restatements of the articles of incorporation.

(b) If the corporation was incorporated before June 13, 1987, by an amendment to, or restatement of, the articles of incorporation which becomes effective on or after June 13, 1987.

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

History: 1987 a. 13.

181.047 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 181.042 and 181.044 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the corporation.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the corporation may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the corporation that the director or officer did not breach or fail to perform a duty he or she owes to the corporation which constitutes conduct under s. 181.042 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 181.041 to 181.053 do not affect a corporation's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the corporation.

History: 1987 a. 13.

181.049 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the corporation, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 181.043 (5) or for review by the court of an adverse determination under s. 181.043 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 181.042 (1) or (2). If the court also determines that the corporation unreasonably refused the director's or officer's request for indemnification, the court shall order the corporation to pay the director's or officer's reasonable

expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 181.042 (2).

History: 1987 a. 13.

181.051 Indemnification and allowance of expenses of employees and agents. A corporation may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles of incorporation or bylaws, by general or specific action of the board of directors or by contract.

History: 1987 a. 13.

181.053 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the corporation against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer, regardless of whether the corporation is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 181.042, 181.044, 181.047 and 181.051.

History: 1987 a. 13.

181.057 Effect of unauthorized corporate acts. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or director against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding, and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts.

History: 1979 c. 110; 1987 a. 13 s. 14; Stats. 1987 s. 181.057.

181.06 Corporate name. The corporate name:

(1) Shall contain the word "corporation", "incorporated", or "limited", or an abbreviation of one of such words; this subsection shall apply only to corporations organized or changing their name after the enactment of this chapter.

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than a

purpose for which corporations may be organized under this chapter.

(3) Shall not be the same as or deceptively similar to the name of any corporation or any limited partnership existing under any law of this state, or any foreign corporation or any foreign limited partnership authorized to transact business or conduct affairs in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter, or ch. 180, except that this subsection shall not apply if the applicant files with the secretary of state either of the following:

(a) The written consent of such other corporation or holder of a reserved name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(4) Subsections (1), (2) and (3) shall not apply to any corporation organized under any other chapter of the statutes which may elect to become subject to this chapter.

(5) A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all of the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business or conduct affairs in, this state.

History: 1973 c. 128; 1985 a. 29.

181.07 Reserved name. (1) The exclusive right to the use of a corporate name may be reserved by:

(a) Any person intending to organize a corporation under this chapter.

(b) Any domestic corporation intending to change its name.

(2) The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant or making a telephone application to reserve a specified corporate name. If the secretary of state finds that the name is available for corporate use, he or she shall reserve the same for the exclusive use of the applicant for a period of 60 days. The secretary of state shall cancel the telephone application to reserve a specified corporate name if the secretary of state does not receive the proper fee within 10 business days after the application.

(3) Any corporation, domestic or foreign entitled to the use of its corporate name under the laws of this state, may upon merger, consolidation, change of name or dissolution reserve the exclusive right to that corporate name for a period of not to exceed 10 years by filing with the secretary of state an application to reserve the right to that name, executed by the corporation. This application shall be filed with the secretary of state simultaneously with the filing of articles of merger, consolidation or dissolution or with the filing of articles of amendment or restated articles which change the corporate name.

(5) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

History: 1973 c. 128; 1977 c. 418; 1981 c. 337; 1985 a. 338.

181.08 Registered agent. Each corporation shall have and continuously maintain in this state a registered agent, which agent may be an individual resident in this state, or a domestic corporation organized under this chapter or ch. 180 or a foreign corporation authorized to transact business in this state. The name and address of the registered agent shall be filed with the secretary of state.

History: 1985 a. 29.

181.09 Change of registered agent or his address. (1) A corporation may change its registered agent or his address by executing and filing with the secretary of state a statement setting forth:

- (a) The name of the corporation;
- (b) The name and address, including street and number, if any, of its registered agent as changed;
- (c) That such change was authorized by resolution duly adopted by its board of directors, or resulted from the action of a governmental agency in changing the address of the registered agent without a corresponding change in physical location.

(2) Such statement shall be executed by a principal officer of the corporation and the corporate seal shall be thereto affixed.

(3) (a) In lieu of a change pursuant to subs. (1) and (2), a corporation may change the name or address of its registered agent, or both, by setting forth the name and address of its registered agent, as changed, in any of the following:

1. Articles of amendment of the corporation's articles of incorporation or in restated articles of incorporation filed and recorded as provided in this chapter.

2. The corporation's annual report required under s. 181.651.

(b) A change made under par. (a) 2 is effective upon the filing of the annual report under s. 181.653.

(4) If a registered agent's address is changed to another place within the county, such change of address may be indicated by executing and filing a statement as required in sub. (1), except it need be signed only by the registered agent and need not be responsive to sub. (1) (c) and shall state that a copy of the statement has been mailed to the corporation.

History: 1973 c. 128; 1977 c. 29; 1983 a. 134; 1987 a. 399.

181.095 Resignation of registered agent. (1) A registered agent may resign by executing and filing with the secretary of state a statement in duplicate setting forth:

- (a) The name of the corporation for which the registered agent is acting.
- (b) The name of the registered agent.
- (c) The address, including street and number, if any, of the corporation's then principal office in this state.
- (d) That the registered agent resigns.

(2) Such statement shall be executed by the registered agent, if an individual, and, if a corporation or a foreign corporation, by a principal officer, and the seal of such corporate registered agent shall be affixed thereto.

(3) The secretary of state shall note on one of the duplicates the date of filing and mail the same to the corporation at its principal office as shown by the statement filed.

(4) If no change of registered agent is previously made, the resignation shall be effective on the expiration of 60 days after the date of filing the statement.

181.10 Registered agent as an agent for service. (1) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found then the secretary of state shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such copies of such process, notice or demand are served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office as shown by the records in his office or at such other mailing address as the corporation may file with him for such purpose.

(3) The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. The certificate of the secretary of state that he was served with any such process, notice or demand, and that he mailed same as required by law, shall be evidence of service.

(4) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

181.11 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, and the qualifications, rights, and method of acceptance of members of each class shall be set forth in the articles of incorporation, or in the by-laws if the articles so provide. A corporation may issue certificates evidencing membership therein.

181.12 Termination and transfer of membership. (1) Unless otherwise provided in the articles of incorporation, membership shall be terminated by death, voluntary withdrawal, or expulsion, and thereafter all the rights of the member in the corporation or in its property shall cease.

(2) Members may be expelled in the manner provided in the articles of incorporation, or in the by-laws, if the articles so provide; if no provision is made therein, expulsion may be effected by an affirmative vote of two-thirds of the members entitled to vote, or of two-thirds of the directors where there are no members entitled to vote.

(3) No member may transfer his membership, or any right arising therefrom, unless transfer is authorized by the articles of incorporation or in the by-laws, if the articles so provide.

181.13 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. Thereafter bylaws may be adopted either by the members or the board of directors, but no bylaw adopted by the members shall be amended or repealed by the directors, unless the bylaws adopted by the members shall have conferred such authority upon the directors. Any bylaw adopted by the board of directors shall be subject to amendment or repeal by the members as well as by the directors.

Adoption by custom and acquiescence discussed. O'Leary v. Howard Young Medical Center, 89 W (2d) 156, 278 NW (2d) 217 (Ct. App. 1979).

181.14 Meetings of members. (1) Meetings of members may be held at such place either within or without this state, as may be provided in or pursuant to the by-laws. In the absence of any such provision, all meetings shall be held at the principal office of the corporation in this state.

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87-88 Wis. Stats. 2794

(2) An annual meeting of the members shall be held at such time as may be provided in or pursuant to the by-laws, and if not so provided, an annual meeting shall be held on each anniversary of the beginning of corporate existence. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the members may be called by the president, the board of directors, by members having one-twentieth of the votes entitled to be cast at such meeting, or by such other officers or such other proportion of the members as may be provided in the articles of incorporation or the by-laws.

181.15 Notice of members' meetings. Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, (unless a different time shall be provided by this chapter, the articles of incorporation or the by-laws) either personally or by mail, by or at the direction of the president, the secretary, or the officer or person calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. In lieu of such notice, if the articles of incorporation or bylaws so provide, notice may be given by publishing the same as a class 2 notice, under ch. 985, near the principal office of the corporation.

181.16 Voting. (1) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or in the by-laws if the articles so provide. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

(2) A member may vote in person, or unless the articles of incorporation or by-laws provide otherwise, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the by-laws may provide that such elections may be conducted by mail.

(3) A corporate member's vote may be cast by the president of the member corporation, or by any other officer or proxy appointed by the president of such corporation, in the absence of express notice of the designation of some other person by the board of directors or by-laws of the member corporation.

181.17 Quorum. Members holding one-tenth of the votes entitled to be cast, present in person or represented by proxy, shall constitute a quorum at a meeting of members, provided that the articles of incorporation or by-laws may fix either a larger or smaller number of members which shall constitute a quorum. A majority of the votes entitled to be cast by the members present in person or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the by-laws.

181.175 Division into districts or units, delegates, meetings. (1) The articles of incorporation or by-laws may provide for the division of the members into geographical or other districts or units to be designated by the board of directors

and may provide for annual and special meetings to be held within the designated districts or units for the election of district or unit delegates to represent the members of the district or unit at the annual and special meetings of the corporation. Unless otherwise provided in the articles of incorporation or by-laws, the number of delegates to be elected in each district or unit may be determined from time to time by the board of directors. Such delegates shall have the powers and duties of members at meetings of the members and meetings of the delegates may be held in lieu of meetings of members.

(2) Written notice of meetings of delegates, stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to the delegates either personally or by mail addressed to each delegate at his address as it appears on the records of the corporation and deposited in the United States mail, with postage prepaid thereon, not less than 10 days before the date set for such meeting.

(3) Each delegate shall have one vote at meetings of delegates and the number of delegates constituting a quorum at such meetings shall be provided in the articles of incorporation or by-laws.

(4) Written notice of meetings of members within districts or units stating the place, day and hour of the meeting and in case of a special meeting the purpose or purposes for which the meeting is called, shall be given to members within the district either personally or by mail addressed to each member entitled to vote at such meeting at his address as it appears on the records of the corporation and deposited in the United States mail, with postage prepaid thereon, not less than 10 days before the date set for such meeting. In lieu of such notice, if the articles of incorporation or bylaws so provide, notice may be given by publishing the same as a class 2 notice, under ch. 985, in the district.

(5) Each member shall have one vote at the district or unit meetings of members and the number of members constituting a quorum at such meetings shall be provided in the articles of incorporation or by-laws.

(6) If the articles of incorporation or by-laws provide for the division of the members into districts or units, the articles of incorporation or by-laws may also provide for the election or appointment of district or unit committees and officers. Such district committees or officers shall have such powers and duties in the administration of the district or unit affairs of the corporation in their respective districts or units as may be determined by the board of directors, provided that such district or unit committees or officers shall not have power to dispose of any property of the corporation, expend its funds or obligate it in any way, unless specifically authorized to do so by the board of directors. Any such district or unit committees or officers shall be given appropriate designations which will prevent their being confused with directors and officers of the corporation.

181.18 Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or by-laws so require. The by-laws may prescribe other qualifications for directors.

181.19 Directors' authority to establish compensation. Unless otherwise provided in the articles of incorporation or by-laws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all directors for

services to the corporation as directors, officers or otherwise, or to delegate such authority to an appropriate committee. The board of directors also shall have authority to provide for or to delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers and employes and to their estates, families, dependents or beneficiaries on account of prior services rendered by such directors, officers and employes to the corporation.

181.20 Number and election of directors. (1) The number of directors of a corporation shall not be less than 3. Subject to such limitation, the number of directors shall be fixed by or in the manner provided in the articles of incorporation, or, if the articles of incorporation so provide, by or in the manner provided in the by-laws.

(2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the by-laws. Thereafter, directors shall be elected or appointed in the manner and for terms provided in the articles of incorporation or the by-laws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

(3) Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(4) A director may be removed from office for cause, or for any reason provided in the articles of incorporation or by-laws. The articles of incorporation or by-laws may provide the procedure for any such removal.

History: 1973 c. 128.

Court is reluctant to interfere in internal affairs of voluntary organizations, unless internal rules governing affairs of organization were construed by organization as to be clearly subversive of personal or property rights. *Attoe v. Madison Pro. Policemen's Asso.* 79 W (2d) 199, 255 NW (2d) 489.

181.21 Vacancies. (1) Unless otherwise provided in the articles of incorporation or by-laws, any vacancy occurring in the board of directors, including a vacancy created by an increase in the number of directors, may be filled until the next succeeding annual election by the affirmative vote of a majority of the directors then in office, although less than a quorum.

(2) In the event that the board of directors ceases to exist, and there are no members having voting rights, the members without voting rights shall thereupon have power to elect a new board.

181.22 Quorum of directors. A majority of the number of directors fixed pursuant to this chapter shall constitute a quorum for the transaction of affairs unless a different proportion is required by the articles of incorporation or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater proportion is required by this chapter, the articles of incorporation or the by-laws.

181.225 Director conflicts of interest. No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or has a material financial interest, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting

of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if 1) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or 2) the fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or 3) the contract or transaction is fair and reasonable to the corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

History: 1973 c. 128.

181.23 Committees of directors. If the articles of incorporation or by-laws so provide, the board of directors by resolution adopted by a majority of the number of directors fixed pursuant to this chapter may designate one or more committees, each committee to consist of 3 or more directors elected by the board of directors, which to the extent provided in said resolution or in the articles of incorporation or in the by-laws, shall have and may exercise, when the board of directors is not in session, the powers of the board of directors in the management of the affairs of the corporation, except action in respect to election of officers or the filling of vacancies in the board of directors or committees created pursuant to the authority granted in this section. The board of directors may elect one or more of its members as alternate members of any such committee who may take the place of any absent member or members at any meeting of such committee. The designation of such committee or committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

181.24 Place and notice of directors' meetings. (1) Unless provided otherwise in the articles of incorporation or by-laws, meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting and objects thereto to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the by-laws.

181.25 Officers. (1) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the by-laws so provide, any 2 or more offices may be held by the same person, except the offices of president and secretary, and the offices of president and vice president.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the articles of incorporation or in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the articles of incorporation or the by-laws.

(3) The articles of incorporation or the by-laws may provide that any one or more officers of the corporation shall be members of the board of directors.

(4) The officers of a corporation may be designated by such other titles as may be provided in the articles of incorporation or the by-laws; and in such case any document required or permitted by this chapter to be signed by the president, vice president, secretary or assistant secretary may be signed by such officer as may be stated in such document to correspond to the officer so required or permitted to sign.

History: 1979 c. 110.

181.26 Removal of officers. Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment shall not of itself create contract rights.

See note to 181.20, citing *Attoe v. Madison Pro. Policemen's Assn.*, 79 W (2d) 199, 255 NW (2d) 489.

181.265 Report of names and addresses of officers or directors. Whenever initial officers are selected, or changes are made in the principal officers or directors of a corporation, the corporation may file with the secretary of state a report setting forth the names and addresses of all the principal officers or directors, or both if there have been changes in both.

History: 1983 a. 27.

181.27 Books and records. (1) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its principal office or at the office of its secretary a record giving the names and addresses of members entitled to vote, or records showing where such information can be obtained. Any books, records or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. All relevant books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

(2) In any pending action or proceeding, or upon petition for such purpose, any court of record in this state may, upon notice fixed by the court, hearing and proper cause shown, and upon suitable terms, order any or all of the books and records of account, minutes, and record of members of a corporation, and any other pertinent documents in its possession, or transcripts from or duly authenticated copies thereof, to be brought within this state, and kept therein at such place and for such time and for such purposes as may be designated in such order; and any corporation failing to comply with such order shall be subject to involuntary dissolution under this chapter, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

History: 1973 c. 128.

Member of corporation was properly denied access to contents of legal opinion given to corporation. *Belth v. American Risk & Ins. Assn.*, 141 W (2d) 65, 413 NW (2d) 654 (Ct. App. 1987).

181.28 Shares of stock and dividends prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes and may make distributions upon dissolution or final liquidation as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

181.283 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the corporation, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the corporation whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

History: 1987 a. 13.

181.285 Consideration of interests in addition to members' interests. In discharging his or her duties to the corporation and in determining what he or she believes to be in the best interests of the corporation, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the corporation.

(2) The effects of the action on communities in which the corporation operates.

(3) Any other factors the director or officer considers pertinent.

History: 1987 a. 13.

181.287 Limited liability of directors and officers. (1) Except as provided in subs. (2) and (3), a director or officer is not liable to the corporation, its members or creditors, or any person asserting rights on behalf of the corporation, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the corporation or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(c) The liability of a director under s. 181.29.

(3) Subsection (2) (a) and (b) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

History: 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.

181.29 Directors' liability on loans to officers and directors. In addition to any other liabilities imposed by law, directors who vote in favor of making a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of the loan until repaid, unless the directors prove that the loan was made for a proper purpose in furtherance of the corporation's affairs. Section 181.287 does not apply to the liability of a director under this section.

History: 1987 a. 13.

181.295 Members' derivative actions. (1) No action may be instituted or maintained in the right of any corporation by a member of such corporation unless:

(a) The plaintiff alleges in the complaint that he was a member at the time of the transaction or any part thereof of which he complains, or that his membership thereafter devolved upon him by operation of law from a member who was a member at the time of the transaction or any part thereof complained of.

(b) The plaintiff alleges in the complaint with particularity his efforts to secure from the board of directors such action as he desires and alleges further that he has either informed the corporation or such board of directors in writing of the ultimate facts of each cause of action against each such defendant director or delivered to the corporation or such board of directors a true copy of the complaint which he proposes to file, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) The complaint in any such action shall be filed within 20 days after the action is commenced.

(2) The action shall not be dismissed or compromised without the approval of the court.

(3) If anything is recovered or obtained as the result of the action whether by means of a compromise and settlement or by a judgment, the court may, out of the proceeds of the action, award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and may direct the plaintiff to account to the corporation for the remainder of such proceeds.

(4) In any action brought in the right of any corporation by fewer than 3% of the members, the defendants shall be entitled on application to the court to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or is excessive.

History: 1973 c. 128.

181.297 Limited liability of volunteers. (1) DEFINITION. In this section, "volunteer" means a natural person, other than an employe of the corporation, who provides services to or on behalf of the corporation without compensation.

(2) **IMMUNITY.** Except as provided in sub. (3), a volunteer is not liable to any person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from any act or omission as a volunteer, unless the person asserting liability proves that the act or omission constitutes any of the following:

(a) A violation of criminal law, unless the volunteer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(b) Wilful misconduct.

(c) If the volunteer is a director or officer of the corporation, an act or omission within the scope of the volunteer's duties as a director or officer.

(d) An act or omission for which the volunteer received compensation or any thing of substantial value in lieu of compensation.

(3) **EXCEPTIONS.** (a) Except as provided in par. (b), this section does not apply to any of the following:

1. A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

2. A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

3. Claims arising from the negligent operation of an automobile, truck, train, airplane or other vehicle by a volunteer.

4. A proceeding against a volunteer who is licensed, certified, permitted or registered under state law and which is based upon an act or omission within the scope of practice under the volunteer's license, certificate, permit or registration.

5. Proceedings based upon a cause of action for which the volunteer is immune from liability under s. 146.31 (2) and (3), 146.37, 895.44, 895.48, 895.51 or 895.52.

(b) Paragraph (a) 1 and 2 does not apply to a proceeding brought by or on behalf of a governmental unit, authority or agency in its capacity as a contractor.

History: 1987 a. 13.

181.30 Incorporators. One or more natural persons of the age of 18 years or more may act as incorporator or incorporators of a corporation by signing, acknowledging and filing articles of incorporation for such corporation.

History: 1971 c. 213 s. 5; 1981 c. 337.

181.31 Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) The name of the corporation.

(b) The period of existence, unless perpetual.

(c) The purpose or purposes for which the corporation is organized. It shall be a sufficient compliance with this paragraph to state, either alone or with other purposes, that the corporation may engage in any lawful activity within the purposes for which corporations may be organized under this chapter, and all such lawful activities shall by such statement be deemed within the purposes of the corporation, subject to expressed limitations, if any.

(d) If the corporation is to have no members, a statement to that effect.

(e) If the corporation is to have one or more classes of members, any provision desired to be set forth designating the class or classes of members and stating the qualifications and rights of the members of each class.

(f) If the directors or any of them are not to be elected or appointed by one or more classes of members, a statement of the manner in which such directors shall be elected or

appointed, or that the manner of such election or appointment shall be provided in the by-laws.

(g) The mailing address and county of the principal office of the corporation in some city, village or town in this state and the name and address, including street and number, if any, of its initial registered agent.

(h) The number of directors or manner of fixing the number of directors, or a provision that the number of directors shall be fixed by or in the manner provided in the bylaws, and the name and address of each of the initial directors.

(i) The name and address of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. The articles of incorporation may include any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation including any provision which under this chapter is required or permitted to be set forth in the by-laws and any provision for distribution of assets on dissolution or final liquidation. Whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

History: 1973 c. 128; 1977 c. 29; 1981 c. 337.

181.32 Filing and recording articles of incorporation. The articles of incorporation shall be filed and recorded as provided in s. 181.67. Duplicate originals of the articles of incorporation shall be submitted to the secretary of state, who shall file one original in his or her office and forward the other within 5 days to the register of deeds of the county in which the corporation's principal office is located for recording. On filing an original, the secretary of state shall issue a certificate of incorporation.

History: 1981 c. 337; 1985 a. 274.

Cross Reference: See 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

181.33 Effect of issuance of certificate of incorporation. The certificate of incorporation issued pursuant to s. 181.32 shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation.

181.34 Organization meetings. (1) After articles of incorporation have been filed, an organization meeting of the board of directors named in the articles of incorporation shall be held either within or without this state at the call of a majority of the incorporators, for the adoption of bylaws, for the election of officers, if the articles of incorporation or proposed bylaws provide for election of officers by the board of directors, and for the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director named, which notice shall state the time and place of the meeting.

(2) A first meeting of the members may be held at the call of the board of directors, or at the call of a majority of the directors, upon at least 3 days' written notice, for such purposes as shall be stated in the notice of the meeting.

History: 1981 c. 337.

181.35 Right to amend articles of incorporation. A corporation may amend its articles of incorporation in any and as many respects as may be desired, provided that its articles of incorporation as amended contain only such provisions as

might be lawfully contained in original articles of incorporation if made at the time of making such amendment.

History: 1973 c. 128.

181.36 Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) Where there are members having voting rights, amendments may be made at any special meeting duly called for that purpose or at any annual meeting, provided that a statement of the nature of the proposed amendment is included in the notice of the meeting. An amendment shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(b) Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Any number of amendments may be submitted and voted upon at any one meeting.

181.37 Articles of amendment. The articles of amendment shall be executed by the president or a vice president, and the secretary or an assistant secretary and shall be sealed with the corporate seal, if there be any, and shall set forth:

(1) The name of the corporation and the county in which its principal office is located.

(2) The amendment so adopted,

(3) The date of the adoption of the amendment,

(4) If sub. (6) does not apply and there are members having voting rights, a statement of the total number of members with voting rights, the number of such members present in person or represented by proxy at the meeting at which the amendment was adopted and the number of members voting for and against such amendment, respectively.

(5) If sub. (6) does not apply and there are no members having voting rights, a statement that there are no members having voting rights, the date of the meeting of the board of directors at which the amendment was adopted and a statement of the fact that such amendment received the affirmative vote of a majority of the directors in office, or such larger number as may be required by the articles of incorporation.

(6) Any action of a governmental agency in changing the address of the corporation's principal office, if there is no corresponding change in physical location.

History: 1981 c. 337; 1983 a. 134.

181.38 Filing of articles of amendment. The articles of amendment shall be filed and recorded, and upon filing of the articles, the secretary of state may issue a certificate of amendment.

History: 1977 c. 29; 1981 c. 337.

Cross Reference: See 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

181.39 Restated articles of incorporation. (1) A corporation may by action taken in the same manner as required for amendment of articles of incorporation adopt restated articles of incorporation consisting of the articles of incorporation as amended to date. Restated articles of incorporation may, but need not be, adopted in connection with an amendment to the articles of incorporation. Restated articles of incorporation shall contain a statement that they supersede and take the place of the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) In lieu of setting forth the mailing address of the principal office of the corporation and the name and address of its initial registered agent, it shall set forth the mailing address and county of the principal office of the corporation and the name and address of its registered agent at the time of the adoption of the restated articles of incorporation; and

(b) No statement need be made with respect to the number or names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation shall be executed, filed and recorded in the manner prescribed in this chapter for articles of amendment and on filing shall supersede and take the place of the theretofore existing articles of incorporation and amendments thereto. The secretary of state shall upon request certify a copy of the articles of incorporation, or the articles of incorporation as restated, or any amendments to either thereof.

History: 1977 c. 29; 1981 c. 337.

The contents of restated articles of incorporation do not have to comply with 181.37, relating to the contents of amended articles. 60 Atty. Gen. 152.

181.40 Filing and recording court order under bankruptcy laws. The secretary of state and register of deeds shall upon delivery to them respectively file and record in the manner and places and upon payment of fees as provided in this chapter in respect to articles of amendment, duly certified copies of any order of a court of the United States in proceedings under the national bankruptcy laws, if such order effects an amendment to the articles of incorporation. It shall be the duty of the principal officers of such corporation to cause each such order to be so filed and recorded promptly after such order has become final.

181.41 Effect of amendment. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be party, or the existing rights of persons other than members, and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

181.42 Procedure for merger. (1) Any 2 or more domestic corporations, subject to the provisions of this chapter, and organized for substantially the same or similar purposes, may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by 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 by the surviving corporation;

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

(c) The respective interests and rights of members of the constituent corporations in the surviving corporation;

(d) Any change in the articles of incorporation 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.

181.43 Procedure for consolidation. (1) Any 2 or more domestic corporations, subject to the provisions of this chapter and organized for substantially the same or similar purposes, may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by 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 respective interests and rights of members of the constituent corporations in the new corporation;

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

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

181.44 Approval of merger or consolidation. (1) A plan of merger or consolidation shall be adopted in the following manner:

(a) Where the members of any merging or consolidating corporation have voting rights, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at each such meeting.

(b) Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

181.45 Articles of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed by the president or a vice president and the secretary or an assistant secretary 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) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation a statement of the total number of members with voting rights, the number of such members present in person or represented by proxy at the meeting at which the plan was adopted and the number of members voting for and against such plan, respectively.

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the affirmative vote of a majority of the directors in office, or such larger number as may be required by the articles of incorporation.

(d) As to each corporation, the county in which its principal office is located.

(2) Such articles of merger or consolidation shall be filed in the office of the secretary of state and shall be recorded in the offices of the registers of deeds of the counties of this state in which the respective corporations so consolidating or merging have their principal offices and in the county in which the surviving or new corporation is to have its principal office.

(3) The certificate of merger or consolidation may be issued by the secretary of state upon expiration of the period for filing a certificate of abandonment.

History: 1973 c. 128; 1977 c. 29; 1981 c. 337.

Cross Reference: See 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

181.46 Effective date of merger or consolidation; abandonment. The merger or consolidation shall be effected upon the filing of the articles of merger or consolidation, or at such time within 31 days thereafter as is designated in said articles. If, after the filing of articles of merger or consolidation, the merger or consolidation is abandoned pursuant to provisions therefor set forth in the plan of merger or consolidation, there shall be executed by the president or a vice president and the secretary or an assistant secretary of each corporation, and shall be sealed with the corporate seal of each corporation, a certificate of abandonment setting forth the fact and date of such abandonment; and such certificate shall within 30 days of such abandonment be filed in the office of the secretary of state and recorded in each office in which such articles of merger or consolidation were recorded.

History: 1973 c. 128; 1981 c. 337.

181.47 Effect of merger or consolidation. When such merger or consolidation has been effected:

(1) 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.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease. The authority of the officers of any corporation, the separate existence of which has so ceased, to act thereafter on behalf of such corporation shall continue with respect to the due execution in the name of such corporation of tax returns, instruments of transfer or conveyance and other documents where the execution thereof is required or convenient to comply with any provision of law, of any contract to which such corporation was a party or of the plan of merger or consolidation.

(3) 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 this chapter.

(4) 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, 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 to 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.

(5) 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.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation 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 incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

History: 1973 c. 128.

181.48 Merger or consolidation of domestic and foreign corporations. (1) 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: 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.

(2) 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 insofar as the laws of such other state provide otherwise.

181.485 Conversion of cooperative. A cooperative organized without capital stock may elect to convert itself to a nonstock corporation by adopting and filing restated articles of incorporation in the manner required under ch. 185. The restated articles of incorporation shall conform to the requirements of s. 181.31 and shall contain a statement that the cooperative elects to convert itself to a corporation subject to this chapter. The election to become a corporation subject to this chapter is effective upon the filing of the restated articles of incorporation.

History: 1985 a. 30.

181.49 Sale, lease or exchange of assets. (1) A sale, lease, exchange, or other disposition of less than substantially all of the property and assets of a corporation, and the mortgage or pledge of any or all property and assets of a corporation, whether or not made in the usual and regular course of its affairs, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of property, real or personal, including shares, obligations or other securities of any other corporation, domestic or foreign, whether or not such other corporation is organized under this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the members shall be required, unless otherwise provided by law or in the articles of incorporation.

(2) A sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation

may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations or other securities of any corporation, domestic or foreign, whether or not such other corporation is organized under this chapter, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of at least two-thirds of the members present or represented by proxy at such meeting. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by members.

(b) Where there are no members, or no members having voting rights, a sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

History: 1973 c. 128.

181.50 Voluntary dissolution. (1) A corporation may dissolve and wind up its affairs in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy.

(b) Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(2) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

181.51 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, education or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this chapter;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this chapter, provided that assets received and held by corporations organized for charitable, religious, eleemosynary, benevolent, educational or similar purposes shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

181.52 Plan of distribution. Where the articles of incorporation do not provide for the distribution of assets on dissolution, a plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, any plan of distribution shall be submitted to a vote at a meeting of members having voting rights, which may be either a regular or a special meeting. Written notices setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes entitled to be cast by members present or represented by proxy at such meeting.

(2) Where there are no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

181.53 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the filing of articles of dissolution, as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) Written notice of a special meeting, or of the annual meeting of members, stating that the purpose, or one of the

purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members.

(2) At such meeting a vote of the members entitled to vote thereat shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption at least two-thirds of the votes entitled to be cast by members present or represented by proxy.

(3) Where there are no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(4) Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs, but the revocation of voluntary dissolution proceedings shall not invalidate any transfer or distribution of assets made prior to such revocation.

History: 1981 c. 337.

181.54 Articles of dissolution. When all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by the president or a vice president, and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:

(1) The name of the corporation;

(2) Where there are members having voting rights, a statement of the total number of members with voting rights, the number of such members present in person or represented by proxy at the meeting at which the resolution to dissolve was adopted and the number of members voting for and against such resolution, respectively;

(3) Where there are no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the affirmative vote of a majority of the directors in office, or such larger number as may be required by the articles of incorporation;

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter;

(6) That there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit;

(7) The names and respective addresses including street and number of the corporation directors as of the date of execution of the articles of dissolution or if there be no directors at such time, then of its last acting board of directors.

(8) The county in which the corporation's principal office is located.

History: 1981 c. 337, 391.

181.55 Filing and recording of articles of dissolution and effect thereof. The articles of dissolution shall be filed and recorded, and when the articles are filed the existence of the

corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action of members, directors and officers as provided in this chapter. Upon the filing of the articles, the secretary of state may issue a certificate of dissolution.

History: 1977 c. 29; 1981 c. 337.

Cross Reference: See 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

181.555 Property omitted from final distribution. Upon the filing of the articles of dissolution, or of a decree of dissolution, the title to any property inadvertently or otherwise omitted from the final distribution shall vest in the directors named in the articles or decree of dissolution as trustees for the benefit of the creditors, members and distributees of the corporation as their respective rights and interests may appear. The trustees shall distribute such property or its proceeds to the persons beneficially entitled, and for this purpose a majority of the directors acting as trustees shall have full authority and capacity to collect and administer such property; to adjust and settle any claims against such property; to waive, release or subordinate reversionary rights or interests in real estate, or rights arising out of restrictions or conditions enforceable by the corporation; to sell, assign, or otherwise transfer such property in whole or in part on such terms and conditions as they in their discretion may determine; and to do such other lawful acts as may be necessary or proper for them to execute their trust. In the event any director named in the articles or decree of dissolution shall cease to be a trustee through death, resignation or otherwise, a majority of the surviving trustees or the sole surviving trustee shall have full powers to act under this section. In the event there shall at any time be no trustee or in the event any trustee cannot with reasonable diligence be found, then the circuit court for the county in which the last principal office of the corporation was located shall have power to appoint a trustee or trustees upon application to the court by any person found by the court to have an interest in such property or its disposition. A sole trustee, or a majority of the trustees, may at any time make application to the circuit court of the county where the corporation had its last registered office to have the court liquidate such property pursuant to the jurisdiction of the circuit court to liquidate assets and business of a corporation as provided in this chapter.

History: 1981 c. 337.

181.56 Involuntary dissolution. (1) A corporation may be dissolved involuntarily by a decree of any circuit court in an action commenced by the attorney general when it is established that:

(a) The corporation's certificate of incorporation was procured through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(c) The corporation has failed for 90 days to appoint and maintain a registered agent in this state; or

(d) The corporation has solicited or accepted money or property and failed to use the money or property for the purpose for which it was solicited or accepted, or has fraudulently solicited money or fraudulently used the money solicited; or

(e) The corporation has failed to comply with a court order for the production of books, records or other documents of the corporation as provided in this chapter; or

(f) The corporation does or omits any act which amounts to a surrender of its corporate rights, privileges or franchises.

(1m) In case the attorney general on application refuses to bring action based on sub. (1) (f), leave to bring the same by a private party shall be granted only on notice to the attorney general and the proposed defendant; and the court on granting leave in such case may require the prosecutor to give adequate security to the state to indemnify it and the defendant against all taxable costs therein.

(2) If prior to the entry of a decree, the corporation shall cure all defaults complained of, and shall pay all penalties thereon, and shall pay the costs of such action, the action for such cause shall abate.

(3) A corporation may be dissolved involuntarily under s. 946.86.

(4) (a) If it is established by the records in the office of the secretary of state that a corporation failed to file its annual report as required by this chapter for the preceding 5 years, the secretary of state may dissolve the corporation involuntarily in the following manner:

1. The secretary of state shall give the corporation notice of its delinquency by 1st class mail addressed to its situs.

2. If the delinquent corporation is not restored to good standing as provided under s. 181.653 (4) within 90 days after the notice was mailed, the secretary of state shall issue a certificate of involuntary dissolution, which shall state the fact of involuntary dissolution, the date and cause of the dissolution and the dissolved corporation's situs.

3. The secretary of state shall file the original certificate of involuntary dissolution and mail a copy to the former corporation at its situs.

(b) Upon the issuance of the certificate of involuntary dissolution, the corporation shall cease to exist without any judicial proceedings and thereafter the dissolved corporation may not transact its ordinary business or exercise corporate powers except as provided under ss. 181.55, 181.555 and 181.65.

(c) The secretary of state shall rescind the dissolution of a corporation involuntarily dissolved under this subsection and issue a certificate stating the rescission if all of the following are met:

1. The corporation files with the secretary of state 2 affidavits, each executed by a different person who is a principal officer of the corporation, stating that the corporation did not receive the notice under par. (a) 1.

2. If the corporation was issued its certificate of incorporation after January 1, 1985, the corporation pays to the secretary of state \$50 in liquidated damages to cover the efforts of the secretary of state in rescinding the involuntary dissolution.

3. The corporation adopts, files and records an amendment to its articles of incorporation changing its name to a name available for use in this state, if the secretary of state finds that the name of the corporation seeking rescission of its involuntary dissolution is the same as or deceptively similar to the name of another corporation as prohibited by s. 181.06 (3).

(d) In this subsection and in s. 181.555, "situs" means a corporation or former corporation's last-known principal office as shown by the most recently filed annual report, or if none, the address of its registered agent, or if none, the last-known address of any known director or incorporator.

(5) The secretary of state shall rescind the dissolution of a corporation involuntarily dissolved under 1983 Wisconsin Act 475, section 7 (2) and issue a certificate stating the rescission if all of the following are met:

(a) The corporation files with the secretary of state 2 affidavits, each executed by a different person who is a principal officer of the corporation, stating that the corpora-

tion did not receive actual notice as a result of the publication of notice under 1983 Wisconsin Act 475, section 7 (2) (a).

(b) The corporation files a designation of registered agent and address in the manner required for changing a registered agent under s. 181.09 (1) and (2).

(c) The corporation adopts, files and records an amendment to its articles of incorporation changing its name to a name available for use in this state, if the secretary of state finds that the name of the corporation seeking rescission of its involuntary dissolution is the same as or deceptively similar to the name of another corporation as prohibited by s. 181.06 (3).

History: 1981 c. 280; 1983 a. 192, 475; 1985 a. 88.

181.57 Jurisdiction of the circuit court to liquidate assets and business of corporation. (1) Circuit courts shall have full power to liquidate the assets and business of a corporation.

(a) In an action by a member or director when it is established:

1. That the directors are deadlocked in the management of the corporate affairs and the members are unable to break the deadlock, or there are no members having voting rights, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

2. That the acts of the directors or those in control of the corporation are illegal, or fraudulent; or

3. That the corporate assets are being misapplied or wasted; or

4. That the corporation is unable to carry out its purposes.

(b) In an action by a creditor when the claim of the creditor has been reduced to judgment and an execution thereupon returned unsatisfied and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(d) When an action has been commenced by the attorney general to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

(e) In an action under s. 946.86.

(2) Proceedings under this section shall be brought in the circuit court for the county in which the principal place of business of the corporation is situated or in which the principal office of the corporation is located.

(3) It shall not be necessary to make members or directors parties to any such action or proceeding unless relief is sought against them personally.

History: 1981 c. 280.

181.58 Procedure in liquidation of corporation by circuit court. (1) In proceedings to liquidate the assets and affairs of a corporation the court shall have power to issue injunctions,

to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by members. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the

proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Assets held for a charitable, religious, eleemosynary, benevolent, educational or similar use, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation, pursuant to a plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the by-laws to the extent that the articles of incorporation or the by-laws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(e) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct, provided that assets received and held by corporations organized for charitable, religious, eleemosynary, benevolent, educational or similar purposes shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

(3) The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property wherever situated.

181.59 Qualifications of receivers. A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: 1973 c. 128.

181.60 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors and members of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims including claims to the assets based on membership. If the court requires the filing of

claims it shall fix a date, which shall not be less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed shall be barred, by order of court, from participating in the distribution of the assets of the corporation.

181.61 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

181.62 Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all claims filed and allowed shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses and claims, all the property and assets have been applied so far as they will to their payment, the court shall enter a decree dissolving the corporation whereupon the existence of the corporation shall cease. The decree shall state the names and respective addresses including street and number of the corporation's directors as of the date of execution of the articles of dissolution, or if there be no directors at such time, then of its last acting board of directors.

181.63 Filing of decree of dissolution. In case the court enters a decree dissolving a corporation the clerk of such court shall cause a certified copy of the decree to be filed and recorded. Upon the filing of the decree the secretary of state shall issue a certificate of dissolution. No fee shall be charged for such filing or recording.

History: 1973 c. 128; 1981 c. 337.

181.64 Deposits with state treasury. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or member who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, may be reduced to cash and deposited with the state treasury of this state and shall be paid over without interest to such creditor or member or to his legal representative, upon proof satisfactory to the state treasurer of his right thereto.

181.65 Survival of remedy after dissolution. The dissolution of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or members, for any right or claim existing or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as is appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 2 years so as to extend its period of duration.

History: 1973 c. 128.

181.651 Annual report of domestic corporation. (1) Each corporation shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) The name of the corporation, the address, including street and number, if any, of its principal office.

(b) The names and respective addresses, including street and number, if any, of its directors and principal officers.

(bm) The name and address, including street and number, if any, of its registered agent.

(c) A statement whether the corporation was engaged in actual activity during the 12 months immediately preceding the date of the report and the general nature of the activity.

(2) The annual report shall be made on forms prescribed and furnished by the secretary of state, and the information contained in the report shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, assistant secretary, or treasurer, or, until the first election of officers, by one of its incorporators, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

(3) The secretary of state shall forward by 1st class mail a report form to every corporation in good standing not later than 60 days prior to the date on which the corporation is required by this chapter to file an annual report. The form shall list the information from the previous annual report submitted by the corporation and request the corporation to make the necessary changes to update the report.

History: 1983 a. 475; 1985 a. 29; 1987 a. 399.

181.653 Filing of annual report of domestic corporation.

(1) The annual report shall be delivered to the secretary of state in each year following the year in which the corporation's articles of incorporation are filed by the secretary of state, during the calendar year quarter in which the anniversary date of filing occurs. Unless the secretary of state finds that the report fails to conform to the requirements of law, the secretary of state shall file the same. If the secretary of state finds that it does not so conform the secretary of state shall return the same to the corporation for any necessary corrections, in which event the late fee prescribed in this section for failure to file such report within the time provided does not apply, if the report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days after it was mailed to the corporation for correction.

(2) Any such report not filed as required by sub. (1) may be filed only upon payment to the secretary of state of the filing fee plus a late fee of \$11.

(3) If the report is not filed during the calendar year quarter as required by sub. (1), the corporation shall not be in good standing. Within the next 6 months the secretary of state shall mail to the corporation a notice that it is no longer in good standing. Until the corporation is restored to good standing the secretary of state shall not accept for filing any documents respecting such corporation except documents incident to its dissolution.

(4) The corporation may be restored to good standing by delivering to the secretary of state a current annual report conforming to the requirements of law and by paying to the secretary of state the not to exceed \$21 late filing fee plus not to exceed \$10 for each calendar year or part of a calendar year during which the corporation has not been in good standing, not exceeding a total of \$121.

History: 1983 a. 475; 1985 a. 29, 338.

181.66 Foreign corporations. (1) Foreign corporations need not obtain authority to conduct affairs in this state, but

shall be subject to the same restrictions, penalties and liabilities imposed upon domestic corporations of like character, and shall not conduct any affairs which a corporation organized under this chapter is not permitted to conduct, but nothing contained in this chapter shall be construed to regulate the organization or the internal affairs of a foreign corporation.

(2) A foreign corporation conducting its affairs or acquiring, holding or disposing of property in this state, shall by so doing be deemed to have thereby appointed the secretary of state as its agent and representative upon whom any process, notice or demand may be served in any action or proceeding arising out of or relating to any affairs conducted or property acquired, held or disposed of within this state. Service of such process, notice or demand shall be made by serving a copy upon the secretary of state or by filing such copy in his office, and such service shall be sufficient service upon said foreign corporation, provided that notice of such service and a copy of the process, notice or demand are within 10 days thereafter sent by mail by the plaintiff to the defendant at its last-known address, and that the plaintiff's affidavit of compliance herewith is appended to the process, notice or demand. The secretary of state shall keep a record of all such processes, notices and demands which shows the day and hour of service.

(3) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

181.665 Omission of seal. Whenever in this chapter it is provided that any document be sealed with the corporate seal, no corporate seal shall be required if the document includes a statement or notation to the effect that the corporation has no seal.

181.667 Recording change of principal office. If a document submitted to the secretary of state for filing under this chapter changes the county of the corporation's principal office:

(1) An original of the document or a duplicate original endorsed by the secretary of state shall be recorded in each county;

(2) The document shall specify the county of the former principal office and the new principal office; and

(3) A certificate of the secretary of state listing the type and date of filing of recordable documents previously filed by the corporation shall be recorded in the county of the new principal office.

History: 1981 c. 337.

181.67 Procedure on filing and recording of documents.

(1) If a document is required to be filed and recorded under this chapter, all of the following shall be included when the document is submitted for filing:

(a) Separate originals of the document for the secretary of state and for the register of deeds of each county in which the document is required to be recorded.

(b) A check payable to the secretary of state in the amount of the filing fee prescribed under s. 181.68.

(c) Separate checks in the amount of the recording fee prescribed under s. 59.57 (1) (a) payable to the register of deeds of each county in which the document is required to be recorded.

(2) (a) Unless the document does not conform to law, the secretary of state shall endorse on each original "Filed" and the date of filing and shall file one original in his or her office.

(b) The secretary of state shall forward to each register of deeds the check under sub. (1) (c) and an original document or duplicate endorsed by the secretary of state, within 5 days of filing.

(c) A register of deeds receiving a check and document forwarded under par. (b) shall record the document. If the document is not articles of incorporation, the register of deeds shall note on the margin of the record of the articles of incorporation the volume and page where the document is recorded.

(3) Each week the secretary of state shall forward to each register of deeds a listing of all documents received during the preceding week for filing and recording as required under this chapter. For each document, the listing shall specify the type of document, the name of the corporation, the name of the county of the corporation's principal office, and the date of filing.

(4) A document required to be filed and recorded under this chapter is effective on filing with the secretary of state, except as provided in s. 181.46. An error or omission in recording the document or a certificate under s. 181.667 (2) with a register of deeds does not affect its effectiveness.

(5) A document filed with the secretary of state under this chapter before May 7, 1982 is effective unless the records of the secretary of state show that the document was recognized as ineffective because of a recording defect and the secretary of state or the corporation acted in reliance on the ineffectiveness of the document.

(6) (a) The secretary of state may waive any of the following:

1. Submission of more than one original of a document.
2. An omission or defect in a document, if the secretary of state determines from the face of the document that the omission or defect is immaterial.

(b) A waiver under par. (a) occurs when the document is filed.

History: 1981 c. 337.

Cross Reference: See 14.38 (14) for provision that certain corporate documents may not be filed with secretary of state unless they bear the drafter's name.

181.68 Fees for filing documents and issuing certificates.

(1) The secretary of state shall charge and collect for:

- (a) Filing articles of incorporation, \$35;
- (b) Filing articles of amendment, \$25, except that no fee may be collected for an amendment showing only a change of address resulting from the action of a governmental agency if there is no corresponding change in physical location and if 2 copies of the notice of the action are submitted to the secretary of state;
- (c) Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, \$30;
- (d) Filing articles of dissolution, \$10;
- (e) Filing statement of change of registered agent or address of registered agent under s. 181.09 (1), or a statement of resignation of registered agent, \$10, except that no fee may be collected for a change of address resulting from the action of a governmental agency if there is no corresponding change in physical location and if 2 copies of the notice of the action are submitted to the secretary of state;

(f) Receiving service of any process, notice or demand authorized to be served on the secretary of state by this chapter, \$10;

(g) Filing an application to reserve a corporate name for 60 days, \$10; making a telephone application to reserve a corporate name for 60 days, \$20; and filing an application to reserve a corporate name under s. 181.07 (3), \$50, plus \$10 for each year of reservation in excess of 5 years;

(gm) Filing an annual report of a domestic corporation, not to exceed \$10;

(h) Filing a notice of transfer of a reserved corporate name, \$10;

(i) Answering a request for verification of the existence or status of a corporation, its name, the name and address of its registered agent, or the date of incorporation, the following amounts:

1. If written, \$4.
2. If conveyed by facsimile machine, \$7.

(im) Answering in writing a request for information specified in par. (i) plus a list of the names and addresses of officers and directors, and the corporation's principal office, \$7; and, if the list of officers and directors exceeds one page, 50 cents for each additional page.

(j) Filing a report of names and addresses of officers or directors, \$3.

(k) Processing a document required or permitted to be filed or recorded under this chapter in an expeditious manner, or preparing the information under par. (i) or (im) in an expeditious manner, \$25 in addition to the fee required by other provisions of this chapter.

(2) The liability of any corporation for any fees, charges or penalties which may be due under this chapter may be enforced by suit brought by the attorney general in the name of the state.

(3) The secretary of state shall not file any document relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges provided to be paid in connection therewith shall have been paid to him or while the corporation is in default in the payment of any fees, charges or penalties herein provided to be paid by or assessed against it.

(4) The secretary of state shall establish the fees specified under ss. 180.793 (2) and (4), 180.87 (1) (j) and (p), 181.653 (4), 181.68 (1) (gm), 185.48 (4) and (6) and 185.83 (1) (e) subject to the maximum amounts provided in those sections.

History: 1977 c. 418; 1979 c. 221; 1981 c. 20; 1983 a. 27, 134, 475; 1985 a. 29, 338; 1987 a. 27, 399.

181.69 Penalties for false statements. Any officer or director or any other person who shall file or cause to be filed with the secretary of state on behalf of any corporation subject to this chapter any certificate, report, statement, application or any other document required or permitted to be so filed under this chapter, known to such director, officer or other person to be false or misleading in any material respect shall be imprisoned in the Wisconsin state prisons not more than 3 years or in the county jail not more than one year or fined not more than \$1,000.

History: 1977 c. 418 s. 924 (18) (e).

181.70 Waiver of notice. Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of any corporation, a waiver thereof in writing signed at any time by the person or persons entitled to such notice, shall be deemed equivalent to the giving of such notice. Such waiver by a member, in respect to any matter of which notice is required under any provision of this chapter shall contain the same information as would have been required to be included in such notice under any applicable provisions of this chapter, except that time and place of meeting need not be stated.

181.705 When notice not required. Section 180.895 shall apply to corporations subject to this chapter.

History: 1973 c. 128.

181.71 Voting requirements of articles of incorporation. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

181.72 Informal action by members or directors. Any action required by the articles of incorporation or by-laws of any corporation or any provision of law to be taken at a meeting or any action which may be taken at a meeting, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members, directors or members of a committee thereof entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this chapter.

181.73 Appeal from secretary of state. (1) If the secretary of state finds that any document required by this chapter to be filed in the secretary's office does not conform to law, the secretary shall, within 10 days after receipt of the document, give written notice of the secretary's decision to the person or corporation, domestic or foreign, delivering the document, specifying the reasons therefor. The decision shall be subject to such judicial proceedings as are provided by law, or such person or corporation, within 60 days after receipt of the notice of decision, may commence an action against the secretary of state in the circuit court of Dane county by filing a summons and a complaint to set aside such finding. The proceedings shall be had as in other actions and the person or corporation shall receive a new trial on all issues relating to the secretary's decision. The trial shall be conducted by the court without a jury, and the court shall either sustain the action of the secretary of state or direct the secretary to take such action as the court deems proper.

(2) Appeals from orders or judgments of the circuit court of Dane county under this section shall be taken in the manner provided by law for appeals from the circuit court in other civil cases.

History: Sup. Ct. Order, 67 W (2d) 755; 1975 c. 218; 1979 c. 110.

181.74 Forms to be furnished by secretary of state. (1) All reports required by this chapter to be filed in the office of the secretary of state shall be made on forms prescribed and furnished by the secretary of state.

(2) The secretary of state may provide such forms for other documents to be filed in his office under this chapter as in his judgment may be deemed necessary for such purpose but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory.

History: 1983 a. 475.

181.75 Application of chapter to rights existing before enactment. Application of the provisions of this chapter to corporations existing before its enactment shall not affect the property rights of members in such corporations which were accrued or established at the time of such enactment, nor shall it affect any liability enforceable at such time, nor shall it affect the validity or enforceability of any contracts existing before such enactment and not involving the property rights of members as such.

181.76 Applicability of chapter. (1) The provisions of this chapter relating to domestic corporations shall apply to all corporations organized hereunder and all corporations with-

out stock organized under corresponding prior general corporation laws.

(3) A domestic corporation without stock not organized as provided in sub. (1) shall not be subject to this chapter but may at any time elect to become subject to this chapter by filing and recording restated articles of incorporation in accordance with the provisions of this chapter. The restated articles shall state that the corporation elects to become subject to this chapter and shall designate a registered agent for the corporation. The election to become subject to this chapter shall be effective upon the filing and recording of the restated articles of incorporation.

(4) A domestic corporation without stock which is not subject to this chapter and which does not elect to become subject to it, may conduct and administer its business and affairs under the provisions of this chapter to the extent that the provisions of this chapter are not inconsistent with the articles or form of organization of such corporation or with any provisions elsewhere in the statutes or under any law relating to such corporation.

(5) An industrial development agency, which is a public nonprofit corporation without stock created under the industrial development law, shall, to the extent not inconsistent with such law, conduct and administer its business and affairs in accordance with this chapter.

History: 1981 c. 390 s. 252.

181.77 Private foundations. (1) No corporation which is a "private foundation", as defined in s. 509 (a) of the internal revenue code of 1954, shall:

(a) Engage in any act of "self-dealing" as defined in s. 4941 (d) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4941 (a) of the internal revenue code of 1954;

(b) Retain any "excess business holdings" as defined in s. 4943 (c) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4943 (a) of the internal revenue code of 1954;

(c) Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of s. 4944 of the internal revenue code of 1954, so as to give rise to any liability for the tax imposed by s. 4944 (a) of the internal revenue code of 1954; and

(d) Make any "taxable expenditures" as defined in s. 4945 (d) of the internal revenue code of 1954, which would give rise to any liability for the tax imposed by s. 4945 (a) of the internal revenue code of 1954.

(2) Each corporation which is a "private foundation" as defined in s. 509 of the internal revenue code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by s. 4942 (a) of the internal revenue code of 1954.

(3) Subsections (1) and (2) shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such subsections.

(4) Nothing in this section shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

History: 1971 c. 66.

181.78 Offer and sale of securities. No domestic nonstock corporation organized under this chapter and no foreign nonstock corporation shall offer or sell any of its securities in

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this state, unless the securities are registered under ch. 551 or unless the securities or the offer or sale thereof are exempted from registration under ch. 551.

History: 1971 c. 84; Stats. 1971 s. 181.77; 1971 c. 211; Stats. 1971 s. 181.78.

181.79 Public purpose corporations. (1) DEFINITION. In this section, "public purpose corporation" means any corporation organized under this chapter to provide for a guaranteed student loan program.

(2) BOARD OF DIRECTORS. (a) *Appointment.* The board of directors of every public purpose corporation shall consist of 7 members appointed as follows:

1. Five members shall be public members, nominated by the governor, and with the advice and consent of the senate appointed, for staggered 4-year terms.

2. One member shall be a senator and one member shall be a representative to the assembly, appointed as are the members of standing committees in their respective houses.

(b) *Removals and vacancies.* Notwithstanding ss. 181.20 (4) and 181.21, the removal of a director from office and filling of a vacancy occurring in the board of directors shall be governed by ss. 17.07 and 17.20.

(3) CHIEF ADMINISTRATIVE OFFICER. The chief administrative officer of every public purpose corporation shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 2-year term.

(4) COMPENSATION. Directors of public purpose corporations shall receive no compensation for services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the discharge of duties, such reimbursement in the

case of a legislator member of the board of directors to be paid by the legislature. The annual compensation of any employe of a public purpose corporation, including the chief administrative officer of the corporation, may not exceed the maximum of a salary range recommended by the secretary of employment relations and approved by the joint committee on employment relations in accordance with the procedure prescribed under s. 20.923 (4).

(5) PURCHASING. Every public purpose corporation shall adhere to specifications prepared under s. 16.72 (2), if applicable to the product or service to be purchased.

(6) CODE OF ETHICS. Every public purpose corporation shall, with the advice of the ethics board, adopt and enforce ethics guidelines applicable to its directors, employes and paid consultants which are similar to subch. III of ch. 19, except that the corporation may not require its paid consultants to file financial disclosure statements.

(7) TRAVEL SCHEDULE AMOUNTS. Directors and employes of every public purpose corporation are subject to uniform travel schedule amounts approved under s. 20.916 (8).

(8) AUDIT. Notwithstanding s. 13.94 (4) (b), public purpose corporations are subject to full audit of all of their records and operations under s. 13.94.

(9) APPLICABILITY OF CHAPTER. The provisions of this chapter apply to public purpose corporations except as otherwise provided in this section.

History: 1985 a. 29.

This section does not violate Art. IV, secs. 31 and 32, Wis. Const. 74 Atty. Gen. 169.