CHAPTER 180

BUSINESS CORPORATIONS

NOTE: Chapter 285, laws of 1971, which revised ch. 180, stats., contains extensive notes explaining the revision. See also previous editions of the statutes.

180.01 Title. This chapter shall be known and may be cited as the "Wisconsin Business Corporation Law".

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

(1m) "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) "Authorized shares" means the shares of all classes which the corporation is authorized by its articles of incorporation to issue.

(3) "Capital surplus" means the excess of the net assets of a corporation plus the cost of its treasury shares, over its stated capital plus its earned surplus or minus its deficit in earned surplus.

(4) "Corporation" or "domestic corporation" means a corporation organized for profit with capital stock which is subject to the provisions of this chapter, except a foreign corporation; and also means, to the extent provided in s. 180.97, a corporation with capital stock but not organized for profit.

(5) "Earned surplus" means the balance of the net profits, income, gains and losses of a corporation from the date of incorporation, or from the latest date when a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Profits, income or gains arising from transactions in shares of the corporation, and losses thereon when charged to capital surplus, do not constitute a part of earned surplus. Earned surplus also includes any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign, in accordance with s. 180.16 (4).

(6) "Foreign corporation" means a corporation, joint stock company or association organized otherwise than under the laws of this state, except a railroad corporation, an association created solely for religious or charitable purposes, an insurer or motor club, a building and loan association, a common law trust, or a corporation not organized or conducted for profit.

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

(7m) "Issuing public corporation" means a domestic corporation, other than an investment company registered under the investment company act of 1940, with at least 100 shareholders of record who are residents of this state as of the date of submission of the corporation's most recent annual report under s. 180.791 (1).

(8) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.

(9) "Net capital surplus" means the capital surplus of a corporation less any deficit in earned surplus.

(10) "Shareholder" means one who is a holder of shares in a corporation.

(11) "Shares" means the units into which the proprietary interests in a corporation are divided.

(12) "Stated capital" means, at any particular time, the sum of (a) the par value of all shares of the corporation having a par value that have been issued, (b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (c) such amounts not included in (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(13) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(14) "Transact business" means transacting business in this state or acquiring, holding, or disposing of property in this state.

(15) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or otherwise, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

History: 1979 c. 102; 1983 a. 189, 200, 538; 1985 a. 195.

180.03 Purposes. Corporations may be organized under this chapter for any lawful business or purpose whatever, except banking, insurance and building or operating public railroads, but subject always to provisions elsewhere in the statutes relating to the organization of specified kinds or classes of corporations.

180.04 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 wherever organized, and of the 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, but no foreign or domestic corporation may subscribe for, take or hold more than 10% of the capital stock of any state bank or trust company unless 75% of the shares entitled to vote of such bank or trust company shall vote in favor thereof at a meeting called for that purpose.

(7) To make contracts, including guarantees, and incur liabilities; to borrow money at such rates of interest as the corporation determines; 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, 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 bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(12) To make donations for the public welfare or for charitable, scientific, educational or religious purposes.

(13) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

(14) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

(15) To cease its corporate activities and surrender its corporate franchise.

(16) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of the directors, officers and employes of the corporation and its subsidiaries.

(17) To have and exercise all powers necessary or convenient to effect its purposes.

History: 1971 c. 52, 285; 1985 a. 325.

180.042 Definitions applicable to indemnification and insurance provisions. In ss. 180.042 to 180.059:

(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 impose duties on, or otherwise involve 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 an excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" includes 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.

180.044 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 shareholders 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. 180.046.

(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. 180.048.

(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.

180.046 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. 180.044 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By a 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 shares as provided in s. 180.28. Shares 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. 180.051.

(6) By any other method provided for in any additional right to indemnification permitted under s. 180.049.

History: 1987 a. 13.

180.047 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. 180.046 that indemnification under s. 180.044 (2) is not required and that indemnification is not ordered by a court under s. 180.051 (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.

180.048 Corporation may limit indemnification. (1) A corporation's obligations to indemnify under s. 180.044 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.

180.049 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 180.044 and 180.047 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 all of the corporation's voting shares then issued and outstanding.

(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. 180.044 (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 180.042 to 180.059 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.

180.051 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. 180.046 (5) or for review by the court of an adverse determination under s. 180.046 (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. 180.044 (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. 180.044 (2).

History: 1987 a. 13.

180.056 Indemnification and allowance of expenses of employes 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.

180.058 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 or 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. 180.044, 180.047, 180.049 and 180.056.

History: 1987 a. 13.

180.059 Indemnification and insurance against securities law claims. (1) It is the public policy of this state to require or permit indemnification, allowance of expenses and insurance for any liability incurred in connection with a proceeding involving securities regulation described under sub. (2) to the extent required or permitted under ss. 180.042 to 180.058.

(2) Sections 180.042 to 180.058 apply, to the extent applicable to any other proceeding, to any proceeding involving a federal or state statute, rule or regulation regulating the offer, sale or purchase of securities, securities brokers or dealers, or investment companies or investment advisers.

History: 1987 a. 13.

180.06 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 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 shareholder 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 shareholders 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 the transaction of unauthorized business.

History: 1979 c. 110.

Defendant trustee was liable to suit under (2) for accepting unauthorized commissions; reliance on advice of counsel was not defense. Wisconsin Real Estate Inv. Trust v. Weinstein, 712 F (2d) 1095 (1983).

180.07 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 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 limited partnership existing under any law of this state, or any foreign corporation or foreign limited partnership authorized to transact business in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter, except that this provision 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. 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 in, this state.

History: 1971 c. 285; 1985 a. 29.

See note to 180.47, citing Litton Systems, Inc. v. Lippmann-Milwaukee, Inc. 481 F Supp. 766 (1979).

180.08 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.

(c) Any foreign corporation intending to make application for a certificate to transact business in this state.

(d) Any foreign corporation authorized to transact business in this state and intending to change its name.

(e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

(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.

(4) 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: 1977 c. 418; 1981 c. 337; 1985 a. 338.

180.09 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation organized under this chapter, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

History: 1985 a. 29.

Corporations failing to maintain registered agents after notice by secretary of state should be reported to the attorney general. 61 Atty. Gen. 349.

180.10 Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, by executing and filing a statement setting forth:

(a) The name of the corporation;

(b) The address, including street and number, if any, and the county of its then registered office;

(c) If the address of its registered office is changed, the address, including street and number, if any, and the county to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent be changed, the name of its successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) 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 office without a corresponding change in physical location.

(2) The statement shall be executed by a principal officer of the corporation under corporate seal. If its new registered office is to be located in a county different from that in which its then registered office is located:

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

(b) The statement shall specify the county of the former registered office and the new registered office; and

(c) 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 registered office.

(3) The change of address of the registered office, or the change of registered agent or both, as the case may be, shall become effective on completion of the filing of the statement with the secretary of state.

(4) In lieu of change under subs. (1), (2) and (3), a corporation may change its registered office or registered agent, or both, by setting forth the address of its registered office and name of its registered agent, as changed, in articles of amendment of its articles of incorporation or in restated articles of incorporation filed and recorded under this chapter. If a document filed under this subsection changes the county of the registered office, sub. (2) (a) and (b) applies.

(5) If a registered agent's business address is changed to another place within the county, such change of address and the address of the registered office 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) (e) or (g) and shall state that a copy of the statement has been mailed to the corporation.

History: 1971 c. 285; 1981 c. 337; 1983 a. 134.

180.105 Resignation of registered agent. (1) A registered agent may resign by executing a statement 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, and the county of the corporation's then registered 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 corporate seal of such corporate registered agent shall be affixed thereto.

(3) Such statement shall be filed and recorded. At the time of filing, a triplicate shall be delivered to the secretary of state. The secretary of state shall note on the triplicate the date of filing and mail the same to the corporation at its principal place of business as shown by the records in his or her office.

(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, and the office of the resigned registered agent shall then cease to be the registered office of the corporation.

History: 1981 c. 337.

180.11 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 fails to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, 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 process, notice or demand is 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 place of business as shown by the most recently filed annual report of the corporation, or if none at its registered office.

(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.

Substituted service provisions of this section don't supersede publication provisions of 801.11 (5) (b). Wisconsin Finance v. Garlock, 140 W (2d) 506, 410 NW (2d) 649 (Ct. App. 1987).

180.12 Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of the shares of any class to the extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(c) Having preference over any other class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(e) Convertible into authorized shares of any other class or into authorized shares of any series of the same or any other class. Shares without par value shall not be converted into

shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

(3) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The rate of dividend;

(b) The price at and the terms and conditions on which shares may be redeemed;

(c) The amount payable upon shares in event of voluntary or involuntary liquidation;

(d) Sinking fund provisions for the redemption or purchase of shares;

(e) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

(f) Voting rights, if any.

(4) If the articles of incorporation expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors may divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established. Duplicate copies of a resolution adopted by the directors pursuant to this section with a certificate thereto affixed, signed by the president or a vice president and the secretary or an assistant secretary and sealed with the corporate seal, stating the fact and date of adoption, and that such copies are true copies of the original shall be filed in the office of the secretary of state and recorded in the office of the register of deeds of the county in which the registered office of the corporation is located, and when so filed shall constitute an amendment to the articles of incorporation. A resolution adopted prior to May 19, 1965, by the directors of a public service corporation pursuant to s. 184.13 theretofore in effect, need not be filed, refiled or recorded under this subsection.

(5) Unless otherwise provided by the articles of incorporation, any authority so vested in the board of directors to divide a class into series shall include authority to reclassify into one or more other series of such class, any treasury shares or any authorized but unissued shares, including shares restored to that status upon cancellation, of any previously established series of such class. Whenever shares of any series are so reclassified, the certificate filed and recorded as above provided shall state the number, designation of class and former series of the shares so reclassified, whether such shares are treasury shares or authorized but unissued shares, and the number thereof which have been restored to that status upon cancellation, and the number of authorized shares of each series of such class after such reclassification.

History: 1971 c. 285; 1985 a. 29.

180.13 Subscriptions for shares. (1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months unless otherwise provided by the terms of the subscription agreement, or unless all of the subscribers consent to the revocation of such subscription.

(2) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such instalments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or series. In case of default in the payment of any instalment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The by-laws may prescribe other penalties for failure to pay instalments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand, which shall include notice of such penalty. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with the postage thereon prepaid. In the event of the sales of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

180.14 Consideration for shares. (1) Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(2) Shares without par value may be issued for such consideration as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

(3) Treasury shares may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

(4) That part of the unreserved earned surplus or net capital surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

(5) In the event of issuance of shares upon the conversion or exchange of indebtedness or shares, consideration for the shares so issued shall be a) the principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted, and b) that part of surplus, if any, transferred to stated capital upon issuance of shares for the shares so exchanged or converted, and c) any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

History: 1971 c. 285.

180.15 Payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid, and nonassessable by the corporation.

(2) The promissory note of any subscriber shall not constitute payment or part payment for the issuance of shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History: 1971 c. 285.

180.155 Stock rights and options. Subject to any provisions set forth in its articles of incorporation before the creation and issuance of the rights or options, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. The rights or options may contain provisions which adjust the rights or options in the event of an acquisition of shares or a reorganization, merger, consolidation, sale of assets or other occurrence. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time within which and the price at which such shares may be purchased from the corporation upon the exercise of any such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof. Notwithstanding s. 180.12 (3) and any other provision of this chapter, and unless otherwise provided in the articles of incorporation before the creation or issuance of the rights or options, a corporation may before, on or after April 30, 1972, create and issue rights or options which include conditions that prevent the holder of a specified percentage of the outstanding shares of the corporation, including subsequent transferees of the holder, from exercising those rights or options.

History: 1971 c. 285; 1987 a. 44.

NOTE: 1987 Wis. Act 44 amends this section effective retroactively to 4-30-72. Section 1 of Act 44 contains a legislative declaration.

180.16 Determination of amount of stated capital. (1) In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(2) In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation determines as provided in this section that only a part thereof shall be stated capital. Prior to or within 60 days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received or to be received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

(3) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the unreserved earned surplus or net capital surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

(4) If shares have been or are issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under this section may instead be allocated to earned surplus by the board of directors of the issuing corporation, except that its aggregate earned surplus shall not exceed the sum of the earned surpluses, as defined in this chapter, of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired.

180.17 Expenses of organization, reorganization and financing. The reasonable charges and expenses of organization or reorganization of a corporation and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

180.18 Certificates representing shares. (1) The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the corporation itself or an employe of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall state upon the face or back of the certificate, in full or in the form of a summary, all of the designations, preferences, limitations and relative rights, as provided by the articles of incorporation, of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority, if any, of the board of directors to fix and determine the relative rights and preferences of subsequent series. In lieu of such statement the certificate may state upon the face or back thereof the designation of each class of shares having preferences or special rights in the payment of dividends, in voting, upon liquidation or otherwise and such other information concerning such shares as may be desired and shall state that the corporation will upon request furnish any shareholder, without charge, information as to the number of such shares authorized and outstanding and a copy of the portions of the articles of incorporation containing the designations, preferences, limitations and relative rights of all shares and any series thereof.

(3) Each certificate representing shares shall also state upon the face thereof:

(a) That the corporation is organized under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(4) No certificate shall be issued for any share until such share is fully paid.

(5) Any certificate conforming to the requirements of law at the time of actual issue of the certificate shall be considered for all purposes as issued in compliance with this section.

History: 1971 c. 285.

180.19 Fractional shares. A corporation may:

(1) Issue fractions of a share;

(2) Arrange for the disposition of fractional interests by those entitled thereto;

(3) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) Issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may deem advisable.

History: 1971 c. 285.

180.20 Liability of subscribers and shareholders for unpaid subscriptions and status of stock. (1) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

(2) Except as herein otherwise provided, shares issued in violation of the provisions of s. 180.14 and certificates issued in violation of s. 180.18 (4) may be declared void in an action brought by the corporation when such shares or certificates are owned by the person to whom so issued or by a transferee who has not paid value unless such transferee received such shares or certificates after value had been paid therefor by a prior transferee in good faith and without knowledge or notice of such violation. The person to whom shares have been issued in violation of the provisions of s. 180.14 or to whom certificates have been issued in violation of the provisions of s. 180.18 (4) and any transferee from such person who takes with knowledge of such violation or knowledge of such facts that his action in taking the shares or certificates amounted to bad faith shall be liable to the corporation to pay the amount necessary to make such shares fully paid. Any person becoming an assignee or transferee of shares or of a subscription for shares or certificates for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration. Shares issued in violation of the provisions of s. 180.14 and certificates issued in violation of s. 180.18 (4) shall be valid in the hands of a transferee in good faith and without knowledge or notice of such violation who paid value therefor and in the hands of any subsequent transferee.

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

180.21 Shareholders preemptive rights. (1) Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

(2) Unless otherwise provided in the articles of incorporation:

(a) No preemptive right shall exist:

1. To acquire any shares issued to directors, officers or employes pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders,

2. To acquire any shares, convertible securities or rights issued for a consideration other than cash, or

3. To acquire treasury shares.

(b) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right;

(c) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock;

(d) Holders of common stock without voting power shall have no preemptive right to shares of common stock with voting power;

(e) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

History: 1971 c. 285.

180.22 Bylaws. If initial directors are designated in the articles of incorporation, they may adopt bylaws; or the subscribers may at their organization meeting adopt bylaws. Thereafter, bylaws may be adopted either by the shareholders or the board of directors, but no bylaws adopted by the subscribers or shareholders shall be amended or repealed by the directors, unless the bylaws adopted by the subscribers or shareholders have conferred such authority upon the directors. Any bylaw adopted by the board of directors shall be subject to amendment or repeal by the shareholders as well as by the directors.

180.23 Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without the state, as may be fixed in or pursuant to the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

(2) An annual meeting of the shareholders shall be held at such time as may be fixed in or pursuant to the bylaws, and if not so fixed, 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 shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting or by such other officers or persons as may be provided in the articles of incorporation or the bylaws.

180.24 Notice of shareholders' 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 other officer or person calling the meeting, to each shareholder of record 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 shareholder at his address as it appears on the stock record books or similar records of the corporation, with postage thereon prepaid.

180.25 Voting of shares. (1) Except as the voting rights of shares are modified by operation of sub. (9), each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are enlarged, limited or denied by the articles of incorporation as permitted by this chapter. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

(2) The "requisite affirmative votes" referred to in ss. 180.51, 180.64 (2), 180.71, 180.753 (2) and 180.761, and the recitals of votes which are "requisite for adoption" or "requisite for approval" to be set forth pursuant to ss. 180.53 (4), 180.65 (1) (b), 180.753 (3) (d) and 180.761 (3) (d), shall, subject to subs. (1) and (3), be as follows:

(a) With respect to corporations organized before January 1, 1973—the affirmative vote of the holders of two-thirds of the shares entitled to vote on the proposal, unless any class or series of shares is entitled to vote thereon as a class, in which event the proposal shall be adopted upon receiving the affirmative votes of the holders of two-thirds of the shares of each class of shares and of each series entitled to vote thereon as a class and of the total shares entitled to vote thereon; provided, that any such corporation organized before January 1, 1973, may expressly elect the majority affirmative voting requirements, or any greater proportion than a majority, in respect to any or all of the subjects covered by ss. 180.51, 180.53 (4), 180.64 (2), 180.65 (1) (b), 180.71, 180.753 (2) and (3) (d) and 180.761 either by its original articles of incorporation or by amendment to its articles of incorporation adopted after April 30, 1972 by such requisite two-thirds affirmative vote.

(b) With respect to corporations organized on or after January 1, 1973—the affirmative vote of the holders of a majority of the shares entitled to vote on the proposal, unless any class or series of shares is entitled to vote thereon as a class, in which event the proposal shall be adopted upon receiving the affirmative votes of holders of a majority of the shares of each class of shares and of each series entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(3) Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

(4) Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares entitled to vote, but shares of its own issue held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares entitled to vote.

(5) (a) A shareholder may vote either in person or by proxy appointed in writing by the shareholder or by his duly authorized attorney-in-fact. Except as provided in par. (b), no proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

(b) A proxy appointed in connection with a shareholder vote under sub. (9) (d):

1. May be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in writing.

2. Shall be solicited and appointed apart from the sale of or offer to purchase shares of the issuing public corporation.

3. May not be solicited sooner than 30 days before the meeting called under sub. (9) (d), unless otherwise agreed in writing by the person under sub. (9) and the directors of the issuing public corporation.

(6) Shares standing in the name of another corporation, domestic or foreign, may be voted either in person or by proxy, by the president or any other officer appointed by the president. A proxy executed by any principal officer of such other corporation or assistant thereto shall be conclusive evidence of the signer's authority to act, in the absence of express notice of the designation of some other person by the board of directors or by the bylaws of such other corporation.

(7) Shares held by an administrator, executor, guardian, conservator, trustee in bankruptcy, receiver, or assignee for creditors may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a fiduciary may be voted by him, either in person or by proxy.

(8) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(9) (a) Unless otherwise provided in the articles of incorporation of an issuing public corporation and except as provided in par. (b) or as restored under par. (d), the voting power of shares of an issuing public corporation held by any person, including shares issuable upon conversion of convertible securities or upon exercise of options or warrants, in excess of 20% of the voting power in the election of directors shall be limited to 10% of the full voting power of those shares. In this subsection, "person" includes 2 or more individuals or persons acting as a group for the purpose of acquiring or holding securities of an issuing public corporation, but does not include a bank, broker, nominee, trustee or other person that acquires or holds shares in the ordinary course of business for others in good faith and not for the purpose of avoiding this subsection unless the person may exercise or direct the exercise of votes with respect to the shares at a meeting of shareholders without further instruction from another.

(b) Shares of an issuing public corporation held, acquired or to be acquired in any of the following circumstances are excluded from the application of this subsection:

1. Shares acquired before April 22, 1986.

2. Shares acquired under an agreement entered into before April 22, 1986.

3. Shares acquired by a donee under an inter vivos gift not made to avoid this subsection or by a distributee as defined in s. 851.07.

4. Shares acquired under a collateral pledge or security agreement, or similar instrument, not created to avoid this subsection.

5. Shares acquired under s. 180.62, 180.63, 180.68 or 180.685 if the issuing public corporation is a party to the merger or consolidation.

6. Shares acquired from the issuing public corporation.

7. Shares acquired under an agreement entered into at a time when the issuing public corporation was not an issuing public corporation.

8. Shares acquired of the capital stock of a state bank or trust company if the acquisition is subject to a shareholder vote under s. 180.04 (6).

9. Shares acquired in a transaction incident to which the shareholders of the issuing public corporation have voted under par. (d) to approve the person's resolution delivered under par. (c) to restore the full voting power of all of that person's shares.

(c) A person desiring a shareholder vote under par. (d) shall deliver to the issuing public corporation at its principal executive office a form of shareholder resolution with an accompanying notice containing all of the following:

1. The identity of the person.

2. A statement that the resolution and notice are submitted under this subsection.

3. The number of shares of the issuing public corporation owned by the person of record and beneficially under the meaning prescribed in rule 13d-3 under the securities exchange act of 1934.

4. A specification of the voting power the person has acquired or proposes to acquire for which shareholder approval is sought.

5. The circumstances, terms and conditions under which shares representing in excess of 20% of the voting power were acquired or are proposed to be acquired, set forth in reasonable detail, including the source of funds or other consideration and other details of the financial arrangements of the transactions.

6. If shares representing in excess of 20% of the voting power were acquired or are proposed to be acquired for the purpose of gaining control of the issuing public corporation, the terms of the proposed acquisition, including but not limited to the source of funds or other consideration and the material terms of the financial arrangements for the acquisition, any plans or proposals of the person to liquidate the issuing public corporation, to sell all or substantially all of its assets, or merge it or exchange its shares with any other person, to change the location of its principal executive office or of a material portion of its business activities, to change materially its management or policies of employment, to alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management or personnel, and such other material information as would affect the decision of a shareholder with respect to voting on the resolution.

(d) 1. Within 10 days after receipt of a resolution and notice under par. (c), the directors of the issuing public corporation shall fix a date for a special meeting of the shareholders to vote on the resolution. The meeting shall be held no later than 50 days after receipt of the resolution and notice under par. (c), unless the person agrees to a later date, and no sooner than 30 days after receipt of the resolution and notice, if the person so requests in writing when delivering the resolution and notice.

2. The notice of the meeting shall include a copy of the resolution and notice delivered under par. (c) and a statement by the directors of their position or lack of position on the resolution.

3. Regular voting power is restored if at the meeting called under subd. 1 at which a quorum is present a majority of the voting power of shares represented at the meeting and entitled to vote on the subject matter approve the resolution.

4. An issuing public corporation is not required to hold more than 2 meetings under subd. 1 in any 12-month period with respect to resolutions and notices presented by the same person unless the person pays to the issuing public corporation, in advance of the 3rd or subsequent such meeting the reasonable expenses of the meeting including, without limitation, fees and expenses of counsel, as estimated in good faith by the board of directors of the issuing public corporation and communicated in writing to the person within 10 days after receipt of a 3rd or subsequent resolution and notice from the person. In such event, notwithstanding subd. 1, the directors may fix a date for the meeting within 10 days after receipt of payment in full of such estimated expenses rather than within 10 days after receipt of the resolution and notice.

(e) Any sale or other disposition of shares by a person holding both shares having full voting power and shares having voting power limited under par. (a) shall be deemed to reduce the number of shares having limited voting power until such shares are exhausted.

(f) A corporation that is not an issuing public corporation may elect, by express provision in its articles of incorporation, to be subject to this subsection as if it were an issuing public corporation unless its articles of incorporation contain a provision stating that the corporation is a close corporation under s. 180.995.

(g) An indication that a corporation is an issuing public corporation or has elected to be subject to this subsection, that is provided in accordance with s. 180.791 (1) (f), is prima facie evidence that the corporation is an issuing public corporation or is subject to this subsection by election, respectively.

History: 1971 c. 285; 1981 c. 390; 1983 a. 200; 1985 a. 195.

Illinois Take-Over Act violated Interstate Commerce Clause. Edgar v. MITE Corp. 457 US 624 (1982).

Take-overs of Wisconsin corporations: A new era of shareholder protection begins. Malmgren and Pelisek. WBB May 1984.

180.26 Closing of transfer books and fixing record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the stock transfer books, the by-laws, or in the absence of an applicable by-law, the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the close of business on the date on which notice of the meeting is mailed or on the date on which the resolution of the board of directors declaring such dividend is adopted,

as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote in any meeting of shareholders has been made as provided in this section, such determination shall be applied to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

180.27 Voting trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(2) Agreements among shareholders regarding the voting of their shares shall not be subject to the provisions of this section regarding voting trusts.

History: 1971 c. 285.

180.28 Quorum of shareholders. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this chapter, the articles of incorporation or the bylaws.

180.29 Voting records. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall, before each meeting of shareholders, make a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes of the meeting. The original stock transfer books shall be prima facie evidence as to who are shareholders entitled to examine such record or transfer books or to vote at any meeting of shareholders.

(2) Failure to comply with the requirements of this section will not affect the validity of any action taken at such meeting.

History: 1971 c. 285.

180.30 Board of directors. The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise provided in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation, and they shall have the same responsibility therefor and standing in relation thereto as provided in this chapter in respect to directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors.

History: 1971 c. 285.

See note to 180.41, citing Kohl v. F.J.A. Christiansen Roofing Co. 95 W (2d) 27, 289 NW (2d) 329 (Ct. App. 1980).

Corporate officers or directors cannot escape fiduciary duties by claiming to be mere figurehead. Burroughs v. Fields, 546 F (2d) 215.

180.303 Reliance by directors or officers. (1) 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:

(a) 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.

(b) 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.

(c) 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.

(2) This section does not apply to a director's reliance under s. 180.40 (3).

History: 1987 a. 13.

180.305 Consideration of interests in addition to shareholders' 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 shareholders, 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.

180.307 Limited liability of directors to corporation and shareholders. (1) Except as provided in subs. (2) and (3), a director is not liable to the corporation, its shareholders, or any person asserting rights on behalf of the corporation or its shareholders, 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, 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 shareholders in connection with a matter in which the director has a material conflict of interest.

(b) A violation of criminal law, unless the director 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 derived an improper personal profit.

(d) Wilful misconduct.

(2) This section does not apply to the liability of a director under s. 180.40 (1).

(3) (a) A corporation may limit the immunity provided under this section as follows:

1. 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.

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

(b) A limitation under par. (a) applies if the cause of action against a director accrued while the limitation is in effect.

History: 1987 a. 13.

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

180.31 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.

The employment contracts entered into by the corporation cannot be relied upon as a defense to an action to recover unreasonable compensation paid by the corporation to the individual defendants, because it was beyond the power of the board to establish unreasonable compensation. Becker v. Becker, 66 W (2d) 731, 225 NW (2d) 884.

180.32 Number and election of directors. (1) The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws. The initial board of directors may be named in the articles of incorporation, but if not so named shall be elected by the subscribers at a meeting held after the filing and recording of the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for determination of the number of directors, the number shall be the same as that provided for in the articles of incorporation.

(2) At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified if qualification is required.

(3) Any director or the entire board of directors may be removed from office with or without cause, by affirmative vote of a majority of the outstanding shares entitled to vote for the election of such director or board of directors, taken at a meeting of shareholders called for that purpose, and any vacancy so created may be filled by the shareholders. Such power of removal or filling of a vacancy may be limited or denied by the articles of incorporation or bylaws.

History: 1971 c. 285.

180.33 Classification of directors. In lieu of electing the whole number of directors annually, the articles of incorporation, or the bylaws, if the articles of incorporation so provide, may provide that the directors be divided into either 2 or 3 classes, the term of office of directors of the 1st class to expire at the 1st annual meeting of shareholders after their election, that of the 2nd class to expire at the 2nd annual meeting after their election, and that of the 3rd class, if any, to expire at the 3rd annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the 2nd succeeding annual meeting, if there be 2 classes, or until the 3rd succeeding annual meeting, if there be 3 classes. No classification of directors shall be effective prior to the 1st annual meeting of shareholders.

180.34 Vacancies. Unless the articles of incorporation or bylaws provide otherwise, 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, except that a vacancy created by a removal by the shareholders may be filled by the shareholders.

180.35 Quorum of directors. A majority of the number of directors fixed by, or in the manner provided in the articles of incorporation or the bylaws shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. 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 number is required by this chapter, the articles of incorporation or the bylaws.

History: 1971 c. 285, 307.

180.355 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 are financially interested, 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 shareholders 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: 1971 c. 285.

180.36 Committees of directors. If the articles of incorporation or bylaws 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 bylaws, 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 business and affairs of the corporation, except action in respect to dividends to shareholders, election of the principal 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.

180.37 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 thereat 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.

180.38 Dividends. (1) The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation or in this chapter. Subject to the same exceptions, dividends declared and paid in its own shares may also be paid on its treasury shares, if so ordered by the board of directors.

(2) Declarations of dividends are subject to the following provisions:

(a) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section.

(b) Dividends may be declared and paid in its own shares out of any treasury shares.

(c) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved earned surplus or net capital surplus of the corporation upon the following conditions:

1. If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend.

2. If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as is fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(d) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

(3) The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the net capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

(4) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

History: 1971 c. 285.

180.385 Right of corporation to acquire and dispose of its own shares. (1) Unless otherwise provided in the articles of incorporation, a corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares; provided that no such acquisition, directly or indirectly, of its own shares for a consideration other than its own shares of equal or subordinate rank shall be made unless all of the following conditions are met:

(a) At the time of such acquisition the corporation is not and would not thereby be rendered insolvent;

(b) The net assets of the corporation remaining after such acquisition would be not less than the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and

(c) 1. Such acquisition is authorized by the articles of incorporation or by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the same class and of each class entitled to equal or prior rank in the distribution of assets in the event of voluntary liquidation; or

2. Such acquisition is authorized by the board of directors and the corporation has unreserved and unrestricted earned surplus equal to the cost of such shares. To the extent that earned surplus is used as the measure of the corporation's right to acquire its own shares, earned surplus shall be restricted until such restriction is removed by shareholder vote or consent as aforesaid, but such restriction shall be removed without any further corporate action a. to the extent of the consideration subsequently received upon the sale of any such shares or upon the sale of shares of the same class not held in treasury, or b. to the extent that earned surplus is reduced upon the payment of a stock dividend in treasury shares or authorized but unissued shares, or c. to the extent that earned surplus is transferred to stated capital or capital surplus.

(2) If the conditions in sub. (1) (a) and (b) are met, a corporation may, without meeting the conditions of sub. (1) (c), acquire its own shares:

(a) In redemption or purchase of its redeemable shares at not to exceed the redemption price,

(b) For the purpose of eliminating fractional shares,

(c) For the purpose of collecting or compromising indebtedness to the corporation, or

(d) For the purpose of paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter.

(3) This section has no application to any acquisition, redemption or disposition by a corporation of its own shares which was effected prior to July 1, 1953. The effect of any such transaction on the net profits, earned surplus or capital surplus of such corporation shall be determined under the law in effect at the time of such transaction.

History: 1971 c. 285.

Insolvency test explicated. Neimark v. Mel Kramer Sales, Inc. 102 W (2d) 282, 306 NW (2d) 278 (Ct. App. 1981).

180.39 Distributions in partial liquidation. The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of stated capital or net capital surplus of the corporation, a portion of its assets, in cash or property, provided all of the following conditions are met:

(1) At the time of such distribution the corporation is not and will not thereby be rendered insolvent;

(2) Such distribution is authorized either by the articles of incorporation or by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation;

(3) All cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends are fully paid;

(4) The net assets of the corporation remaining after such distribution will not be less than the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and

(5) Each such distribution, when made, is identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

History: 1971 c. 285.

180.40 Liability of directors and shareholders. (1) In addition to any other liabilities imposed by law upon directors of a corporation:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor, without a violation of the provisions of this chapter or any restrictions in the articles of incorporation.

(c) Directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid, discharged or barred by statute.

(d) Directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof, unless such directors shall sustain the burden of proof that such loan was made for a proper business purpose.

(2) A director of a corporation who is present at a meeting of its board of directors or a committee thereof of which he is a member at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or forwards such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(3) A director shall not be liable under sub. (1) (a), (b) or (c) if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(4) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

(4m) Sections 180.303 and 180.307 do not apply to the liability of a director under sub. (1) or the reliance of a director under sub. (3).

(5) In addition to any other liabilities imposed by law upon shareholders of a corporation:

(a) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(b) Any shareholder receiving any dividend or distribution of the assets of the corporation which dividend is paid or distribution is made contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be liable to the corporation for the amount received by said shareholder which is paid or distributed in excess of the amount which could have been paid or distributed without a violation of the provisions of this chapter or any restrictions in the articles of incorporation.

(6) The shareholders of every corporation, other than railroad corporations, shall be personally liable to an amount equal to the par value of shares owned by them respectively, and to the consideration for which their shares without par value was issued, for all debts owing to employes of the corporation for services performed for such corporation, but not exceeding 6 months' service in any one case.

History: 1971 c. 285; 1987 a. 13.

Sub. (6) applies to shareholders of foreign corporations licensed to do business in this state as well as shareholders of domestic corporations. Joncas v. Krueger, 61 W (2d) 529, 213 NW (2d) 1.

Liability of directors to creditors of corporation discussed. See note to 286.32, citing McGivern v. Amasa Lumber Co. 77 W (2d) 241, 252 NW (2d) 371.

Protecting the corporate executive: director and officer liability insurance reevaluated. Greenberg, Dean, 58 MLR 555.

180.405 Shareholders' derivative actions. (1) No action may be instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of shares or of voting trust certificates representing shares of such corporation unless:

(a) The plaintiff alleges in the complaint that he was a registered shareholder or the holder of voting trust certificates at the time of the transaction or any part thereof of which he complains or that his shares or voting trust certificates thereafter devolved upon him by operation of law from a holder who was a holder 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 foreign or domestic corporation by the holder or holders of less than 3 per cent of any class of shares issued and outstanding, 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.

While the plaintiff sufficiently alleged his status as a stockholder of the defendant corporation, his complaint was nevertheless demurrable as against the individual defendant officers and directors, there being no allegation with respect to his status as a registered stockholder, a statutory prerequisite to maintaining a derivative action. Rank v. Lease Associates, Inc. 45 W (2d) 689, 173 NW (2d) 713.

The clause in (1) (b), "or the reasons for not making such effort" provides an alternative to both the earlier stated requirements. The procedure specified in this section bars a direct suit by a stockholder where the primary injury alleged is to the corporation. Rose v. Schantz, 56 W (2d) 222, 201 NW (2d) 593.

A stockholder at the time of the transaction complained of who transfers his stock to himself as trustee for his children may bring an action under this section as a registered stockholder. Becker v. Becker, 56 W (2d) 369, 202 NW (2d) 688.

In derivative stockholders' action where defendant was alleged to control majority of stock and to have conspired to divert corporate assets, defendant was proper defendant in derivative and individual actions. Derivative nature of suit requires that plaintiff be personally wronged by defendant's acts in order to have standing to bring suit. Shelstad v. Cook, 77 W (2d) 547, 253 NW (2d) 517.

Plaintiffs can sue for injuries to themselves as stockholders without bringing a derivative action even though the facts alleged might sustain such an action, and hence do not have to comply with this section. Traylor v. Marine Corp. 328 F Supp. 382.

180.41 Officers. (1) The principal officers of a corporation shall consist of a president, one or more vice presidents as may be fixed by, or in the manner provided in, the articles of incorporation or bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the articles of incorporation or bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the articles of incorporation or bylaws. 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 by-laws, or as may be determined by resolution of the board of directors not inconsistent with the articles of incorporation or by-laws.

History: 1971 c. 285.

There is no conclusive presumption that directors or officers have knowledge of affairs of corporation. Kohl v. F.J.A. Christiansen Roofing Co. 95 W (2d) 27, 289 NW (2d) 329 (Ct. App. 1980).

Corporate officers or directors cannot escape fiduciary duties by claiming to be mere figurehead. Burroughs v. Fields, 546 F (2d) 215.

180.42 Removal of officers. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create contract rights.

180.43 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 shareholders and board of directors; shall keep at its registered office or principal place of business, or at the offices of its transfer agents or registrars, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each; and shall cause a true statement of its assets and liabilities as of the close of each fiscal year and of the results of its operations and of changes in surplus for such fiscal year, all in reasonable detail, to be made and filed at its registered office within 4 months after the end of such fiscal year or such longer period as may be reasonably necessary for the preparation thereof, and thereat kept available for a period of at least 10 years for inspection on request by any shareholder, and shall mail a copy of the latest such statement to any shareholder or holder of voting trust certificates for shares of the corporation upon his written request therefor. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(2) (a) Any person who shall have been a shareholder of record for at least 6 months immediately preceding his demand or who shall be the holder of record of at least 5% of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable

time or times, for any proper purpose, its relevant books and records of account, minutes and record of shareholders and to make extracts therefrom.

(b) A person under s. 180.25 (9) (c) that has delivered the resolution under s. 180.25 (9) (c) may on written demand examine and make extracts from the records of shareholders of an issuing public corporation, in person or by agent or attorney at any reasonable time for the purpose of communicating with the shareholders in connection with the special shareholders' meeting under s. 180.25 (9) (d).

(3) A holder of a voting trust certificate evidencing an interest in a voting trust conforming to the provisions of this chapter shall have the same rights as a shareholder to examine and make extracts from the relevant books and records of account, annual financial statements, minutes and record of shareholders of such corporation upon submitting to the corporation, officer or agent to whom demand for examination is made, his voting trust certificate or other proof of his interest in the voting trust.

(4) Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of 10 per cent of the value of the shares owned by such shareholder, but not to exceed $500, in addition to any other damages or remedy afforded him by law. In addition to any other meritorious defense, it shall be a defense to any action for penalties under this section that the person suing therefor has at any time sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation, or was not acting in good faith in making his demand.

(5) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder or holder of voting trust certificates of proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates shall have been a shareholder of record or holder of voting trust certificates, and irrespective of the number of shares held by him or represented by voting trust certificates held by him, to compel the production for examination by such shareholder or holder of voting trust certificates of the relevant books and records of account, minutes and record of shareholders of a corporation.

(6) 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 shareholders 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: 1971 c. 285; 1983 a. 200; 1985 a. 195.

Interim financial statements are not "books and records of account" under (2). Bitters v. Milcut, Inc. 117 W (2d) 48, 343 NW (2d) 418 (Ct. App. 1983).

"Proper purpose" under (2) (a) discussed. Rubi v. Paige, 139 W (2d) 300, 407 NW (2d) 323 (Ct. App. 1987).

"Proper purpose" under (2) must be germane to requesting shareholder's status as shareholder. A & K Railroad Materials v. Green Bay & W. R. Co. 437 F Supp. 636.

180.44 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 and acknowledging, and filing articles of incorporation for such corporation.

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

180.45 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) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(h) Any provision limiting, denying or granting preemptive rights to shareholders.

(i) The address, including street and number, if any, and the county of its initial registered office and the name of its initial registered agent at such address.

(j) 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.

(k) The name and address, including street and number, if any, 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 additional provisions, not inconsistent with law, including any provision which under this chapter is required or permitted to be set forth in the by-laws. 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: 1971 c. 307; 1981 c. 337.

180.46 Filing and recording of articles of incorporation. The articles of incorporation shall be filed and recorded as provided in s. 180.86. Duplicate originals of the articles of incorporation shall be submitted to the secretary of state for filing and recording. The secretary of state shall file one of them and forward the other within 5 days to the register of deeds of the county in which the registered office of the

corporation 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.

180.47 Effect of issuance of certificate of incorporation. The certificate of incorporation issued pursuant to s. 180.46 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.

This section cannot accurately be viewed as correcting, waiving or curing non-compliance with the statutory conditions governing the initial incorporation of a business, which are required to precede the issuance of a certificate of incorporation under 180.46, since this section clearly authorizes the state to assert such non-compliance for the purpose of canceling or revoking the certificate of incorporation. 62 Atty. Gen. 160.

Corporation is not insulated by 180.47 from private suit under 180.07 (3). Litton Systems, Inc. v. Lippmann-Milwaukee, Inc. 481 F Supp. 766 (1979).

180.49 Organization meetings. (1) After articles of incorporation which do not name the initial directors are filed in the office of the secretary of state under s. 180.46, the first meeting of subscribers shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of electing directors and for such other purposes as are stated in the notice of the meeting. At such first meeting each subscriber shall be entitled to vote to the same extent as though he or she were then a shareholder of the shares for which he or she has subscribed. The incorporators so calling the meeting shall give at least 3 days' notice thereof by mail to each subscriber, which notice shall state the time, place and purpose of the meeting.

(2) After articles of incorporation which name the initial directors are filed, or after the election by subscribers of the directors constituting the initial board of directors, an organization meeting of such board of directors shall be held, either within or without this state, at the call of a majority of the directors so named or elected, for the purpose of electing officers and for the transaction of such other business as comes before the meeting. The directors calling the meeting shall give at least 3 days' notice thereof by mail to each director so named or elected, which notice shall state the time and place of the meeting.

(3) Until the directors are so named or elected, the incorporators shall have direction of the affairs of the corporation and shall make such rules as are necessary for perfecting its organization or regulating subscriptions for its shares, including the consideration therefor.

(4) A majority of the incorporators or the survivors thereof may, in lieu of action by the shareholders, amend the articles of incorporation or voluntarily dissolve the corporation at any time before shares have been issued, by signing and filing articles of amendment or articles of dissolution, as the case may be, which shall include a statement that no shares have been issued, and which shall contain such other variations in the forms of such documents prescribed by this chapter as may be appropriate to the case. Unless such amendment has been authorized by the affirmative vote or the written consent of not less than two-thirds of the shares subscribed for, any subscriber or shareholder who has not voted in favor thereof or consented thereto shall be released from his or her subscription and shall be entitled to repayment of any consideration paid in for his or her shares upon application to the corporation within 10 days after notice of such amendment.

History: 1971 c. 285; 1981 c. 337.

180.50 Right to amend articles of incorporation. (1) A corporation may amend its articles of incorporation, from time to time, 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, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

(2) In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of existence.

(c) To change, enlarge or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class or series, which the corporation has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

(g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect to all or any part of its shares, whether issued or unissued.

(h) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(i) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(j) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(p) To limit, deny or grant to shareholders of any class preemptive rights to shares of the corporation, whether then or thereafter authorized.

180.51 Procedure to amend articles of incorporation. Amendments to the articles of incorporation 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 meeting. The proposed amendment shall be adopted upon receiving the requisite affirmative votes as provided in s. 180.25. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

History: 1971 c. 285.

180.52 Class voting on amendments. (1) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class, except a decrease of authorized but unissued shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class, except a reclassification of unissued or treasury shares into shares of a subordinate and inferior class or a cancellation thereof.

(d) Effect or require an exchange or conversion, or create a right of exchange or conversion, of all or any part of the shares of another class into the shares of such class.

(e) Change in a manner prejudicial to the holders of outstanding shares of such class, the designations, preferences, limitations or relative rights of the shares of such class or of any other class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares either with or without par value, of the same class or another class or classes.

(g) Create a new class or enlarge an existing class of shares having rights or preferences prior or superior to the shares of such class, or increase the rights or preferences of any class having rights or preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to fix and determine the designation and the relative rights and preferences of authorized but unissued shares of such series.

(i) Limit or deny any existing preemptive rights of the shares of such class.

(j) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

(k) Authorize the payment of a dividend in shares of such class.

(2) Whenever any such amendment shall affect the holders of shares of one or more but not all of the series of any preferred or special class at the time outstanding, the holders of the outstanding shares of the series affected thereby shall for the purposes of this section be deemed a separate class and entitled to vote as a class on such amendment.

180.53 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 registered office is located;

(2) The amendment so adopted;

(3) The date of the adoption of the amendment by the shareholders;

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class or series are entitled to vote thereon as a class, the designation of each such class or series and the number of outstanding shares thereof entitled to vote; and the total affirmative number of votes, and the affirmative number of votes of each such class and series, requisite for adoption of such amendment;

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class or series are entitled to vote thereon as a class, the number of shares of each such class or series voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

(8) If the effective time of such amendment is not to be the time of filing of the articles of amendment, then a designation of the effective date and time, which shall be within 31 days after such filing.

History: 1971 c. 285; 1981 c. 337.

180.54 Filing and recording 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.

180.55 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 address of its initial registered office and the name of its initial registered agent at such address, it shall set forth the address, including street and number, if any, and the county of its registered office and the name of its registered agent at such address at the time of the adoption of the restated articles of incorporation or as changed thereby; and

(b) No statement need be made with respect to the number 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: 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.

180.56 Filing and recording order of U.S. court 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 of a corporation. 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.

180.57 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 a party, or the existing rights of persons other than shareholders; 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.

180.58 Cancellation of shares by redemption. (1) When shares of a corporation are redeemed by the corporation, the redemption shall effect a cancellation of such shares and such shares shall be restored to the status of authorized but unissued shares. The stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(2) If the articles of incorporation provide that such shares, when redeemed, shall not be reissued, the corporation may file and there shall be recorded a statement of reduction of authorized shares which shall operate as an amendment to its articles of incorporation and shall reduce the authorized number of shares of the class by the number of shares so canceled. Such statement shall be executed by its president or a vice president and by its secretary or an assistant secretary, and the corporate seal shall be thereto affixed, and shall set forth:

(a) The name of the corporation;

(b) The number of shares, canceled through redemption, by which the authorized shares are reduced, itemized by classes and series;

(c) The aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation and reduction.

(3) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

History: 1981 c. 337.

180.59 Cancellation of shares other than through redemption. (1) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than shares redeemed. The stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

(2) Nothing contained in this section shall be construed to forbid a cancellation of shares or reduction of stated capital in any other manner permitted by this chapter.

180.60 Reduction of stated capital in certain cases. (1) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at either an annual or special meeting of shareholders.

(b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon.

(2) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

180.61 Special provisions relating to surplus and reserves. (1) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be deemed to be capital surplus.

(2) The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

(3) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit in earned surplus. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(4) A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter.

180.62 Procedure for merger. (1) Any 2 or more domestic corporations 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 the surviving corporation;

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

(c) The manner and basis of converting the shares of each merging corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;

(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.

History: 1971 c. 285.

180.63 Procedure for consolidation. (1) Any 2 or more domestic corporations 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 manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property;

(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.

History: 1971 c. 285.

180.64 Approval by shareholders. (1) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at either an annual or special meeting of shareholders. Written notice shall be given to each shareholder of record whether or not entitled to vote at such meeting not less than 20 days before such meeting and in the manner provided by this chapter for the giving of notice of meetings of shareholders, and shall state the purpose of the meeting. Such notice shall include, if applicable, a statement that any shareholder desiring to be paid the fair value of his shares must file a written objection to the plan at least 48 hours prior to such meeting, and shall be accompanied by a copy or a summary of the plan of merger or consolidation.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the requisite affirmative votes as provided in s. 180.25, of each such corporation. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(3) After such approval by a vote of the shareholders of each corporation, and at any time before the merger or consolidation has been effected, it may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: 1971 c. 285.

180.65 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) As to each corporation, the number of shares outstanding, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series; and the total affirmative number of votes, and the affirmative number of votes of each such class and series, which in each case is requisite for the approval of such plan under the provisions of s. 180.25;

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

(d) As to each corporation, the county in which its registered 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 registered offices, and in the county where the surviving or new corporation is to have its registered 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: 1971 c. 285; 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.

180.66 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: 1981 c. 337.

180.67 Effect of merger or consolidation. When any merger or consolidation has been effected in accordance with this chapter:

(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, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed 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.

See note to 102.03, citing Schweiner v. Hartford Accident & Indemnity Co. 120 W (2d) 344, 354 NW (2d) 767 (Ct. App. 1984).

180.68 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:

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

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

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

2. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding which shall set forth the address of the surviving or new corporation to which the secretary of state shall direct any process served; and

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

(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.

180.685 Merger of subsidiary corporation. (1) Unless otherwise provided in the articles of incorporation, any corporation owning at least 90% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least 90% of its shares, hereinafter designated the surviving corporation;

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

(c) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property; and

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

(2) Not less than 30 days before the proposed effective time of such merger, a copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation, other than the surviving corporation, together with a notice which shall state that the shareholder has the right upon written demand on the subsidiary corporation, filed within 20 days thereafter, to be paid the fair value of his shares as provided in s. 180.72.

(3) Unless the merger shall be abandoned pursuant to provisions therefor set forth in the plan of merger and notice thereof mailed prior to the proposed effective time of merger to each shareholder to whom notice was sent pursuant to sub. (2), articles of merger 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, and shall set forth:

(a) The plan of merger;

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation;

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger, and notice required by sub. (2), or a statement that the same were waived;

(d) If the effective time of such merger is not to be the time of filing of the articles of merger, then a designation of the effective date and time, which shall be within 31 days after filing; and

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

(4) After the expiration or waiver of all rights of such shareholders to make written demands for payment under s. 180.72, such articles of merger 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 merging have their registered offices.

History: 1971 c. 285; 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.

This section can be utilized to effect merger of 2 Wisconsin railroad corporations. 61 Atty. Gen. 389.

180.70 Sale, lease or exchange of assets without shareholder action. (1) The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, and the mortgage or pledge of any or all property and assets of a corporation or the sale, lease, exchange or other disposition of less than substantially all the property and assets of a corporation, whether or not made in the usual and regular course of the business of the 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 other corporation, domestic or foreign, whether or not such other corporation be organized under the provisions of this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required, unless otherwise provided by law or in the articles of incorporation.

(2) Any corporation, by provision in its articles of incorporation, may authorize any one or more of its officers to sell, lease, exchange, mortgage, pledge, or otherwise convey or dispose of all or any part of its real property, fixtures, improvements or chattels real, by instruments duly executed according to law, and in such case no authorization or consent of the shareholders or directors shall be required.

(3) Where the articles of incorporation of any corporation organized prior to July 1, 1953, expressly provide in substance that such corporation has power or authority to deal in, sell, lease, exchange, mortgage, pledge, or otherwise convey or dispose of all or any part of its real property, fixtures, improvements or chattels real, such action may be taken by its officers by instruments duly executed according to law, and in such case no authorization or consent of the shareholders or directors shall be required.

History: 1971 c. 285.

180.71 Sale, lease or exchange of assets with shareholder action. A sale, lease, exchange or other disposition of all, or substantially all, the property and assets, with or without good will, of a corporation, if not made in the usual and regular course of its business, 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 other corporation, domestic or foreign, whether or not such other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 20 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange or other disposition. Such notice shall further state, if applicable, that any shareholder desiring to be paid the fair value of his shares must file a written objection to the proposed sale, lease, exchange or other disposition at least 48 hours prior to the meeting.

(3) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and 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 requisite affirmative votes as provided in s. 180.25.

(4) After such authorization by a vote of shareholders, 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 shareholders.

History: 1971 c. 285.

180.72 Rights of objecting shareholders. (1) Any shareholder of a corporation shall have the right to file with the corporation a written objection, at least 48 hours prior to the meeting of shareholders at which any of the following corporate actions are proposed to be voted upon: a) Any plan of merger or consolidation to which the corporation is a party; b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash, with or without an assumption of liabilities of the seller, on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale; or c) Any conversion under s. 180.975 of a corporation to a nonprofit nonstock corporation subject to ch. 181. A shareholder may object as to less than all of the shares registered in his name; and in that event, his rights shall be determined as if the shares as to which he has objected and his other shares were registered in the names of different shareholders. A shareholder in a statutory close corporation formed under s. 180.995 need not file a written objection prior to a meeting of shareholders or the corporate action in order to preserve his or her right to receive the fair value of his or her shares. This subsection shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger. Except in a business combination, as defined in s. 180.725 (1) (d), which is subject to s. 180.725 (2) or exempt under s. 180.725 (3), this subsection shall not apply to the holders of shares of any class or series if the shares of such class or series were registered on a national securities exchange or quoted on the national association of securities dealers, inc., automated quotations system on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation, a proposed sale or exchange of property and assets, or a proposed conversion under s. 180.975 is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide.

(2) If such written objection by a shareholder to such proposed corporate action has been filed, and if such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within 10 days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation any of its shareholders may, within 20 days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action, except as provided in s. 180.725. In a business combination, as defined in s. 180.725 (1) (d), the fair value shall be the market value determined under s. 180.725 (1) (k) 1. a to d. Any shareholder failing to make demand within the applicable 10-day or 20-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to any other rights of a shareholder.

(3) No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, at the effective time of the merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section, or if a court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

(4) Within 10 days after such corporate action is effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, or, in the case of a conversion under s. 180.975, the corporation, as defined in s. 181.02 (4), shall give written notice thereof to each objecting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the objecting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer, and a profit and loss statement of such corporation for the 12-month period ended on the date of such balance sheet.

(5) If within 30 days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such objecting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the objecting shareholder shall cease to have any interest in such shares.

(6) If within such period of 30 days an objecting shareholder and the corporation do not so agree, then the corporation, within 30 days after receipt of written demand from any objecting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, commence a special proceeding by serving and filing a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located requesting that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any objecting shareholder may do so in the name of the corporation. All objecting shareholders, wherever residing, who have made demands as herein provided and whose rights to payment have not otherwise terminated, shall be made parties to the special proceeding. A copy of the petition and any process or notice shall be served on each such objecting shareholder, whether a resident or nonresident of this state, as provided in ch. 801. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a finding of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the objecting shareholder shall cease to have any interest in such shares.

(7) The judgment may include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(8) The costs and expenses of any such proceeding shall be determined by the court and may be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the objecting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(9) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of

competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation together with the name of the original objecting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original objecting shareholder had after making demand for payment of the fair value thereof.

(10) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

History: 1971 c. 285; Sup. Ct. Order, 67 W (2d) 775; 1983 a. 200, 340, 538; 1987 a. 399.

Legislative Council Note, 1983: This amendment to sub. (1) is intended to assure that the provision of "dissenter's rights" in s. 180.995 are not predicated on prior notice to the corporation. Currently, s. 180.72 (1) requires that written objection be filed by an objecting shareholder at least 48 hours prior to the meeting of shareholders at which certain actions are proposed to be voted upon. This amendment creates an exception to that requirement for shareholders in a statutory close corporation in order to avoid the denial of rights under s. 180.995 because of the failure to comply with the procedural requirement that written objections must be filed 48 hours in advance of a meeting. [Bill 433-A]

Appraisal remedy under this section does not bar suits for breach of fiduciary duty or other torts. Kademian v. Ladish Co. 792 F (2d) 614 (1986).

180.725 Special voting requirements for issuing public corporations. (1) In this section:

(a) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

(b) "Associate" of a person means any of the following:

1. An organization, other than the issuing public corporation or a subsidiary of the issuing public corporation, of which the person is an officer, director or partner or is, directly or indirectly, the beneficial owner of 10% or more of a class of voting securities.

2. A trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity.

3. A relative or spouse of the person, or a relative of the spouse, who has the same principal residence as the person who is a director or officer of the issuing public corporation or of an affiliate of the issuing public corporation.

(c) "Beneficial owner" has the meaning prescribed in rule 13d-3 under the securities exchange act of 1934. A person is not a "beneficial owner" solely because of any of the following:

1. The existence of an agreement by or on behalf of the person and by or on behalf of a record or beneficial owner of securities under which the owner agrees to vote the securities in favor of a proposed merger, consolidation, sale, lease, exchange or other disposition of assets.

2. The existence of an option from, or other arrangement with, an issuing public corporation to acquire securities of the issuing public corporation.

(d) "Business combination" means any of the following:

1. Unless the merger or consolidation is subject to s. 180.685, does not alter the contract rights of the shares as set forth in the articles of incorporation or does not change or convert in whole or in part the outstanding shares of the issuing public corporation, a merger or consolidation of the issuing public corporation or a subsidiary of the issuing public corporation with:

a. A significant shareholder; or

b. Any other corporation, whether or not itself a significant shareholder, which is, or after the merger or consolidation would be, an affiliate of a significant shareholder that was a significant shareholder before the transaction.

2. A sale, lease, exchange or other disposition, other than a mortgage or pledge if not made to avoid the requirements of this section, to a significant shareholder, other than the issuing public corporation or a subsidiary of the issuing public corporation, or to an affiliate of the significant shareholder, of all, or substantially all, of the property and assets, with or without goodwill, of an issuing public corporation, if not made in the usual and regular course of its business.

(e) "Commencement of a tender offer" has the meaning prescribed in rule 14d-2 under the securities exchange act of 1934.

(f) "Common shares" means shares other than preferred or preference shares.

(g) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise.

(h) "Determination date" means the date on which a significant shareholder first becomes a significant shareholder.

(k) "Market value" means:

1. In the case of shares:

a. If the shares are listed on a national securities exchange registered under the securities exchange act of 1934 or are quoted on any national market system, the highest closing sales price per share reported on the exchange or quoted on the system during the valuation period.

b. If bids for the shares are quoted on the national association of securities dealers automated quotation system, or any successor system operated by the association, the highest closing bid per share quoted on the system during the valuation period.

c. If the shares are listed on an exchange or are quoted on a system under subd. 1. a but no transactions are reported during the valuation period or if the shares are neither listed on an exchange or system under subd. 1. a nor quoted on a system under subd. 1. b, and if at least 3 members of the national association of securities dealers are market makers for the securities, the highest closing bid per share obtained from the association during the valuation period.

d. If no report or quote is available under subd. 1. a, b or c, the fair market value as determined in good faith by the board of directors of the issuing public corporation.

2. In the case of property other than cash or shares, the fair market value of the property on the date in question as determined in good faith by the board of directors of the corporation.

(L) "Organization" means a person other than an individual.

(Lm) "Significant shareholder", with respect to an issuing public corporation, means a person that is the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting shares of the issuing public corporation; or is an affiliate of the issuing public corporation and within the 2-year period immediately before the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding voting shares of the issuing public corporation. For the purpose of determining whether a person is a significant shareholder, the number of voting shares deemed to be outstanding includes shares deemed owned by the person as the beneficial owner but does not include any other voting shares which may be issuable under an agreement, arrange-

ment or understanding, or upon exercise of conversion rights, warrants or options, or otherwise. In this paragraph, "person" includes 2 or more individuals or persons acting as a group for the purpose of acquiring, holding or voting securities of an issuing public corporation.

(m) "Subsidiary" means a corporation of which voting shares having a majority of the votes entitled to be cast are owned, directly or indirectly, by one other corporation.

(mm) "Take-over offer" means the offer to acquire or the acquisition of any equity security, as defined in s. 552.01 (2), of an issuing public corporation, pursuant to a tender offer or request or invitation for tenders, if after the acquisition thereof the offeror, as defined in s. 552.01 (3), would be directly or indirectly a beneficial owner of more than 5% of any class of the outstanding equity securities of the issuer. "Take-over offer" does not include an offer or acquisition of any equity security of an issuing public corporation pursuant to:

1. Brokers' transactions effected by or through a broker-dealer in the ordinary course of its business.

2. An exchange offer for securities of another issuer, if the offer is exempted from registration under ch. 551 and does not involve any public offering under the securities act of 1933.

3. An offer made to not more than 10 persons in this state during any period of 12 consecutive months.

4. An offer made to all the stockholders of the issuing public corporation, if the number of its stockholders does not exceed 100 at the time of the offer.

5. An offer if the acquisition of any equity security pursuant thereto, together with all other acquisitions by the offeror of securities of the same class during the preceding 12 months, would not exceed 2% of that class of the outstanding equity securities of the issuer.

6. An offer by the issuing public corporation to acquire its own equity securities.

(n) "Valuation date" means the later of the day before the date of the shareholders' vote pursuant to sub. (2) or the day 20 days before the consummation of the business combination.

(nm) "Valuation period" means the 30-day period preceding the date upon which the market value is to be determined.

(o) "Voting shares" means capital shares of a corporation entitled to vote generally in the election of directors.

(1m) An indication that a corporation is an issuing public corporation or has elected to be subject to this section, provided in accordance with s. 180.791 (1) (f), is prima facie evidence that the corporation is an issuing public corporation or is subject to this section by election, respectively.

(2) In addition to a vote otherwise required by law or the articles of incorporation of the issuing public corporation, a business combination must be approved by the affirmative vote of at least:

(a) Eighty percent of the votes entitled to be cast by outstanding voting shares of the corporation, voting together as a single voting group; and

(b) Two-thirds of the votes entitled to be cast by holders of voting shares other than voting shares beneficially owned by a significant shareholder who is a party to the business combination or an affiliate or associate of a significant shareholder who is a party to the business combination, voting together as a single voting group.

(3) (a) The vote required by sub. (2) does not apply to a business combination if each of the following conditions is met:

1. The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by shareholders of the issuing public corporation in the business combination is at least equal to the highest of the following:

a. The highest per share price, including brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the significant shareholder for common shares of the same class or series acquired by it within the 2-year period immediately before the date of commencement of a tender offer initiated by the significant shareholder, or in the transaction in which it became a significant shareholder, whichever is higher.

b. The market value per share of the same class or series on the date of commencement of a tender offer initiated by the significant shareholder, on the determination date or on the date of the first public announcement of the proposed business combination, whichever is highest.

c. The highest preferential amount per share to which the holder of shares of the class or series of shares is entitled in a voluntary or involuntary liquidation or dissolution of the corporation.

3. The consideration to be received by holders of a class or series of outstanding shares is to be in cash or in the same form as the significant shareholder has previously paid for shares of the same class or series. If the significant shareholder has paid for shares of a class of shares with varying forms of consideration, the form of consideration for the class of shares shall be either cash or the form used to acquire the largest number of shares of the class or series of shares previously acquired by it.

(b) Subsection (2) does not apply to a business combination of any of the following:

1. A corporation if a business combination involving the corporation is governed by s. 180.04 (6), 186.31, 215.53, 215.73, 221.25 or 223.11.

2. A corporation whose original articles of incorporation have a provision expressly electing not to be governed by this section.

3. An issuing public corporation whose shareholders adopt an amendment to the articles of incorporation on or after April 24, 1984, by a vote of at least 80% of the votes entitled to be cast by outstanding shares of voting shares of the issuing public corporation, voting together as a single voting group and two-thirds of the votes entitled to be cast by persons, if any, who are not significant shareholders of the issuing public corporation, voting together as a single voting group, expressly electing not to be governed by this section.

(c) A corporation that is not an issuing public corporation may elect, by express provision in its articles of incorporation, to be subject to this section as if it were an issuing public corporation unless its articles of incorporation contain a provision stating that the corporation is a close corporation under s. 180.995.

(4) A business combination of a corporation that has a provision of the articles of incorporation permitted by s. 180.25 is subject to sub. (2) unless one of the exemptions of sub. (3) have been met.

(5) In addition to a vote otherwise required by law or the articles of incorporation of the issuing public corporation, approval by vote of holders of a majority of the shares of the issuing public corporation entitled to vote on the proposal is required at a shareholders' meeting held in conformance with ss. 180.24 and 180.28 before any of the following actions may be taken by the officers or board of directors of the issuing public corporation, while a take-over offer is being made, or after a take-over offer has been publicly announced and before it is concluded, for the issuing public corporation's voting shares:

(a) Acquiring more than 5% of the issuing public corporation's voting shares at a price above the market value from any individual who or organization which holds more than 3% of the voting shares and has held the shares for less than 2 years, unless the issuing public corporation makes at least an equal offer to acquire all voting shares and all securities which may be converted into voting shares.

(b) Selling or optioning assets of the issuing public corporation which amount to at least 10% of the market value of the issuing public corporation. This paragraph does not apply to an issuing public corporation if all of the following are satisfied:

1. The issuing public corporation has at least 3 directors who are not either officers or employes of the issuing public corporation.

2. A majority of the directors who are not either officers or employes of the issuing public corporation vote to not be governed by this paragraph.

History: 1983 a. 200; 1985 a. 195; 1987 a. 45.

NOTE: 1983 Wisconsin Act 200, which created this section, includes in Section 1, "Legislative declaration". See 1983 Session Laws.

Illinois Take-Over Act violated Interstate Commerce Clause. Edgar v. MITE Corp. 457 US 624 (1982).

Take-overs of Wisconsin corporations: A new era of shareholder protection begins. Malmgren and Pelisek. WBB May 1984.

180.726 Restrictions on certain business combinations involving a resident domestic corporation and interested stockholder. (1) DEFINITIONS. In this section:

(a) "Affiliate" has the meaning given in s. 180.725 (1).

(b) "Announcement date" means the date of the first public announcement of the final, definitive proposal for a business combination.

(c) "Associate" of a person means any of the following:

1. A corporation or organization of which the person is an officer, director or partner or is the beneficial owner of at least 10% of any class of voting stock.

2. A trust or other estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity.

3. A relative or spouse of the person, or a relative of the spouse, who has the same principal residence as the person.

(d) 1. "Beneficial owner" of stock means a person, except as provided in subd. 2, that meets any of the following conditions:

a. Individually, or with or through any of the person's affiliates or associates, beneficially owns the stock, directly or indirectly.

b. Individually, or with or through any of the person's affiliates or associates, directly or indirectly has the right, whether exercisable immediately or only after the passage of time, to acquire the stock pursuant to a written or unwritten agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise.

c. Individually, or with or through any of the person's affiliates or associates, directly or indirectly has the right to vote the stock pursuant to a written or unwritten agreement, arrangement or understanding, except that a person is not the beneficial owner of stock under this subd. 1. c if the agreement, arrangement or understanding to vote that stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable regulations under the exchange act and is not reportable under the report required under 17 CFR 240.13d-1 (1) (a) or a comparable or successor report.

d. Has a written or unwritten agreement, arrangement or understanding with another person that is directly or indirectly a beneficial owner, or whose affiliates or associates are direct or indirect beneficial owners, of the stock, if the agreement, arrangement or understanding is for the purpose of acquiring, holding, disposing of or voting the stock, unless the voting is pursuant to a revocable proxy or consent described in subd. 1. c.

2. A person is not the direct or indirect beneficial owner of stock tendered pursuant to a tender or exchange offer which is made by that person or an affiliate or associate of that person until the tendered stock is accepted for purchase or exchange.

(e) "Business combination" means any of the following:

1. A merger, including a merger under s. 180.685, or consolidation of the resident domestic corporation or any subsidiary of the resident domestic corporation with any of the following:

a. An interested stockholder.

b. A corporation, whether or not it is an interested stockholder, which is, or after a merger or consolidation would be, an affiliate or associate of an interested stockholder.

2. A sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, to or with an interested stockholder or an affiliate or associate of an interested stockholder of assets of the resident domestic corporation or a subsidiary of the resident domestic corporation if those assets meet any of the following conditions:

a. Have an aggregate market value equal to at least 5% of the aggregate market value of all the assets, determined on a consolidated basis, of the resident domestic corporation.

b. Have an aggregate market value equal to at least 5% of the aggregate market value of all the outstanding stock of the resident domestic corporation.

c. Represent at least 10% of the earning power or income, determined on a consolidated basis, of the resident domestic corporation.

3. The issuance or transfer by the resident domestic corporation or a subsidiary of the resident domestic corporation, in one transaction or a series of transactions, of any stock of the resident domestic corporation or a subsidiary of the resident domestic corporation if all of the following conditions are satisfied:

a. The stock has an aggregate market value equal to at least 5% of the aggregate market value of all the outstanding stock of the resident domestic corporation.

b. The stock is issued or transferred to an interested stockholder or an affiliate or associate of an interested stockholder, except for stock of the resident domestic corporation or such subsidiary issued or transferred pursuant to the exercise of warrants, rights or options to purchase such stock offered, or a dividend paid, or distribution made, proportionately to all stockholders of the resident domestic corporation.

4. The adoption of a plan or proposal for the liquidation or dissolution of the resident domestic corporation which is proposed by, on behalf of, or pursuant to a written or unwritten agreement, arrangement or understanding with, an interested stockholder or an affiliate or associate of an interested stockholder.

5. Any of the following, if the direct or indirect effect is to increase the proportionate share of the outstanding stock of a class or series or securities convertible into voting stock of the resident domestic corporation or a subsidiary of the resident domestic corporation beneficially owned by the interested stockholder or an affiliate or associate of the interested stockholder, unless the increase is the result of immaterial changes due to fractional share adjustments:

a. A reclassification of securities, including, without limitation, a stock split, stock dividend or other distribution of stock in respect of stock, or reverse stock split.

b. A recapitalization of the resident domestic corporation.

c. A merger or consolidation of the resident domestic corporation with a subsidiary of the resident domestic corporation.

d. Any other transaction, whether or not with, into or involving the interested stockholder, which is proposed by, on behalf of, or pursuant to a written or unwritten agreement, arrangement or understanding with, the interested stockholder or an affiliate or associate of the interested stockholder.

6. Receipt by an interested stockholder or an affiliate or associate of an interested stockholder of the direct or indirect benefit of a loan, advance, guarantee, pledge or other financial assistance or a tax credit or other tax advantage provided by or through the resident domestic corporation or any subsidiary of the resident domestic corporation, unless the interested stockholder receives the benefit proportionately as a holder of stock of the resident domestic corporation.

(g) "Consummation date" means the date of consummation of a business combination.

(h) 1. "Control", "controlled by" or "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, except as provided in subd. 2, by contract, or otherwise.

2. "Control" of a corporation is not established under subd. 1 if a person, in good faith and not for the purpose of circumventing this section, holds voting power as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of that corporation.

(i) "Exchange act" means the securities exchange act of 1934 and amendments thereto.

(j) 1. "Interested stockholder", with respect to a resident domestic corporation, means a person other than the resident domestic corporation or a subsidiary of the resident domestic corporation that meets any of the following conditions:

a. Is the beneficial owner of at least 10% of the voting power of the outstanding voting stock of that resident domestic corporation.

b. Is an affiliate or associate of that resident domestic corporation and at any time within 3 years immediately before the date in question was the beneficial owner of at least 10% of the voting power of the then outstanding voting stock of that resident domestic corporation.

2. For the purpose of determining whether a person is an interested stockholder, the number of shares of voting stock of the resident domestic corporation considered outstanding includes shares beneficially owned by the person but does not include any other unissued shares of voting stock of the resident domestic corporation which may be issuable pursuant to an agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(L) 1. "Resident domestic corporation" means a domestic corporation that, as of the stock acquisition date in question, satisfies any of the following:

a. Its principal executive offices are located in this state.

b. It has significant business operations located in this state.

c. More than 10% of the holders of record of its shares are residents of this state.

d. More than 10% of its shares are held of record by residents of this state.

2. For purposes of subd. 1. c and d, the record date for determining the percentages and numbers of shareholders and shares is the most recent shareholder record date established under s. 180.26 before the stock acquisition date in question, and the residence of each shareholder is the address of the shareholder which appears on the records of the resident domestic corporation.

(m) "Stock" means any of the following:

1. Shares, stock or similar security, certificate of interest, participation in a profit sharing agreement, voting trust certificate, or certificate of deposit for any of the items described in this subdivision.

2. Security which is convertible, with or without consideration, into stock, or any warrant, call or other option or privilege of buying stock, or any other security carrying a right to acquire, subscribe to or purchase stock.

(n) "Stock acquisition date", with respect to any person, means the date that that person first becomes an interested stockholder of that resident domestic corporation.

(o) "Subsidiary" of a resident domestic corporation means any other corporation, whether or not a domestic corporation, of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by the resident domestic corporation.

(p) "Voting stock" means capital stock of a corporation, whether or not a domestic corporation, entitled to vote generally in the election of directors.

(2) BUSINESS COMBINATIONS DURING THE 3 YEARS AFTER THE STOCK ACQUISITION DATE. Except as provided in sub. (5), a resident domestic corporation may not engage in a business combination with an interested stockholder of the resident domestic corporation for 3 years after the interested stockholder's stock acquisition date unless the board of directors of the resident domestic corporation has approved, before the interested stockholder's stock acquisition date, that business combination or the purchase of stock made by the interested stockholder on that stock acquisition date.

(3) BUSINESS COMBINATIONS MORE THAN 3 YEARS AFTER THE STOCK ACQUISITION DATE. At any time after the 3-year period described in sub. (2), the resident domestic corporation may engage in a business combination with the interested stockholder but only if any of the following is satisfied:

(a) The board of directors of the resident domestic corporation has approved, before the interested stockholder's stock acquisition date, the purchase of stock made by the interested stockholder on that stock acquisition date.

(b) The business combination is approved by the affirmative vote of the holders of a majority of the voting stock not beneficially owned by the interested stockholder at a meeting called for that purpose.

(c) The business combination meets all of the following conditions:

1. Holders of all outstanding shares of stock of the resident domestic corporation not beneficially owned by the interested stockholder are each entitled to receive per share an aggregate amount of cash and the market value, as of the consummation date, of noncash consideration at least equal to the higher of the following:

a. The highest of: the market value per share on the announcement date with respect to the business combination, the market value per share on the interested stockholder's stock acquisition date, the highest price per share paid by the interested stockholder, including brokerage commissions, transfer taxes and soliciting dealers' fees, for shares of the same class or series within the 3 years immediately before and

including the announcement date of the business combination, or the highest price per share paid by the interested stockholder, including brokerage commissions, transfer taxes and soliciting dealers' fees, for shares of the same class or series within the 3 years immediately before and including the interested stockholder's stock acquisition date; plus, in each case, interest compounded annually from the earliest date on which that highest per share acquisition price was paid or the per share market value was determined, through the consummation date, at the rate for one-year U.S. treasury obligations from time to time in effect; less the aggregate amount of any cash and the market value, as of the dividend payment date, of any noncash dividends paid per share since that date, up to the amount of that interest.

b. The highest preferential amount per share, if any, to which the holders of shares of that class or series of stock are entitled upon the voluntary or involuntary liquidation of the resident domestic corporation, plus the aggregate amount of dividends declared or due which those holders are entitled to before payment of dividends on another class or series of stock, unless the aggregate amount of those dividends is included in the preferential amount.

2. The form of consideration to be received by holders of each particular class or series of outstanding stock in the business combination is in cash or, if the interested stockholder previously acquired shares of that class or series, the same form as the interested stockholder previously used to acquire the largest number of shares of that class or series.

(d) The business combination is a business combination as described in sub. (5) (a), (b), (c), (d) or (e).

(4) DETERMINATION OF MARKET VALUE. For purposes of this section, the market value of stock or property other than cash or stock is determined as follows:

(a) In the case of stock, by:

1. The highest closing sale price during the 30 days immediately before the date in question of a share of that class or series of stock on the composite tape for stocks listed on the New York stock exchange, or, if that class or series of stock is not quoted on the composite tape or if that class or series of stock is not listed on the New York stock exchange, on the principal U.S. securities exchange registered under the exchange act on which that class or series of stock is listed.

2. If that class or series of stock is not listed on an exchange described in subd. 1, the highest closing bid quotation for a share of that class or series of stock during the 30 days immediately before the date in question on the national association of securities dealers automated quotation system, or any similar system then in use.

3. If no quotations described in subd. 2 are available, the fair market value on the date in question of a share of that class or series of stock as determined in good faith by the board of directors of the resident domestic corporation.

(b) In the case of property other than cash or stock, the fair market value of the property on the date in question as determined in good faith by the board of directors of the resident domestic corporation.

(4m) PRESUMPTION OF CONTROL. For purposes of this section, a person's beneficial ownership of at least 10% of the voting power of a corporation's outstanding voting stock creates a presumption that the person has control of the corporation.

(5) EXCLUSIONS FROM SECTION. This section does not apply to any of the following:

(a) Unless the articles of incorporation provide otherwise, a business combination of a resident domestic corporation with an interested stockholder if the resident domestic corporation did not have a class of voting stock registered or traded on a national securities exchange or registered under section 12 (g) of the exchange act on the interested stockholder's stock acquisition date.

(b) Unless the articles of incorporation provide otherwise, a business combination with an interested stockholder who was an interested stockholder immediately before September 10, 1987, unless subsequently the interested stockholder increased its beneficial ownership of the voting power of the outstanding voting stock of the resident domestic corporation to a proportion in excess of the proportion of voting power that the interested stockholder beneficially owned immediately before September 10, 1987, excluding an increase approved by the board of directors of the resident domestic corporation before the increase occurred.

NOTE: This section is created by 1987 Wis. Act 45. Section 3m of the Act provides that the creation takes effect retroactively to 9-10-87 except that the creation of par. (b) is effective 9-18-87 for any person who was an interested stockholder on 9-10-87.

(c) A business combination of a resident domestic corporation with an interested stockholder which became an interested stockholder inadvertently, if the interested stockholder satisfies all of the following:

1. As soon as practicable divests itself of a sufficient amount of the voting stock of the resident domestic corporation so that the interested stockholder is no longer the beneficial owner of at least 10% of the voting power of the outstanding voting stock of the resident domestic corporation, or a subsidiary of that resident domestic corporation.

2. Would not at any time within the 3 years before the announcement date with respect to the business combination in question have been an interested stockholder except for the inadvertent acquisition.

(d) A business combination of a resident domestic corporation with an interested stockholder which was an interested stockholder immediately before September 10, 1987, and inadvertently increased its beneficial ownership of the voting power of the outstanding voting stock of the resident domestic corporation to a proportion in excess of the proportion of voting power that the interested stockholder beneficially owned immediately before September 10, 1987, if the interested stockholder divests itself of a sufficient amount of voting stock so that the interested stockholder is no longer the beneficial owner of a proportion of the voting power in excess of the proportion of voting power that the interested stockholder held immediately before September 10, 1987.

(e) A business combination of a resident domestic corporation if the business combination is governed by s. 180.04 (6), with respect to acquiring or holding stock of a state bank or trust company, or by s. 186.31, 186.41, 215.36, 215.53, 215.73, 221.25, 221.58 or 223.11.

(6) RELATIONSHIP OF SECTION TO OTHER LAWS. (a) The requirements of this section are in addition to the requirements of other applicable law, including the other provisions of this chapter, and any additional requirements contained in the articles of incorporation or bylaws of a resident domestic corporation with respect to business combinations.

(b) For purposes of applying this section, if any other provision of this chapter is inconsistent with, in conflict with or contrary to this section, that provision does not apply to the extent that it is inconsistent with, in conflict with or contrary to this section.

(7) SUNSET. This section does not apply after September 10, 1991.

History: 1987 a. 45.

NOTE: This section is created by 1987 Wis. Act 45 effective retroactively to 9-10-87. Section 1 of the Act contains a legislative declaration.

180.753 Dissolution by act of corporation. A corporation may be dissolved pursuant to the act of the corporation, in the following manner:

(1) Written notice of a special meeting, or of the annual meeting of shareholders, 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 shareholder 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 shareholders.

(2) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation, which shall require for its adoption the requisite affirmative votes as provided in s. 180.25.

(3) Upon the adoption of such resolution, a statement of intent to dissolve 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:

(a) The name of the corporation;

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

(c) A copy of the resolution of the shareholders authorizing the dissolution of the corporation;

(d) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of shares of each such class and the total affirmative number of votes, and the affirmative number of votes of each such class and series, which in each case is requisite for approval of the resolution of dissolution;

(e) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively; and

(f) The county in which its registered office is located.

History: 1971 c. 285; 1981 c. 337.

180.755 Filing and recording statement of intent to dissolve and effect thereof. The statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be filed and recorded, and on the filing of the statement the corporation shall cease to carry on its business, except insofar as may be necessary for the proper winding up thereof.

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.

180.757 Proceedings after filing and recording of statement of intent to dissolve. After the filing of a statement of intent to dissolve:

(1) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, including those contingent in nature, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(2) The corporation, at any time during the liquidation of its business and affairs, may make application to the circuit court of the county in which the registered office or principal place of business of the corporation is located, to have the liquidation continued under the supervision of the court as provided in this chapter.

History: 1981 c. 337.

180.761 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 shareholders, 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 shareholder 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 shareholders.

(2) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption the requisite affirmative votes as provided in s. 180.25.

(3) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate 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:

(a) The name of the corporation and the county in which its registered office is located;

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

(c) A copy of the resolution of the shareholders revoking the voluntary dissolution proceedings;

(d) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of shares of each such class and the total affirmative number of votes, and the affirmative number of votes of each such class and series, which in each case is requisite for approval of the resolution;

(e) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

History: 1971 c. 285; 1981 c. 337.

180.763 Filing and recording of statement of revocation of voluntary dissolution proceedings and effect thereof. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be filed and recorded, and on filing the statement the revocation is effective and the corporation may again carry on its business.

History: 1981 c. 337.

180.765 Articles of dissolution. When all debts, liabilities and obligations of the corporation, including those contingent in nature, have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate 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) That the corporation has theretofore filed with the secretary of state a statement of intent to dissolve;

(3) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, and that adequate provision has been made for all debts, obligations and liabilities, contingent in nature, of which the corporation has actual knowledge;

(4) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) 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.

(6) The names and respective addresses, including street and number, of its 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 directors.

(7) The county in which the corporation's registered office is located.

History: 1981 c. 337; 1985 a. 29.

180.767 Filing and recording articles of dissolution and effect thereof. The articles of dissolution shall be filed and recorded, and the existence of the corporation shall cease when the articles are filed, except for the purpose of suits, other proceedings and appropriate corporate action of shareholders, directors and officers as provided in this chapter. Upon 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.

180.768 Property not distributed prior to dissolution. (1) Upon the filing of the articles of dissolution or of a decree of dissolution or upon the issuance of a certificate of involuntary dissolution, the title to any property inadvertently or otherwise omitted from the final distribution or the title to any property not distributed prior to the issuance of a certificate of involuntary dissolution vests in the directors named in the articles or decree of dissolution or in the last-acting directors in the case of the issuance of a certificate of involuntary dissolution as trustees for the benefit of the creditors and shareholders of the corporation as their respective rights and interests may appear. The trustees shall distribute this property or its proceeds to the persons beneficially entitled, and for this purpose a majority of the directors acting as trustees have full authority and capacity to collect and administer this property; to adjust and settle any claims against this 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 this property in whole or in part, on such terms and conditions as they in their discretion may determine; and to do any other lawful acts as may be necessary or proper for them to execute their trust.

(2) If a director named in the articles or decree of dissolution or a last-acting director in the case of the issuance of a certificate of involuntary dissolution ceases 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.

(3) If there is at any time no trustee, or in the event any trustee cannot with reasonable diligence be found, then the circuit court for the county in which the corporation's situs, as defined under s. 180.769 (3) (c), is located has power to appoint a trustee or trustees, or a successor trustee or trustees, upon application to the court by any person found by the court to have an interest in the property or its disposition.

(4) 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's situs is located to have the court liquidate the property under the jurisdiction of the circuit court to liquidate assets and business of a corporation as provided in this chapter.

History: 1977 c. 418; 1981 c. 337.

180.769 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 30 days to appoint and maintain a registered agent in this state; or

(d) The corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change; 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.

(2) If prior to the entry of the court's decree the corporation shall cure its defaults other than those under sub. (1) (a) and (b) and shall pay all penalties and court costs that may have accrued the cause of action with respect to the defaults so cured shall abate.

(3) (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 3 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. 180.793 (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 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 whatever and thereafter the dissolved corporation may not transact its ordinary business or exercise corporate powers except as provided under ss. 180.767, 180.768 and 180.787.

(bm) The secretary of state shall rescind the dissolution of a corporation involuntarily dissolved under this subsection and issue a certificate stating the recision 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. The corporation pays to the secretary of state $100 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 recision of its involuntary dissolution is the same as or deceptively similar to the name of another corporation as prohibited by s. 180.07 (3).

(c) In this subsection and in s. 180.768, "situs" means a corporation or former corporation's last-known principal place of business as shown by the most recently filed annual

report, or if none, its registered office, or if none, its designated location, or if none, the last-known address of any known director or incorporator.

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

History: 1977 c. 29; 1977 c. 418 ss. 681 to 685, 929 (44); 1977 c. 447; 1981 c. 280; 1983 a. 505.

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

(a) In an action by a shareholder when it is established:

1. That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, 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 shareholders are deadlocked in voting power, and have failed, for a period which includes at least 2 consecutive annual meeting dates, to elect successors to directors whose term has expired or would have expired upon the election and qualification of their successors.

(b) In an action by a creditor:

1. 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; or

2. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court.

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

(e) In an action under s. 946.86.

(f) When entering an order of dissolution under s. 180.995.

(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 the circuit court for the county in which the registered office of the corporation is situated.

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

History: 1981 c. 280; 1983 a. 340.

180.773 Procedure in liquidation of corporation by circuit court. (1) In proceedings to liquidate the assets and business 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 business 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 subscribers and by shareholders on account of any unpaid portion of the consideration for the issuance of shares. 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 to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(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.

180.775 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: 1971 c. 285.

180.777 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation the court shall require all creditors and claimants 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, and shall fix a date, which shall be not 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 the court, from participating with other creditors and claimants in the distribution of the assets of the corporation in such proceedings.

180.779 Discontinuance of liquidation proceedings. The liquidation of the assets and business 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.

180.781 Decree of dissolution. In proceedings to liquidate the assets and business 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 to its shareholders, 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 go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall

cease. Such decree shall state the names and respective addresses, including street and number, of the directors of the corporation as of the date of such decree, or if there be no directors at such time, then of its last acting directors.

180.783 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 filing or recording.

History: 1981 c. 337.

180.785 Unclaimed assets. Assets distributable in the course of a voluntary or involuntary dissolution that remain unclaimed after one year shall be reported and delivered to the state treasurer as provided under ch. 177.

History: 1983 a. 408.

180.787 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 shareholders, 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, except that notice of an additional assessment under ch. 71 shall be given within the time prescribed under ss. 71.74 (9) and 71.77 and except that the time limit under s. 77.59 (3) applies in respect to sales and use tax liability. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name, except that if an additional assessment is made under s. 71.74 (7), such assessment shall be defended in the name of the person named in the matter. The shareholders, directors and officers may 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: 1975 c. 224; 1985 a. 29; 1987 a. 312 s. 17.

When a corporation becomes defunct by dissolution in the state of its creation, it is defunct in every state unless the other state has also granted it a charter. Only the state of incorporation can prolong its life for litigation purposes. The date of dissolution must be considered in relation to the date of injury in a tort case. The 2-year period is not a statute of limitation, hence the period is not tolled by 893.30, and 180.787 does not apply to foreign corporations. Bazan v. Kux Machine Co. 52 W (2d) 325, 190 NW (2d) 521.

A suit against a director is not barred unless the action would have abated in the absence of this section; an action alleging fraud and conversion of assets may be brought after 2 years. United States v. Palakow, 438 F (2d) 1177.

180.791 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 place of business.

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

(c) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(d) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(e) A statement whether the corporation was engaged in actual business during the 12 months immediately preceding the date of the report and the general nature of any such business.

(f) An indication of whether the corporation is an issuing public corporation, as defined in s. 180.02 (7m), or has elected to be governed by s. 180.25 (9) under s. 180.25 (9) (f) or by s. 180.725 under s. 180.725 (3) (c), and of whether the corporation is a target company, as defined in s. 552.01 (6), or is a target company both as defined in s. 552.01 (6) and as limited in s. 552.05 (7) for purposes of the application of s. 552.05.

(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 report blanks by 1st class mail 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.

History: 1979 c. 221; 1985 a. 29, 195.

180.793 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 not to exceed $26.

(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. If a corporation has been out of good standing at least 3 consecutive years immediately prior to January 1, 1978, the secretary of state shall provide only the notice required under s. 180.769 (3). 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 $26 late filing fee plus not to exceed $15 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 $176.

History: 1977 c. 29; 1979 c. 221; 1985 a. 29, 338.

180.795 Report of election of initial officers and directors and of changes. (1) Within 20 days after the election of the initial principal officers of the corporation, the corporation shall file with the secretary of state a report setting forth the names and addresses of the officers and directors, and the address of the principal place of business of the corporation.

(2) Whenever any change is made in the principal officers or directors of a corporation, the corporation shall, within 20 days after such change, 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.

180.801 Admission of foreign corporation. (1) A foreign corporation shall procure a certificate of authority from the secretary of state before it transacts business in this state. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter shall be construed to regulate the organization or the internal affairs of such corporation.

(2) Any foreign corporation may, without procuring a certificate of authority, loan money in this state and take, acquire and hold notes, bonds and other evidences of indebtedness and mortgages, trust deeds and other liens upon or rights in property in this state to represent or secure money loaned or for other lawful consideration, but any such foreign corporation which transacts such business shall first file with the secretary of state a statement in form acceptable to the secretary of state, that it constitutes the secretary of state its attorney for the service of process in any action or proceeding in respect to any liability arising out of or relating to any such business transacted by such foreign corporation within this state. Except as regards the loaning of money and the taking, acquiring and holding of notes, bonds, other evidences of indebtedness, mortgages, trust deeds and other liens upon or rights in property as set forth above, nothing herein contained shall be construed as authorizing any foreign corporation to transact the business of a bank or trust company. Service of process may be made as provided in s. 180.825.

(3) A foreign corporation may, without procuring a certificate of authority, acquire the mortgaged property upon foreclosure or pursuant to the mortgage or trust deed or other document evidencing its rights or in satisfaction thereof and dispose of the same provided that if such mortgage, trust deed or other document was given to represent or secure money loaned in this state by such foreign corporation, the foreign corporation shall have filed the statement required by sub. (2) before making the loan or if given to represent or secure money loaned or indebtedness acquired without this state, the foreign corporation shall have filed with the secretary of state a statement in the form required by sub. (2) before acquiring such property. The holding of title to and renting the mortgaged property or the property constituting the security acquired upon foreclosure or in satisfaction of the indebtedness by a foreign corporation which has filed such statement, for a period of one year from the date of such acquisition or for a period of 6 months after the date of final judgment in any litigation in which such acquisition is in issue, whichever period is longer, shall not require the foreign corporation to procure a certificate of authority. If such indebtedness was acquired within or without this state as direct or indirect successor, assignee or grantee of another foreign corporation which loaned such money without compliance with sub. (1) or (2), the enforcement proceedings shall be subject to s. 180.847.

(4) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purpose of this chapter, by reason of carrying on in this state any one or more of the following activities:

(a) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(b) Maintaining bank accounts.

(c) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(d) Soliciting or procuring orders, whether by mail or through employes or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(e) Creating evidences of debt or mortgages or liens on real or personal property located outside of this state.

(f) Securing or collecting debts other than for money loaned or enforcing any rights in property securing the same.

See note to Art. I, sec. 1, citing Fields v. Playboy Club of Lake Geneva, Inc. 75 W (2d) 644, 250 NW (2d) 311.

180.807 Powers of foreign corporation. No foreign corporation shall transact in this state any business which a corporation organized under the laws of this state is not permitted to transact. A foreign corporation which has received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in such foreign corporation's articles of incorporation theretofore filed as provided in this chapter, except that it shall not exercise in this state any purpose set forth in or authorized by its articles of incorporation which it has stated in its application for a certificate of authority it will not pursue in this state; and such foreign corporation shall not be subject to any of the provisions of this chapter other than those made expressly applicable to it.

180.809 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation which has a name the same as, or deceptively similar to, the name of any domestic corporation existing under any law of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this section shall not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its board of directors adopting a fictitious name for use in transacting business in this state which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state or to any name reserved as provided in this chapter; or

(2) 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

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

History: 1971 c. 285.

180.811 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority to transact business in this state would not be granted to it on application therefor, and shall not adopt for use in this state a fictitious name as permitted by s. 180.809 (1), then in addition to becoming subject to revocation of its certificate of authority, it shall not transact business in this state under such changed name.

History: 1971 c. 285.

180.813 Application for certificate of authority. (1) A foreign corporation may procure a certificate of authority to transact business in this state by making application therefor to the secretary of state, which application shall set forth:

(a) The name of the corporation and the state, territory or country under the laws of which it is organized, and whether now in good standing.

(b) The date of its incorporation and the period of its duration.

(c) The address, including street and number, if any, of its principal office in the state, territory or country under the laws of which it is organized.

(d) The address, including street and number, if any, of its proposed registered office in this state, and the name of its proposed registered agent in this state at such address.

(e) The names of the states, territories and countries, if any, in which it is admitted or qualified to transact business.

(f) Any of the purposes set forth in, or authorized by, its articles of incorporation which it will not pursue in this state.

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

(h) A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(i) A statement of the aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(j) The amount of paid-in capital and the number and value of shares of capital stock issued without par value. The value of capital stock without par value, for the purpose of such statement and for the purpose of computing filing fees, shall be taken as the amount by which the entire property of said corporation shall exceed its liabilities other than such capital stock without par value, but each share of the capital stock without par value shall be deemed to be of the value of not less than $10.

(k) The proportion of its capital which is represented in this state by its property to be located or to be acquired herein and by its business to be transacted herein. The proportion of capital employed in this state shall be computed by taking the estimate of the gross business of the corporation to be transacted in this state in the following year and adding the same to the value of its property to be located or to be acquired in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the estimate of its total gross business for said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. For the purposes of this section, the estimate of the business to be transacted and the property to be located or to be acquired in the state shall cover the period when it is estimated the corporation will commence business in this state to and including December 31 of that year. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he or she may deem proper in order to determine the accuracy of the report submitted.

(l) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary.

History: 1977 c. 104.

180.815 Filing of documents on application for certificate of authority. (1) The foreign corporation shall deliver to the secretary of state duplicate originals of the application of the corporation for a certificate of authority, and a copy of its articles of incorporation, if any, and all amendments thereto, or of the provisions thereof then in effect duly authenticated by the proper officer of the state, territory or country wherein it is incorporated.

(2) If, according to law, a certificate of authority to transact business in this state should be issued to such corporation, the secretary of state shall, when all fees and charges have been paid as in this chapter prescribed:

(a) Indorse on each of such documents the word "Filed" and the month, day and year of the filing thereof.

(b) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto or of the provisions thereof then in effect.

(c) Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

180.819 Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the foreign corporation shall have the right to transact business in this state for those purposes set forth in its articles of incorporation, except that it shall not have authority to transact business in this state for those purposes which in its application for certificate of authority it has stated it will not pursue in this state, all subject, however, to the right of this state to suspend or revoke such right to transact business in this state as provided in this chapter.

180.821 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business in this state;

(2) A registered agent, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a domestic or foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

180.823 Change of registered office or registered agent of foreign corporation. (1) A foreign corporation may change the address of its registered office. A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(2) A foreign corporation may change the address of its registered office or change its registered agent, or both, by filing in the office of the secretary of state a statement setting forth;

(a) The name of the corporation;

(b) The address, including street and number, if any, of its then registered office;

(c) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent be changed, the name of its successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) That such change was authorized by resolution duly adopted by its board of directors.

(3) Such statement shall be executed in duplicate by a principal officer, and the corporate seal shall be thereto affixed, and shall be delivered to the secretary of state. Unless the secretary of state finds that such statement does not conform to the provisions of this chapter, he shall:

(a) Indorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof;

(b) File one of such duplicate originals in his office;

(c) Return the other duplicate original to the corporation or its representative.

(4) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary of state.

(5) If a registered agent's business address is changed to another place within the county, such change of address and the address of the registered office may be indicated by executing and filing a statement as required in sub. (2), except it need be signed only by the registered agent and need not be responsive to sub. (2) (e) or (g) and shall state that a copy of the statement has been mailed to the foreign corporation.

History: 1971 c. 285.

180.824 Resignation of registered agent of foreign corporation. (1) A registered agent may resign by executing a statement setting forth:

(a) The name of the foreign 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 foreign corporation's then registered 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 corporate seal of such corporate registered agent shall be affixed thereto.

(3) Duplicate originals of such statement shall be filed with the secretary of state. He shall note on the duplicate of the statement the date of filing and mail the same to the foreign corporation at its principal office outside the state as shown by its last annual report on file.

(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, and the office of the resigned registered agent shall then cease to be the registered office of the foreign corporation.

180.825 Service of process on foreign corporation. (1) Service of process in any action or special proceeding, or service of any notice or demand required or permitted by law to be served on a foreign corporation, may be made on such corporation by service thereof on the registered agent of such corporation.

(2) During any period within which a foreign corporation authorized to transact business in this state fails to appoint or maintain in this state a registered agent, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in this state of such corporation, or whenever the certificate of authority of any foreign corporation is revoked, the secretary of state shall be an agent and representative of such foreign corporation upon whom any process, notice or demand may be served. Service on the secretary of state of any such process, notice or demand against any such foreign corporation shall be made by delivering to and leaving with the secretary, or with any clerk having charge of the corporation department of the secretary's office, duplicate copies of such process, notice or demand. If any process, notice or demand is served on the secretary of state, the secretary shall immediately cause one of such copies to be forwarded by registered mail, addressed to such corporation at its principal office as the same appears in the records of the secretary of state. The time within which the defendant may answer or move to dismiss under s. 802.06 (2) shall not start to run until 10 days after the date of such mailing.

(3) Service under this section can be made upon a foreign corporation only in an action or proceeding arising out of or relating to business transacted by such foreign corporation within this state.

(4) The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, which shows the date and hour of service and the date of mailing. The certificate of the secretary of state that he was served with a summons and complaint or notice of object of action or with any notice or demand required or permitted by law and that he mailed the same as required by law, shall be evidence of service. If the address of the foreign corporation is not known or readily ascertainable, mailing is dispensed with, and a copy of the process shall then be published as a class 3 notice, under ch. 985, in the county wherein the last-known registered office of the foreign corporation was located and, if unknown, in Dane county.

(5) 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.

History: Sup. Ct. Order, 67 W (2d) 753; 1975 c. 218.

180.827 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall within 30 days after such amendment becomes effective file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state, territory or country under the laws of which such corporation is organized; but the filing thereof shall not of itself amend its certificate of authority.

180.829 Merger of foreign corporation authorized to transact business in this state. If a foreign corporation authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state, territory or country under which it is organized, it shall within 30 days after such merger becomes effective file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state, territory or country under the laws of which such statutory merger was effected; and it shall not be necessary for a surviving corporation to procure either a new or an amended certificate of authority to transact business in this state unless the name of such corporation is changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: 1977 c. 29.

180.831 Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall secure an amended certificate of authority in the event it changes its corporate name, amends its articles of incorporation affecting the purposes therein set forth, or desires to

increase or decrease the purposes it may pursue in this state from those covered by the certificate of authority in effect, by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority; except that if the necessity for securing an amended certificate of authority arises only by reason of a change of corporate name, the filing, as provided for in this chapter, of a copy of amended articles of incorporation or of articles of merger providing for such change of name shall constitute the application, and the secretary of state, if such name be proper for use by the corporation in this state, shall issue an amended certificate of authority in the name of the corporation as so changed, and no duplicate copy of the application need be filed or attached to the amended certificate of authority so issued.

180.833 Annual report of foreign corporation. (1) Each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) The name of the corporation and the state, territory or country under the laws of which it is organized;

(b) The date of its incorporation and the period of its duration;

(c) The address, including street and number, if any, of its principal office in the state, territory or country under the laws of which it is organized;

(e) The names of the states, territories and countries other than this state, if any, in which it is admitted or qualified to transact business;

(f) A statement whether the corporation was engaged in actual business in this state during the year immediately preceding the date of the report and the general nature of any such business;

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

(h) A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(i) A statement of the aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(j) The amount of paid-in capital and the number and value of shares of capital stock issued without par value. The value of capital stock without par value, for the purpose of such statement and for the purpose of computing filing fees shall be taken as the amount by which the entire property of said corporation shall exceed its liabilities other than such capital stock without par value, but each share of capital stock without par value shall be deemed to be of the value of not less than $10;

(k) The proportion of the capital represented in this state by its property located and business transacted therein during the preceding year. The proportion of capital employed in the state shall be computed by taking the gross business of the corporation in the state and adding the same to the value of its property located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of its total gross business of said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he or she may deem proper in order to determine the accuracy of the report submitted;

(l) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such foreign corporation.

(2) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by sub. (1) (h), (i), (j) and (k), which shall be given as of December 31 next preceding the date herein provided for the filing of such report, or if the corporation keeps its accounts on other than a calendar year basis, then as of the close of its fiscal year next preceding such December 31. It shall be executed by a principal officer or, if the corporation is in the hands of a receiver, assignee or trustee, it may be executed on behalf of the corporation by such receiver, assignee or trustee.

(3) The secretary of state shall forward report blanks by 1st class mail 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.

History: 1977 c. 104; 1985 a. 29.

180.835 Filing of annual report of foreign corporation. (1) The first annual report of a foreign corporation shall be delivered to the secretary of state between January 1 and March 31 of the year next succeeding the calendar year in which such corporation was authorized to transact business in this state. Subsequent annual reports of a foreign corporation shall be delivered to the secretary of state between January 1 and March 31 of each year. Unless the secretary of state finds such report does not conform to the requirements of this chapter, the secretary of state shall, when all fees and charges have been paid as in this chapter provided, 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 fees prescribed in this section for failure to file such report within the time provided do not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state not more than 30 days after the date it was mailed back to the foreign corporation by the secretary of state.

(2) If the annual report is delivered to the secretary of state after March 31 and prior to June 1, the corporation shall pay a late fee of $25, and the secretary of state shall not file the report until the late fee is paid. If the annual report is delivered to the secretary of state on or after June 1, the corporation shall pay a late fee of $55 and the secretary of state shall not file the report until the late fee is paid.

History: 1977 c. 29.

180.837 Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall file with the secretary of state an application for withdrawal and final report.

(2) The application for withdrawal and final report shall set forth:

(a) The name of the corporation and the state, territory or country under the laws of which it is organized;

(b) That it is not transacting business in this state;

(c) That it surrenders its authority to transact business in this state;

(d) That it revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any suit, action or proceeding based upon any cause of action arising in this state during the time it was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) The highest proportion of its capital which is or was represented in this state by its property located and business transacted here at any time since its last fee payment on its capital representation. The proportion of capital employed in this state shall be computed as provided under s. 180.833 (1) (k) except that reference shall be to the current year rather than the preceding one;

(g) Such information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

(3) The application for withdrawal and final report shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the same shall be executed on behalf of the corporation by such receiver or trustee.

History: 1977 c. 418.

180.839 Filing of application for withdrawal and final report. (1) Duplicate originals of such application for withdrawal and final report shall be delivered to the secretary of state. Unless he finds that it does not conform to the provisions of this chapter, he shall, when all fees and charges have been paid as in this chapter prescribed:

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

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

(2) He shall return such certificate of withdrawal with a duplicate original of the application for withdrawal and final report thereto affixed, to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

180.841 Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state when he finds that:

(a) The certificate of authority of the corporation was procured through fraud practiced upon this state; 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 a period of 90 days to pay any fees, charges or penalties prescribed by this chapter; or

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

(e) The corporation has failed to file by June 1 its annual report as required by this chapter; or

(f) The corporation has failed to file in the office of the secretary of state a duly authenticated copy of each amendment to its articles of incorporation or articles of merger to which it is a party within the time prescribed by this chapter; or

(g) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter; or

(h) The corporation has changed its name to one under which a certificate of authority to transact business in this state would not be granted to it on application therefor.

(2) On the happening of any of the above events, the secretary of state shall give not less than 30 days' written notice to the corporation that he intends to proceed to revoke the certificate of authority of such corporation for one of the causes above set forth, specifying the same. Such notice shall be given by mail duly addressed to such corporation at its registered office in this state and at its principal office outside the state, as shown by its last annual report on file. If, before the expiration of the time stated in the notice, the corporation establishes to the satisfaction of the secretary of state the fact that the stated cause for the revocation of its certificate of authority did not exist as of the time the notice was mailed or, if it did exist at said time, has been cured, then the secretary of state shall take no further action. Otherwise, on the expiration of the time stated in the notice, he shall proceed to revoke the certificate of authority.

(3) A court may revoke a certificate of authority under s. 946.86. The court shall notify the secretary of state of the action and the secretary shall proceed under s. 180.843 (1) (a) to (c).

History: 1981 c. 280.

180.843 Issuance of certificate of revocation. (1) To revoke any such certificate of authority, the secretary of state shall:

(a) Issue a certificate of revocation in triplicate.

(b) File one of such certificates in his office.

(c) Mail to such corporation at its registered office in this state and at its principal office outside the state, as shown by its last annual report on file, a notice of such revocation accompanied by one of such certificates.

(2) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

180.845 Application to corporations heretofore licensed to transact business in this state. (1) Foreign corporations subject to this chapter which have been duly licensed to transact business in this state at the time this chapter takes effect, for a purpose or purposes for which a corporation might secure a certificate of authority under this chapter, shall, subject to the conditions set forth in their respective licenses to transact business, be entitled to all the rights and privileges applicable to foreign corporations procuring authority to transact business in this state under this chapter, and from the time this chapter takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring under this chapter authority to transact business in this state.

(2) Provided, however, that it shall not be necessary for a foreign corporation licensed to transact business in this state at the time this chapter takes effect to designate a registered office or appoint a registered agent prior to the time it files its first annual report pursuant to the provisions of this chapter. Such corporation may at any time after this chapter takes effect designate a registered office and appoint a registered agent in the manner provided in this chapter for change of registered office or registered agent.

(3) Any agent for the service of process appointed by such foreign corporation before this chapter takes effect shall continue as such agent until the corporation designates a registered office and appoints a registered agent as above provided. If there is no such agent, then service of process may be made on the secretary of state as provided in this chapter when there is no registered agent.

(4) Notwithstanding the repeal of any law applicable to foreign corporations by chapter 731, laws of 1951, any appointment of the secretary of state as attorney upon whom summons, notices, pleadings or process may be served, and any designation of any other person for such purpose made pursuant to or resulting from the operation of any law theretofore in force with respect to any foreign corporation not licensed to transact business in this state on August 19, 1951, shall continue in full force and effect as to such foreign corporation until such time as such corporation may make such an appointment or designation under this chapter or otherwise become subject thereto.

180.847 Transacting business without certificate of authority. (1) No foreign corporation transacting business in this state without a certificate of authority, if a certificate of authority is required under this chapter, shall be permitted to maintain or defend a civil action or special proceeding in any court of this state, until such corporation has obtained a certificate of authority. Nor shall a civil action or special proceeding be maintained in any court of this state by any foreign corporation or a successor, assignee or grantee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state at a time when such corporation was without such certificate of authority until a certificate of authority has been obtained by such corporation or, in the case of a successor, assignee or grantee of such corporation, until all fees which were payable by such corporation under this chapter not exceeding the maximum sum of $300 have been paid.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation or of its title to property in this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority, if a certificate of authority is required under this chapter, shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter and in addition thereto it shall be liable for a penalty of 50% of such amount. Such fees and penalty shall be paid before a certificate of authority is issued.

(3m) (a) A foreign corporation which transacts business in this state without a certificate of authority, if a certificate of authority is required under this chapter, may be required to forfeit not more than $5,000. The forfeiture under this paragraph is in addition to any fees that may be collected under sub. (3).

(b) The department of justice or the district attorney of the county where the foreign corporation is transacting business or has transacted business may bring an action on behalf of the state to enforce the forfeiture under par. (a) or to restrain a foreign corporation from transacting business in this state without a certificate of authority, if a certificate of authority is required under this chapter, or both.

(4) A foreign corporation transacting business in this state without a certificate of authority, if a certificate of authority is required under this chapter, 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 business so transacted 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 the secretary's 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 time within which the defendant may answer or move to dismiss under s. 802.06 (2) shall not start to run until 10 days after the date of such mailing. The secretary of state shall keep a record of all such processes, notices and demands which shows the day and hour of service, and the date of mailing.

(5) 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.

History: Sup. Ct. Order, 67 W (2d) 754; 1975 c. 218; 1987 a. 311.

See note to 218.01, citing Nagle Motors v. Volkswagen N. C. Distributor, 51 W (2d) 413, 187 NW (2d) 374.

A foreign corporation not certified in Wisconsin can defend an action but cannot seek affirmative relief. Bazan v. Kux Machine Co. 52 W (2d) 325, 190 NW (2d) 521.

A foreign corporation selling goods to a Wisconsin corporation which has no salesmen or employes here and makes no sales to consumers is not transacting business so as to be required to obtain a certificate of authority. Peabody Seating Co. v. Jim Cullen, Inc. 56 W (2d) 119, 201 NW (2d) 546.

See note to Art. I, sec. 1, citing Fields v. Playboy Club of Lake Geneva, Inc. 75 W (2d) 644, 250 NW (2d) 311.

Where foreign corporation paid for and filed certificate of authority 7 months prior to notice of appeal but secretary of state did not issue certificate until after notice of appeal, certificate was outside trial court record and could not be considered by appellate court. South Carolina Equipment, Inc. v. Sheedy, 120 W (2d) 119, 353 NW (2d) 63 (Ct. App. 1984).

Service on the secretary of state confers no jurisdiction where defendant only engaged in sales promotion and solicitation by traveling salesmen, with all sales accepted outside the state. Illinois v. Harper & Row Publishers, Inc. 308 F Supp. 1207.

The test of "transacting business" under this section is essentially the same test as "doing business" under s. 801.05 (1) (d). Modern Cycle Sales, Inc. v. Burkhardt-Larson Co. 395 F Supp. 587.

180.849 Proceedings by and against foreign corporations. Maintaining or defending any action or special proceeding or any administrative or arbitration proceeding, or effecting the settlement thereof or settlement of claims or disputes by a foreign corporation shall in itself not constitute the transacting of business within the state, and a foreign corporation is authorized to prosecute or defend any action or proceeding which a domestic corporation may prosecute or defend except as the same is expressly prohibited or limited by this chapter or other applicable provisions of law. But such foreign corporation cannot maintain an action founded upon an act or upon any liability or obligation, express or implied, arising out of, or made, or entered into in consideration of any act which the laws of this state forbid a corporation or any association of individuals to do, without express authority of law.

180.86 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. 180.87.

(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 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 registered 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. 180.53 (8) or 180.66. An error or omission in recording the document or a certificate under s. 180.10 (2) (b) 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.

180.861 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.

180.87 Fees for filing documents. (1) The secretary of state shall charge and collect for:

(a) Filing articles of incorporation, $1.25 for each $1,000 or fraction thereof of authorized par value shares, and 2.5 cents for each authorized share without par value, the minimum fee to be $70.

(b) Filing articles of amendment or restated articles of incorporation, $25; and an additional sum equal to $1.25 for each $1,000 or fraction thereof par value shares and 2.5 cents for each share without par value as authorized after such amendment or restated articles, less a credit computed at the foregoing rates upon all shares as authorized immediately prior to such amendment or restated articles.

(c) Filing articles of merger, or consolidation, $30; and an additional sum equal to $1.25 for each $1,000 or fraction thereof par value shares and 2.5 cents for each share without par value as authorized after such merger or consolidation, less a credit computed at the foregoing rates upon all shares of domestic corporations which are parties to merger or consolidation as authorized immediately prior to such merger or consolidation.

(d) Filing a statement of intent to dissolve or statement of revocation of voluntary dissolution procedures, $10.

(e) Filing articles of dissolution, $10.

(f) 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. 180.08 (3), $50, plus $10 for each year of reservation in excess of 5 years.

(g) Filing a notice of transfer of a reserved corporate name, $10.

(h) Filing a statement of change of address of registered office or change of registered agent, or both, 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. If simultaneous filings are made by one registered agent such fee shall be reduced to $1 each on such filings in excess of 200.

(i) Filing an application of a foreign corporation for certificate of authority to transact business in this state, $75, and $1.25 for every $1,000 or fraction thereof of its capital exceeding $60,000 employed or to be employed in this state, computed as provided in s. 180.813, as shown by the application.

(j) Filing an annual report of a foreign corporation not to exceed $30, and in case the annual report shows that the corporation employs in this state capital in excess of the amount of capital on which a fee has previously been paid, computed as provided in s. 180.813, an additional fee which, with previous payments made on account of capital employed in this state, will amount to $1.25 for each $1,000 or fraction thereof of the excess.

(k) Filing an application of a foreign corporation for amended certificate of authority to transact business in this state, $15, and in case the application shows that the corporation employs in this state capital in excess of the amount of capital on which a fee has previously been paid, computed as provided in s. 180.813, an additional fee which, with previous payments made on account of capital employed in this state, will amount to $1.25 for each $1,000 or fraction thereof of the excess.

(l) Filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $25. If the amendment is filed more than 60 days after the same has become effective in the home state, the corporation shall pay to the secretary of state a late fee of $40.

(m) Filing in the foreign corporation records of the office of the secretary of state a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state other than with a domestic corporation, $30.

(n) Filing an application for withdrawal and final report of a foreign corporation, $15 and in case that final report shows that the corporation employs in this state capital in excess of the amount of capital on which a fee has previously been

paid, computed as provided in s. 180.837 (2) (f), an additional fee which, with previous payments made on account of capital employed in this state, will amount to $1.25 for each $1,000 or fraction thereof of the excess.

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

(p) Filing an annual report of a domestic corporation, not to exceed $15.

(q) Filing an appointment of the secretary of state as attorney for service of process under s. 180.801 (2), $10.

(r) Answering a request for verification of the existence or status of a domestic or foreign corporation, its name, its current registered office or agent, or the date of incorporation or issuance of a certificate of authority, the following amounts:

1. If written, $4.

2. If conveyed by facsimile machine, $7.

(rm) Answering in writing a request for information specified in par. (r) plus a list of the names and addresses of officers and directors, and the principal place of business of a domestic or foreign corporation, $7; and, if the list of officers and directors exceeds one page, 50 cents for each additional page.

(s) Filing a report of election of officers and directors, $3.

(t) Processing a document required or permitted to be filed or recorded under this chapter in an expeditious manner, or preparing the information under par. (r) or (rm) 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.

History: 1971 c. 285; 1977 c. 29, 418; 1979 c. 221; 1983 a. 27 ss. 1582, 1583, 2204 (47); 1983 a. 134; 1985 a. 29, 338; 1987 a. 27.

A foreign corporation which has merged into itself a domestic corporation may not take credit for the fees paid by the domestic corporation for capital authorization as a credit against the fee to be paid by the foreign corporation for capital invested in this state. 60 Atty. Gen. 495.

A foreign corporation filing application for a certificate of authority to transact business in this state is not entitled to any credit against the filing fee due under (1) (i) even though some part or all of the capital of the newly applying corporation had generated the payment of fees by some other corporation which had previously employed such capital in this state. 63 Atty. Gen. 535.

180.88 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 punished by imprisonment in the state prison not more than 3 years or in the county jail not more than one year or by fine not exceeding $1,000.

180.89 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 shareholder or subscriber 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.

180.895 When notice not required. Whenever any notice 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, to any person with whom communication is made unlawful by any law of the United States now or hereafter enacted, or by any rule, regulation, proclamation or executive order issued under any such law, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person; and any action or meeting which has been or hereafter shall be taken or held without notice to any such person or without giving or without applying for a license or permit to give any such notice to any such person with whom communication is made unlawful as aforesaid, shall have the same force and effect as if such notice had been given as provided under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this chapter, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is made unlawful by any law, rule, regulation, proclamation or executive order as aforesaid.

180.91 Informal action by shareholders 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 other 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 shareholders, subscribers, 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.

Articles of incorporation which purport to allow informal corporate action by written consent of less than all parties entitled to vote are clearly inconsistent with this section and are prohibited by ch. 180. 62 Atty. Gen. 240.

180.92 Appeal from secretary of state. (1) If the secretary of state finds that any document, other than the annual report of a domestic or foreign corporation, required by this chapter to be filed in the secretary's office does not conform to law, the secretary shall 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 of state to take such action as the court deems proper.

(2) If the secretary of state revokes, or gives notice of intention to revoke, the certificate of authority to transact business in this state of any foreign corporation, under this

chapter or involuntarily dissolves a domestic corporation under s. 180.769 (3), such decision shall be subject to such judicial proceedings as are provided by law, or such corporation, within 60 days after receipt of the notice of revocation, intention to revoke or copy of the certificate of involuntary dissolution, 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 decision. 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 of state to take such action as the court deems proper. Upon the commencement of such action the court may stay or suspend the effect of the order of the secretary of state revoking or noticing intention to revoke the certificate of authority to transact business in this state or the issuance by the secretary of state of a certificate of involuntary dissolution upon such terms and conditions as the court deems proper.

(3) 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) 754; 1975 c. 218; 1979 c. 110; 1981 c. 337; 1983 a. 505; 1985 a. 135.

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

180.95 Application of chapter to rights existing before enactment. Application of the provisions of this chapter to corporations existing before August 19, 1953 shall not affect the property rights of shareholders in such corporations which were accrued or established at such time, nor shall it affect any liability enforceable at such time, nor shall it affect the validity or enforceability of any contracts existing before such time and not involving the property rights of shareholders as such.

180.97 Applicability of chapter. (1) DOMESTIC CORPORATIONS. After June 30, 1953 this chapter shall apply to all domestic corporations with capital stock, regardless of when they were organized and whether for profit or not, but any domestic corporation organized under provisions other than those in this chapter and corresponding prior general corporation laws shall be subject to this chapter only to the extent that it is not inconsistent with such provisions; any domestic corporation with capital stock but not organized for profit which has before July 1, 1953, been organized under the general corporation laws or any special statute or law of this state, shall be subject to this chapter only 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 special law relating to such corporation.

(2) FOREIGN CORPORATIONS. The provisions of this chapter as to foreign corporations shall be applicable to all foreign corporations after August 19, 1951.

(3) REORGANIZATION AS CHAPTER 181 CORPORATION. Any domestic corporation with capital stock but not organized for profit, formed before July 1, 1953, may elect to become subject to ch. 181 by adopting by the affirmative vote of the holders of two-thirds of all outstanding shares and of each class or series thereof, and by filing and recording, restated articles of incorporation which conform with ch. 181; and thereupon such corporation shall be subject to ch. 181 and shall cease to be subject to this chapter. The shareholders shall be entitled to the same notice of such proposed action and shall have the same rights to object and to receive the fair value of their shares, as are provided in s. 180.72 in respect to a sale of all assets, unless such receipt is inconsistent with the articles of incorporation of such corporation in effect prior to such restatement.

History: 1981 c. 390 s. 252.

180.975 Conversion of certain corporations to ch. 181 corporations. (1) CONVERSION PERMITTED. A corporation organized under the laws of this state before July 1, 1953, whose only asset since its organization has been real estate used for the operation of a country club may convert its form of organization to a nonprofit nonstock corporation that is subject to ch. 181, if all of the following conditions are satisfied:

(a) *Resolution by board of directors.* The board of directors adopts a resolution recommending conversion of the corporation to a nonprofit nonstock corporation and directing submission of the proposed conversion to a vote of shareholders at an annual or special meeting of shareholders.

(b) *Notice of shareholder meeting.* Written notice of the meeting at which the proposed conversion will be submitted to a vote of shareholders is given to each shareholder of record in the manner provided under s. 180.24 except that the notice shall satisfy all of the following:

1. Be delivered to shareholders not less than 20 days before the meeting.

2. Whether the meeting is an annual or special meeting, state that the purpose, or one of the purposes, is to consider the proposed conversion.

3. If applicable, state that any shareholder desiring to be paid the fair value of his or her shares must file a written objection to the proposed conversion at least 48 hours before the meeting.

(c) *Shareholder vote.* Shareholders approve the proposed conversion. The proposed conversion is approved by shareholders if, at the meeting for which notice is given under par. (b), the proposal receives the affirmative vote of the holders of two-thirds of all outstanding shares and of each class or series thereof.

(d) *Restated articles of incorporation.* If the proposed conversion is approved by shareholders under par. (c), the corporation restates its articles of incorporation following the same procedures as provided in s. 180.51 for amending articles of incorporation. Notwithstanding s. 180.55, the restated articles of incorporation shall satisfy all of the following conditions:

1. Contain all of the information required under s. 181.39 (1).

2. Contain a statement that the corporation elects to convert itself to a nonprofit nonstock corporation subject to ch. 181.

3. Be executed, filed and recorded as provided in s. 181.39 (2).

(2) CONVERSION EFFECTIVE. The conversion of a corporation to a nonprofit nonstock corporation subject to ch. 181 is effective upon the filing with the secretary of state restated articles of incorporation satisfying sub. (1) (d).

(3) EFFECT OF CONVERSION ON LEGAL ACTIONS AND OBLIGATIONS. (a) *Legal actions.* Any cause of action against a

corporation or its directors, officers or shareholders that accrues before conversion of the corporation is effective under sub. (2) may be maintained against the corporation or its directors, officers or shareholders as if the conversion had not taken place.

(b) *Obligations.* 1. Except as provided in subd. 2, once conversion of a corporation is effective under sub. (2), the nonprofit nonstock corporation is responsible and liable for all obligations of the converted corporation. Neither the rights of creditors nor any liens on the property of the converted corporation shall be impaired by the conversion.

2. Any contractual obligation relating to ownership of the converted corporation's stock, including any obligation to issue or redeem stock options, shall terminate when the conversion is effective under sub. (2). The contractual obligations described in this subdivision shall terminate without compensation, except that a nonprofit nonstock corporation shall provide reasonable compensation for any terminated contracts that were entered into before May 17, 1988.

History: 1987 a. 399.

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

180.99 Service corporations. (1) TITLE OF SECTION. This section may be cited as "The Service Corporation Law".

(2) FORMATION OF CORPORATION. One or more natural persons licensed, certified or registered pursuant to any provisions of the statutes, provided all have the same license, certificate or registration, may organize and own stock in a service corporation under this section. Such corporation may own, operate and maintain an establishment and otherwise serve the convenience of its shareholders in carrying on the particular profession, calling or trade for which the licensure, certification or registration of its organizers is required; provided that professional or other personal services, consultation or advice in any form may be rendered only by officers, agents, or employes (as defined in sub. (9)) of such corporation who are themselves licensed, certified or registered pursuant to statute in the field of endeavor designated in the articles of such corporation.

(3) BUSINESS CORPORATION LAW APPLICABLE. Other provisions of this chapter shall be applicable to such corporations, including their organization, and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other stock corporations, excepting as such powers may be limited or enlarged by this section. No corporation organized under this section shall engage in any business other than that for which it was specifically organized and for which its charter was granted; but nothing contained in this section or in other provisions of existing law applicable to stock corporations shall be interpreted as prohibiting such a corporation from investing its funds in real estate, mortgages or securities or from owning real and personal property related to the fulfillment of its purposes. If any provision of this section conflicts with any other provision of this chapter, or with other provisions of the statutes, this section shall control.

(4) CORPORATE NAME. The corporation may bear the last name of one or more persons formerly or currently associated with it. A corporation organized under this section may also adopt a name which does not include the surname of any present or former shareholder; provided, that if it does so, it must record such name and the names of its shareholders with the register of deeds of the county in which it is located, or has its principal office. The corporate name shall end with the word "Chartered", or "Limited", or the abbreviation "Ltd.", or the words "Service Corporation", or the abbreviation "S.C.".

(5) FILING AND RECORDING OF ARTICLES. Before commencing operations, a service corporation shall file and record its articles as required by s. 180.46.

(6) PARTICIPANTS; CONFLICT OF INTEREST. Except as permitted in sub. (7), all shareholders, directors and officers of a service corporation must at all times be persons licensed, certified or registered by a state agency. No individual not so licensed, certified or registered may have any part in the ownership or control of such corporation, except that the nonparticipant spouse of a married individual has the rights of ownership provided under ch. 766; nor may any proxy to vote any shares of such corporation be given to a person who is not so licensed, certified or registered. If any shareholder, director, officer or employe of a corporation organized under this section becomes legally disqualified to render professional or other personal services, consultation or advice within this state for which he or she was licensed, certified or registered, or accepts employment or is elected to a public office which pursuant to existing law places restrictions or limitations upon his or her rendering of the services for which he or she was licensed, certified or registered, he or she shall sever all employment with, and financial interest in, such corporation forthwith. A corporation's failure to require prompt compliance with this provision is a ground for the suspension or forfeiture of its franchise.

(7) ALTERNATIVE INCORPORATION BY ONE OR 2 PERSONS. A service corporation which has only one shareholder need have only one director, who shall be such shareholder. He shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed, certified or registered in the same field of endeavor as the president. A service corporation which has only 2 shareholders, need have only 2 directors, who shall be such shareholders. The 2 shareholders shall fill all the general offices of the corporation between them.

(8) CONTRACT AND TORT RELATIONSHIPS PRESERVED. This section shall not alter any contract, tort or other legal relationship between a person receiving professional services and one or more persons who are licensed, certified or registered to render such services and who are shareholders in the same service corporation; and any legal liability which may arise out of such service shall be joint and several among the shareholders of the same service corporation. No shareholder, director, officer or employe of a service corporation shall be personally liable for the debts or other contractual obligations of the corporation. Notwithstanding any other or contrary provisions of the statutes, a corporation organized under this section may charge for the services of its officers, employes or agents, may collect such charges and may compensate those who render such personal services.

(9) CORPORATE AGENTS. The relationship of an individual to a corporation organized under this section, with which such individual is associated, whether as shareholder, director, officer or employe, shall in no way modify or diminish the jurisdiction over him of whatever state agency licensed, certified or registered him for a particular field of endeavor. The term "employe" as used in this section does not include administrators, technicians, clerks, bookkeepers or others hired by a service corporation who are not usually and ordinarily considered by custom, practice or law to be rendering professional or other personal services for which a

license, certificate, registration or other legal authorization is required, nor does it include any other person who performs all his employment under the direct supervision and control of an officer or employe of such corporation who is himself licensed, certified or registered.

(10) CONTINUITY; DISSOLUTION; STOCK TRANSFER OR REDEMPTION. (a) A corporation under this section shall have perpetual existence until dissolved in accordance with other provisions of this chapter.

(b) Whenever all shareholders of a corporation licensed under this section shall cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which such corporation was organized, said corporation shall thereupon be treated as converted into and shall operate henceforth solely as a business corporation under applicable provisions of this chapter, exclusive of this section.

(c) Within 90 days following the date of death of a shareholder, or his disqualification as hereinbefore provided, to own shares in the corporation, all of the shares of such shareholder shall be transferred to, and acquired by, the corporation or persons qualified to own such shares. If no other provision to accomplish such transfer and acquisition is in effect and carried out within said period, the corporation shall thereafter purchase and redeem all of his shares of its stock at the book value thereof, determined as of the end of the month immediately preceding death or disqualification. For this purpose, the book value shall be determined from the books and records of the corporation in accordance with the regular methods of accounting used by it for the purposes of determining its net taxable income for federal income tax purposes; and no subsequent adjustment of such income, whether by the corporation itself, by federal income tax audit made and agreed to, or by a court decision which has become final, shall alter the redemption price. Nothing contained in this section shall prevent the parties involved from making any other arrangement or provision in the corporate articles, bylaws, or by contract to transfer the shares of a deceased or disqualified shareholder to the corporation or to persons qualified to own the same, whether made before or after the death or disqualification of the shareholder, provided that within the 90-day period herein specified all the stock involved shall have been so transferred.

(11) ANNUAL REPORT. A corporation organized and operating under this section shall furnish a report to the office of 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 of the filing occurs. The report shall show the names and post-office addresses of all its shareholders, directors and officers, which shall certify that, with the exceptions permitted in sub. (7), all such persons are duly licensed, certified, registered or otherwise legally authorized to render the same professional or other personal service in this state. This report shall be made on forms prescribed and furnished by the secretary of state, but shall contain no fiscal or other information except that expressly called for by this subsection. The secretary of state shall forward report blanks by 1st class mail 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. It shall be signed by the president or vice president and the secretary or an assistant secretary of the corporation, and acknowledged before a notary public by the persons signing the report, shall be filed in the office of the secretary of state, and shall be in lieu of the regular annual report of corporations otherwise required by this chapter. The filing of such reports shall be governed by s. 180.793 (2), (3) and (4).

History: 1977 c. 26; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 186; 1985 a. 29.

Corporate provisions of this chapter apply when shareholder withdraws from service corporation. Melby v. O'Melia, 93 W (2d) 51, 286 NW (2d) 373 (Ct. App. 1979).

See note to 448.08, citing 71 Atty. Gen. 108.

180.995 Statutory close corporations. (1) APPLICABILITY. (a) This section applies to a corporation if its articles of incorporation state that the corporation is a close corporation under this section.

(b) Except as provided in par. (c), if an election is made to be a statutory close corporation this section controls in the event of conflict with other sections of the statutes.

(c) A service corporation organized under s. 180.99 electing to be a statutory close corporation is subject to s. 180.99 in the event of conflict with this section.

(2) ELECTION. A corporation organized under this chapter and having 50 or fewer shareholders at the time of election may become a statutory close corporation by amending its articles of incorporation to include the statement required under sub. (1). The amendment shall be approved by the holders of at least two-thirds of the shares of each class of shares of the corporation whether or not otherwise entitled to vote. If the amendment is approved, a shareholder who did not vote in favor of the amendment is entitled to receive the fair value of his or her shares under s. 180.72.

(3) SHARE TRANSFER RESTRICTIONS. (a) Except as provided in this subsection or as otherwise provided in the articles of incorporation, no interest in shares of a statutory close corporation may be transferred.

(b) This subsection does not apply to a transfer:

1. To the corporation or to any other holder of the same class of shares.

2. To members of the holder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. A holder's immediate family shall include only his or her spouse, parents, lineal descendants including any adopted children and stepchildren and the spouse of any lineal descendants, and brothers and sisters.

3. Consented to in writing by all of the holders of the corporation's common shares having voting rights.

4. To a personal representative on the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution or similar proceeding brought by or against a shareholder.

5. By merger, consolidation or share exchange that becomes effective under ss. 180.62 to 180.685 or a share exchange of existing shares for other shares of a different class or series in the corporation.

6. By a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

7. Made after termination of the corporation's status as a statutory close corporation.

(c) Any person desiring to transfer shares in a transaction not exempt under par. (b) shall obtain an offer from a 3rd party to purchase the shares for cash and shall deliver written notice of the 3rd-party offer to the corporation's registered office stating the number and kind of shares, the offering price, the other terms of the offer and the name and address of the 3rd-party offeror. No transfer may be made to a 3rd party unless all of the following conditions are met:

1. The 3rd party is eligible to become a qualified shareholder under any federal or state tax statute that the corporation has elected to be subject to and the 3rd party agrees in writing not to take any action to terminate the election without the approval of the remaining shareholders.

2. The transfer to the 3rd party will not result in the imposition of a personal holding company tax on the corporation under 26 USC 541 or any similar state or federal penalty tax.

(d) The notice under par. (c) constitutes an offer to sell the shares to the corporation on the terms of the 3rd-party offer. Within 20 days after the corporation receives the notice, the president shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all, but not less than all, of the offered shares. Approval of action to purchase shall be by affirmative vote of the holders of a majority of the shares entitled to vote, excluding the offered shares. With the consent of all of the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, but if the corporation has more than one class of shares the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.

(e) Written notice of the acceptance of the shareholder's offer shall be delivered or sent to the offering shareholder at the address specified in the notice, or, in the absence of any specification, at his or her last-known address as reflected in the records of the corporation, within 75 days after receipt of the shareholder's offer. Notice sent by mail is timely if deposited in the mail before midnight of the 75th day following the day the offer from the shareholder was received by the corporation. If the notice contains terms of purchase different from those contained in the shareholder's notice, the different terms constitute a counteroffer and unless the shareholder wishing to transfer his or her stock accepts in writing the counteroffer, or the shareholder and the purchaser otherwise resolve by written agreement the differences between the offer and counteroffer within 15 days after receipt by the shareholder of the notice of acceptance, the notice containing the counteroffer is ineffective as an acceptance.

(f) If a contract to sell is created under par. (e), the shareholder shall deliver all of the certificates for the stock sold, duly endorsed, within 20 days after receipt of the notice of acceptance. Breach of any of the terms of the contract entitles the nonbreaching party to specific performance or any other remedy at law or equity for breach of a contract.

(g) If the offer to sell is not accepted under pars. (d) and (e), the shareholder may transfer to the 3rd-party offeror all, but not less than all, of the offered shares within 120 days after delivery of the notice under par. (c), in accordance with its terms.

(4) NOTICE OF STATUTORY CLOSE CORPORATION STATUS. (a) The following notice shall be noted conspicuously on each share certificate issued by a statutory close corporation: "The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, or other documents, which may restrict transfers and affect voting and other rights, may be obtained without charge by a shareholder on written request to the corporation."

(b) All persons claiming an interest in shares of a statutory close corporation complying with the notice requirement of this subsection are bound by the documents referred to in the notice. All persons claiming an interest in shares of a statutory close corporation not complying with the requirement of this subsection are bound by any documents of which they, or any person through whom they claim, have knowledge or notice.

(5) TRANSFER OF SHARES IN BREACH OF TRANSFER RESTRICTIONS. (a) Any attempted transfer of shares in a statutory close corporation in violation of any transfer restriction binding on the transferee shall be ineffective.

(b) Any attempted transfer of shares in a statutory close corporation in violation of any transfer restriction not binding on the transferee, either because the notice required by sub. (4) has not been given or because the restriction prohibiting the transfer is held by court order to be unenforceable, shall give the corporation the option, exercisable by notice and payment within 75 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms.

(6) MERGERS, CONSOLIDATIONS, SHARE EXCHANGES AND SALE OF ASSETS. (a) Approval of any plan of merger, consolidation or exchange of shares:

1. That will terminate the status of the corporation as a statutory close corporation requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares of the statutory close corporation, whether or not otherwise entitled to vote.

2. Under which the new or surviving corporation will be a statutory close corporation requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares of the corporation that is not a statutory close corporation, whether or not otherwise entitled to vote.

(b) If a plan to merge, consolidate or exchange shares is approved, any shareholder who does not vote in favor of the plan shall be entitled to receive the fair value of his or her shares under s. 180.72.

(c) A sale, lease, exchange or other disposition of all, or substantially all, of the property and assets, with or without the goodwill, of a statutory close corporation, if not made in the usual and regular course of its business, requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote. Any shareholder who does not vote in favor of a disposition under this paragraph shall be entitled to receive the fair value of his or her shares under s. 180.72.

(7) TERMINATION OF STATUTORY CLOSE CORPORATION STATUS. (a) A statutory close corporation ceases to be subject to this section upon the effectiveness of articles of amendment deleting from its articles of incorporation the statement that it is a statutory close corporation and, if the corporation has elected under sub. (11) not to have a board of directors, deleting the statement in the articles to that effect and specifying the number, names and addresses of its directors. The amendment shall be approved by the affirmative vote of the holders of at least two-thirds of the shares of each class of shares of the corporation, whether or not otherwise entitled to vote.

(b) If the amendment to terminate the corporation's status as a statutory close corporation is approved, any shareholder who does not vote in favor of the amendment shall be entitled to receive the fair value of his or her shares under s. 180.72.

(8) EFFECT OF TERMINATION OF STATUTORY CLOSE CORPORATION STATUS. (a) The termination of statutory close corporation status does not affect the rights of any shareholder or the corporation under an agreement or the corporation's articles of incorporation, except to the extent that the agreement or the articles are invalid under this chapter.

(b) The corporation shall adopt bylaws if it has no bylaws on termination of statutory close corporation status.

(9) CONSIDERATION FOR SHARES. (a) The consideration for the issuance of shares of a statutory close corporation may be, in whole or in part, money, other property, tangible or intangible, or labor or services actually performed or to be performed for the corporation, or a promissory note or other obligation to transfer money or property to the corporation. When the consideration for which shares are to be issued is received by the corporation, the shares shall be nonassessable.

(b) Any compromise or forgiveness of any note or other obligation to transfer money or other property to a statutory close corporation in payment for shares is valid only if approved by all of the shareholders of the corporation, unless the articles of incorporation or any final judgment in a proceeding brought to enforce the obligation provides otherwise.

(c) In the absence of fraud, the judgment of the persons responsible for the issuance of shares as to the value of the consideration received for shares is conclusive.

(10) CUMULATIVE VOTING FOR DIRECTORS. (a) Shareholders in a statutory close corporation do not have a right to cumulate their votes for director unless the articles of incorporation provide for cumulative voting.

(b) The right to cumulate votes entitles any designated shareholders to multiply the number of votes they are entitled to cast by the number of directors they are entitled to elect and cast the total for a single candidate or distribute the total among 2 or more candidates.

(c) Cumulative voting is not authorized at any meeting unless at least one of the following conditions is met:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.

2. Shares were voted cumulatively in the last election of directors.

3. A shareholder gives notice of his or her intent to cumulate his or her votes before the vote is taken during a meeting, and if one shareholder gives this notice, all other shareholders participating in the election are entitled to cumulate their votes without further notice.

(11) ELECTION NOT TO HAVE A BOARD OF DIRECTORS. (a) A statutory close corporation may operate without a board of directors if the articles of incorporation contain a statement to that effect. While this statement is effective:

1. All corporate powers shall be exercised by, or under authority of, and the business and affairs of the corporation shall be managed under the direction of, the shareholders of the corporation and all powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed by the shareholders.

2. No liability that would otherwise be imposed on the directors may be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.

3. Any requirement that an instrument filed with any governmental agency contain a statement that a specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation having no board of directors and that the action was duly approved by the shareholders.

4. The shareholders, by resolution, may appoint one or more shareholders to sign any documents as "Designated Directors".

5. Except as provided in the articles of incorporation, any action requiring director approval or both director and shareholder approval may be authorized by shareholder approval and any action requiring a vote of a majority or greater percentage of the board of directors requires the affirmative vote of the holders of a majority, or such greater percentage, of the shares entitled to vote.

(b) An amendment to the articles of incorporation to operate without a board of directors shall be approved by the holders of all of the shares of the corporation whether or not otherwise entitled to vote, or all of the subscribers to the shares, or the incorporators, as the case may be. An amendment to the articles of incorporation to delete the election shall be approved by the affirmative vote of the holders of at least two-thirds of each class of the shares of the corporation whether or not otherwise entitled to vote.

(12) AGREEMENTS AMONG SHAREHOLDERS. (a) The shareholders of a statutory close corporation may, by unanimous action, enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation. Except as otherwise provided in an agreement authorized by this subsection, the terms of the agreement are binding on all successors in interest.

(b) Any agreement authorized by this subsection is valid and enforceable according to its terms notwithstanding the elimination of a board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as if it were a partnership or that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.

(c) If the corporation has a board of directors, the effect of an agreement authorized by this subsection restricting the discretionary powers of the directors is to relieve the directors of, and to impose upon the person or persons in whom such discretion or powers are vested, the liability for acts or omissions imposed by law upon directors to the extent that the discretion or powers of the directors are controlled by the agreement.

(d) An election not to have a board of directors in an agreement authorized by this subsection is not valid unless the articles of incorporation contain a statement to that effect adopted under sub. (11).

(e) A shareholder agreement authorized by this subsection may not be amended except by the unanimous written consent of the shareholders, unless otherwise provided in the agreement.

(f) Any action permitted by this subsection to be taken by shareholders may be taken by the subscribers to shares of the corporation if no shares have been issued at the time of the agreement authorized by this subsection.

(g) This subsection does not prohibit any other agreement among 2 or more shareholders.

(13) IRREVOCABLE PROXIES. (a) A shareholder in a statutory close corporation may execute a proxy which is irrevocable for the period specified in the proxy when it is held by any of the following or a nominee of any of the following:

1. A pledgee of shares.

2. A person who has purchased or agreed to purchase or holds an option to purchase the shares or a person who has sold a portion of the person's shares in the corporation to the maker of the proxy.

3. A creditor of the corporation or the shareholder who extended or continued credit to the corporation or the shareholder in consideration of the proxy if the proxy states that it was given in consideration of the extension or continu-

sion of credit and the name of the person extending or continuing credit.

4. A person who has contracted to perform services as an employe of the corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employe and the period of employment contracted for.

5. A person, including an arbitrator, designated by or under a shareholders' agreement authorized by sub. (12).

(b) Regardless of the period of irrevocability specified in a proxy executed under par. (a), the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated or the seller no longer owns any shares of the corporation or dies, the debt of the corporation or the shareholder is paid, the period of employment provided for in the contract of employment has terminated or the shareholders' agreement has terminated.

(c) In addition to par. (a), a proxy given to secure the performance of a duty or to protect a title, either legal or equitable, may be irrevocable until the happening of events which, under the terms of the proxy agreement, discharge the obligations secured by it.

(d) A proxy may be revoked, regardless of a provision making it irrevocable, by a purchaser of shares without actual knowledge of the existence of the provision, unless the existence of the proxy and its irrevocability appears on the certificate representing the shares.

(14) BYLAWS. Provisions otherwise required by law to be stated in corporate bylaws may be stated with equal effect in the articles of incorporation of a statutory close corporation or in an agreement authorized under sub. (12).

(15) ANNUAL MEETING. A statutory close corporation may establish in its articles of incorporation or bylaws, or in an agreement authorized under sub. (12), a date at which an annual meeting of shareholders shall be held, if called, and, if not so established, the date shall be the first business day after May 31. Except as provided in the articles of incorporation, no annual meeting need be held unless a written request is delivered to the corporation by any shareholder not less than 30 days before the established date for the meeting.

(16) SHAREHOLDER SALE OPTION AT DEATH. (a) If the articles of incorporation of a statutory close corporation make this subsection applicable to the corporation in whole or modified form, a deceased shareholder's personal representative may, subject to the shareholder's will, require the corporation to elect one of the following:

1. To purchase or cause the purchase of, under pars. (d) to (f), all, but not less than all, of the shares of the deceased shareholder.

2. Dissolution of the corporation.

(b) A modification of this subsection is valid if it is stated in the articles of incorporation.

(c) An amendment to the articles of incorporation to provide that this subsection shall apply or to delete or modify the provisions of this subsection shall be approved by the holders of at least two-thirds of each class of shares of the corporation whether or not otherwise entitled to vote, or, if the corporation has no shareholders at the time of the amendment, by two-thirds of all of the subscribers or all of the incorporators, as the case may be. Any shareholder who does not vote in favor of an amendment to delete or modify the provisions of this subsection shall, if the amendment terminates or substantially alters the existing rights of the shareholder under this subsection to have his or her shares purchased, be entitled to receive the fair value of his or her shares under s. 180.72.

(d) A person exercising rights under this subsection shall, within 6 months after the death of the beneficial owner of shares, deliver a written notice to the corporation's registered office specifying the number and class of all shares beneficially owned by the deceased shareholder and stating that an offer by the corporation to purchase the shares is being solicited under this subsection. Within 20 days after receipt of the notice, the president of the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to offer to purchase the shares. Approval of action to offer to purchase the shares shall be by affirmative vote of the holders of a majority of the shares entitled to vote, excluding the shares covered by the notice. With the consent of all of the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or such proportion as shall be agreeable to those desiring to purchase. Written notice of any offer to purchase approved by the shareholders, or that no offer to purchase was approved, shall be delivered or sent to the person exercising rights under this subsection within 75 days after delivery of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the corporation's balance sheets as of the end of, and profit and loss statements for, its preceding 2 accounting years and any available interim balance sheet and profit and loss statement.

(e) To the extent the price and other terms for purchasing shares of a transferring shareholder by the corporation or remaining shareholders are fixed or are to be determined under provisions in the articles of incorporation, the bylaws of the corporation, or by written agreement, those provisions shall be binding, except that in the event of a default in any payment due par. (h) shall apply and the person exercising rights under this section shall have the right to petition for dissolution of the corporation. Any offer to purchase shall be accepted or rejected in writing within 15 days after the offer.

(f) If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this subsection may commence an action to compel purchase or dissolution. The corporation shall be made a party defendant and shall, at its expense, give notice of the commencement of the action to all of its shareholders and other persons as the court may direct. The court shall, under sub. (19) (e), determine the fair value of the shares of the person exercising rights under this subsection and enter an order requiring the corporation to cause the purchase of the shares at fair value and on the other terms so determined or to give the person the right to have the corporation dissolved.

(g) Upon the petition of the corporation, the court may modify its decree to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or cure any default by any purchaser is entitled to recover the excess payment from the defaulting person.

(h) If the corporation or other purchaser fails to make any payment specified in the court order within 30 days after the due date for payment, the court shall, upon the petition of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter an order dissolving the corporation.

(i) 1. If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation before the commencement of an action brought under par. (f) and the court finds that the failure of the person exercising rights under this section to accept the corporation's last offer was arbitrary, vexatious or not otherwise in good faith, the court may assess all or a portion of the costs and expenses of the action against the person.

2. If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation before an action was commenced under par. (f) and the court finds that the corporation's last offer was arbitrary, vexatious or was otherwise not made in good faith, the court may assess all or a portion of the costs and expenses of the action against the corporation.

3. Expenses assessable under subds. 1 and 2 include reasonable compensation for, and reasonable expenses of, any appraisers appointed by the court and the reasonable fees and expenses of counsel for, and experts employed by, any party.

4. Except as provided in subds. 1 and 2, the legal costs of an action filed under par. (f) shall be assessed on an equal basis between the corporation and any party exercising rights under this section, and all other fees and expenses shall be borne by the party incurring the fees and expenses.

(j) A shareholder may, by signed writing, waive the rights under this subsection of the shareholder and the shareholder's estate and heirs.

(k) This subsection does not prohibit other agreements for the purchase of shares of the corporation, nor does it prevent the enforcement of other remedies.

(17) SHAREHOLDER OPTION TO DISSOLVE THE CORPORATION. (a) The articles of incorporation of a statutory close corporation or a shareholders' agreement under sub. (12) may grant to any shareholder, or to the holders of any specified number or percentage of shares of any class or classes, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. The shareholders exercising the option shall give written notice to all other shareholders. After the expiration of 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if a resolution to dissolve the corporation had been adopted under s. 180.753 (1) and (2).

(b) Unless the articles of incorporation otherwise provide, an amendment to the articles of incorporation to include, modify or delete a provision authorized by par. (a) shall be approved by the holders of all of the outstanding shares, whether or not otherwise entitled to vote, or all of the subscribers or all of the incorporators, as the case may be.

(18) GREATER QUORUM OR VOTING REQUIREMENTS. (a) The articles of incorporation may impose a greater quorum or voting requirement for shareholders, or classes of shareholders, than is required by this chapter.

(b) An action by shareholders to adopt an amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the largest of the greater quorum or voting requirements then in effect or proposed to be added, changed or deleted.

(19) POWER OF COURT TO GRANT RELIEF. (a) Any shareholder of record, the beneficial owner of shares held by a nominee or the holder of voting trust certificates of a statutory close corporation may petition the court for relief on the grounds that:

1. The directors or those in control of the corporation have or will have acted in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner in his or her capacity as a shareholder, director or officer of the corporation.

2. The directors or those in control of the corporation are so divided respecting the management of the corporation's affairs that the votes required for action cannot be obtained and the shareholders are unable to break the deadlock, with the consequence that the corporation is suffering or will suffer irreparable injury or that the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally.

3. Conditions exist that would be grounds for involuntary dissolution of the corporation.

(b) If the court finds that one or more of the conditions specified in par. (a) exist, it shall grant appropriate relief, including any of the following:

1. Canceling, altering or enjoining any resolution or other act of the corporation.

2. Directing or prohibiting any act of the corporation or of shareholders, directors, officers or other persons party to the action.

3. Canceling or altering the articles of incorporation or bylaws of the corporation.

4. Removing from office any director or officer, or ordering that a person be appointed a director or officer.

5. Requiring an accounting with respect to any matters in dispute.

6. Appointing a receiver to manage the business and affairs of the corporation.

7. Appointing a provisional director who shall have all the rights, powers and duties of a duly elected director and shall serve for the term and under the conditions established by the court.

8. Ordering the payment of dividends.

9. If the court finds that it cannot order appropriate relief, ordering that the corporation be liquidated and dissolved unless either the corporation or one or more of the remaining shareholders has purchased all of the shares of another shareholder at their fair value by a designated date, with the fair value and terms of the purchase to be determined under par. (e). If the share purchase is not consummated and the corporation is dissolved and liquidated, any shareholder whose shares were to be purchased shall have the same rights and priorities in the assets of the corporation as would have been the case had no purchase been ordered by the court.

10. Ordering liquidation and dissolution, but only if grounds exist for ordering involuntary dissolution if the corporation were not a statutory close corporation, or if all other relief ordered by the court has failed to resolve the matters in dispute.

11. Awarding damages to any aggrieved party in addition to, or in lieu of, any other relief granted.

(c) In determining whether to grant relief under par. (b) 9 or 10, the court shall take into consideration the financial condition of the corporation but shall not refuse to order liquidation solely on the grounds that the corporation has earned surplus or current operating profits.

(d) If the court determines that any party to a proceeding brought under this subsection has acted arbitrarily, vexatiously or in bad faith, it may award reasonable expenses, including attorney fees and the costs of any appraisers or other experts, to one or more of the other parties.

(e) If the court orders relief under par. (b) 9, it shall:

1. Determine the fair value of the shares to be purchased, considering the going concern value of the corporation, any agreement among the shareholders fixing a price or specifying a formula for determining the value of the corporation's

shares for any purpose, the recommendations of any appraisers appointed by the court, any legal constraints on the ability of the corporation to acquire the shares to be purchased and other relevant evidence.

2. Enter an order specifying the identity of the purchaser and the terms of the purchase found to be proper under the circumstances, including payment of the purchase price in instalments, payment of interest on the instalments, subordination of the obligation to the rights of other creditors of the corporation, security for the deferred purchase price, and a covenant not to compete or other restriction on the selling shareholder.

3. Order that the selling shareholder shall, concurrently with the payment of the purchase price, or in the event of an instalment purchase, concurrently with the payment of the initial payment called for in the order, make delivery of all his or her shares and, from that date, have no rights or claims against the corporation or its directors, officers or shareholders by reason of having been a director, officer or shareholder of the corporation, except the right to receive the unpaid balance of the amount awarded under this subsection and any amounts due under any agreement with the corporation or the remaining shareholders that are not terminated by the court's orders.

4. Order dissolution of the corporation if the purchase is not completed as ordered.

(f) Except as provided in pars. (g) and (h), the rights of a shareholder to file a proceeding under this section are in addition to, and not in lieu of, any other rights or remedies the shareholder may have.

(g) No shareholder may file an action under this section before exhausting any nonjudicial remedy for resolution of the issues in dispute to which the shareholder has agreed in writing.

(h) If a shareholder has the right to dissent from any proposed action and to receive the fair value of his or her shares under this section or s. 180.72, any action under this section brought in respect to the proposed action shall be filed before the time for a dissenting shareholder to file with the corporation notice of intention to dissent and to demand fair compensation under s. 180.72.

(20) LIMITED LIABILITY. The failure of a statutory close corporation to observe usual corporate formalities or requirements relating to the exercise of its corporate powers or the management of its business and affairs is not grounds for imposing personal liability on the shareholders for obligations of the corporation.

(21) OFFICERS; EXECUTION OF DOCUMENTS. (a) A statutory close corporation may operate and conduct business with one or more officers.

(b) Any individual may hold more than one office in a statutory close corporation and may execute, acknowledge or verify in more than one capacity any instrument required to be executed, acknowledged or verified by the holders of 2 or more offices.

History: 1983 a. 340; 1985 a. 29 s. 3202 (48) (a); 1985 a. 135 s. 85.

NOTE: 1983 Wisconsin Act 340, which created this section, contains extensive explanatory notes. See 1983 session laws.

Undercapitalization as basis for piercing corporate veil discussed. Consumer's Co-op of Walworth v. Olsen, 142 W (2d) 465, 419 NW (2d) 211 (1988).

Assessing the utility of Wisconsin's close corporation statutes: An empirical study. 1986 WLR 811.