

## CHAPTER 180

### BUSINESS CORPORATIONS

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## SUBCHAPTER I

## GENERAL PROVISIONS

**180.0101 Title.** This chapter may be cited as the “Wisconsin business corporation law”.

**History:** 1989 a. 303.

Wisconsin's Business Corporation Law. Williams and Berry. Wis. Law. June, 1990.

Chapter 180 Trailer Bill. DeGuire, Ware and Williams. Wis. Law. July 1991.

LLC and Corporate Law Revisions. Boucher and Sosnowski. Wis. Law. Oct. 1996.

**180.0103 Definitions.** In this chapter, except as otherwise provided:

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

(2) “Articles of incorporation” includes amended and restated articles of incorporation.

(3) “Authorized shares” means the shares of all classes that a domestic corporation or foreign corporation is authorized to issue.

(4) “Conspicuous” means written so that a reasonable person against whom the writing is to operate should have noticed it, including printing in italics or boldface or contrasting color, or typing in capitals or with underlining.

(5) “Corporation” or “domestic corporation,” except as used in sub. (9), means a corporation for profit that is not a foreign corporation and that is incorporated under or subject to this chapter. “Corporation” or “domestic corporation” includes, to the extent provided under s. 180.1703, a corporation with capital stock but not organized for profit.

(6) “Deliver” or “delivery” means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

(6m) “Department,” except in subs. (8) and (18), means the department of financial institutions.

(7) “Distribution” means a direct or indirect transfer by a corporation of money or other property, other than its shares, or an

incurrence of indebtedness by a corporation, to or for the benefit of its shareholders in respect to any of its shares, including but not limited to any of the following:

- (a) A declaration or payment of a dividend.
- (b) A purchase, redemption or other acquisition of shares.
- (c) A distribution of evidences of indebtedness.

**(7g)** “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

**(7k)** “Electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a writing and executed or adopted by a person with intent to authenticate the writing.

**(7m)** “Electronic transmission” or “electronically transmitted” means Internet transmission, telephonic transmission, electronic mail transmission, transmission of a telegram, cablegram, or datagram, or any other form or process of communication that does not directly involve the physical transfer of paper and that is suitable for the retention, retrieval, and reproduction of information by the recipient.

**(8)** “Entity” includes a domestic corporation; a foreign corporation; a limited liability company; a nonstock corporation; a stock or nonstock cooperative association; an unincorporated cooperative association; a profit or nonprofit unincorporated association; a business trust; an estate; a partnership; a trust; 2 or more persons having a joint or common economic interest; a state or an agency, commission, department, authority, bureau or other instrumentality of a state; a governmental subdivision; the United States; and a foreign government.

**(9)** “Foreign corporation” means a corporation for profit incorporated under a law other than the law of this state, except a railroad corporation, an association created solely for religious or charitable purposes, an insurer or motor club, a savings and loan association, a savings bank or a common law trust.

**(10)** “Governmental subdivision” includes a county, city, village, town and special purpose district.

**(11)** “Individual” includes the estate of an individual adjudicated incompetent or a deceased natural person.

**(11e)** “Investment company” means a corporation that is registered, or is organized for the purpose of registering, as a management investment company under 15 USC 80a–1 to 80a–64, if the corporation’s articles of incorporation state that the corporation is registered or is organized for the purposes of registering as a management investment company under 15 USC 80a–1 to 80a–64.

**(11m)** “Person” includes an individual and an entity.

**(12)** “Principal office” means the office, whether in or outside this state, of a domestic corporation or foreign corporation in which are located its principal executive offices and, if the domestic corporation or foreign corporation has filed an annual report under s. 180.1622, that is designated as the principal office in its most recent annual report.

**(13)** “Record date” means the date established under s. 180.0623 (4), 180.0640 (2), 180.0702 (2), 180.0704 (4), 180.0705 (3) or 180.0707 on which a corporation determines the identity of its shareholders for purposes of this chapter.

**(14)** “Shareholder” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

**(15)** “Shares” means the units into which the proprietary interests in a corporation are divided.

**(16)** “Signed” or “signature” includes the execution or adoption of a manual, facsimile, conformed, or electronic signature, or any symbol, with intent to authenticate a writing.

**(17)** “Subscriber” means a person who subscribes for shares in a corporation, whether before or after incorporation.

**(17m)** “Treasury shares” means shares of a corporation that have been issued, that have been subsequently acquired by and

belong to the corporation and that have not been canceled or restored to the status of authorized but unissued shares.

**(18)** “United States” includes an authority, bureau, commission, department and any other agency of the United States.

**(19)** “Voting group” means any of the following:

(a) All shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

(b) All shares that under the articles of incorporation or this chapter are entitled to vote generally on a matter.

**History:** 1989 a. 303; 1991 a. 16, 221; 1993 a. 112; 1995 a. 27, 271; 1999 a. 9; 2001 a. 44, 104; 2005 a. 387, 441; 2015 a. 196.

**180.0120 Filing requirements. (1)** Except as provided in sub. (4), a document required or permitted to be filed under this chapter with the department must satisfy all of the following requirements to be filed under s. 180.0125 (2) (a):

(a) Contain the information required by this chapter, although it may also contain other information.

(c) Be in the English language, except that:

1. A corporate name need not be in English if it is written in English letters or Arabic or Roman numerals.

2. The certificate of status, or similar document, required of a foreign corporation need not be in English if accompanied by a reasonably authenticated English translation.

(d) Contain the name of the drafter, if required by s. 182.01 (3).

(e) Be executed in accordance with sub. (3).

(f) Be on the form prescribed by the department if the document is described in s. 180.0121 (1).

(g) Be delivered to the department for filing and be accompanied by one exact or conformed copy and the filing fee required by s. 180.0122.

**(2)** The department shall file photocopies or other reproduced copies of typewritten or printed documents if the copies are manually signed and satisfy this section.

**(3)** (a) Any of the following persons may execute a document described in s. 180.0122 (1) (a), (b), (h) to (j), (Lg), (m) to (r) and (u) to (ym):

1. An officer of the domestic corporation or foreign corporation.

2. If directors have not been selected or the corporation has not been formed, an incorporator.

3. If the domestic corporation or foreign corporation is in the hands of a receiver, trustee or other court–appointed fiduciary, the fiduciary.

(c) The person executing a document shall sign it and, beneath or opposite the signature, state his or her name and the capacity in which he or she signs. The document may but need not contain any of the following:

1. The corporate seal.

2. An attestation by the secretary or an assistant secretary of the domestic corporation or foreign corporation.

3. An acknowledgment, verification or proof.

**(4)** The department may waive any of the requirements of subs. (1) to (3) if it appears from the face of the document that the document’s failure to satisfy the requirement is immaterial.

**History:** 1989 a. 303; 1991 a. 16; 1993 a. 323; 1995 a. 27.

**180.0121 Forms. (1)** (a) The department shall prescribe and furnish on request forms for all of the following documents:

1. A foreign corporation’s application for a certificate of authority to transact business in this state under s. 180.1503.

2. A foreign corporation’s application for a certificate of withdrawal under s. 180.1520.

3. A domestic corporation’s or foreign corporation’s annual report under s. 180.1622 and a service corporation’s annual report under s. 180.1921.

4. An application for a certificate of conversion under s. 180.1161 (5).

(b) The forms prescribed by the department under par. (a) 1., 2. and 3. shall require disclosure of only the information required under ss. 180.1503, 180.1520, 180.1622 and 180.1921, respectively.

(c) Use of a form prescribed under par. (a) is mandatory.

(2) The department may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but use of these forms is not mandatory.

**History:** 1989 a. 303; 1995 a. 27; 2001 a. 44; 2005 a. 476; 2015 a. 295.

**180.0122 Filing and service fees.** (1) Except as provided under sub. (5), the department shall collect the following fees when the documents described in this subsection are delivered for filing or, under pars. (e) and (f), the telephone applications are made:

- (a) Articles of incorporation, \$100.
- (b) Application for use of indistinguishable name, \$10.
- (c) Written application for reserved name, \$15.
- (d) Written application for renewal of reserved name, \$15.
- (e) Telephone application for reserved name, \$30.
- (f) Telephone application for renewal of reserved name, \$30.
- (g) Notice of transfer of reserved name or of registered name, \$10.
- (h) Application for registered name, \$50.
- (i) Application for renewal of registered name, \$50.
- (j) Subject to sub. (3) (c), domestic corporation's or foreign corporation's statement of change of registered office, \$10.
- (k) Agent's statement of change of registered office, \$10 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made the fee is reduced to \$1 for each affected domestic corporation or foreign corporation in excess of 200.
- (L) Agent's statement of resignation, \$10.
- (Lg) A director or principal officer statement under s. 180.0860 (1), \$3.
- (Lr) A director or principal officer resignation notice under s. 180.0860 (2), \$3.
- (m) Amendment of articles of incorporation, \$40.
- (n) Restatement of articles of incorporation with or without amendment of articles, \$40.
- (o) Articles of merger, \$150.
- (om) Articles of share exchange, \$50 for each domestic corporation and each foreign corporation authorized to transact business in this state that is a party to the share exchange.
- (p) Articles of dissolution, \$20.
- (q) Articles of revocation of dissolution, \$10.
- (r) Application for reinstatement following administrative dissolution, \$90.
- (s) Certificate of reinstatement, \$10.
- (t) Certificate of judicial dissolution, \$10.
- (u) Application for certificate of authority, \$100, and \$3 for every \$1,000 or fraction thereof of the foreign corporation's capital exceeding \$60,000 employed or to be employed in this state, computed as provided in s. 180.1503, as shown by the application.
- (v) Application for amended certificate of authority, \$40.
- (w) Application for certificate of withdrawal, \$40, and in case that application shows that the foreign 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. 180.1520 (2) (f), an additional fee which, with previous payments made on account of capital employed in this state, will amount to \$3 for each \$1,000 or fraction thereof of the excess.
- (x) Annual report of a domestic corporation, \$25.

(y) Annual report of a foreign corporation, \$65, and in case the annual report shows that the foreign 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. 180.1503, an additional fee which, with previous payments made on account of capital employed in this state, will amount to \$3 for each \$1,000 or fraction thereof of the excess.

(ym) Articles of correction, \$40.

(yr) A certificate of conversion, \$150.

(z) Request for certificate or statement of status, the fee established under s. 182.01 (4) (b).

(2) The department shall collect the fee established under s. 182.01 (4) (c) each time process is served on the department under this chapter. The party to a civil, criminal, administrative or investigatory proceeding causing service of process may recover this fee as costs if the party prevails in the proceeding.

(3) The department may not collect a fee for any of the following:

(a) Filing a certificate of administrative dissolution or a certificate of revocation of authority to transact business.

(b) Providing a confirmation of status by telephone.

(c) Filing a domestic corporation's or a foreign corporation's statement of change of registered office if the only change is to an address and all of the following apply:

1. The new address is the result of a change in the way a county, city, village, town or the U.S. postal service describes the physical location of the registered office.

2. A copy of the notice indicating the new address is submitted with the statement.

3. The physical location of the registered office has not changed.

(4) In addition to the fees required under sub. (1), the department shall collect the expedited service fee established under s. 182.01 (4) (d) for processing in an expeditious manner a document required or permitted to be filed under this chapter and shall collect the fee established under s. 182.01 (4) (f) for preparing in an expeditious manner a certificate of status under s. 180.0128 (1) to (3) or a statement of status under s. 180.0128 (4).

(5) The department, by rule, may specify a larger fee for filing documents described in sub. (1) in paper format.

**History:** 1989 a. 303; 1991 a. 16, 269; 1993 a. 214, 323, 331; 1995 a. 27, 271; 1997 a. 27; 2001 a. 16, 44; 2005 a. 25.

**180.0123 Effective date and time of document.** (1) (a) Except as provided in sub. (2) or s. 180.0124 (3), 180.1622 (5) or 180.1921 (4), a document filed by the department under this chapter is effective on the date that it is received by the department for filing and at any of the following times on that date:

1. The time of day specified in the document as its effective time.

2. If no effective time is specified, at the close of business.

(b) The date that a document is received by the department is determined by the department's endorsement on the original document under s. 180.0125 (1).

(2) A document may specify a delayed effective date and time, except the effective date may not be more than 90 days after the date that it is received for filing. If a document specifies a delayed effective date and time in accordance with this subsection, the document is effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date.

**History:** 1989 a. 303; 1991 a. 16, 269; 1995 a. 27.

**180.0124 Correcting filed document.** (1) A domestic corporation or foreign corporation may correct a document that is filed by the department before, on or after January 1, 1991, if the document contains a statement that was incorrect at the time of fil-

ing or was defectively executed, including defects in any attestation, seal, verification or acknowledgment.

(2) To correct a document under sub. (1), a domestic corporation or foreign corporation shall prepare and deliver to the department for filing articles of correction that satisfy all of the following:

(a) Describe the document, including its filing date, or include a copy of the document.

(b) Specify the incorrect statement and the reason that it is incorrect, or specify the manner in which the execution was defective, whichever is applicable.

(c) Correct the incorrect statement or defective execution.

(3) (a) Except as provided in par. (b), articles of correction are effective on the effective date of the document that they correct.

(b) With respect to persons relying on the uncorrected document and adversely affected by the correction, the articles of correction are effective when filed.

History: 1989 a. 303; 1995 a. 27.

**180.0125 Filing duty of department of financial institutions.** (1) Upon receipt of a document by the department for filing, the department shall stamp or otherwise endorse the date of receipt on the original, the document copy and, upon request, any additional document copy received. The department shall return any additional document copy to the person delivering it, as confirmation of the date of receipt.

(2) (a) Except as provided in par. (b), if a document satisfies s. 180.0120 and the terms of the document satisfy, if applicable, s. 180.0401 (1) and (2) or 180.1506 (1) and (2), the department shall file the document by stamping or otherwise endorsing “Filed”, together with the department name, on both the original and the document copy. After filing a document, the department shall deliver the document copy to the domestic corporation or foreign corporation, or its representative.

(b) If a domestic corporation or foreign corporation is in default in the payment of any fee required under s. 180.0122 (1) (a) to (j) or (m) to (yr), the department shall refuse to file any document relating to the domestic corporation or foreign corporation until all delinquent fees are paid by the domestic corporation or foreign corporation.

(3) (a) If the department refuses to file a document, the department shall return it to the domestic corporation or foreign corporation, or its representative, within 5 business days after the document was received by the department for filing, together with a brief, written explanation of the reason for the refusal.

(b) The department’s failure to either file or return a document within 5 business days after it was received constitutes a refusal to file the document.

(c) Except as provided in s. 180.0124 (3), if a document that had been refused for filing by the department is resubmitted and filed by the department, the effective date of the filed document under s. 180.0123 is the date that the resubmitted document is received by the department for filing or a delayed effective date specified in the resubmitted document in accordance with s. 180.0123 (2). The effective time of the resubmitted document shall be determined under s. 180.0123 (1) or (2), whichever is applicable.

(4) Except as provided in s. 180.0203 (2), the department’s filing of a document or refusal to file a document does not do any of the following:

(a) Affect the validity or invalidity of the document in whole or part.

(b) Relate to the correctness or incorrectness of information contained in the document.

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

History: 1989 a. 303; 1995 a. 27; 2001 a. 44.

**180.0126 Appeal from department of financial institutions’ refusal to file document.** (1) If the department refuses to file a document received by the department for filing, the domestic corporation or foreign corporation may appeal the refusal by filing a petition in circuit court to compel the department to file the document. The domestic corporation or foreign corporation shall file the petition in the circuit court for the county where the domestic corporation’s or foreign corporation’s principal office or, if none in this state, its registered office is or will be located. The domestic corporation or foreign corporation shall attach to the petition the document and any explanation by the department of the reasons for the refusal to file.

(2) The domestic corporation or foreign corporation shall file the petition under sub. (1) within 30 days after the department returns the document under s. 180.0125 (3) (a). If the department does not return the document within the period specified in s. 180.0125 (3) (b), the domestic corporation or foreign corporation shall file the petition within 30 days after the period specified in s. 180.0125 (3) (b) expires.

(3) The court may summarily order the department to file the document or take other action that the court considers appropriate. The court’s final decision may be appealed as in other civil proceedings.

History: 1989 a. 303; 1995 a. 27; 1997 a. 35.

**180.0127 Evidentiary effect of copy of filed document.** A certified copy of a document filed by the department is conclusive evidence that the original document is on file with the department.

History: 1989 a. 303; 1995 a. 27.

**180.0128 Confirmation of status.** (1) Any person may obtain from the department, upon request, a certificate of status for a domestic corporation or foreign corporation.

(2) A certificate of status shall include all of the following information:

(a) The domestic corporation’s corporate name or the foreign corporation’s corporate name and fictitious name, if any, used in this state.

(b) Whether each of the following is true:

1. The domestic corporation is incorporated under the laws of this state, or the foreign corporation is authorized to transact business in this state.

3. The domestic corporation or foreign corporation has, during its most recently completed report year, filed with the department an annual report required by s. 180.1622, or, if a service corporation, by s. 180.1921.

4. The domestic corporation has not filed articles of dissolution.

5. The foreign corporation has not applied for a certificate of withdrawal under s. 180.1520 and is not the subject of a proceeding under s. 180.1531 to revoke its certificate of authority.

(c) The domestic corporation’s date of incorporation and the period of its duration if less than perpetual.

(3) The certificate of status may include other facts of record in the department that are requested.

(4) Upon request, the department shall issue, by telegraph, teletype, facsimile or other form of wire or wireless communication, a statement of status, which shall contain the information required in a certificate of status under sub. (2) and may contain any other information permitted under sub. (3).

(5) Subject to any qualification stated in a certificate or statement of status issued by the department, the certificate or statement is conclusive evidence that the domestic corporation or foreign corporation is in existence or is authorized to transact business in this state.

(6) Upon request by telephone or otherwise, the department shall confirm, by telephone, any of the information required in a

certificate of status under sub. (2) and may confirm any other information permitted under sub. (3).

**History:** 1989 a. 303; 1991 a. 16; 1995 a. 27.

**180.0129 Penalty for false document.** (1) A person may not sign a document with intent that it be delivered to the department for filing or deliver, or cause to be delivered, a document to the department for filing, if the person knows that the document is false in any material respect at the time of its delivery.

(2) Whoever violates this section is guilty of a Class I felony.

**History:** 1989 a. 303; 1995 a. 27; 1997 a. 283; 2001 a. 109.

**180.0141 Notice.** (1) This section applies to notice that is required under this chapter and that is made subject to this section by express reference to this section.

(2) (a) A person shall give notice in writing, except as provided in par. (b). For purposes of this section, notice by electronic transmission is written notice.

(b) A person may give oral notice if oral notice is permitted by the articles of incorporation or bylaws and not otherwise prohibited by this chapter.

(3) Except as provided in s. 180.0721 (4) or unless otherwise provided in the articles of incorporation or bylaws, notice may be communicated in person; by mail or other method of delivery; by telephone, including voice mail, answering machine or answering service; or by any other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

(4) Written notice to a domestic corporation or a foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the domestic corporation or foreign corporation at its principal office. With respect to a foreign corporation that has not yet filed an annual report under s. 180.1622, the address of the foreign corporation's principal office may be determined from its application for a certificate of authority.

(5) (a) Except as provided in par. (b) and ss. 180.0807 (2) and 180.0843 (1), written notice is effective at the earliest of the following:

1. When received.
2. Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.
3. On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
4. On the effective date specified in the articles of incorporation or bylaws.

(b) Written notice by a domestic corporation or foreign corporation to its shareholder is effective under any of the following conditions:

1. When mailed, but only if mailed postpaid and addressed to the shareholder's address shown in the domestic corporation's or foreign corporation's current record of shareholders.
2. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

(c) Oral notice is effective when communicated.

**History:** 1989 a. 303; 1999 a. 9.

**180.0142 Number of shareholders.** (1) For purposes of this chapter, any of the following constitute one shareholder if identified as a shareholder in a corporation's current record of shareholders:

- (a) Three or fewer co-owners.
- (b) An entity.
- (c) The trustees, guardians, custodians or other fiduciaries of a single trust, estate or account.

(2) For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

**History:** 1989 a. 303.

## SUBCHAPTER II

### INCORPORATION

**180.0201 Incorporators.** (1) One or more persons may act as the incorporator or incorporators of a corporation.

(2) Following the incorporation of a corporation, a majority of the corporation's incorporators or their survivors may take any action permitted by this chapter to be taken by its incorporators.

**History:** 1989 a. 303.

**180.0202 Articles of incorporation.** (1) The articles of incorporation shall include all of the following information:

(a) A statement that the corporation is incorporated under this chapter.

(b) A corporate name that satisfies s. 180.0401.

(c) The number of authorized shares, except that an investment company may declare an indefinite number of authorized shares.

(d) If more than one class of shares is authorized, all of the following:

1. The distinguishing designation of each class.
2. The number of shares of each class that the corporation is authorized to issue, except that an investment company may declare that each class has an indefinite number of authorized shares.
3. Before the issuance of shares of a class, a description of the preferences, limitations and relative rights of that class.

(e) If one or more series of shares are created within a class of shares, all of the following before the issuance of shares of a series:

1. The distinguishing designation of each series within a class.
2. The number of shares of each series that the corporation is authorized to issue, except that an investment company may declare that each series has an indefinite number of authorized shares.
3. The preferences, limitations and relative rights of that series.

(f) Any provision authorizing the board of directors to act under s. 180.0602 (1).

(g) Any provision granting or limiting preemptive rights.

(h) The street address of the corporation's initial registered office and the name of its initial registered agent at that office.

(i) The name and address of each incorporator.

(2) The articles of incorporation may set forth other information, including but not limited to any of the following:

(a) The names and addresses of the natural persons who will serve as the initial directors.

(b) Provisions not inconsistent with law regarding:

1. The purpose or purposes for which the corporation is organized.
2. Managing the business and regulating the affairs of the corporation.
3. Defining, limiting and regulating the powers of the corporation, its board of directors and its shareholders.
4. A par value for authorized shares or classes or series of shares.

(c) Any provision that, under this chapter, is required or permitted to be set forth in the bylaws.

(3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(4) If a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation controls.

**History:** 1989 a. 303; 1991 a. 173; 1995 a. 271.

**180.0203 Incorporation.** (1) The corporate existence begins when the articles of incorporation become effective under s. 180.0123.

(2) The department’s filing of the articles of incorporation is conclusive proof that the corporation is incorporated under this chapter, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

**History:** 1989 a. 303; 1995 a. 27.

Chapter 180 does not preclude a corporation incorporated under ch. 180 from being organized as a nonprofit. *De La Trinidad v. Capitol Indemnity Corporation*, 2009 WI 8, 315 Wis. 2d 324, 759 N.W.2d 586, 07–0045.

**180.0205 Organization of corporation.** (1) After incorporation, if initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers and carrying on any other business brought before the meeting.

(2) (a) After incorporation, if initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting, at the call of a majority of the incorporators, to do any of the following:

1. Elect directors and complete the organization of the corporation.

2. Elect directors who will complete the organization of the corporation.

(b) Action required or permitted by this chapter by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or outside this state.

**History:** 1989 a. 303.

**180.0206 Bylaws.** (1) The incorporators, board of directors or shareholders of a corporation may adopt initial bylaws for the corporation.

(2) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with its articles of incorporation or with the laws of this state.

**History:** 1989 a. 303.

**180.0207 Emergency bylaws.** (1) In this section, “emergency” means a catastrophic event that prevents a quorum of the corporation’s directors from being readily assembled.

(2) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws that are effective only in an emergency. The emergency bylaws may make all provisions necessary for managing the corporation during the emergency, including but not limited to the following:

(a) Procedures for calling a meeting of the board of directors.

(b) Quorum requirements for the meeting.

(c) Designation of additional or substitute directors.

(3) Provisions of the regular bylaws that are consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(4) Notwithstanding ss. 180.0828, 180.0831 and 180.0833, corporate action taken in good faith in accordance with the emergency bylaws binds the corporation and may not be used to impose liability on a corporate director, officer, employee or agent.

**History:** 1989 a. 303.

## SUBCHAPTER III

## PURPOSES AND POWERS

**180.0301 Purposes.** (1) A corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in its articles of incorporation.

(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if not prohibited by, and subject to all limitations of, the other statute.

**History:** 1989 a. 303.

**180.0302 General powers.** Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as a natural person to do all things necessary or convenient to carry out its business and affairs, including but not limited to power to do all of the following:

(1) Sue and be sued, complain and defend in its corporate name.

(2) Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it.

(3) Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation.

(4) Purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, property or any legal or equitable interest in property, wherever located.

(5) Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property.

(6) Purchase, receive, subscribe for or otherwise acquire, and own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of and deal in and with shares or other interests in, or obligations of, any other entity.

(7) Make contracts and guarantees; incur liabilities; borrow money; issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the corporation; and secure any of its obligations by mortgage or pledge of any of its property, franchises or income.

(8) Lend money, invest and reinvest its funds and receive and hold property as security for repayment.

(9) Be a promoter, partner, member, associate or manager of an entity.

(10) Conduct its business, locate offices and exercise the powers granted by this chapter in or outside this state.

(11) Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation and, subject to s. 180.0832, lend them money and credit.

(12) Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents of the corporation and its subsidiaries.

(13) Make donations and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic or religious purposes.

(14) Transact any lawful business that will aid governmental policy.

(15) Make payments or donations, or do any other act, not prohibited by law, that furthers the business and affairs of the corporation.

(16) Provide benefits or payments to directors, officers and employees of the corporation or its subsidiaries, and to their estates, families, dependents or beneficiaries, in recognition of the

past services of the directors, officers and employees to the corporation or its subsidiaries.

**History:** 1989 a. 303.

A ch. 180 corporation cannot offer general trust services to the public, notwithstanding compliance with 223.105. 78 *Atty. Gen.* 153.

**180.0303 Emergency powers. (1)** In this section, “emergency” has the meaning given in s. 180.0207 (1).

**(2)** In anticipation of or during an emergency, the board of directors of a corporation may do all of the following:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent.

(b) Relocate the principal office or designate alternative principal offices or regional offices, or authorize the officers to do so.

**(3)** Unless emergency bylaws adopted under s. 180.0207 provide otherwise, all of the following apply to a meeting of the board of directors during an emergency:

(a) Notwithstanding s. 180.0822 (2), the corporation need give notice of the meeting only to those directors whom it is practicable to reach, and the corporation may give notice in any practicable manner, including by publication and radio.

(b) Notwithstanding s. 180.0824 (1) and (2), one or more officers of the corporation present at a meeting of the board of directors may be considered to be directors for the meeting in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

**(4)** Notwithstanding ss. 180.0828, 180.0831 and 180.0833, corporate action taken in good faith in anticipation of or during an emergency under this section to further the ordinary business affairs of the corporation binds the corporation and may not be used to impose liability on a corporate director, officer, employee or agent.

**History:** 1989 a. 303; 1991 a. 16.

**180.0304 Lack of corporate power. (1)** Except as provided in sub. (2), the validity of any corporate action or any conveyance or transfer of property to or by the corporation may not be challenged on the ground that the corporation lacks or lacked power to act.

**(2)** A corporation’s power to act may be challenged in any of the following proceedings:

(a) In a proceeding by a shareholder against the corporation to enjoin the act.

(b) In a proceeding by the corporation, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the corporation.

(c) In a proceeding by the attorney general under s. 180.1430 (1).

**(3)** In a shareholder’s proceeding under sub. (2) (a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and the court may award damages for loss, other than loss of anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

**History:** 1989 a. 303.

#### SUBCHAPTER IV

#### NAME

**180.0401 Corporate name. (1)** (a) The corporate name of a corporation:

1. Shall contain the word “corporation”, “incorporated”, “company” or “limited” or the abbreviation “corp.”, “inc.”, “co.” or “Ltd.” or words or abbreviations of like import in another language, except as provided in par. (b) or s. 180.1907.

2. May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by s. 180.0301 and its articles of incorporation.

(b) A corporation in existence on January 1, 1991, need not change its name to comply with par. (a) 1.

**(2)** (a) Except as provided in subs. (3) and (4), the corporate name of a domestic corporation must be distinguishable upon the records of the department from all of the following names:

1. The corporate name of a domestic corporation or a foreign corporation authorized to transact business in this state.

2. A corporate name reserved or registered under s. 180.0402, 180.0403, 181.0402 or 181.0403.

3. The corporate name of a dissolved corporation or a dissolved nonstock corporation that has retained the exclusive use of its name under s. 180.1405 (3) or 181.1405 (3), respectively.

4. The fictitious name adopted by a foreign corporation or a foreign nonstock corporation authorized to transact business in this state.

5. The corporate name of a nonstock corporation incorporated in this state.

6. The name of a limited partnership formed under the laws of, or registered in, this state.

7. The name of a cooperative association or an unincorporated cooperative association incorporated or authorized to transact business in this state.

8. The name of a limited liability company organized under the laws of, or registered in, this state.

9. The name of a limited liability partnership formed under the laws of, or registered in, this state.

(b) The corporate name of a corporation is not distinguishable from a name referred to in par. (a) 1. to 9. if the only difference between it and the other name is the inclusion or absence of a word or words referred to in sub. (1) (a) 1. or of the words “limited partnership”, “limited liability partnership”, “cooperative” or “limited liability company” or an abbreviation of these words.

**(3)** A corporation may apply to the department for authorization to use a name that is not distinguishable upon the records of the department from one or more of the names described in sub. (2). The department shall authorize use of the name applied for if any of the following occurs:

(a) The other corporation or the foreign corporation, limited liability company, nonstock corporation, limited partnership, limited liability partnership, cooperative association, or unincorporated cooperative association consents to the use in writing and submits an undertaking in a form satisfactory to the department to change its name to a name that is distinguishable upon the records of the department from the name of the applicant.

(b) The applicant delivers to the department a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

**(4)** A corporation may use the name, including the fictitious name, that is used in this state by another domestic corporation or a foreign corporation authorized to transact business in this state if the corporation proposing to use the name has done any of the following:

(a) Merged with the other domestic corporation or foreign corporation.

(b) Been formed by reorganization of the other domestic corporation or foreign corporation.

(c) Acquired all or substantially all of the assets, including the corporate name, of the other domestic corporation or foreign corporation.

**History:** 1989 a. 303; 1991 a. 16; 1993 a. 112; 1995 a. 27, 97; 1997 a. 79; 2005 a. 441.

**180.0402 Reserved name. (1)** A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by



delivering an application to the department for filing or by making a telephone application. The application shall include the name and address of the applicant and the name proposed to be reserved. If the department finds that the corporate name applied for under this subsection is available, the department shall reserve the name for the applicant's exclusive use for a 120-day period, which may be renewed by the applicant or a transferee under sub. (2) from time to time.

(2) A person who has the right to exclusive use of a reserved corporate name under sub. (1) may transfer the reservation to another person by delivering to the department a written and signed notice of the transfer that states the name and address of the transferee.

History: 1989 a. 303; 1993 a. 214; 1995 a. 27; 2001 a. 44.

**180.0403 Registered name.** (1) (a) A foreign corporation may register its corporate name if the name is distinguishable upon the records of the department from the names described in s. 180.1506 (2) (a) 1. to 7. and if the foreign corporation delivers to the department for filing an application complying with par. (b).

(b) A foreign corporation's application to register a corporate name shall be accompanied by a certificate of status or similar document from the state or country of incorporation and shall include all of the following information:

1. The foreign corporation's corporate name.
2. The state or country and the date of its incorporation.
3. The street address of its principal office.

(c) The registration expires December 31. The foreign corporation may renew its registration by delivering to the department for filing a renewal application, which complies with par. (b), between October 1 and December 31 of each year that the registration is in effect. The renewal application when filed renews the registration for the next year.

(2) A domestic corporation or a foreign corporation authorized to transact business in this state may, upon merger, change of name or dissolution, register its corporate name for no more than 10 years by delivering to the department for filing an application, executed by the domestic corporation or foreign corporation, simultaneously with the delivery for filing of the articles of merger or dissolution, the articles of amendment or restated articles that change the corporate name or an application for an amended certificate of authority that changes the corporate name.

(3) A corporate name is registered under sub. (1) or (2) for the applicant's exclusive use on the effective date of the application.

(3m) A person who has the right to exclusive use of a registered name under sub. (1) or (2) may transfer the registration to another person by delivering to the department a written and signed notice of the transfer that states the name and address of the transferee.

(4) (a) A foreign corporation whose registration is effective under sub. (1) may thereafter apply for a certificate of authority under the registered name or consent in writing to the use of that name by a domestic corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation obtains a certificate of authority or consents to another foreign corporation obtaining a certificate of authority under the registered name.

(b) The holder of a registration effective under sub. (2) may thereafter incorporate as a domestic corporation or obtain a certificate of authority under the registered name or consent in writing to use of that name by a domestic corporation thereafter incorporated under this chapter or by a foreign corporation thereafter authorized to transact business in this state. The registration terminates when any of the following occurs:

1. The holder incorporates as a domestic corporation or obtains a certificate of authority under the registered name.

2. The domestic corporation that has consent to use the registered name is incorporated.

3. The holder consents to another foreign corporation obtaining a certificate of authority under the registered name.

History: 1989 a. 303; 1993 a. 331; 1995 a. 27.

## SUBCHAPTER V

### OFFICE AND AGENT

**180.0501 Registered office and registered agent.** Each corporation shall continuously maintain in this state a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business. The registered agent shall be any of the following:

(1) A natural person who resides in this state and whose business office is identical with the registered office.

(2) A domestic corporation, a nonstock corporation, a limited partnership, a limited liability partnership, or a limited liability company, incorporated or organized in this state or that has in effect a statement of qualification under s. 178.0901, whose business office is identical with the registered office.

(3) A foreign corporation, nonstock corporation, limited partnership, registered limited liability partnership, or limited liability company authorized to transact business in this state whose business office is identical with the registered office.

History: 1989 a. 303; 1993 a. 112; 1997 a. 79; 2001 a. 44; 2015 a. 295.

**180.0502 Change of registered office or registered agent.** (1) A corporation may change its registered office or registered agent, or both, by doing any of the following:

(a) Delivering to the department for filing a statement of change.

(b) Including the name of its registered agent and the street address of its registered office, as changed, in articles of amendment to its articles of incorporation, in a restatement of its articles of incorporation or in articles of merger.

(c) If a domestic corporation, including the name of its registered agent and the street address of its registered office, as changed, in its annual report under s. 180.1622 or 180.1921. A change under this paragraph is effective on the date the annual report is filed by the department.

(2) Except as provided in sub. (3), a statement of change shall include all of the following information:

(a) The name of the corporation and, if applicable, a statement that the corporation is incorporated under this chapter.

(d) The name of its registered agent, as changed.

(e) The street address of its registered agent, as changed.

(f) A statement that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) If the name of a registered agent changes or if the street address of a registered agent's business office changes, the registered agent may change the name of the registered agent or street address of the registered office of any corporation for which he, she, or it is the registered agent. To make a change under this subsection, the registered agent shall notify the corporation in writing of the change and deliver to the department for filing a signed statement that complies with sub. (2) and recites that the corporation has been notified of the change.

History: 1989 a. 303; 1991 a. 269; 1995 a. 27; 2005 a. 476.

**180.0503 Resignation of registered agent.** (1) The registered agent of a corporation may resign by signing and delivering to the department for filing a statement of resignation that includes all of the following information:

- (a) The name of the corporation for which the registered agent is acting.

- (b) The name of the registered agent.
  - (c) The street address of the corporation's current registered office and its principal office.
  - (d) A statement that the registered agent resigns.
  - (e) If applicable, a statement that the registered office is also discontinued.
- (2) After filing the statement, the department shall mail a copy to the corporation at its principal office.
- (3) The resignation is effective and, if applicable, the registered office is discontinued on the earlier of the following:
- (a) Sixty days after the department receives the statement of resignation for filing.
  - (b) The date on which the appointment of a successor registered agent is effective.

**History:** 1989 a. 303; 1995 a. 27.

**180.0504 Service on corporation.** (1) A corporation's registered agent is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

(2) Except as provided in sub. (3), if a corporation has no registered agent or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office. Service is perfected under this subsection at the earliest of the following:

- (a) The date on which the corporation receives the mail.
- (b) The date shown on the return receipt, if signed on behalf of the corporation.
- (c) Five days after its deposit in the U.S. mail, if mailed postpaid and correctly addressed.

(3) Except as provided in s. 180.1421 (2m) (b), if the address of the corporation's principal office cannot be determined from the records held by the department, the corporation may be served by publishing a class 3 notice, under ch. 985, in the community where the corporation's principal office or registered office, as most recently designated in the records of the department, is located.

(4) This section does not limit or affect the right to serve any process, notice or demand required or permitted by law to be served on a corporation in any other manner permitted by law.

**History:** 1989 a. 303; 1995 a. 27; 2011 a. 234.

**Cross-reference:** See also s. 801.11 (5).

## SUBCHAPTER VI

### SHARES AND DISTRIBUTIONS

**180.0601 Authorized shares.** (1) The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue, except that an investment company may prescribe that each class has an indefinite number of authorized shares. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class. Before the issuance of shares of a class, the corporation shall describe in its articles of incorporation the preferences, limitations and relative rights of that class. All shares of a class shall have preferences, limitations and relative rights identical with those of other shares of the same class unless the class is divided into series.

(2) The articles of incorporation may create series of shares within a class of shares, except that an investment company may prescribe that each series has an indefinite number of authorized shares. Before the issuance of shares of a series, the corporation shall describe in its articles of incorporation the number of shares of each series that the corporation is authorized to issue or that there is an indefinite number of authorized shares, a distinguishing designation for each series within a class and the preferences, limitations and relative rights of that series. All shares of a series

shall have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(3) The articles of incorporation shall authorize all of the following:

(a) One or more classes of shares that together have unlimited voting rights.

(b) One or more classes of shares, which may be the same class or classes as those with voting rights under par. (a), that together are entitled to receive the net assets of the corporation upon dissolution.

(4) The articles of incorporation may authorize one or more classes of shares that have designations, preferences, limitations and relative rights that may include, but are not limited to, any of the following:

(a) Special, conditional or limited voting rights, or no right to vote, except to the extent prohibited by this chapter.

(b) Provisions for the redemption or conversion of the shares under any of the following terms specified by articles of incorporation:

1. At the option of the corporation, the shareholder or another person, or upon the occurrence of a designated event.

2. For cash, indebtedness, securities or other property.

3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events.

(c) Provisions entitling the holders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative or partially cumulative.

(d) Preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

**History:** 1989 a. 303; 1995 a. 271.

**180.0602 Terms of class or series determined by board of directors.** (1) To the extent provided in the articles of incorporation, the board of directors may, within the limits under s. 180.0601, do any of the following:

(a) Determine with respect to any class of shares the preferences, limitations and relative rights, in whole or in part, before the issuance of any shares of that class.

(b) Create one or more series within a class, and, with respect to any series, determine the number of shares of the series, the distinguishing designation and the preferences, limitations and relative rights, in whole or in part, before the issuance of any shares of that series, except that an investment company may prescribe that each series has an indefinite number of authorized shares.

(c) In the case of an investment company, change the distinguishing designation of a class or series of shares, whether or not shares of the class are issued and outstanding, if the change does not affect the preferences, limitations and relative rights, in whole or in part, of the class or series.

(2) Before issuing any shares of a class or series under sub. (1), the corporation shall deliver to the department for filing articles of amendment, which are effective without shareholder action, that include all of the following information:

(a) The name of the corporation.

(b) The text of the amendment determining the terms of the class or series of shares.

(c) The number of shares of the class or series of shares created, except that an investment company may prescribe that each class and each series have an indefinite number of authorized shares.

(d) A statement that none of the shares of the class or series has been issued, except that this statement is not required if the only amendment to the articles of incorporation is made pursuant to sub. (1) (c).

(e) The date that the amendment was adopted.

(f) A statement that the amendment was adopted by the board of directors and that shareholder action was not required.

(3) (a) After the articles of amendment are filed under sub. (2) and before the corporation issues any shares of the class or series that is the subject of the articles of amendment, the board of directors may alter or revoke the distinguishing designation of the class or series and the preferences, limitations, or relative rights described in the articles of amendment, by adopting another resolution appropriate for that purpose and filing with the department revised articles of amendment that comply with sub. (2). Except as provided in par. (b), a distinguishing designation, preference, limitation, or relative right may not be altered or revoked after the issuance of any shares of the class or series that are subject to the distinguishing designation, preference, limitation, or relative right, except by amendment of the articles of incorporation under s. 180.1003.

(b) 1. Except as otherwise provided in this subdivision, after the articles of amendment are filed under sub. (2), the board of directors may decrease the number of shares of the class or series that is the subject of the articles of amendment by adopting another resolution appropriate for that purpose. The shares specified in the resolution shall resume the status applicable to them immediately before their inclusion in the class or series. The board of directors may not decrease the number of shares under this subdivision below the number of such shares that are outstanding.

2. After the articles of amendment are filed under sub. (2), if no shares of the class or series that is the subject of the articles of amendment are outstanding, the board of directors may eliminate from the articles of incorporation all matters set forth in the articles of amendment with respect to that class or series by adopting another resolution for that purpose. The board of directors shall prepare a certificate setting forth the content of any resolution under this subdivision, stating that none of the authorized shares of the class or series are outstanding, and stating that no such shares will be issued under the articles of amendment and shall deliver the signed certificate to the department for filing. A resolution under this subdivision takes effect upon receipt of the certificate by the department and has the effect of eliminating from the articles of incorporation all matters set forth in the articles of amendment with respect to the applicable class or series.

3. Except as otherwise provided in this subdivision, after the articles of amendment are filed under sub. (2), the board of directors may increase the number of shares of the class or series that is the subject of the articles of amendment by adopting another resolution appropriate for that purpose. The board of directors may not increase the number of shares under this subdivision to be greater than the total number of authorized shares of the class or series as specified in the articles of incorporation.

**History:** 1989 a. 303; 1995 a. 27, 271; 2005 a. 476.

**180.0603 Issued and outstanding shares. (1)** A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. If an investment company has authorized an indefinite number of shares, there is no limit on the number of shares that the investment company may issue. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or canceled.

(2) The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of sub. (3) and to s. 180.0640.

(3) At all times that shares of the corporation are outstanding, there must be outstanding one or more shares that together have unlimited voting rights and one or more shares, which may be the same share or shares as those with unlimited voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

**History:** 1989 a. 303; 1995 a. 271.

**180.0604 Fractional shares. (1)** A corporation may do any of the following:

(a) Issue fractions of a share or pay in money the value of fractions of a share.

(b) Arrange for disposition of fractional shares by the shareholders.

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share on the surrender of enough scrip to equal a full share.

(2) A certificate representing scrip shall be conspicuously labeled “scrip” and shall contain the terms of exchange of scrip for a full share and the information required by s. 180.0625 (1), except that it may state that it is issued to bearer.

(3) The holder of a fractional share may exercise the rights of a shareholder, including the right to vote, to receive dividends and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to the rights described in this subsection unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including but not limited to any of the following:

(a) That the scrip will become void if not exchanged for full shares before a specified date.

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripolders.

**History:** 1989 a. 303.

**180.0620 Subscription for shares. (1)** (a) A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all of the subscribers agree to revocation.

(b) Unless the subscription agreement provides otherwise, the filing of the articles of incorporation by the department constitutes acceptance by the corporation of all existing subscriptions to its shares.

(2) The board of directors may determine the payment terms of subscriptions for shares that are entered into before incorporation, unless the subscription agreement specifies the payment terms. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued under subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to s. 180.0621.

**History:** 1989 a. 303; 1995 a. 27.

**180.0621 Issuance of shares. (1)** The powers granted in subs. (2) to (5) to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received

for the shares to be issued is adequate. The board of directors' determination is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued for that consideration are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the benefits are received or the note is paid. If the services are not performed, the benefits are not received or the note is not paid, the corporation may cancel, in whole or in part, the shares escrowed or restricted and the distributions credited.

History: 1989 a. 303.

**180.0622 Liability of shareholders, transferees and others.** (1) A purchaser from a corporation of the corporation's shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or the consideration specified in the subscription agreement entered into before incorporation.

(2) Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation, except for a shareholder in a corporation defined under s. 71.365 (7), and only to the extent provided for under s. 73.0306, and except that a shareholder may become personally liable by his or her acts or conduct other than as a shareholder.

(3) A person who becomes a transferee of shares in good faith and without knowledge that the consideration determined for the shares or specified in the subscription agreement entered into before incorporation has not been paid is not personally liable for any unpaid portion of the consideration.

(4) (a) In this subsection, "fiduciary" means a personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver.

(b) A fiduciary is not personally liable as a holder of or subscriber to shares of a corporation, but the estate and funds in the fiduciary's hands are so liable. A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

History: 1989 a. 303; 2001 a. 102; 2005 a. 474; 2017 a. 58.

Personal Liability for Corporate Debt. Kelley. Wis. Law. Oct. 1994.

**180.0623 Share dividends.** (1) In this section, "share dividend" means shares issued proportionally and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series.

(2) Except as provided in sub. (3) and unless the articles of incorporation provide otherwise, a corporation may issue share dividends.

(3) (a) A corporation may not issue shares of one class or series as a share dividend in respect of shares of another class or series unless any of the following is satisfied:

1. The articles of incorporation authorize the issuance.
2. A majority of the votes entitled to be cast by the class or series to be issued approve the issuance.
3. There are no outstanding shares of the class or series to be issued, as determined under par. (b).

(b) If a security is outstanding that is convertible into or carries a right to subscribe for or acquire shares of the class or series to be issued, the holder of the security is considered a holder of the class or series to be issued for purposes of making the determination under par. (a) 3.

(4) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date on which the board of directors authorizes the share dividend.

History: 1989 a. 303.

**180.0624 Share rights, options and warrants.** Unless the articles of incorporation provide otherwise before the issuance of the rights, options or warrants, a corporation may issue rights, options or warrants for the purchase of shares of the corporation. The rights, options or warrants may contain provisions that adjust the rights, options or warrants in the event of an acquisition of shares or a reorganization, merger, share exchange, sale of assets or other occurrence. Subject to the articles of incorporation, the board of directors shall determine the terms on which the rights, options or warrants are issued, their form and content, and the consideration for which the shares are to be issued. Notwithstanding s. 180.0601 (1) and any other provision of this chapter, and unless otherwise provided in the articles of incorporation before issuance of the rights, options or warrants, a corporation may before, on or after April 30, 1972, issue rights, options or warrants that 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, options or warrants.

History: 1989 a. 303.

**180.0625 Form and content of certificates.** (1) At a minimum, a share certificate shall state on its face all of the following:

(a) The name of the issuing corporation and that it 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, that the certificate represents.

(2) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the front or back of each certificate shall contain any of the following:

(a) A summary of the designations, relative rights, preferences and limitations applicable to each class, and the variations in rights, preferences and limitations determined for each series and the authority of the board of directors to determine variations for future series.

(b) A conspicuous statement that the corporation will furnish the shareholder the information described in par. (a) on request, in writing and without charge.

(3) (a) Each share certificate shall be signed either manually or in facsimile, by the officer or officers designated in the bylaws or by the board of directors.

(b) The validity of a share certificate is not affected if a person who signed the certificate no longer holds office when the certificate is issued.

History: 1989 a. 303.

**180.0626 Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of any shares of any of its classes or series without certificates. The authorization does not affect shares already represented by certificates until the certificates are surrendered to the corporation.

(2) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on share certificates by s. 180.0625 (1) and (2) and, if applicable, s. 180.0627.

(3) Unless this chapter or ch. 408 expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

History: 1989 a. 303.

**180.0627 Restriction on transfer of shares and other securities.** (1) In this section:

(a) “Other securities” include securities that are convertible into or carry a right to subscribe for or acquire shares.

(b) “Transfer restriction” means a restriction on the transfer or registration of transfer of shares and other securities of a corporation.

(2) (a) Except as provided in par. (b), the articles of incorporation, bylaws, an agreement among shareholders and holders of other securities, or an agreement between shareholders and holders of other securities and the corporation may impose a transfer restriction on shares and other securities of the corporation for any reasonable purpose, including but not limited to any of the following purposes:

1. Maintaining the corporation’s status when it is dependent on the number or identity of its shareholders.

2. Preserving exemptions under federal or state securities law.

(b) A transfer restriction may not affect shares and other securities issued before the restriction is adopted unless the holders of the shares and other securities are parties to the transfer restriction agreement or vote in favor of the transfer restriction.

(3) A transfer restriction is valid and enforceable against the holder or a transferee of the holder if the transfer restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by s. 180.0626 (2). Unless so noted, a transfer restriction is not enforceable against a person who does not know of the transfer restriction.

(4) The transfer restrictions permitted under this section include, but are not limited to, transfer restrictions that do any of the following:

(a) Obligate the shareholder or holder of other securities first to offer the corporation or other persons, whether separately, consecutively or simultaneously, an opportunity to acquire the restricted shares or other securities.

(b) Obligate the corporation or other persons, whether separately, consecutively or simultaneously, to acquire the restricted shares or other securities.

(c) Require the corporation, the holders of any class of its shares or other securities or another person to approve the transfer of the restricted shares or other securities, if the requirement is not manifestly unreasonable.

(d) Prohibit the transfer of the restricted shares or other securities to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

History: 1989 a. 303.

**180.0628 Expense of issuing shares.** A corporation may pay the expense of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

History: 1989 a. 303.

**180.0630 Preemptive rights.** (1) In this section, “other securities” has the meaning given in s. 180.0627 (1) (a).

(2) Except as provided in sub. (7), the shareholders or holders of other securities of a corporation do not have a preemptive right to acquire the corporation’s unissued shares or other securities except to the extent provided in the articles of incorporation. If the articles of incorporation state that “the corporation elects to have preemptive rights”, or words of similar meaning, subs. (3) to (6) govern the preemptive rights, except to the extent that the articles of incorporation expressly provide otherwise.

(3) Except as provided in sub. (5), the shareholders or holders of other securities of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation’s unissued shares or other securities upon the decision of the board

of directors to issue the shares or other securities, subject to the following conditions:

(a) Holders of shares or other securities with general voting rights have preemptive rights with respect to shares and other securities of any class with general voting rights.

(b) Holders of shares or other securities without preferential rights to distributions or assets have preemptive rights with respect to shares and other securities of any class without preferential rights to distributions or assets, except that holders of shares or other securities without general voting rights have no preemptive rights with respect to shares or other securities of any class with general voting rights.

(4) A shareholder or holder of other security may waive his or her preemptive right. A written waiver is irrevocable even if it is not supported by consideration.

(5) There is no preemptive right with respect to any of the following:

(a) Shares or other securities issued as compensation to directors, officers or employees of the corporation or its affiliates.

(b) Shares or other securities issued to satisfy conversion or option rights created to provide compensation to directors, officers or employees of the corporation or its affiliates.

(c) Shares or other securities authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation.

(d) Shares or other securities sold for other than money or an obligation to pay money.

(e) Treasury shares.

(6) If shares or other securities subject to preemptive rights are not acquired by shareholders or holders of other securities, the corporation may issue the shares or other securities to any person for one year after being offered to shareholders or holders of other securities, at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the preemptive rights of shareholders or holders of other securities.

(7) The preemptive rights of shares of a preexisting class, as defined in s. 180.1701, are governed by s. 180.1705.

History: 1989 a. 303; 1991 a. 16.

**180.0631 Corporation’s acquisition of its own shares.**

(1) Treasury shares shall be considered issued shares but not outstanding shares.

(2) A corporation may acquire its own shares and all shares so acquired after December 31, 1990, constitute treasury shares unless any of the following conditions exists:

(a) The articles of incorporation prohibit treasury shares or prohibit the reissuance of acquired shares.

(b) The board of directors, by resolution, cancels the acquired shares, in which event the shares are restored to the status of authorized but unissued shares.

(3) (a) If the articles of incorporation prohibit treasury shares but do not prohibit the reissuance of acquired shares, all of its own shares acquired by the corporation shall be restored to the status of authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissuance of acquired shares, the number of authorized shares is reduced by the number of shares acquired by the corporation, effective upon amendment of the articles of incorporation, except in the case of an investment company that has authorized an indefinite number of shares. The board of directors may adopt articles of amendment under this paragraph without shareholder action and deliver them to the department for filing. The articles shall include all of the following information:

1. The name of the corporation.

2. The reduction in the number of authorized shares, itemized by class and series.

3. The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

4. A statement that the amendment was adopted by the board of directors and that shareholder action was not required.

(4) Sections 180.0621 to 180.0628, as they apply to the issuance of shares, apply to the issuance of treasury shares.

(5) Treasury shares existing on December 31, 1990, remain treasury shares until disposed of, canceled or restored to the status of authorized but unissued shares by action of the board of directors or shareholders.

**History:** 1989 a. 303; 1991 a. 16; 1995 a. 27, 271.

**180.0640 Distributions to shareholders.** (1) The board of directors may authorize and the corporation may make distributions to its shareholders, subject to sub. (3) and any restriction by the articles of incorporation.

(2) The record date for determining shareholders entitled to a distribution, other than a distribution involving a purchase, redemption or other acquisition of the corporation's shares, is the date on which the board of directors authorizes the distribution, unless the board of directors fixes a different record date.

(3) No distribution may be made if, after giving it effect, any of the following would occur:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business.

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that sub. (3) does not prohibit a distribution on financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(5) Except as provided in sub. (7), the effect of a distribution for purposes of sub. (3) is measured as of the following dates:

(a) In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of the following:

1. The date on which money or other property is transferred or debt is incurred by the corporation.

2. The date on which the shareholder ceases to be a shareholder with respect to the acquired shares.

(b) In the case of any other distribution of indebtedness, as of the date on which the indebtedness is distributed.

(c) In all other cases, as of the following:

1. The date on which the distribution is authorized if the payment occurs within 120 days after the date of authorization.

2. The date on which the payment is made if payment occurs more than 120 days after the date of authorization.

(6) A corporation's indebtedness to a shareholder incurred because of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement. This subsection does not affect the validity or priority of a security interest in corporation property created to secure indebtedness incurred because of a distribution.

(7) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under sub. (3) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the

effect of which is measured on the date on which the payment is actually made.

**History:** 1989 a. 303; 1995 a. 400.

## SUBCHAPTER VII

### SHAREHOLDERS

**180.0701 Annual meeting.** (1) Except as provided in sub. (4), a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2) A corporation may hold the annual shareholders' meeting in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the corporation shall hold the annual meeting at its principal office.

(3) Failure to hold an annual meeting in one or more years does not affect the validity of any corporate action.

(4) If so provided in the articles of incorporation or bylaws of an investment company, the investment company is not required to hold an annual meeting of shareholders in any year in which none of the following matters is required to be acted on by the shareholders under 15 USC 80a-1 to 80a-64:

(a) Election of directors.

(b) Approval of the investment advisory agreement.

(c) Ratification of the selection of independent certified public accountants licensed or certified under ch. 442.

(d) Approval of a distribution agreement.

**History:** 1989 a. 303; 1995 a. 271; 2001 a. 16.

**180.0702 Special meeting.** (1) A corporation shall hold a special meeting of shareholders if any of the following occurs:

(a) A special meeting is called by the board of directors or any person authorized by the articles of incorporation or bylaws to call a special meeting.

(b) The holders of at least 10 percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing one or more purposes for which it is to be held.

(2) If not otherwise fixed under s. 180.0703 (2) (b) or 180.0707, the record date for determining shareholders entitled to demand a special meeting is the date that the first shareholder signs the demand.

(3) A corporation may hold a special shareholders' meeting in or outside this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, the corporation shall hold a special meeting at its principal office.

(4) Only business within the purpose described in the meeting notice required by s. 180.0705 (2) (b) may be conducted at a special shareholders' meeting.

**History:** 1989 a. 303.

**180.0703 Court-ordered meeting.** (1) The circuit court for the county where a corporation's principal office or, if none in this state, its registered office is located may, after notice to the corporation and an opportunity to be heard, order a meeting to be held on petition of a shareholder of the corporation who satisfies any of the following:

(a) Is entitled to participate in an annual meeting, if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting and the corporation is required to hold an annual meeting under s. 180.0701 (1).

(b) Signed a demand for a special meeting valid under s. 180.0702, if the corporation failed to do any of the following:

1. Give notice of the special meeting within 30 days after the date that the demand was delivered to the corporation.

2. Hold the special meeting in accordance with the notice.

(2) The court may fix the time and place of the meeting and require that it be called and conducted in accordance with the corporation's articles of incorporation and bylaws in so far as possible, except that the court may do all of the following:

(a) Fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters.

(b) Enter other orders necessary to accomplish the purpose of the meeting.

History: 1989 a. 303.

**180.0704 Action without meeting.** (1) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting in any of the following ways:

(a) Without action by the board of directors, by all shareholders entitled to vote on the action.

(b) If the articles of incorporation so provide, by shareholders who would be entitled to vote at a meeting those shares with voting power to cast not less than the minimum number or, in the case of voting by voting groups, numbers of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote were present and voted, except action may not be taken under this paragraph with respect to an election of directors for which shareholders may vote cumulatively under s. 180.0728.

(2) Action under sub. (1) must be evidenced by one or more written consents describing the action taken, signed by the number of shareholders necessary to take the action under sub. (1) (a) or (b) and delivered to the corporation for inclusion in the corporate records.

(3) Action taken under sub. (1) is effective when consents representing the required number of shares are delivered to the corporation, unless the consent specifies a different effective date. Within 10 days after action taken under sub. (1) (b) is effective, the corporation shall give notice of the action to shareholders who, on the record date determined under sub. (4), were entitled to vote on the action but whose shares were not represented on the written consent. The notice shall comply with s. 180.0141.

(4) If not otherwise fixed under s. 180.0703 (2) (b) or 180.0707, the record date for determining shareholders entitled to take action without a meeting is the date that the first shareholder signs the consent under sub. (1).

(5) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) If this chapter requires that notice of proposed action be given to shareholders who are not entitled to vote on the action and the action is to be taken under this section, the corporation shall give those nonvoting shareholders written notice of the proposed action at least 10 days before the action becomes effective. The notice shall comply with s. 180.0141 and shall contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

History: 1989 a. 303.

**180.0705 Notice of meeting.** (1) A corporation shall notify shareholders of the date, time and place of each annual and special shareholders' meeting not less than 10 days nor more than 60 days before the meeting date, unless a different time is provided by this chapter, the articles of incorporation or the bylaws. The notice shall comply with s. 180.0141. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) (a) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose for which the meeting is called.

(b) Notice of a special meeting shall include a description of each purpose for which the meeting is called.

(3) If not otherwise fixed under s. 180.0703 (2) (b) or 180.0707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is given to shareholders.

(4) (a) Unless the bylaws require otherwise and except as provided in par. (b), if an annual or special shareholders' meeting is adjourned to a different date, time or place, the corporation is not required to give notice of the new date, time or place if the new date, time or place is announced at the meeting before adjournment.

(b) If a new record date for an adjourned meeting is or must be fixed under s. 180.0707 (3), the corporation shall give notice of the adjourned meeting under this section to persons who are shareholders as of the new record date.

History: 1989 a. 303.

**180.0706 Waiver of and exemption from notice.** (1) A shareholder may waive any notice required by this chapter, the articles of incorporation or the bylaws at any time. The waiver shall be in writing and signed by the shareholder entitled to the notice, contain the same information that would have been required in the notice under any applicable provisions of this chapter, except that the time and place of meeting need not be stated, and be delivered to the corporation for inclusion in the corporate records.

(2) A shareholder's attendance at a meeting, in person or by proxy, waives objection to all of the following:

(a) Lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting or promptly upon arrival objects to holding the meeting or transacting business at the meeting.

(b) Consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

(3) (a) Except as provided in par. (b), any notice required to be given by a corporation to a shareholder under this chapter is not required to be given if any of the following applies:

1. Notice of 2 consecutive annual meetings, and all notices of meetings during the period between these annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned as undeliverable.

2. All, but not less than 2, payments of dividends on securities during a one-year period, or 2 consecutive payments of dividends on securities during a period of more than one year, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned as undeliverable.

(b) If a shareholder to whom par. (a) applies delivers to the corporation a written notice containing the shareholder's current address, then, beginning 30 days after receipt of the notice by the corporation, the requirement that notice be given to the shareholder is reinstated, until such time as par. (a) may again apply.

History: 1989 a. 303; 1995 a. 400; 2005 a. 476.

**180.0707 Record date.** (1) The bylaws may fix or provide the manner of fixing a future date as the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors may fix a future date as the record date.

(2) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(3) (a) Except as provided in par. (b), a determination of shareholders entitled to notice of or to vote at a shareholders'

meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(b) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

**History:** 1989 a. 303.

**180.0708 Conduct of meeting.** Unless the articles of incorporation or bylaws provide otherwise, every meeting of the shareholders shall be conducted as follows:

(1) A chairperson shall preside over the meeting. The chairperson shall be appointed by the board of directors.

(2) The chairperson shall determine the order of business and the time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all shareholders.

(3) The chairperson shall determine and announce at the meeting the time at which the polls will close for each matter voted upon at the meeting. The polls close at the announced time, except that, if no such announcement is made, the polls close upon final adjournment of the meeting. After the polls close, no ballots, proxies, or votes or revocations or changes to ballots, proxies, or votes may be accepted.

**History:** 2005 a. 476.

**180.0720 Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list shall be arranged by class or series of shares and show the address of and number of shares held by each shareholder.

(2) The corporation shall make the shareholders' list available for inspection by any shareholder, beginning 2 business days after notice of the meeting is given for which the list was prepared and continuing to the date of the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or his or her agent or attorney may, on written demand, inspect and, subject to s. 180.1602 (2) (b) 3. to 5., copy the list, during regular business hours and at his or her expense, during the period that it is available for inspection under this subsection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder or his or her agent or attorney may inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder or his or her agent or attorney to inspect the shareholders' list before or at the meeting, or to copy the list as permitted by sub. (2), on petition of the shareholder, the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located may, after notice to the corporation and an opportunity to be heard, order the inspection or copying at the corporation's expense. The court may also postpone the meeting for which the list was prepared until the inspection or copying is complete.

(5) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

**History:** 1989 a. 303.

**180.0721 Voting entitlement of shares.** (1) Except as provided in subs. (2) and (4) and s. 180.1150, or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) The shares of a domestic corporation are not entitled to vote if they are owned, directly or indirectly, by a 2nd domestic

corporation or foreign corporation and the first domestic corporation owns, directly or indirectly, a sufficient number of shares entitled to elect a majority of the directors of the 2nd domestic corporation or foreign corporation.

(3) Subsection (2) does not limit the power of a domestic corporation or foreign corporation to vote any shares, including its shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote after written notice of redemption that complies with s. 180.0141 is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

**History:** 1989 a. 303; 1991 a. 16.

**180.0722 Proxies.** (1) A shareholder may vote his or her shares in person or by proxy.

(2) (a) A shareholder entitled to vote at a meeting of shareholders, or to express consent or dissent in writing to any corporate action without a meeting of shareholders, may authorize another person to act for the shareholder by appointing the person as proxy. An appointment of a proxy may be in durable form as provided in ch. 244.

(b) Without limiting the manner in which a shareholder may appoint a proxy under par. (a), a shareholder or the shareholder's authorized officer, director, employee, agent or attorney-in-fact may use any of the following as a valid means to make such an appointment:

1. Appointment of a proxy in writing by signing or causing the shareholder's signature to be affixed to an appointment form by any reasonable means, including, but not limited to, by facsimile signature.

2. Appointment of a proxy by transmitting or authorizing the transmission of an electronic transmission of the appointment to the person who will be appointed as proxy or to a proxy solicitation firm, proxy support service organization or like agent authorized to receive the transmission by the person who will be appointed as proxy. Every electronic transmission shall contain, or be accompanied by, information that can be used to reasonably determine that the shareholder transmitted or authorized the transmission of the electronic transmission. Any person charged with determining whether a shareholder transmitted or authorized the transmission of the electronic transmission shall specify the information upon which the determination is made.

(c) Any copy, facsimile telecommunication or other reliable reproduction of the information in the appointment form under par. (b) 1. or the electronic transmission under par. (b) 2. may be substituted or used in lieu of the original appointment form or electronic transmission for any purpose for which the original appointment form or electronic transmission could be used, but only if the copy, facsimile telecommunication or other reliable reproduction is a complete reproduction of the information in the original appointment form or electronic transmission.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a different period is expressly provided in the appointment.

(4) (a) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include, but are not limited to, the appointment of any of the following:

1. A pledgee.

2. A person who purchased or agreed to purchase the shares.

3. A creditor of the corporation who extended it credit under terms requiring the appointment.



4. An employee or officer of the corporation whose employment contract requires the appointment.

5. A party to a voting agreement created under s. 180.0731.

(b) An appointment made irrevocable under par. (a) is revoked when the interest with which it is coupled is extinguished.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the secretary or other officer or agent of the corporation authorized to tabulate votes receives notice of the death or incapacity before the proxy exercises his or her authority under the appointment.

(6) Notwithstanding sub. (4), a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or, if the shares are without certificates, on the information statement for the shares.

(7) Subject to s. 180.0724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation may accept the proxy's vote or other action as that of the shareholder making the appointment.

(8) A proxy appointed in connection with a shareholder vote under s. 180.1150 (5):

(a) Notwithstanding sub. (4), may be revoked at any time by openly stating the revocation at a shareholder meeting or appointing a new proxy in the manner provided under sub. (2) (b).

(b) Shall be solicited and appointed apart from the sale of or offer to purchase shares of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

(c) May not be solicited sooner than 30 days before the meeting called under s. 180.1150 (5), unless otherwise agreed in writing by the person acting under s. 180.1150 and the directors of the resident domestic corporation, as defined in s. 180.1150 (1) (c).

History: 1989 a. 303; 1997 a. 27; 1999 a. 9; 2009 a. 319.

**180.0723 Shares held by nominees.** (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure may set forth all of the following:

(a) The types of nominees to which it applies.

(b) The rights or privileges that the corporation recognizes in a beneficial owner.

(c) The manner in which the nominee selects the procedure.

(d) The information that must be provided when the procedure is selected.

(e) The period for which selection of the procedure is effective.

(f) Other aspects of the rights and duties created.

History: 1989 a. 303.

**180.0724 Acceptance of instruments showing shareholder action.** (1) If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if any of the following apply:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity.

(b) The name signed purports to be that of a personal representative, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable

to the corporation is presented with respect to the vote, consent, waiver, or proxy appointment.

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation is presented with respect to the vote, consent, waiver or proxy appointment.

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder is presented with respect to the vote, consent, waiver or proxy appointment.

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all co-owners.

(3) The corporation may reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent of the corporation who is authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver or proxy appointment in good faith and in accordance with this section or s. 180.0722 (2) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section or s. 180.0722 (2) is valid unless a court of competent jurisdiction determines otherwise.

History: 1989 a. 303; 1999 a. 9; 2001 a. 102.

**180.0725 Quorum and voting requirements for voting groups.** (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation, bylaws adopted under authority granted in the articles of incorporation or this chapter provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, other than for the purpose of objecting to holding the meeting or transacting business at the meeting, it is considered present for purposes of determining whether a quorum exists, for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors under s. 180.0728, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation, bylaws adopted under authority granted in the articles of incorporation or this chapter requires a greater number of affirmative votes.

History: 1989 a. 303; 1991 a. 16.

**180.0726 Action by single and multiple voting groups.**

(1) If the articles of incorporation or this chapter provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by the voting group as provided in s. 180.0725.

(2) If the articles of incorporation or this chapter provides for voting by 2 or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in s. 180.0725. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

(3) A voting group described in s. 180.0103 (19) (b) constitutes a single voting group for purposes of voting on the matter on which the shares are entitled to vote.

History: 1989 a. 303.

**180.0727 Greater or lower quorum or greater voting requirements.** (1) The articles of incorporation may provide, or authorize the bylaws under s. 180.1021 to provide, for a greater or lower quorum requirement or a greater voting requirement for shareholders or voting groups of shareholders than is provided by this chapter.

(2) An amendment to the articles of incorporation that adds, changes or deletes a greater or lower quorum requirement or a greater voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.

**History:** 1989 a. 303.

**180.0728 Voting for directors; cumulative voting.**

(1) Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. In this subsection, “plurality” means that the individuals with the largest number of votes are elected as directors up to the maximum number of directors to be chosen at the election.

(2) Shareholders do not have a right to cumulate their votes for directors unless the articles of incorporation provide for cumulative voting. If the articles of incorporation contain a statement indicating that all or a designated voting group of shareholders are entitled to cumulate their votes for directors, the shareholders so designated are entitled to multiply the number of votes that they are entitled to cast by the number of directors for whom they are entitled to vote and cast the product for a single candidate or distribute the product among 2 or more candidates.

(3) (a) Except as provided in par. (c), shares entitled under sub. (2) to vote cumulatively may not be voted cumulatively at a particular meeting unless any of the following notice requirements are satisfied:

1. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized.

2. A shareholder who has the right to cumulate his or her votes gives notice that complies with s. 180.0141 to the corporation not less than 48 hours before the time set for the meeting of his or her intent to cumulate his or her votes during the meeting.

(b) If one shareholder gives notice under par. (a) 2., all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

(c) If shares of a corporation that is a close corporation under s. 180.1801 are entitled under sub. (2) to vote cumulatively, the shares may not be voted cumulatively at a particular meeting unless the notice requirement of par. (a) 1. or 2. is satisfied or unless shares were voted cumulatively in the last election of directors.

(4) For purposes of this section, votes against a candidate are not given legal effect and are not counted as votes cast in an election of directors.

**History:** 1989 a. 303; 1991 a. 16.

**180.0730 Voting trusts.** (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their shares to the trustee. The voting trust agreement may include any provision consistent with the voting trust’s purpose. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation’s principal office.

(2) A voting trust becomes effective on the date that the first shares subject to the trust are registered in the trustee’s name.

**History:** 1989 a. 303.

**180.0731 Voting agreements.** (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to s. 180.0730.

(2) A voting agreement created under this section is specifically enforceable.

**History:** 1989 a. 303.

**180.0740 Definitions applicable to ss. 180.0740 to 180.0747.** In ss. 180.0740 to 180.0747:

(1) “Beneficial owner” means a person whose shares are held in a voting trust or held by a nominee on the person’s behalf.

(2) “Derivative proceeding” means a civil suit in the right of a domestic corporation or, to the extent provided in ss. 180.0743 and 180.0745 to 180.0747, in the right of a foreign corporation.

**History:** 1989 a. 303; 1991 a. 16.

**180.0741 Standing.** A shareholder or beneficial owner may not commence or maintain a derivative proceeding unless the shareholder or beneficial owner satisfies all of the following:

(1) Was a shareholder or beneficial owner of the corporation at the time of the act or omission complained of or became a shareholder or beneficial owner through transfer by operation of law from a person who was a shareholder or beneficial owner at that time.

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

**History:** 1989 a. 303; 1991 a. 16.

A plaintiff does not fairly and adequately represent the interest of the corporation when a derivative action is used for personal advantage. Whether or not a personal agenda exists is determined by the trial court. *Read v. Read*, 205 Wis. 2d 558, 561 N.W.2d 768 (Ct. App. 1996), 95–2453.

To bring an individual claim for breach of fiduciary duty, the complaint must allege facts sufficient, if proved, to show an injury personal to the complainant, rather than primarily to the corporation. The plaintiff must also show that each defendant had a fiduciary duty to the plaintiff in respect to corporate affairs that to each defendant constitutes a breach. Generally a claim of waste of corporate assets must be brought in a derivative action and not as a direct action. *Reget v. Paige*, 2001 WI App 73, 242 Wis. 2d 278, 626 N.W.2d 302, 99–0838.

Derivative claims are those a corporation could bring because the corporation’s assets are affected. If the injury is one primarily to the corporation, a plaintiff must allege that it was a registered shareholder at the time of the transaction of which it complains. The failure to plead registered shareholder status requires the dismissal of derivative claims. *Borne v. Gonstead Advanced Techniques, Inc.* 2003 WI App 135, 266 Wis. 2d 253, 667 N.W.2d 709, 01–2624.

To have standing pursuant to this section, one must be a current shareholder to initiate a claim on behalf of the corporation. *Krier v. Vilione*, 2009 WI 45, 317 Wis. 2d 288, 766 N.W.2d 517, 06–1573.

**180.0742 Demand.** No shareholder or beneficial owner may commence a derivative proceeding until all of the following occur:

(1) A written demand is made upon the corporation to take suitable action.

(2) Ninety days expire from the date on which the demand was made, unless the shareholder or beneficial owner is notified before the expiration of 90 days that the corporation has rejected the demand or unless irreparable injury to the corporation would result by waiting for the expiration of the 90–day period.

**History:** 1989 a. 303; 1991 a. 16.

**180.0743 Stay of proceedings.** If the domestic corporation or foreign corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for the period that the court considers appropriate.

**History:** 1989 a. 303; 1991 a. 16.

**180.0744 Dismissal.** (1) The court shall dismiss a derivative proceeding on motion by the corporation if the court finds, subject to the burden of proof assigned under sub. (5) or (6), that one of the groups specified in sub. (2) or (6) has determined, acting in good faith after conducting a reasonable inquiry upon which its conclusions are based, that maintenance of the derivative proceeding is not in the best interests of the corporation.

(2) Unless a panel is appointed under sub. (6), the determination in sub. (1) shall be made by any of the following:

(a) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum.

(b) A majority vote of a committee consisting of 2 or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the voting, independent directors constitute a quorum.

(3) Whether a director is independent for purposes of this section may not be determined solely on the basis of any one or more of the following factors:

(a) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded.

(b) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded.

(c) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(4) If a derivative proceeding is commenced after a determination was made rejecting a demand by a shareholder or beneficial owner, the complaint shall allege with particularity facts establishing any of the following:

(a) That a majority of the board of directors did not consist of independent directors at the time that the determination was made.

(b) That the requirements of sub. (1) have not been met.

(5) If a majority of the board of directors did not consist of independent directors at the time that the determination rejecting a demand was made, the corporation shall have the burden of proving that the requirements of sub. (1) have been met. If a majority of the board of directors consisted of independent directors at the time that the determination was made, the shareholder or beneficial owner shall have the burden of proving that the requirements of sub. (1) have not been met.

(6) Upon motion by the corporation, the court may appoint a panel of one or more independent persons to determine whether maintenance of the derivative proceeding is in the best interests of the corporation. If a panel is appointed under this subsection, the shareholder or beneficial owner shall have the burden of proving that the requirements of sub. (1) have not been met.

**History:** 1991 a. 16, 173.

A special litigation committee formed under sub. (2) (b) shall be examined carefully by a circuit court to determine whether its members are independent. The test is whether a committee member has a relationship with a defendant or the corporation that would be reasonably expected to affect the member's judgment with respect to litigation in issue. *Einhorn v. Culea*, 2000 WI 65, 235 Wis. 2d 646, 612 N.W.2d 78, 97–3592.

**180.0745 Discontinuance or settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the beneficial owners, the shareholders or a class of shareholders of the domestic corporation or foreign corporation, the court shall direct that notice be given to the shareholders and beneficial owners affected.

**History:** 1989 a. 303.

**180.0746 Payment of expenses.** On termination of the derivative proceeding, the court may do any of the following:

(1) Notwithstanding s. 814.04 (1), order the domestic corporation or foreign corporation to pay the plaintiff's reasonable expenses, including attorney fees, incurred in the derivative proceeding by the shareholder or beneficial owner who commenced or maintained the derivative proceeding if the court finds that the derivative proceeding has resulted in a substantial benefit to the domestic corporation or foreign corporation.

(2) Order the shareholder or beneficial owner who commenced or maintained the derivative proceeding to pay any defendant's reasonable expenses, including attorney fees, notwithstanding s. 814.04 (1), incurred in defending the derivative

proceeding if it finds that the derivative proceeding was commenced or maintained without reasonable cause or for an improper purpose.

**History:** 1989 a. 303; 1991 a. 16.

**180.0747 Applicability to foreign corporations.** In any derivative proceeding in the right of a foreign corporation, the matters covered by ss. 180.0741, 180.0742 and 180.0744 shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation.

**History:** 1989 a. 303; 1991 a. 16.

## SUBCHAPTER VIII

### DIRECTORS AND OFFICERS

**180.0801 Requirement for and duties of board of directors.** (1) Except as provided in s. 180.1821, a corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

**History:** 1989 a. 303.

**180.0802 Qualifications of directors.** The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

**History:** 1989 a. 303.

**180.0803 Number and election of directors.** (1) A board of directors shall consist of one or more natural persons, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) The number of directors may be increased or, subject to s. 180.0805 (2), decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws.

(3) Directors shall be elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under s. 180.0806.

**History:** 1989 a. 303.

**180.0804 Election of directors by certain classes of shareholders.** If the articles of incorporation authorize dividing the shares into classes, the articles of incorporation may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors shall be a separate voting group for purposes of the election of directors.

**History:** 1989 a. 303.

**180.0805 Terms of directors generally.** (1) The terms of the directors of a corporation, including the initial directors, expire at the next annual shareholders' meeting unless their terms are staggered under s. 180.0806.

(2) A decrease in the number of directors may not shorten an incumbent director's term.

(3) Despite the expiration of a director's term, the director shall continue to serve, subject to ss. 180.0807, 180.0808 and 180.0809, until his or her successor is elected and, if necessary, qualifies or until there is a decrease in the number of directors.

**History:** 1989 a. 303.

**180.0806 Staggered terms of directors.** The articles of incorporation or the bylaws, if the articles of incorporation so provide, may provide for staggering the terms of the directors by dividing the total number of directors into 2 or 3 groups. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the

2nd group expire at the 2nd annual shareholders' meeting after their election, and the terms of the 3rd group, if any, expire at the 3rd annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, the number of directors equal to the number of the group whose term expires at the time of the meeting shall be chosen for a term of 2 years, if there are 2 groups, or a term of 3 years, if there are 3 groups.

History: 1989 a. 303.

**180.0807 Resignation of directors.** (1) A director may resign at any time by delivering written notice that complies with s. 180.0141 to the board of directors, to the chairperson of the board of directors or to the corporation.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

History: 1989 a. 303.

**180.0808 Removal of directors by shareholders.**

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation or bylaws provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

(3) If cumulative voting is authorized under s. 180.0728, the shareholders may not remove a director if the number of votes sufficient to elect the director under cumulative voting is voted against his or her removal. If cumulative voting is not authorized under s. 180.0728, the shareholders may remove a director only if the number of votes cast to remove the director exceeds the number of votes cast not to remove him or her, unless the articles of incorporation or bylaws adopted under authority granted in the articles of incorporation provide for a greater voting requirement under s. 180.0727 (1).

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

History: 1989 a. 303; 1991 a. 16.

**180.0809 Removal of directors by judicial proceeding.**

(1) The circuit court for the county where a corporation's principal office or, if none in this state, its registered office is located may remove a director of the corporation from office in a proceeding brought either by the corporation or by its shareholders holding at least 10 percent of the outstanding shares of any class, if the court finds all of the following:

(a) That the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation.

(b) That removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders bring a proceeding under sub. (1), they shall make the corporation a party defendant.

History: 1989 a. 303.

**180.0810 Vacancy on board.** (1) Unless the articles of incorporation provide otherwise, and except as provided in sub. (2), if a vacancy occurs on the board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled by any of the following:

(a) The shareholders.

(b) The board of directors.

(c) If the directors remaining in office constitute fewer than a quorum of the board, the directors, by the affirmative vote of a majority of all directors remaining in office.

(2) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting

group may vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group may vote to fill the vacancy if it is filled by the directors.

(3) A vacancy that will occur at a specific later date, because of a resignation effective at a later date under s. 180.0807 (2) or otherwise, may be filled before the vacancy occurs, but the new director may not take office until the vacancy occurs.

History: 1989 a. 303.

**180.0811 Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors, irrespective of any personal interest of any of its members, may fix the compensation of directors.

History: 1989 a. 303.

**180.0820 Meetings.** (1) The board of directors may hold regular or special meetings in or outside this state.

(2) (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting of the board of directors by, or to conduct the meeting through the use of, any means of communication by which any of the following occurs:

1. All participating directors may simultaneously hear each other during the meeting.

2. All communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.

(b) If a meeting will be conducted through the use of any means described in par. (a), all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in par. (a) is deemed to be present in person at the meeting.

(3) If requested by a director, minutes of any regular or special meeting shall be prepared and distributed to each director.

History: 1989 a. 303; 1991 a. 16.

NOTE: See s. 180.0825 (4) for applicability of ss. 180.0820 to 180.0823 to committees.

**180.0821 Action without meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action shall be evidenced by one or more written consents describing the action taken, signed by each director and retained by the corporation.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(3) A consent signed under this section has the effect of a unanimous vote taken at a meeting at which all directors were present, and may be described as such in any document.

History: 1989 a. 303.

**180.0822 Notice of meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place or purpose of the meeting.

(2) Except as provided in s. 180.0303 (3), and unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least 48 hours' notice of the date, time and place of the meeting. The notice shall comply with s. 180.0141. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

History: 1989 a. 303.

**180.0823 Waiver of notice.** (1) A director may waive any notice required by this chapter, the articles of incorporation or bylaws before or after the date and time stated in the notice.

Except as provided by sub. (2), the waiver shall be in writing, signed by the director entitled to the notice and retained by the corporation.

(2) A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless the director at the beginning of the meeting or promptly upon his or her arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

History: 1989 a. 303.

**180.0824 Quorum and voting.** (1) (a) Unless the articles of incorporation or bylaws require a greater or, under sub. (2), a lesser number, and except as provided in ss. 180.0303 (3) (b) and 180.0831 (4), a quorum of a board of directors shall consist of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) Unless the articles of incorporation or bylaws require a greater or, under sub. (2), a lesser number, and except as provided in ss. 180.0303 (3) (b) and 180.0831 (4), a quorum of a committee of the board of directors created under s. 180.0825 shall consist of a majority of the number of directors appointed to serve on the committee.

(2) (a) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) The articles of incorporation or bylaws may authorize a quorum of a committee of the board of directors created under s. 180.0825 to consist of no fewer than one-third of the number of directors appointed to serve on the committee.

(3) Except as provided in ss. 180.0825 (3), 180.0831 (4) and 180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors or a committee of the board of directors created under s. 180.0825, unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) (a) Except as provided in par. (b), a director who is present and is announced as present at a meeting of the board of directors or a committee of the board of directors created under s. 180.0825, when corporate action is taken assents to the action taken unless any of the following occurs:

1. The director objects at the beginning of the meeting or promptly upon his or her arrival to holding the meeting or transacting business at the meeting.

2. The director dissents or abstains from an action taken and minutes of the meeting are prepared that show the director's dissent or abstention from the action taken.

3. The director delivers written notice that complies with s. 180.0141 of his or her dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

4. The director dissents or abstains from an action taken, minutes of the meeting are prepared that fail to show the director's dissent or abstention from the action taken and the director delivers to the corporation a written notice of that failure that complies with s. 180.0141 promptly after receiving the minutes.

(b) A director who votes in favor of action taken may not dissent or abstain from that action.

History: 1989 a. 303; 1991 a. 16; 2005 a. 476.

**180.0825 Committees.** (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees, appoint members of the board of directors to serve on the committees and designate other members of the board of directors to serve as alternates. Each committee shall have at least one member. Unless otherwise provided by the board of directors, members of the committee shall serve at the pleasure of the board of directors.

(2) Except as provided in sub. (3), the creation of a committee, appointment of members to it, and designation of alternate members, if any, shall be approved by the number of directors required by the articles of incorporation or bylaws to take action under s. 180.0824 (3).

(3) The board of directors may provide by resolution that any vacancies on the committee shall be filled by the affirmative vote of a majority of the remaining committee members.

(4) Sections 180.0820 to 180.0823 apply to committees of a board of directors and to committee members.

(5) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors, except that a committee may not do any of the following:

(am) Approve or recommend to shareholders for approval any action or matter expressly required by this chapter to be submitted to shareholders for approval.

(bm) Adopt, amend, or repeal any bylaw of the corporation.

(6) Unless otherwise provided by the board of directors in creating the committee, a committee may employ counsel, accountants and other consultants to assist it in the exercise of authority.

(7) The creation of a committee, delegation of authority to a committee or action by a committee does not relieve the board of directors or any of its members of any responsibility imposed upon the board of directors or its members by law.

History: 1989 a. 303; 2005 a. 476.

**180.0826 Reliance by directors or officers.** Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the corporation, may rely on information, opinions, reports or statements, valuation reports any of which may be written or oral, formal or informal, including financial statements, valuation reports and other financial data, if prepared or presented by any of the following:

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

(2) Legal counsel, certified public accountants licensed or certified under ch. 442, or other persons as to matters that the director or officer believes in good faith are within the person's professional or expert competence.

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

History: 1989 a. 303; 2001 a. 16.

**180.0827 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 employees, suppliers and customers of the corporation.

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

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

History: 1989 a. 303.

**180.0828 Limited liability of directors.** (1) Except as provided in sub. (2), 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 willful 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 that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful.

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

(d) Willful misconduct.

(2) A corporation may limit the immunity provided under this section by its articles of incorporation. A limitation under this subsection applies if the cause of action against a director accrues while the limitation is in effect.

**History:** 1989 a. 303.

Wisconsin's business judgment rule is codified in this section. The business judgment rule is substantive law because acts of the board of directors done in good faith and in the honest belief that its decisions were in the best interest of the company cannot form the basis for a legal claim against directors. It is also procedural because it limits judicial review of internal corporate business decisions made in good faith. The rule creates an evidentiary presumption that the acts of the board of directors were done in good faith and in the honest belief that its decisions were in the best interest of the company. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, 356 Wis. 2d 665, 849 N.W.2d 693, 12–1967

In order to fall outside of the protection that this section grants directors, plaintiffs must plead facts that create a plausible claim that the directors' acts were taken in contravention of sub. (1). To survive a motion to dismiss, plaintiffs must plead facts sufficient to plausibly show that the directors' actions constitute: 1) a willful failure to deal fairly with the minority shareholders on a matter in which the director has a material conflict of interest; 2) receipt of an improper personal profit; or 3) willful misconduct. *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, 356 Wis. 2d 665, 849 N.W.2d 693, 12–1967

The Business Judgment Rule in Wisconsin. Davis. 2015 WLR 475.

Protecting Corporate Directors: Wisconsin's Business Judgment Rule. Davis. Wis. Law. June 2015.

**180.0831 Director conflict of interest.** (1) In this section, "conflict of interest transaction" means a transaction with the corporation in which a director of the corporation has a direct or indirect interest.

(2) A conflict of interest transaction is not voidable by the corporation solely because of the director's interest in the transaction if any of the following is true:

(a) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors and the board of directors or committee authorized, approved or specifically ratified the transaction under sub. (4).

(b) The material facts of the transaction and the director's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved or specifically ratified the transaction under sub. (5).

(c) The transaction was fair to the corporation.

(3) For purposes of this section, the circumstances in which a director of the corporation has an indirect interest in a transaction include but are not limited to a transaction under any of the following circumstances:

(a) Another entity in which the director has a material financial interest or in which the director is a general partner is a party to the transaction.

(b) Another entity of which the director is a director, officer or trustee is a party to the transaction and the transaction is or, because of its significance to the corporation, should be considered by the board of directors of the corporation.

(4) For purposes of sub. (2) (a), a conflict of interest transaction is authorized, approved or specifically ratified if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee acting on the transaction, who have no direct or indirect interest in the transaction. If a majority of the directors who have no direct or indirect interest in the transaction vote to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action

taken under sub. (2) (a) if the transaction is otherwise authorized, approved or ratified as provided in this section.

(5) For purposes of sub. (2) (b), a conflict of interest transaction is authorized, approved or specifically ratified if it receives the vote of a majority of the shares entitled to be counted under this subsection. Shares owned by or voted under the control of a director who has a direct or indirect interest in the transaction, and shares owned by or voted under the control of an entity described in sub. (3) (a), may not be counted in a vote of shareholders to determine whether to authorize, approve or ratify a conflict of interest transaction under sub. (2) (b). The vote of those shares shall be counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

**History:** 1989 a. 303.

**180.0832 Loans to directors.** (1) Except as provided in sub. (3), a corporation may not lend money to or guarantee the obligation of a director of the corporation unless any of the following occurs:

(a) The particular loan or guarantee is approved by a majority of the votes represented by the outstanding voting shares of all classes, voting as a single voting group, except the votes of shares owned by or voted under the control of the benefited director.

(b) The corporation's board of directors determines that the loan or guarantee benefits the corporation and either approves the specific loan or guarantee or a general plan authorizing loans and guarantees.

(2) The fact that a loan or guarantee is made in violation of this section does not affect the borrower's liability on the loan.

(3) This section does not apply to an advance to a director that is permitted by s. 180.0853 or 180.0858 or that is made to defray expenses incurred by the director in the ordinary course of the corporation's business.

**History:** 1989 a. 303.

**180.0833 Liability for unlawful distributions.**

(1) Except as provided in sub. (3), a director who votes for or assents to a distribution made in violation of s. 180.0640 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 180.0640 or the articles of incorporation, if it is established that the director's vote or assent constitutes conduct described by s. 180.0828 (1) (a), (b), (c) or (d). In any proceeding brought under this section, a director has all of the defenses ordinarily available to a director.

(2) A director who is liable under sub. (1) for an unlawful distribution is entitled to contribution from all of the following persons:

(a) Every other director who could be held liable under sub. (1) for the unlawful distribution.

(b) Each shareholder for the amount that the shareholder accepted knowing that the distribution was made in violation of s. 180.0640 or the articles of incorporation.

(3) A proceeding under this section is barred unless it is brought within 2 years after the date on which the effect of the distribution was measured under s. 180.0640 (5).

**History:** 1989 a. 303.

**180.0840 Officers.** (1) A corporation shall have the officers described in its bylaws or appointed by its board of directors by resolution not inconsistent with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The same natural person may simultaneously hold more than one office in a corporation.

History: 1989 a. 303; 1991 a. 16.

**180.0841 Duties of officers.** Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent not inconsistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the bylaws or by the board of directors to prescribe the duties of other officers.

History: 1989 a. 303.

**180.0843 Resignation and removal of officers. (1)** An officer may resign at any time by delivering notice to the corporation that complies with s. 180.0141. The resignation is effective when the notice is delivered, unless the notice specifies a later effective date and the corporation accepts the later effective date. If a resignation is effective at a later date, the corporation's board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor may not take office until the effective date.

(2) The board of directors may remove any officer and, unless restricted by the bylaws or by the board of directors, an officer may remove any officer or assistant officer appointed by that officer under s. 180.0840 (2), at any time, with or without cause and notwithstanding the contract rights, if any, of the officer removed.

History: 1989 a. 303.

**180.0844 Contract rights of officers. (1)** The appointment of an officer does not itself create contract rights.

(2) Except as provided in s. 180.0843 (2), an officer's resignation or removal is subject to any remedies provided by any contract between the officer and the corporation or otherwise provided by law.

History: 1989 a. 303.

**180.0850 Definitions applicable to indemnification and insurance provisions.** In ss. 180.0850 to 180.0859:

(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" of a corporation means any of the following:

(a) An individual who is or was a director or officer of the corporation.

(b) An individual who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, manager, employee or agent of another corporation or foreign corporation, limited liability company, partnership, joint venture, trust or other enterprise.

(c) An individual who, while a director or officer of the corporation, is or was serving an employee 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, forfeiture, or fine, including an excise tax assessed with respect to an employee benefit plan, plus costs, fees, and surcharges imposed under ch. 814, and reasonable expenses.

(5) "Party" includes an individual 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: 1989 a. 303; 1993 a. 112; 2003 a. 139.

**180.0851 Mandatory indemnification. (1)** A corporation shall indemnify a director or officer, to the extent that 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 that he or she owes to the corporation and the breach or failure to perform constitutes any of the following:

1. A willful 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 the criminal law, unless the director or officer had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful.

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

4. Willful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 180.0855.

(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. 180.0852.

(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: 1989 a. 303.

Indemnification under this section is not self-executing. Certain formalities are required that prevent after-the-fact justification for taking corporate funds for personal use. Without these formalities, an officer could direct the corporation to pay funds for his own defense and only later assert that he or she had been indemnified by the corporation. *Ehlinger v. Hauser*, 2010 WI 54, 325 Wis. 2d 287, 785 N.W.2d 328, 07–0477.

**180.0852 Corporation may limit indemnification.** A corporation's articles of incorporation may limit its obligation to indemnify under s. 180.0851. Any provision of the articles of incorporation relating to a corporation's power or obligation to indemnify that was in existence on June 13, 1987, does not constitute a limitation on the corporation's obligation to indemnify under s. 180.0851. A limitation under this section applies if the first alleged act or omission of a director or officer for which indemnification is sought occurred while the limitation was in effect.

History: 1989 a. 303.

**180.0853 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. 180.0855 that indemnification under s. 180.0851 (2) is not required and that indemnification is not ordered by a court under s. 180.0854 (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: 1989 a. 303

**180.0854 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. 180.0855 (5) or for review by the court of an adverse determination under s. 180.0855 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice that 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. 180.0851 (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. 180.0851 (2).

History: 1989 a. 303.

**180.0855 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. 180.0851 (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 who are 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 who are 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. 180.0725. 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. 180.0854.

(6) By any other method provided for in any additional right to indemnification permitted under s. 180.0858.

History: 1989 a. 303.

**180.0856 Indemnification and allowance of expenses of employees and agents.** (1) A corporation shall indemnify an employee who is not a director or officer of the corporation, to the extent that he or she has been successful on the merits or otherwise in defense of a proceeding, for all reasonable expenses incurred in the proceeding if the employee was a party because he or she was an employee of the corporation.

(2) In addition to the indemnification required by sub. (1), a corporation may indemnify and allow reasonable expenses of an employee or agent who is not a director or officer of the corporation 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: 1989 a. 303; 1991 a. 16.

**180.0857 Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is an employee, agent, director or officer of the corporation against liability asserted against or incurred by the individual in his or her capacity as an employee, agent, director or officer or arising from his or her status as an employee, 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. 180.0851, 180.0853, 180.0856 and 180.0858.

History: 1989 a. 303.

**180.0858 Additional rights to indemnification and allowance of expenses.** (1) Except as provided in sub. (2), ss. 180.0851 and 180.0853 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 that is adopted, after notice, 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 that he or she owes to the corporation which constitutes conduct under s. 180.0851 (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 180.0850 to 180.0859 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 employee, agent, director or officer of the corporation.

History: 1989 a. 303; 1991 a. 16.

**180.0859 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. 180.0850 to 180.0858.

(2) Sections 180.0850 to 180.0858 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 advisors.

History: 1989 a. 303.

**180.0860 Statements of changes in directors or principal.** (1) Whenever initial directors and principal officers are selected, or changes are made in the directors or principal officers of a corporation, the corporation may file with the department a statement that includes the names and addresses of all the directors or principal officers, or both if there have been changes in both. The information in the statement shall be current as of the date on which the statement is signed on behalf of the corporation.

(2) A director who resigns under s. 180.0807 or a principal officer who resigns under s. 180.0843 (1) may file a copy of the resignation notice with the department.

History: 1993 a. 323; 1995 a. 27.

## SUBCHAPTER X

### AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

#### 180.1001 Authority to amend articles of incorporation.

(1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted to be included in the articles of incorporation or to delete a provision that is not required to be included in the articles of incorporation. Whether a provision is required or permitted to be included in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, voting, control, capital structure, dividend entitlement or purpose or duration of the corporation.

History: 1989 a. 303.

**180.1002 Amendment of articles of incorporation by board of directors.** Unless the articles of incorporation provide otherwise, the corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

(2) To delete the names and addresses of the initial directors.

(3) To delete the names and addresses of the incorporators.

(4) To delete the name and address of a former registered agent or registered office, if a statement of change is on file with the department.

(5) To change the registered agent or the registered office.

(6) To change each share, whether issued or unissued, of an outstanding class into a greater number of whole shares if the corporation has only shares of that class outstanding or the aggregate preferences and relative rights of that class are not increased to the prejudice of the outstanding shares of any other class.

(7) To change the corporate name by substituting the word "corporation", "incorporated", "company" or "limited" or the abbreviation "corp.", "inc.", "co." or "ltd.", or words or abbreviations of similar meaning in another language, for a similar word or abbreviation in the name or by adding, deleting or changing a geographical attribution for the name.

(7m) In the case of an investment company, to change the corporate name, if the investment company notifies shareholders of the change in corporate name not less than 30 days before the effective date of the change.

(8) If the articles of incorporation so provide, to make a change permitted by s. 180.0602.

(8m) In the case of an investment company, to declare an indefinite number of authorized shares.

(8n) In the case of a company that is registered, or is organized for the purpose of registering, as a management investment company under 15 USC 80a-1 to 80a-64, to state that the corporation is registered or is organized for the purposes of registering as a management investment company under 15 USC 80a-1 to 80a-64.

(9) To make any other change expressly permitted by this chapter to be made without shareholder action.

History: 1989 a. 303; 1995 a. 27, 271.

**180.1003 Amendment of articles of incorporation by board of directors and shareholders.** (1) (a) The corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to shareholders.

(b) The board of directors may condition its submission of the proposed amendment on any basis.

(2) (a) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 180.0705, except as provided in par. (b).

(b) The notice shall state that the purpose, or one of the purposes, of the meeting is to consider and to act upon the proposed amendment and shall contain or be accompanied by a copy or summary of the amendment.

(3) Unless this chapter, the articles of incorporation, bylaws adopted under authority granted in the articles of incorporation or, acting under sub. (1) (b), the board of directors requires a greater vote or a vote by voting groups, the amendment is adopted if approved by all of the following:

(a) A majority of the votes entitled to be cast on the amendment by each voting group with respect to which the amendment would create dissenters' rights under s. 180.1302.

(b) The votes required by ss. 180.0725 and 180.0726 by every other voting group entitled to vote on the amendment.

History: 1989 a. 303; 1991 a. 16.

#### 180.1004 Voting on amendments by voting groups.

(1) Except as provided in s. 180.1707, if shareholder approval of an amendment to the articles of incorporation is required by this chapter, the holders of the outstanding shares of a class of shares may vote as a separate voting group on the proposed amendment if the amendment would do any of the following:

(a) Increase the aggregate number of authorized shares of the class, except as provided in sub. (2).

(b) Decrease the aggregate number of authorized shares of the class, except a decrease of the number of authorized but unissued shares of the class.

(c) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

(d) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class.

(e) Change, in a manner prejudicial to the holders of the outstanding shares of the class, the designation, rights, preferences or limitations of all or part of the shares of the class.

(f) Change the shares of all or part of the class into a different number of shares of the same class.

(g) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class.

(h) Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior or substantially equal to the shares of the class.

(i) Increase the voting rights of any class of shares or create a new class of shares having voting rights, to the prejudice of the voting rights of the class, if any.

(j) Limit or deny an existing preemptive right of all or part of the shares of the class.

(k) Cancel or otherwise affect rights to distributions or dividends that have accumulated but have not yet been declared on all or part of the shares of the class.

(L) Authorize the issuance of shares of the class as a share dividend in respect to shares of another class.

(2) The articles of incorporation may permit the adoption of an amendment increasing the aggregate number of authorized shares of a class without the approval of the class as a separate voting group, except that if any shares of the class are outstanding the articles of incorporation may not be amended to include such permission without the approval of the class as a separate voting group.

(3) If a proposed amendment to the articles of incorporation would affect a series of a class of shares in one or more ways described in sub. (1), the shares of that series may vote as a separate voting group on the proposed amendment.

(4) If a proposed amendment to the articles of incorporation that entitles 2 or more series of shares to vote as separate voting groups under this section would affect those 2 or more series in the same or a substantially similar way, the shares of all the series so affected shall vote together as a single voting group on the proposed amendment.

(5) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

**History:** 1989 a. 303.

**180.1005 Amendment before issuance of shares.** If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation. Unless the amendment has been approved 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 of or consented to the amendment is released from his or her subscription and is entitled to repayment of any consideration paid for his or her shares upon application to the corporation within 10 days after notice, under s. 180.0141, of the amendment.

**History:** 1989 a. 303.

**180.1006 Articles of amendment.** A corporation amending its articles of incorporation shall deliver to the department for filing articles of amendment that include all of the following information:

(1) The name of the corporation.

(2) The text of each amendment adopted.

(3) If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself.

(4) The date on which each amendment was adopted.

(5) A statement that the amendment was adopted in accordance with s. 180.1002, 180.1003 or 180.1005, whichever is the case.

**History:** 1989 a. 303; 1995 a. 27.

**180.1007 Restated articles of incorporation.** (1) A corporation's board of directors or, if the corporation has not yet issued shares, the incorporators may restate the articles of incorporation at any time and without shareholder approval, unless shareholder approval is required under sub. (3).

(2) The restatement shall consist of the articles of incorporation as amended to date and shall contain a statement that they supersede and take the place of the existing articles of incorporation and any amendments to the articles of incorporation.

(3) (a) In addition to the contents described in sub. (2), the restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment, the restatement shall be adopted in the manner provided under s. 180.1002, under ss. 180.1003 and 180.1004 or under s. 180.1005, whichever is applicable, except as provided in par. (b).

(b) Notwithstanding s. 180.1003 (2) (b), if shareholder approval is required, the notice under s. 180.1003 (2) (a) of the proposed shareholders' meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and shall contain or be accompanied by a copy of the restatement that identifies any amendment or other change that it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the department for filing articles of restatement that include the name of the corporation and the text of the restated articles of incorporation together with a certificate including the following information:

(a) A statement indicating whether the restatement contains an amendment to the articles of incorporation requiring shareholder approval and, if it does not, that the board of directors or the incorporators adopted the restatement.

(b) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by s. 180.1006 (1) to (5).

(5) The restated articles of incorporation supersede the original articles of incorporation, any restated articles of incorporation previously adopted and all amendments to the original and any restated articles of incorporation.

**History:** 1989 a. 303; 1995 a. 27.

**180.1008 Amendment pursuant to reorganization.**

(1) Except as provided in sub. (4), a corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court having jurisdiction under federal statute.

(2) The persons designated by the court shall deliver to the department for filing articles of amendment that include all of the following information:

(a) The name of the corporation.

(b) The text of each amendment approved by the court.

(c) The date of the court's order or decree approving the articles of amendment.

(d) The title of the reorganization proceeding in which the order or decree was entered.

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Notwithstanding s. 180.1302, shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**History:** 1989 a. 303; 1995 a. 27.

**180.1009 Effect of amendment.** (1) An amendment to a corporation's articles of incorporation, including a restatement of its articles of incorporation under s. 180.1007 that includes an amendment to its articles of incorporation, does not affect any of the following:

(a) A cause of action existing against or in favor of the corporation.

(b) A civil, criminal, administrative or investigatory proceeding to which the corporation is a party.

(c) The existing rights of persons other than shareholders of the corporation.

(2) An amendment, or a restatement including an amendment, changing a corporation's name does not abate a civil, criminal, administrative or investigatory proceeding brought by or against the corporation in its former name.

**History:** 1989 a. 303.

**180.1020 Amendment of bylaws by board of directors or shareholders.** (1) A corporation's board of directors may

amend or repeal the corporation's bylaws or adopt new bylaws except to the extent that any of the following applies:

(a) The articles of incorporation, s. 180.1021 (2) or 180.1022 (1) (a) or any other provision of this chapter reserve that power exclusively to the shareholders.

(b) The shareholders in adopting, amending or repealing a particular bylaw provide within the bylaws that the board of directors may not amend, repeal or readopt that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws or adopt new bylaws even though the board of directors may also amend or repeal the corporation's bylaws or adopt new bylaws.

History: 1989 a. 303.

**180.1021 Bylaw fixing quorum or voting requirements for shareholders.** (1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater or lower quorum requirement or a greater voting requirement for shareholders or voting groups of shareholders than is provided by this chapter. The adoption or amendment of a bylaw that adds, changes or deletes a greater or lower quorum requirement or a greater voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect.

(2) A bylaw that fixes a greater or lower quorum requirement or a greater voting requirement for shareholders under sub. (1) may not be adopted, amended or repealed by the board of directors.

History: 1989 a. 303.

**180.1022 Bylaw fixing quorum or voting requirements for directors.** (1) A bylaw that fixes a greater or lower quorum requirement or a greater voting requirement for the board of directors may be amended or repealed as follows:

(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw provides otherwise under sub. (2).

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater or lower quorum requirement or a greater voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect, unless a different voting requirement is specified under sub. (2).

History: 1989 a. 303.

## SUBCHAPTER XI

### MERGER, SHARE EXCHANGE, AND CONVERSION

**180.1100 Definitions.** In this subchapter:

(1) "Business entity" means a domestic business entity and a foreign business entity.

(2) "Domestic business entity" means a corporation, a limited liability company, as defined in s. 183.0102 (10), a partnership, as defined in s. 178.0102 (11), a limited partnership, as defined in s. 179.01 (7), or a corporation, as defined in s. 181.0103 (5).

(3) "Foreign business entity" means a foreign limited liability company, as defined in s. 183.0102 (8), a foreign partnership, as defined in s. 178.0102 (6), a foreign limited partnership, as defined in s. 179.01 (4), a foreign corporation, as defined in s.

180.0103 (9), or a foreign corporation, as defined in s. 181.0103 (13).

History: 2001 a. 44; 2015 a. 295.

**180.1101 Merger.** (1) One or more corporations may merge with or into one or more other business entities if the board of directors of each corporation, by resolution adopted by each board, approves a plan of merger and, if required by s. 180.1103, its shareholders also approve the plan of merger, and if the merger is permitted under the applicable law of the jurisdiction that governs each other business entity that is a party to the merger and each such business entity approves the plan of merger in the manner required by the laws applicable to the business entity.

(2) The plan of merger shall set forth all of the following:

(a) The name, form of business entity, and identity of the jurisdiction governing each business entity planning to merge and the name, form of business entity, and identity of the jurisdiction of the surviving business entity into which each other business entity plans to merge.

(b) The terms and conditions of the merger.

(c) The manner and basis of converting the shares or other interests in each business entity that is a party to the merger into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property in whole or part.

(3) The plan of merger may set forth any of the following:

(a) Amendments to the articles of incorporation or other similar governing document of the surviving business entity.

(b) Other provisions relating to the merger.

History: 1989 a. 303; 2001 a. 44.

**180.1102 Share exchange.** (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another business entity if the board of directors of each corporation, by resolution adopted by each board, approves a plan of share exchange and, if required by s. 180.1103, its shareholders also approve the plan of share exchange, and if the share exchange is permitted under the applicable law of the jurisdiction that governs the other business entity and the other business entity approves the plan of share exchange in the manner required by the laws of the jurisdiction that governs the other business entity.

(2) The plan of share exchange shall set forth all of the following:

(a) The name, form of business entity, and identity of the jurisdiction governing the business entity whose shares will be acquired and the name of the acquiring business entity.

(b) The terms and conditions of the exchange.

(c) The manner and basis of exchanging the shares or other ownership interests to be acquired for shares, obligations or other securities of the acquiring or any other business or for cash or other property in whole or part.

(3) The plan of share exchange may set forth other provisions relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

History: 1989 a. 303; 2001 a. 44.

**180.1103 Action on plan of merger or share exchange.**

(1) **SUBMIT TO SHAREHOLDERS.** After adopting and approving a plan of merger or share exchange, the board of directors of each corporation that is party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in sub. (5) and s. 180.11045 (2), or share exchange for approval by its shareholders.

(2) **MEETING NOTICE.** The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 180.0705, except that the notice

shall be given at least 20 days before the meeting date. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and shall contain or be accompanied by a copy or summary of the plan.

**(3) REQUIRED VOTE.** Unless this chapter, the articles of incorporation or bylaws adopted under authority granted in the articles of incorporation require a greater vote or a vote by voting groups, the plan of merger or share exchange to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

**(4) SEPARATE VOTING BY VOTING GROUPS.** Separate voting by voting groups is required on any of the following:

(a) A plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under s. 180.1004, except as provided in s. 180.1707.

(b) A plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

**(5) WHEN SHAREHOLDER APPROVAL OF MERGER NOT REQUIRED.**

(a) In this subsection:

1. “Participating shares” means shares that entitle their holders to participate, without limitation, in distributions.

2. “Voting shares” means shares that entitle their holders to vote unconditionally in elections of directors.

(b) Action by the shareholders of the surviving corporation on a plan of merger is not required if all of the following conditions are satisfied:

1. The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in s. 180.1002, from its articles of incorporation before the merger.

2. Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations and relative rights, immediately after.

3. The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights or warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of voting shares of the surviving corporation outstanding immediately before the merger.

4. The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights or warrants issued pursuant to the merger, will not exceed by more than 20 percent the total number of participating shares of the surviving corporation outstanding immediately before the merger.

**(6) MERGER OR SHARE EXCHANGE ABANDONED.** After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further action on the part of shareholders or other owners, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors or other similar governing body of any other business entity that is a party to the merger.

**History:** 1989 a. 303; 1991 a. 16; 2001 a. 44; 2005 a. 476.

**180.1104 Merger of subsidiary or parent.** (1) A parent corporation owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation or at least 90 percent of the outstanding interests of each class of any other subsidiary business entity may merge the subsidiary into the parent or the parent into the subsidiary without approval of the shareholders or

other owners of the subsidiary and, if the conditions specified in s. 180.1302 (1) (a) 3. a. to d. are satisfied, without approval of the shareholders of the parent.

**(2)** The board of directors of the parent corporation shall adopt a plan of merger that sets forth all of the following:

(a) The names of the parent and subsidiary.

(b) The manner and basis of converting the shares or other interests of the subsidiary or parent into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property in whole or part.

**(3)** The parent shall mail a copy or summary of the plan of merger to each shareholder or other owner of the merging business entity who does not waive the mailing requirement in writing.

**(4)** The parent may not deliver articles of merger to the department for filing until at least 10 days after the date on which it mailed a copy of the plan of merger to each shareholder or other owner of the merging business entity who did not waive the mailing requirement.

**(5)** Articles of merger under this section may not contain amendments to the articles of incorporation of the surviving business entity, except for amendments enumerated in s. 180.1002 or otherwise not requiring the approval of the shareholders or other owners of the entity.

**History:** 1989 a. 303; 1995 a. 27; 2001 a. 44; 2005 a. 476.

**180.11045 Merger of indirect wholly owned subsidiary or parent.** (1) **DEFINITIONS.** In this section:

(a) “Holding company” means a corporation that issues shares under sub. (2) (b) and that, during the period beginning with its incorporation and ending with the effective time of a merger under this section, was at all times a wholly owned subsidiary of the parent corporation that is party to the merger.

(b) “Indirect wholly owned subsidiary” means any of the following:

1. A corporation, all of the outstanding shares of each class of which are, prior to the effective time of a merger under this section, owned by a parent corporation indirectly through one or more business entities.

2. A limited liability company organized under ch. 183, all of the outstanding interests of each class of which are, prior to the effective time of a merger under this section, owned by a parent corporation indirectly through one or more business entities.

(c) “Organizational documents” means, when used in reference to a corporation, the corporation’s articles of incorporation and bylaws and, when used in reference to a limited liability company, the limited liability company’s operating agreement and articles of organization.

(d) “Parent corporation” means a corporation owning, prior to the effective time of a merger under this section, all of the outstanding shares of each class of another corporation or all of the outstanding interests of each class of another business entity.

(e) “Surviving entity” means the limited liability company or corporation, other than the holding company, surviving a merger under sub. (2).

(f) “Wholly owned subsidiary” means any of the following:

1. A corporation, all of the outstanding shares of each class of which are owned by a corporation indirectly through one or more business entities or directly.

2. A limited liability company organized under ch. 183, all of the outstanding interests of each class of which are owned by a corporation indirectly through one or more business entities or directly.

**(2) MERGER AUTHORIZED.** Unless the articles of incorporation of the parent corporation specifically provide otherwise, or the parent corporation is a statutory close corporation under ss. 180.1801 to 180.1837, a parent corporation may merge with or into one of its indirect wholly owned subsidiaries pursuant to s. 180.1101 without approval of the shareholders of the parent cor-

poration or the shareholders or members of the indirect wholly owned subsidiary if all of the following conditions are satisfied:

(a) The parent corporation and the indirect wholly owned subsidiary are the only parties to the merger.

(b) Each share or other interest of the parent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal interest of a corporation that was a wholly owned subsidiary of the parent corporation immediately prior to the effective time of the merger having the same designation, preferences, limitations, and relative rights as the share or other interest of the parent corporation outstanding immediately prior to the effective time of the merger.

(c) Except as otherwise provided in this paragraph, immediately following the effective time of the merger, the organizational documents of the holding company issuing shares in the merger pursuant to sub. (2) (b) contain provisions identical to the organizational documents of the parent corporation immediately prior to the effective time of the merger. This requirement does not apply to provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, and provisions that are subject to amendment under s. 180.1002. To the extent that the 2nd sentence of s. 180.0852 applied to the parent corporation immediately prior to the effective time of the merger, the organizational documents of the holding company immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective time of the merger, the articles of incorporation of the holding company immediately following the effective time of the merger shall contain provisions implementing s. 180.1706 (2) and (3).

(d) Immediately following the effective time of the merger, the surviving entity is a wholly owned subsidiary of the holding company.

(e) The directors of the parent corporation immediately prior to the effective time of the merger are the directors of the holding company immediately following the effective time of the merger.

(f) Except as otherwise provided in this paragraph, the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the organizational documents of the parent corporation immediately prior to the effective time of the merger. With respect to a surviving entity that is a corporation, this requirement does not apply to provisions regarding the incorporator or incorporators; the corporate name; the registered office and agent; or provisions that are subject to amendment under s. 180.1002 or any other law permitting amendment of the articles of incorporation without approval of the shareholders. With respect to a surviving entity that is a limited liability company, this requirement does not apply to provisions regarding the organizer or organizers; the entity name; the registered office and agent; references to members rather than shareholders; references to interests, units, or similar terms rather than shares; references to managers rather than directors; or provisions that are subject to amendment under any law permitting amendment of the operating agreement without approval of the members. The organizational documents of the surviving entity immediately following the effective time of the merger may specify a reduced number of classes and shares or other interests that the surviving entity is authorized to issue. To the extent that the 2nd sentence of s. 180.0852 applied to the parent corporation immediately prior to the effective time of the merger, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective time of the merger, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions implementing s. 180.1706 (2) and (3). The organizational documents of the surviving entity immediately following the effective time of the merger shall con-

tain provisions that specifically refer to this paragraph and that require all of the following:

1. Any act, other than the election or removal of directors or managers of the surviving entity, for which approval of the shareholders or members of the surviving entity is required under this chapter, ch. 183, or the surviving entity's organizational documents may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding company, by the same vote as is required for approval of the shareholders or members of the surviving entity under this chapter, ch. 183, or the surviving entity's organizational documents.

2. If the surviving entity is a limited liability company, any act, other than the election or removal of managers of the surviving entity, for which approval of the shareholders of the surviving entity would be required under this chapter if the surviving entity were a corporation may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding company, by the same vote as would be required for approval of the shareholders under this chapter if the surviving entity were a corporation.

3. If the surviving entity is a limited liability company, any amendment of the organizational documents of the surviving entity that would be required under this chapter to be included in the articles of incorporation of the surviving entity if the surviving entity were a corporation, other than an amendment specified in s. 180.1002, may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding company, by the same vote as would be required for approval of the shareholders under this chapter if the surviving entity were a corporation.

4. If the surviving entity is a limited liability company, the affairs of the surviving entity are managed by or under the direction of a group of managers consisting of individuals who have the same fiduciary duties toward the surviving entity and its members as the directors of a corporation have toward the corporation and its shareholders and who are liable for breach of their duties to the same extent as directors of a corporation.

(g) In the opinion of the board of directors of the parent corporation, the shareholders of the parent corporation do not have a gain or loss under the Internal Revenue Code as a result of the merger.

**(3) ARTICLES OF MERGER.** The surviving entity shall include in the articles of merger under s. 180.1105 a statement that the merger was approved in accordance with this section and that the requirements of sub. (2) have been satisfied.

**(4) EFFECT OF MERGER.** All of the following occur when a merger under sub. (2) takes effect:

(a) To the extent that the restrictions of s. 180.1131, 180.1141, or 180.1150 applied to the parent corporation and its shareholders immediately prior to the effective time of the merger, the restrictions apply to the holding company and its shareholders immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as the corporation existed immediately prior to the effective time of the merger. For purposes of ss. 180.1130, 180.1132, 180.1141, 180.1142, 180.1143, and 180.1150, the shares of the holding company acquired in the merger are deemed to have been acquired at the time and for the price and form of consideration that the shares of the parent corporation that were converted in the merger were acquired.

(b) If immediately prior to the effective time of the merger s. 180.1141, 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, the section does not apply to the shareholder as a shareholder of the holding company solely by reason of the merger.

(c) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the parent corporation immediately prior to the effec-

tive time of the merger, the shares of the holding company into which the shares of the parent corporation are converted in the merger are represented by the certificates that previously represented shares of the parent corporation.

(d) A shareholder of the parent corporation immediately prior to the effective time of the merger retains any right that the shareholder had immediately prior to the effective time of the merger to institute or maintain a derivative proceeding in the right of the parent corporation.

(e) No act of the surviving entity that requires the additional approval of the shareholders of the holding company or any successor company pursuant to sub. (2) (f) shall give rise to dissenters' rights under ss. 180.1301 to 180.1331 for the shareholders or the beneficial shareholders of the holding company or any successor to the holding company.

(f) To the extent that shares of the parent corporation immediately prior to the effective time of the merger constituted shares of a preexisting class, the shares of the holding company immediately following the effective time of the merger constitute shares of a preexisting class to the same extent as if the holding company were the parent corporation as the parent corporation existed immediately prior to the effective time of the merger. Shares or interests of the surviving entity do not constitute shares of a preexisting class for purposes of s. 180.1705. For purposes of s. 180.1707, to the extent that shares of the parent corporation immediately prior to the effective time of the merger constituted shares of a preexisting class, the shares or interests of the surviving entity constitute shares of a preexisting class to the same extent as if the surviving entity were the parent corporation as the parent corporation existed immediately prior to the effective time of the merger.

(g) To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, the provisions apply to the holding company immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as the corporation existed immediately prior to the effective time of the merger. To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, if the surviving entity is a corporation, the provisions apply to the surviving entity immediately following the effective time of the merger to the same extent as if the surviving entity were the parent corporation as the corporation existed immediately prior to the effective time of the merger. To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, if the surviving entity is a limited liability company, the provisions apply to the corresponding provisions of the organizational documents of the surviving entity immediately following the effective time of the merger to the same extent as if the surviving entity were the parent corporation as the corporation existed immediately prior to the effective time of the merger.

(h) To the extent that immediately prior to the effective time of the merger shareholders of the parent corporation had rights or were subject to obligations or restrictions of the types referred to in s. 180.0627 (2), 180.0630 (4), 180.0722 (2), 180.0730 (1), or 180.0731 (1), the rights, obligations, or restrictions apply to the shareholders of the holding company immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as the corporation existed immediately prior to the effective time of the merger, unless the agreement, waiver, proxy, or trust establishing the rights, obligations, or restrictions specifies otherwise.

**History:** 2005 a. 476.

#### **180.1105 Articles of merger or share exchange.**

(1) Except as provided in s. 180.1104 (4), after a plan of merger or share exchange is approved by the shareholders of the corporation, or adopted by the board of directors if shareholder approval is not required, and by each other business entity that is a party to the merger in the manner required by the laws applicable to the

business entity, the surviving or acquiring business entity shall deliver to the department for filing articles of merger or share exchange setting forth all of the following:

(am) The effective date and time of the merger or share exchange, if the merger or share exchange is to take effect at a time other than the close of business on the date of filing the articles of merger, as provided under s. 180.0123.

(bm) The name and state of incorporation of each corporation that is a party to the merger or share exchange.

(cm) A statement that a plan of merger or share exchange has been approved and adopted by each corporation that is a party to the merger or share exchange as required under s. 180.1103 or 180.1104, as applicable.

(dm) The name of the surviving or acquiring corporation.

(e) In the case of a merger, any amendments in the articles of incorporation of the surviving corporation that are intended by the parties to the merger to take effect upon the merger or, if there are no such amendments, a statement that the articles of incorporation of the surviving corporation or another corporation that is a party to the merger will be the articles of incorporation of the surviving corporation.

(f) A statement that the executed plan of merger or share exchange is on file at the principal place of business of the surviving or acquiring corporation.

(g) A statement that the surviving or acquiring corporation will provide a copy of the plan of merger or share exchange, upon request and without cost, to any shareholder of a corporation that was a party to the merger or share exchange or, upon payment to the surviving or acquiring corporation of an amount equal to the cost of producing the copy, to any other interested person.

(h) In the case of a merger, a statement indicating whether a business entity that merged with or into the surviving entity in the merger has a fee simple ownership interest in any Wisconsin real estate.

(i) Other provisions relating to the merger, as determined by the surviving business entity.

(2) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

**History:** 1989 a. 303; 1995 a. 27; 2001 a. 44; 2005 a. 476.

**180.1106 Effect of merger or share exchange.** (1) All of the following occur when a merger takes effect:

(a) Every other business entity that is party to the merger merges into the surviving business entity, and the separate existence of every business entity that is a party to the merger, except the surviving business entity, ceases.

(am) 1. If, under the laws applicable to a business entity that is a party to the merger, one or more of the owners thereof is liable for the debts and obligations of such business entity, such owner or owners shall continue to be liable for the debts and obligations of the business entity, but only for such debts and obligations accrued during the period or periods in which such laws are applicable to such owner or owners.

2. If, under the laws applicable to the surviving business entity, one or more of the owners thereof is liable for the debts and obligations of such business entity, the owner or owners of a business entity that is party to the merger, other than the surviving business entity, who become subject to such laws shall be liable for the debts and obligations of the surviving business entity to the extent provided in such laws, but only for such debts and obligations accrued after the merger. The owner or owners of the surviving business entity prior to the merger shall continue to be liable for the debts and obligations of the surviving business entity to the extent provided in subd. 1.

3. This paragraph does not affect liability under any taxation laws.

(b) The title to all property owned by each business entity that is party to the merger is vested in the surviving business entity without reversion or impairment.

(c) The surviving business entity has all liabilities of each business entity that is party to the merger.

(d) A civil, criminal, administrative, or investigatory proceeding pending by or against any business entity that is a party to the merger may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for the business entity whose existence ceased.

(e) The articles of incorporation, articles of organization, certificate of limited partnership, or other similar governing document, whichever is applicable, of the surviving business entity shall be amended to the extent provided in the plan of merger.

(f) The shares or other interests of each business entity that is party to the merger that are to be converted into shares, interests, obligations, or other securities of the surviving business entity or any other business entity or into cash or other property are converted, and the former holders of the shares or interests are entitled only to the rights provided in the articles of merger or to their rights under ss. 180.1301 to 180.1331 or otherwise under the laws applicable to each business entity that is party to the merger.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under ss. 180.1301 to 180.1331.

(3) (a) When a merger or share exchange under this section takes effect, the department is the agent of any surviving foreign business entity of a merger or any acquiring foreign business entity in a share exchange, for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or other owners of each domestic business entity that is a party to the merger or share exchange.

(b) When a merger or share exchange under this section takes effect, any surviving foreign business entity of a merger or any acquiring foreign business entity in a share exchange shall promptly pay to the dissenting shareholders of each domestic corporation or dissenting owners of each other domestic business entity that is a party to the merger or share exchange the amount, if any, to which they are entitled under ss. 180.1301 to 180.1331 or under any law applicable to such other domestic business entity.

**History:** 1989 a. 303; 2001 a. 44, 105; 2005 a. 476.

Sub. (1) (d) is straightforward in its requirement that a pending claim “may be continued as if the merger did not occur.” The plaintiff’s judicial dissolution claim, initiated prior to a merger, alleged harm to that shareholder, not to the corporation. The statute precludes a merger from operating to strip such a claimant of the right to pursue a pending action. *Notz v. Everett Smith Group, Ltd.* 2009 WI 30, 316 Wis. 2d 640, 764 N.W.2d 904, 06–3156.

The Conveyance Glitch in the Next Economy Law. *Boatwright*. Wis. Law. July 2003.

### 180.1130 Definitions applicable to ss. 180.1130 to 180.1134. In ss. 180.1130 to 180.1134:

(1) “Associate” of a person means any of the following:

(a) An organization, other than the resident domestic corporation or a subsidiary of the resident domestic corporation, of which the person is an officer, director, manager or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of a class of voting securities.

(b) 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.

(c) 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 resident domestic corporation or of an affiliate of the resident domestic corporation.

(2) “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:

(a) 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, share exchange or sale, lease, exchange or other disposition of assets.

(b) The existence of an option from, or other arrangement with, a resident domestic corporation to acquire securities of the resident domestic corporation.

(3) “Business combination” means any of the following:

(a) Unless the merger or share exchange is subject to s. 180.1104 or s. 180.11045, 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 resident domestic corporation, a merger or share exchange of the resident domestic corporation or a subsidiary of the resident domestic corporation with any of the following:

1. A significant shareholder.

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

(b) A sale, lease, exchange or other disposition, other than a mortgage or pledge if not made to avoid the requirements of ss. 180.1130 to 180.1134, to a significant shareholder, other than the resident domestic corporation or a subsidiary of the resident domestic corporation, or to an affiliate of the significant shareholder, of all or substantially all of the property and assets, with or without goodwill, of a resident domestic corporation, if not made in the usual and regular course of its business.

(4) “Commencement of a tender offer” has the meaning prescribed in rule 14d–2 under the securities exchange act of 1934.

(5) “Common shares” means shares other than preferred or preference shares.

(6) “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.

(7) “Determination date” means the date on which a significant shareholder first becomes a significant shareholder.

(9) “Market value” means the following:

(a) In the case of shares:

1. 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.

2. If bids for the shares are quoted on the National Association of Securities Dealers automated quotations system, or any successor system operated by the association, the highest closing bid per share quoted on the system during the valuation period.

3. If the shares are listed on an exchange or are quoted on a system under subd. 1. but no transactions are reported during the valuation period or if the shares are neither listed on an exchange or system under subd. 1. nor quoted on a system under subd. 2., 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.

4. If no report or quote is available under subd. 1., 2. or 3., the fair market value 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 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.

(10) “Organization” means a person other than an individual.

(10m) “Resident domestic corporation” means a resident domestic corporation, as defined in s. 180.1140 (9), if that corpo-

ration has a class of voting stock that is registered or traded on a national securities exchange or that is registered under section 12 (g) of the Securities Exchange Act.

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

(12) “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.

(13) “Take-over offer” means the offer to acquire or the acquisition of any equity security, as defined in s. 552.01 (2), of a resident domestic 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 percent 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 a resident domestic corporation pursuant to:

(a) Brokers’ transactions effected by or through a broker-dealer in the ordinary course of its business.

(b) 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.

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

(d) An offer made to all the shareholders of the resident domestic corporation, if the number of its shareholders does not exceed 100 at the time of the offer.

(e) 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 percent of that class of the outstanding equity securities of the issuer.

(f) An offer by the resident domestic corporation to acquire its own equity securities.

(14) “Valuation date” means the time when the closing price of the stock is determined on the day before the first public announcement of the proposed business combination.

(15) “Valuation period” means the 30-day period preceding the date on which the market value is to be determined.

(16) “Voting shares” means capital shares of a corporation entitled to vote generally in the election of directors.

**History:** 1989 a. 303; 1991 a. 16; 1993 a. 112; 1997 a. 27, 41, 252; 2005 a. 476.

**180.1131 Shareholder vote.** In addition to a vote otherwise required by law or the articles of incorporation of the resident domestic corporation, a business combination must be approved by the affirmative vote of at least all of the following, except as provided in s. 180.1132:

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

(2) 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.

**History:** 1989 a. 303; 1997 a. 27.

**180.1132 Exceptions.** (1) **FAIR PRICE.** The vote required by s. 180.1131 does not apply to a business combination if each of the following conditions is met:

(a) 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 resident domestic corporation in the business combination is at least equal to the highest of the following:

1. The highest per share price, including brokerage commissions, transfer taxes and soliciting dealers’ fees, received by any person selling common shares of the same class or series, with appropriate adjustments for recapitalizations and for share splits, share dividends and like distributions, from the significant shareholder either in the transaction in which it became a significant shareholder or within the 2 years before the date of the business combination, whichever is higher.

2. 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.

3. 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, with appropriate adjustments for recapitalizations and for share splits, share dividends and like distributions.

(b) 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.

(2) **CERTAIN CORPORATIONS EXCLUDED.** Section 180.1131 does not apply to a business combination of any of the following:

(a) A corporation if a business combination involving the corporation is governed by s. 186.31, 215.53, 215.73, 221.0702 or 223.21.

(b) A corporation whose original articles of incorporation have a provision expressly electing not to be governed by ss. 180.1130 to 180.1134.

(c) A resident domestic corporation whose shareholders adopt an amendment to the articles of incorporation on or after April 24, 1984, by a vote of at least 80 percent of the votes entitled to be cast by outstanding shares of voting shares of the resident domestic corporation, voting together as a single voting group and by two-thirds of the votes entitled to be cast by persons, if any, who are not significant shareholders of the resident domestic corporation, voting together as a single voting group, expressly electing not to be governed by ss. 180.1130 to 180.1134.

(3) **OPT-IN FOR CERTAIN CORPORATIONS.** A corporation that is not a resident domestic corporation may elect, by express provision in its articles of incorporation, to be subject to ss. 180.1130 to 180.1134 as if it were a resident domestic corporation unless its articles of incorporation contain a provision stating that the corporation is a close corporation under ss. 180.1801 to 180.1837.

**History:** 1989 a. 303; 1991 a. 16; 1995 a. 336; 1997 a. 27.



**180.1133 Other requirements for greater votes.** A business combination of a corporation that has a provision of the articles of incorporation permitted by s. 180.0727 is subject to s. 180.1131 unless one of the exemptions of s. 180.1132 has been met.

**History:** 1989 a. 303.

**180.1134 Actions during take-over offer.** In addition to a vote otherwise required by law or the articles of incorporation of the resident domestic corporation, approval by vote of holders of a majority of the shares of the resident domestic corporation entitled to vote on the proposal is required at a shareholders' meeting held in conformance with ss. 180.0705 and 180.0725 before any of the following actions may be taken by the officers or board of directors of the resident domestic 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 resident domestic corporation's voting shares:

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

(2) Selling or optioning assets of the resident domestic corporation which amount to at least 10 percent of the market value of the resident domestic corporation. This subsection does not apply to a resident domestic corporation if all of the following are satisfied:

(a) The resident domestic corporation has at least 3 directors who are not either officers or employees of the resident domestic corporation.

(b) A majority of the directors who are not either officers or employees of the resident domestic corporation vote to not be governed by this subsection.

**History:** 1989 a. 303; 1991 a. 16, 32; 1997 a. 27.

**180.1140 Definitions applicable to business combination provisions.** In ss. 180.1140 to 180.1144:

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

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

(a) A corporation or organization of which the person is an officer, director, manager or partner or is the beneficial owner of at least 10 percent of any class of voting stock.

(b) 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.

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

(3) (a) "Beneficial owner" of stock means a person, except as provided in par. (b), that meets any of the following conditions:

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

2. 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.

3. 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 subdivision 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.

4. 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. 3.

(b) 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.

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

(a) A merger, including a merger under s. 180.1104, or share exchange of the resident domestic corporation or any subsidiary of the resident domestic corporation with any of the following:

1. An interested stockholder.

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

(b) 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:

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

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

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

(c) 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:

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

2. 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.

(d) 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.

(e) 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 of 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:

1. 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.

2. A recapitalization of the resident domestic corporation.

3. A merger or share exchange of the resident domestic corporation with a subsidiary of the resident domestic corporation.

4. 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.

(f) 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.

(5) “Consummation date” means the date of consummation of a business combination.

(6) (a) “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 par. (b), by contract, or otherwise.

(b) “Control” of a corporation is not established under par. (a) if a person, in good faith and not for the purpose of circumventing ss. 180.1140 to 180.1144, 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.

(7) “Exchange act” means the securities exchange act of 1934 and amendments thereto.

(8) (a) “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:

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

2. 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 percent of the voting power of the then outstanding voting stock of that resident domestic corporation.

(b) 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.

(9) (a) “Resident domestic corporation” means a domestic corporation that, as of the stock acquisition date in question, satisfies any of the following:

1. Its principal offices are located in this state.
2. It has significant business operations located in this state.
3. More than 10 percent of the holders of record of its shares are residents of this state.
4. More than 10 percent of its shares are held of record by residents of this state.

(b) For purposes of par. (a) 3. and 4., the record date for determining the percentages and numbers of shareholders and shares is the most recent record date established 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.

(10) “Stock” means any of the following:

(a) 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 paragraph.

(b) 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.

(11) “Stock acquisition date”, with respect to any person, means the time when that person first becomes an interested stockholder of that resident domestic corporation.

(12) “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.

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

History: 1989 a. 303; 1991 a. 39; 1993 a. 112; 2005 a. 476.

### 180.1141 Restrictions on business combinations.

(1) BUSINESS COMBINATIONS DURING THE 3 YEARS AFTER THE STOCK ACQUISITION DATE. Except as provided in s. 180.1143, 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.

(2) BUSINESS COMBINATIONS MORE THAN 3 YEARS AFTER THE STOCK ACQUISITION DATE. At any time after the 3-year period described in sub. (1), 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 s. 180.1143 (1), (2), (3) or (4).

**History:** 1989 a. 303; 1991 a. 39.

### 180.1142 Determining market value and control.

(1) For purposes of ss. 180.1140 to 180.1144, 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.

(2) For purposes of ss. 180.1140 to 180.1144, a person's beneficial ownership of at least 10 percent of the voting power of a corporation's outstanding voting stock creates a presumption that the person has control of the corporation.

**History:** 1989 a. 303; 1991 a. 39.

**180.1143 Exclusions from business combination restrictions.** Sections 180.1140 to 180.1144 do not apply to any of the following:

(1) 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.

(2) 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.

(3) 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:

(a) 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 percent of the voting power of the outstanding voting stock of the resident domestic corporation, or a subsidiary of that resident domestic corporation.

(b) 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.

(4) 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.

**History:** 1989 a. 303; 1991 a. 39.

**180.1144 Relationship to other laws.** (1) The requirements of ss. 180.1140 to 180.1144 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.

(2) For purposes of applying ss. 180.1140 to 180.1144, if any other provision of this chapter is inconsistent with, in conflict with or contrary to ss. 180.1140 to 180.1144, that provision does not apply to the extent that it is inconsistent with, in conflict with or contrary to ss. 180.1140 to 180.1144.

**History:** 1989 a. 303; 1991 a. 39.

**180.1150 Control share voting restrictions.** (1) In this section:

(b) "Person" includes 2 or more individuals or persons acting as a group for the purpose of acquiring or holding securities of a resident domestic 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 section 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.

(c) "Resident domestic corporation" has the meaning given in s. 180.1130 (10m).

(2) Unless otherwise provided in the articles of incorporation of a resident domestic corporation or otherwise specified by the board of directors of the resident domestic corporation in accordance with s. 180.0824 (3), and except as provided in sub. (3) or as restored under sub. (5), the voting power of shares of a resident domestic corporation held by any person, including shares issuable upon conversion of convertible securities or upon exercise of

options or warrants, in excess of 20 percent of the voting power in the election of directors shall be limited to 10 percent of the full voting power of those shares.

(3) Shares of a resident domestic corporation held, acquired or to be acquired in any of the following circumstances are excluded from the application of this section:

(a) Shares acquired before April 22, 1986.

(b) Shares acquired under an agreement entered into before April 22, 1986.

(c) Shares acquired by a donee under an inter vivos gift not made to avoid this section or by a distributee as defined in s. 851.07.

(d) Shares acquired under a collateral pledge or security agreement, or similar instrument, not created to avoid this section.

(e) Shares acquired under s. 180.1101, 180.1102, or 180.1104 if the resident domestic corporation is a party to the merger or share exchange.

(f) Shares acquired from the resident domestic corporation.

(g) Shares acquired under an agreement entered into at a time when the resident domestic corporation was neither a resident domestic corporation nor an issuing public corporation under s. 180.1150 (1) (a), 1995 stats.

(i) Shares acquired in a transaction incident to which the shareholders of the resident domestic corporation have voted under sub. (5) to approve the person's resolution delivered under sub. (4) to restore the full voting power of all of that person's shares.

(4) A person desiring a shareholder vote under sub. (5) shall deliver to the resident domestic corporation at its principal office a form of shareholder resolution with an accompanying notice containing all of the following:

(a) The identity of the person.

(b) A statement that the resolution and notice are submitted under this section.

(c) The number of shares of the resident domestic corporation owned by the person of record and beneficially under the meaning prescribed in rule 13d-3 under the securities exchange act of 1934.

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

(e) The circumstances, terms and conditions under which shares representing in excess of 20 percent 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.

(f) If shares representing in excess of 20 percent of the voting power were acquired or are proposed to be acquired for the purpose of gaining control of the resident domestic 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 resident domestic 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 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.

(5) (a) Within 10 days after receipt of a resolution and notice under sub. (4), the directors of the resident domestic 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 sub. (4), 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.

(b) The notice of the meeting shall include a copy of the resolution and notice delivered under sub. (4) and a statement by the directors of their position or lack of position on the resolution.

(c) Regular voting power is restored if at the meeting called under par. (a) 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.

(d) A resident domestic corporation is not required to hold more than 2 meetings under par. (a) in any 12-month period with respect to resolutions and notices presented by the same person unless the person pays to the 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 resident domestic 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 par. (a), 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.

(6) Any sale or other disposition of shares by a person holding both shares having full voting power and shares having voting power limited under sub. (2) shall be deemed to reduce the number of shares having limited voting power until such shares are exhausted.

(7) A corporation that is not a resident domestic corporation may elect, by express provision in its articles of incorporation, to be subject to this section as if it were a resident domestic corporation unless its articles of incorporation contain a provision stating that the corporation is a close corporation under ss. 180.1801 to 180.1837.

**History:** 1989 a. 303; 1995 a. 336; 1997 a. 27; 2001 a. 44; 2005 a. 476.

**180.1161 Conversion. (1)** (a) A domestic corporation may convert to another form of business entity if it satisfies the requirements under this section and if the conversion is permitted under the applicable law of the jurisdiction that governs the organization of the business entity into which the domestic corporation is converting.

(b) In addition to satisfying any applicable legal requirements of the jurisdiction that governs the organization of the business entity into which the domestic corporation is converting and that relate to the submission and approval of a plan of conversion, the domestic corporation shall comply with the procedures that govern a plan of merger under s. 180.1103 for the submission and approval of a plan of conversion.

(2) (a) A business entity other than a domestic corporation may convert to a domestic corporation if it satisfies the requirements under this section and if the conversion is permitted under the applicable law of the jurisdiction that governs the business entity.

(b) A business entity converting into a domestic corporation shall comply with the procedures that govern the submission and approval of a plan of conversion of the jurisdiction that governs the business entity.

(3) A plan of conversion shall set forth all of the following:

(a) The name, form of business entity, and the identity of the jurisdiction governing the business entity that is to be converted.

(b) The name, form of business entity, and the identity of the jurisdiction that will govern the business entity after conversion.

(c) The terms and conditions of the conversion.

(d) The manner and basis of converting the shares or other ownership interests of the business entity that is to be converted into the shares or other ownership interests of the new form of business entity.

(e) The effective date and time of the conversion, if the conversion is to be effective other than at the close of business on the date of filing the certificate of conversion, as provided under s. 180.0123.

(f) A copy of the articles of incorporation, articles of organization, certificate of limited partnership, or other similar governing document of the business entity after conversion.

(g) Other provisions relating to the conversion, as determined by the business entity.

(4) When a conversion is effective, all of the following shall occur:

(a) 1. Except with respect to taxation laws of each jurisdiction that are applicable upon the conversion of the business entity, the business entity that was converted is no longer subject to the applicable law of the jurisdiction that governed the organization of the prior form of business entity and is subject to the applicable law of the jurisdiction that governs the new form of business entity.

2. If the conversion is from or to a business entity under the laws applicable to which one or more of the owners thereof is liable for the debts and obligations of such business entity, such owner or owners shall continue to be or become so liable for debts and obligations of such business entity, but only for such debts and obligations accrued during the period or periods in which such laws are applicable to such owner or owners. This subdivision does not affect liability under any taxation laws.

(b) The business entity continues to have all liabilities of the business entity that was converted.

(c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment.

(d) The articles of incorporation, articles of organization, certificate of limited partnership, or other similar governing document, whichever is applicable, of the business entity are as provided in the plan of conversion.

(e) All other provisions of the plan of conversion apply.

(5) After a plan of conversion is submitted and approved, the business entity that is to be converted shall deliver to the department for filing a certificate of conversion that includes all of the following:

(a) The plan of conversion.

(b) A statement that the plan of conversion was approved in accordance with the applicable law of the jurisdiction that governs the organization of the business entity.

(c) The registered agent and registered office, record agent and record office, or other similar agent and office of the business entity before and after conversion.

(6) Any civil, criminal, administrative, or investigatory proceeding that is pending by or against a business entity that is converted may be continued by or against the business entity after the effective date of conversion.

**History:** 2001 a. 44; 2005 a. 476; 2015 a. 295.

Next Economy Legislation: Allowing Complex Business Reorganizations. Boucher, Sosnowski, & Nichols. Wis. Law. Aug. 2002.

## SUBCHAPTER XII

### SALE OF ASSETS

#### **180.1201 Sale of assets in regular course of business; mortgage of assets; transfer of assets to subsidiary.**

(1) A corporation may, on the terms and conditions and for the consideration determined by the board of directors, do any of the following:

(a) Sell, lease, exchange or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business.

(b) Sell, lease, exchange or otherwise dispose of less than substantially all of its property whether or not in the usual and regular course of business.

(c) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber

any or all of its property whether or not in the usual and regular course of business.

(d) Transfer any or all of its assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation, unless the transfer is in connection with a plan or action involving the sale, exchange, or disposal of all or substantially all of the assets of the corporation and requires shareholder approval under s. 180.1202.

(2) Unless required by the articles of incorporation, approval by the shareholders of a transaction permitted in sub. (1) is not required.

**History:** 1989 a. 303; 1991 a. 16; 2005 a. 476.

#### **180.1202 Sale of assets other than in regular course of business.**

(1) Except as provided in sub. (5), a corporation may sell, lease, exchange or otherwise dispose of all, or substantially all, of its property, with or without goodwill, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, upon adoption of a resolution by the board of directors approving the proposed transaction and approval by its shareholders of the proposed transaction.

(2) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 180.0705, except the notice shall be given no fewer than 20 days before the meeting date. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange or other disposition of all, or substantially all, of the property of the corporation and contain or be accompanied by a description of the transaction.

(3) Unless this chapter, the articles of incorporation or bylaws adopted under authority granted in the articles of incorporation require a greater vote or a vote by voting groups, the proposed transaction is authorized if approved by a majority of all the votes entitled to be cast on the transaction.

(4) After a sale, lease, exchange or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(5) A transaction that constitutes a distribution is governed by s. 180.0640 and not by this section.

**History:** 1989 a. 303; 1991 a. 16; 1997 a. 254.

In determining whether "substantially all" corporate assets are transferred within the meaning of s. 180.71 [now s. 180.1202] more than dollar values must be considered. The determinative factor is whether the sale changes the nature of corporate activity. *Sterman v. Hornbeck*, 156 Wis. 2d 556, 457 N.W.2d 874 (Ct. App. 1990).

## SUBCHAPTER XIII

### DISSENTERS' RIGHTS

#### **180.1301 Definitions.** In ss. 180.1301 to 180.1331:

(1) "Beneficial shareholder" means a person who is a beneficial owner of shares held by a nominee as the shareholder.

(1m) "Business combination" has the meaning given in s. 180.1130 (3).

(2) "Corporation" means the issuer corporation or, if the corporate action giving rise to dissenters' rights under s. 180.1302 is a merger or share exchange that has been effectuated, the surviving domestic corporation or foreign corporation of the merger or the acquiring domestic corporation or foreign corporation of the share exchange.

(3) "Dissenter" means a shareholder or beneficial shareholder who is entitled to dissent from corporate action under s. 180.1302 and who exercises that right when and in the manner required by ss. 180.1320 to 180.1328.

(4) "Fair value", with respect to a dissenter's shares other than in a business combination, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in

anticipation of the corporate action unless exclusion would be inequitable. “Fair value”, with respect to a dissenter’s shares in a business combination, means market value, as defined in s. 180.1130 (9) (a) 1. to 4.

(5) “Interest” means interest from the effectuation date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all of the circumstances.

(6) “Issuer corporation” means a domestic corporation that is the issuer of the shares held by a dissenter before the corporate action.

**History:** 1989 a. 303; 1991 a. 16.

“Date of payment” in sub. (5) refers to the actual payment date by a corporation following a special proceeding, even if the payment occurs after a “verdict, decision or report,” within the meaning of s. 814.04 (4), or after “judgment,” within the meaning of s. 815.05 (8). Thus the definition of interest contained in sub. (5) applies to the time period following a court decision on fair value until final payment is made. *HMO–W Incorporated v. SSM Health Care System*, 2003 WI App 137, 266 Wis. 2d 69, 667 N.W.2d 733, 02–0042.

The phrase “rate that is fair and equitable under all of the circumstances” in sub. (5) directs the circuit court to consider the circumstances of the particular case in determining the interest rate to be paid. It was appropriate under this standard to look at the borrowing power of a parent corporation to determine if the rate the subsidiary would obtain would be the rate the parent could obtain. *HMO–W Incorporated v. SSM Health Care System*, 2003 WI App 137, 266 Wis. 2d 69, 667 N.W.2d 733, 02–0042.

**180.1302 Right to dissent.** (1) Except as provided in sub. (4) and s. 180.1008 (3), a shareholder or beneficial shareholder may dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the issuer corporation is a party if any of the following applies:

1. Shareholder approval is required for the merger by s. 180.1103 or by the articles of incorporation.

2. The issuer corporation is a subsidiary that is merged with its parent under s. 180.1104.

3. The issuer corporation is a parent that is merged with its subsidiary under s. 180.1104. This subdivision does not apply if all of the following are true:

a. The articles of incorporation of the surviving corporation do not differ from the articles of incorporation of the parent before the merger, except for amendments specified in s. 180.1002 (1) to (9).

b. Each shareholder of the parent whose shares were outstanding immediately before the effective time of the merger holds the same number of shares with identical designations, preferences, limitations, and relative rights, immediately after the merger.

c. The number of voting shares, as defined in s. 180.1103 (5) (a) 2., outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights or warrants issued pursuant to the merger, do not exceed by more than 20 percent the total number of voting shares of the parent outstanding immediately before the merger.

d. The number of participating shares, as defined in s. 180.1103 (5) (a) 1., outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights or warrants issued pursuant to the merger, do not exceed by more than 20 percent the total number of participating shares of the parent outstanding immediately before the merger.

(b) Consummation of a plan of share exchange if the issuer corporation’s shares will be acquired, and the shareholder or the shareholder holding shares on behalf of the beneficial shareholder is entitled to vote on the plan.

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the issuer corporation other than in the usual

and regular course of business, including a sale in dissolution, but not including any of the following:

1. A sale pursuant to court order.

2. A sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale.

(cm) Consummation of a plan of conversion.

(d) Except as provided in sub. (2), any other corporate action taken pursuant to a shareholder vote to the extent that the articles of incorporation, bylaws or a resolution of the board of directors provides that the voting or nonvoting shareholder or beneficial shareholder may dissent and obtain payment for his or her shares.

(2) Except as provided in sub. (4) and s. 180.1008 (3), the articles of incorporation may allow a shareholder or beneficial shareholder to dissent from an amendment of the articles of incorporation and obtain payment of the fair value of his or her shares if the amendment materially and adversely affects rights in respect of a dissenter’s shares because it does any of the following:

(a) Alters or abolishes a preferential right of the shares.

(b) Creates, alters or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares.

(c) Alters or abolishes a preemptive right of the holder of shares to acquire shares or other securities.

(d) Excludes or limits the right of the shares to vote on any matter or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights.

(e) Reduces the number of shares owned by the shareholder or beneficial shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under s. 180.0604.

(3) Notwithstanding sub. (1) (a) to (c), if the issuer corporation is a statutory close corporation under ss. 180.1801 to 180.1837, a shareholder of the statutory close corporation may dissent from a corporate action and obtain payment of the fair value of his or her shares, to the extent permitted under sub. (1) (d) or (2) or s. 180.1803, 180.1813 (1) (d) or (2) (b), 180.1815 (3) or 180.1829 (1) (c).

(4) Unless the articles of incorporation provide otherwise, subs. (1) and (2) do not apply to the holders of shares of any class or series if the shares of the class or series are registered on a national securities exchange or quoted on the National Association of Securities Dealers, Inc., automated quotations system on the record date fixed to determine the shareholders entitled to notice of a shareholders meeting at which shareholders are to vote on the proposed corporate action.

(5) Except as provided in s. 180.1833, a shareholder or beneficial shareholder entitled to dissent and obtain payment for his or her shares under ss. 180.1301 to 180.1331 may not challenge the corporate action creating his or her entitlement unless the action is unlawful or fraudulent with respect to the shareholder, beneficial shareholder or issuer corporation.

**History:** 1989 a. 303; 1991 a. 16; 2001 a. 44; 2005 a. 476.

Minority discounts are inappropriate under dissenters’ rights statutes and will not be applied in determining “fair value” under sub. (1). Each dissenting shareholder should be assigned the proportionate interest of his or her shares in the going interest in the entire company. *HMO–W Incorporated v. SSM Health Care System*, 2000 WI 46, 234 Wis. 2d 707, 611 N.W.2d 250, 98–2834.

The Role of Discounts in Determining “Fair Value” Under Wisconsin’s Dissenters’ Rights Statutes: The Case for Discounts. Emory. 1995 WLR 1155.

**180.1303 Dissent by shareholders and beneficial shareholders.** (1) A shareholder may assert dissenters’ rights

as to fewer than all of the shares registered in his or her name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf he or she asserts dissenters’ rights. The rights of a shareholder who under this subsection asserts dissenters’ rights as to fewer than all of the shares registered in his or her name are determined as if the shares

as to which he or she dissents and his or her other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his or her behalf only if the beneficial shareholder does all of the following:

(a) Submits to the corporation the shareholder's written consent to the dissent not later than the time that the beneficial shareholder asserts dissenters' rights.

(b) Submits the consent under par. (a) with respect to all shares of which he or she is the beneficial shareholder.

History: 1989 a. 303.

**180.1320 Notice of dissenters' rights.** (1) If proposed corporate action creating dissenters' rights under s. 180.1302 is submitted to a vote at a shareholders' meeting, the meeting notice shall state that shareholders and beneficial shareholders are or may be entitled to assert dissenters' rights under ss. 180.1301 to 180.1331 and shall be accompanied by a copy of those sections.

(2) If corporate action creating dissenters' rights under s. 180.1302 is authorized without a vote of shareholders, the corporation shall notify, in writing and in accordance with s. 180.0141, all shareholders entitled to assert dissenters' rights that the action was authorized and send them the dissenters' notice described in s. 180.1322.

History: 1989 a. 303.

When the plaintiff was not a shareholder at the time of the complained of acts, it had no right to vote in dissent to a plan of liquidation and dissolution, and it could not be a dissenter entitled to notice of dissenters' rights, as only one who can vote in dissent is entitled to such notice under this section. *Borne v. Gonstead Advanced Techniques, Inc.* 2003 WI App 135, 266 Wis. 2d 253, 667 N.W.2d 709, 01–2624.

**180.1321 Notice of intent to demand payment.** (1) If proposed corporate action creating dissenters' rights under s. 180.1302 is submitted to a vote at a shareholders' meeting, a shareholder or beneficial shareholder who wishes to assert dissenters' rights shall do all of the following:

(a) Deliver to the issuer corporation before the vote is taken written notice that complies with s. 180.0141 of the shareholder's or beneficial shareholder's intent to demand payment for his or her shares if the proposed action is effectuated.

(b) Not vote his or her shares in favor of the proposed action.

(2) A shareholder or beneficial shareholder who fails to satisfy sub. (1) is not entitled to payment for his or her shares under ss. 180.1301 to 180.1331.

History: 1989 a. 303.

**180.1322 Dissenters' notice.** (1) If proposed corporate action creating dissenters' rights under s. 180.1302 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders and beneficial shareholders who satisfied s. 180.1321.

(2) The dissenters' notice shall be sent no later than 10 days after the corporate action is authorized at a shareholders' meeting or without a vote of shareholders, whichever is applicable. The dissenters' notice shall comply with s. 180.0141 and shall include or have attached all of the following:

(a) A statement indicating where the shareholder or beneficial shareholder must send the payment demand and where and when certificates for certificated shares must be deposited.

(b) For holders of uncertificated shares, an explanation of the extent to which transfer of the shares will be restricted after the payment demand is received.

(c) A form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and that requires the shareholder or beneficial shareholder asserting dissenters' rights to certify whether he or she acquired beneficial ownership of the shares before that date.

(d) A date by which the corporation must receive the payment demand, which may not be fewer than 30 days nor more than 60 days after the date on which the dissenters' notice is delivered.

(e) A copy of ss. 180.1301 to 180.1331.

History: 1989 a. 303.

**180.1323 Duty to demand payment.** (1) A shareholder or beneficial shareholder who is sent a dissenters' notice described in s. 180.1322, or a beneficial shareholder whose shares are held by a nominee who is sent a dissenters' notice described in s. 180.1322, must demand payment in writing and certify whether he or she acquired beneficial ownership of the shares before the date specified in the dissenters' notice under s. 180.1322 (2) (c). A shareholder or beneficial shareholder with certificated shares must also deposit his or her certificates in accordance with the terms of the notice.

(2) A shareholder or beneficial shareholder with certificated shares who demands payment and deposits his or her share certificates under sub. (1) retains all other rights of a shareholder or beneficial shareholder until these rights are canceled or modified by the effectuation of the corporate action.

(3) A shareholder or beneficial shareholder with certificated or uncertificated shares who does not demand payment by the date set in the dissenters' notice, or a shareholder or beneficial shareholder with certificated shares who does not deposit his or her share certificates where required and by the date set in the dissenters' notice, is not entitled to payment for his or her shares under ss. 180.1301 to 180.1331.

History: 1989 a. 303.

**180.1324 Restrictions on uncertificated shares.**

(1) The issuer corporation may restrict the transfer of uncertificated shares from the date that the demand for payment for those shares is received until the corporate action is effectuated or the restrictions released under s. 180.1326.

(2) The shareholder or beneficial shareholder who asserts dissenters' rights as to uncertificated shares retains all of the rights of a shareholder or beneficial shareholder, other than those restricted under sub. (1), until these rights are canceled or modified by the effectuation of the corporate action.

History: 1989 a. 303.

**180.1325 Payment.** (1) Except as provided in s. 180.1327, as soon as the corporate action is effectuated or upon receipt of a payment demand, whichever is later, the corporation shall pay each shareholder or beneficial shareholder who has complied with s. 180.1323 the amount that the corporation estimates to be the fair value of his or her shares, plus accrued interest.

(2) The payment shall be accompanied by all of the following:

(a) The corporation's latest available financial statements, audited and including footnote disclosure if available, but including not less than a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year and the latest available interim financial statements, if any.

(b) A statement of the corporation's estimate of the fair value of the shares.

(c) An explanation of how the interest was calculated.

(d) A statement of the dissenter's right to demand payment under s. 180.1328 if the dissenter is dissatisfied with the payment.

(e) A copy of ss. 180.1301 to 180.1331.

History: 1989 a. 303.

**180.1326 Failure to take action.** (1) If an issuer corporation does not effectuate the corporate action within 60 days after the date set under s. 180.1322 for demanding payment, the issuer corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the issuer corporation effectuates the corporate

action, the corporation shall deliver a new dissenters' notice under s. 180.1322 and repeat the payment demand procedure.

**History:** 1989 a. 303.

**180.1327 After-acquired shares.** (1) A corporation may elect to withhold payment required by s. 180.1325 from a dissenter unless the dissenter was the beneficial owner of the shares before the date specified in the dissenters' notice under s. 180.1322 (2) (c) as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent that the corporation elects to withhold payment under sub. (1) after effectuating the corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of his or her demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under s. 180.1328 if the dissenter is dissatisfied with the offer.

**History:** 1989 a. 303.

**180.1328 Procedure if dissenter dissatisfied with payment or offer.** (1) A dissenter may, in the manner provided in sub. (2), notify the corporation of the dissenter's estimate of the fair value of his or her shares and amount of interest due, and demand payment of his or her estimate, less any payment received under s. 180.1325, or reject the offer under s. 180.1327 and demand payment of the fair value of his or her shares and interest due, if any of the following applies:

(a) The dissenter believes that the amount paid under s. 180.1325 or offered under s. 180.1327 is less than the fair value of his or her shares or that the interest due is incorrectly calculated.

(b) The corporation fails to make payment under s. 180.1325 within 60 days after the date set under s. 180.1322 for demanding payment.

(c) The issuer corporation, having failed to effectuate the corporate action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within 60 days after the date set under s. 180.1322 for demanding payment.

(2) A dissenter waives his or her right to demand payment under this section unless the dissenter notifies the corporation of his or her demand under sub. (1) in writing within 30 days after the corporation made or offered payment for his or her shares. The notice shall comply with s. 180.0141.

**History:** 1989 a. 303.

When payment is made by check, the payment date under sub. (2) is the date the payee receives the check. *Kohler Co. v. Sogen International Fund, Inc.* 2000 WI App 60, 233 Wis. 2d 592, 608 N.W.2d 746, 99-0960.

**180.1330 Court action.** (1) If a demand for payment under s. 180.1328 remains unsettled, the corporation shall bring a special proceeding within 60 days after receiving the payment demand under s. 180.1328 and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not bring the special proceeding within the 60-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall bring the special proceeding in the circuit court for the county where its principal office or, if none in this state, its registered office is located. If the corporation is a foreign corporation without a registered office in this state, it shall bring the special proceeding in the county in this state in which was located the registered office of the issuer corporation that merged with or whose shares were acquired by the foreign corporation.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the special proceeding. Each party to the special proceeding shall be served with a copy of the petition as provided in s. 801.14.

(4) The jurisdiction of the court in which the special proceeding is brought under sub. (2) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. An appraiser has the power described in the order appointing him or her or in any amendment to the order. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the special proceeding is entitled to judgment for any of the following:

(a) The amount, if any, by which the court finds the fair value of his or her shares, plus interest, exceeds the amount paid by the corporation.

(b) The fair value, plus accrued interest, of his or her shares acquired on or after the date specified in the dissenter's notice under s. 180.1322 (2) (c), for which the corporation elected to withhold payment under s. 180.1327.

**History:** 1989 a. 303.

Because this section does not provide for different procedures, all procedural mechanisms under chs. 801 to 847 are available in an action under this section. *Kohler Co. v. Sogen International Fund, Inc.* 2000 WI App 60, 233 Wis. 2d 592, 608 N.W.2d 746, 99-0960.

Subs. (2) and (4) establish a rule of venue applicable within Wisconsin's judicial system and do not attempt to block corporations from using federal diversity jurisdiction. *Albert Trostel & Son v. Edward Notz*, 679 F.3d 627 (2012).

**180.1331 Court costs and counsel fees.** (1) (a) Notwithstanding ss. 814.01 to 814.04, the court in a special proceeding brought under s. 180.1330 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and shall assess the costs against the corporation, except as provided in par. (b).

(b) Notwithstanding ss. 814.01 and 814.04, the court may assess costs against all or some of the dissenters, in amounts that the court finds to be equitable, to the extent that the court finds the dissenters acted arbitrarily, vexatiously or not in good faith in demanding payment under s. 180.1328.

(2) The parties shall bear their own expenses of the proceeding, except that, notwithstanding ss. 814.01 to 814.04, the court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts that the court finds to be equitable, as follows:

(a) Against the corporation and in favor of any dissenter if the court finds that the corporation did not substantially comply with ss. 180.1320 to 180.1328.

(b) Against the corporation or against a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter.

(3) Notwithstanding ss. 814.01 to 814.04, if the court finds that the services of counsel and experts for any dissenter were of substantial benefit to other dissenters similarly situated, the court may award to these counsel and experts reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

**History:** 1989 a. 303.

## SUBCHAPTER XIV

### DISSOLUTION

**180.1401 Dissolution before issuance of shares.**

(1) The incorporators or the board of directors of a corporation that has not issued shares may authorize the dissolution of the corporation.

(2) At any time after dissolution is authorized under sub. (1), the corporation may dissolve by delivering to the department for filing articles of dissolution that include all of the following:

(a) The name of the corporation.

(b) The date of its incorporation.

(c) A statement that none of the corporation's shares has been issued.

(d) A statement that no debt of the corporation remains unpaid.



(e) A statement that the incorporators or the board of directors, specifying which, authorized the dissolution in accordance with this section.

(3) A corporation is dissolved under this section on the effective date of its articles of dissolution.

History: 1989 a. 303; 1995 a. 27.

**180.1402 Dissolution by board of directors and shareholders.** (1) (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) The board of directors may condition its submission of the proposal for dissolution on any basis.

(2) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 180.0705, except the notice shall state that the purpose, or one of the purposes, of the meeting is to consider and to act upon dissolving the corporation.

(3) Unless this chapter, the articles of incorporation, bylaws adopted under authority granted in the articles of incorporation or, acting under sub. (1) (b), the board of directors requires a greater vote or a vote by voting groups, the proposal to dissolve is adopted if approved by a majority of all the votes entitled to be cast on the proposal. Dissolution is authorized upon adoption of the proposal.

History: 1989 a. 303; 1991 a. 16.

**180.1403 Articles of dissolution for dissolution under s. 180.1402.** (1) At any time after dissolution is authorized under s. 180.1402, the corporation may dissolve by delivering to the department for filing articles of dissolution that include all of the following:

(a) The name of the corporation.

(b) The date on which dissolution was authorized.

(c) A statement that dissolution was authorized in accordance with s. 180.1402.

(d) If the corporation is to retain the exclusive use of its name for less than 120 days after the effective date of its articles of dissolution, as provided in s. 180.1405 (3), a statement specifying the shorter period.

(2) A corporation is dissolved under this section on the effective date of its articles of dissolution.

History: 1989 a. 303; 1995 a. 27.

**180.1404 Revocation of dissolution.** (1) A corporation may revoke its dissolution authorized under s. 180.1401 or 180.1402, within 120 days after the effective date of the dissolution.

(2) Revocation of dissolution shall be authorized in the same manner that the dissolution was authorized, except the board of directors may revoke the dissolution if any of the following applies:

(a) The dissolution was authorized by the incorporators under s. 180.1401.

(b) The authorization of dissolution permits revocation by action of the board of directors alone, without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that include all of the following:

(a) The name of the corporation.

(b) The effective date of the dissolution that is revoked.

(c) The date that the revocation of dissolution was authorized.

(d) A statement that the revocation of dissolution was authorized in the same manner as the dissolution or that the revocation of dissolution was authorized by the board of directors under sub. (2) (a) or (b).

(4) On the effective date of the articles of revocation of dissolution, the revocation of dissolution shall relate back to and take

effect as of the effective date of the dissolution, and the corporation may resume carrying on its business as if dissolution had never occurred.

History: 1989 a. 303; 1995 a. 27.

**180.1405 Effect of dissolution.** (1) A dissolved corporation continues its corporate existence but may not carry on any business except that which is appropriate to wind up and liquidate its business and affairs including the following:

(a) Collecting its assets.

(b) Disposing of its properties that will not be distributed in kind to its shareholders.

(c) Discharging or making provision for discharging its liabilities.

(d) Distributing its remaining property among its shareholders according to their interests.

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not do any of the following:

(a) Transfer title to the corporation's property.

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records.

(c) Subject its directors or officers to standards of conduct different from those prescribed in this chapter.

(d) Change any of the following:

1. Quorum or voting requirements for its board of directors or shareholders.

2. Provisions for selection, resignation or removal of its directors or officers or both.

3. Provisions for amending its articles of incorporation or bylaws.

(e) Prevent commencement of a civil, criminal, administrative or investigatory proceeding by or against the corporation in its corporate name.

(f) Abate or suspend a civil, criminal, administrative or investigatory proceeding pending by or against the corporation on the effective date of dissolution.

(g) Terminate the authority of the registered agent of the corporation.

(3) Except as provided in s. 180.1421 (4) and unless a dissolved corporation registers its corporate name under s. 180.0403 (2), the dissolved corporation retains the exclusive use of its corporate name for 120 days after the effective date of its articles of dissolution or for a shorter period if specified in its articles of dissolution under s. 180.1403 (1) (d).

History: 1989 a. 303.

**180.1406 Known claims against dissolved corporation.** (1) Except as provided in sub. (4), a dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) A dissolved corporation may deliver written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice is subject to s. 180.0141 (5) and shall include all of the following:

(a) A description of the information that must be included in a claim.

(b) The mailing address where a claim may be sent.

(c) The deadline, which may not be fewer than 120 days after the written notice is effective under s. 180.0141 (5), by which the dissolved corporation must receive the claim.

(d) A statement that the claim is barred if not received by the deadline.

(3) If a claimant is notified as provided by sub. (2), the claimant's claim against the dissolved corporation is barred, except as provided in sub. (4), if any of the following applies:

(a) The claimant fails to deliver the claim to the dissolved corporation by the deadline specified in the notice.

(b) The dissolved corporation rejects the claim and the claimant does not bring a proceeding to enforce the claim within 90 days after written notice of the rejection is effective under s. 180.0141 (5).

(4) This section does not apply to any of the following:

(a) A claim based on a contingent liability or an event occurring after the effective date of the dissolution.

(b) The liability of a corporation for an additional assessment under s. 71.74 or for sales and use taxes determined as owing under s. 77.59.

**History:** 1989 a. 303.

**180.1407 Claims against dissolved corporation generally.** (1) A dissolved corporation may publish notice of its dissolution and request that persons with claims, whether known or unknown, against the corporation or its directors, officers or shareholders, in their capacities as such, present them in accordance with the notice. The notice shall be published as a class 1 notice, under ch. 985, in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if none in this state, its registered office is or was last located. The notice shall include all of the following:

(a) A description of the information that must be included in a claim.

(b) A mailing address where the claim may be sent.

(c) A statement that a claim against the dissolved corporation or its directors, officers or shareholders is barred unless a proceeding to enforce the claim is brought within 2 years after the publication date of the notice.

(2) Except as provided in sub. (3), if the dissolved corporation publishes a newspaper notice in accordance with sub. (1), a claim against the dissolved corporation or its directors, officers or shareholders is barred unless the claimant brings a proceeding to enforce the claim within 2 years after the publication date of the newspaper notice, if the claimant is any of the following:

(a) A claimant who did not receive written notice under s. 180.1406.

(b) A claimant who delivered his or her claim to the dissolved corporation by the deadline set under s. 180.1406 if the dissolved corporation has not acted on the claim.

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of the dissolution.

(3) This section does not apply to the liability of a corporation for an additional assessment under s. 71.74, for an additional assessment of real estate transfer fees under s. 77.26 or for sales and use taxes determined as owing under s. 77.59.

**History:** 1989 a. 303; 1993 a. 205.

**180.1408 Enforcing claims.** (1) A claim not barred under s. 180.1406 or 180.1407 may be enforced against the dissolved corporation to the extent of its undistributed assets.

(2) If the dissolved corporation's assets have been distributed in liquidation, a claim not barred under s. 180.1406 or 180.1407 may be enforced against a shareholder of the dissolved corporation to the extent of the shareholder's proportionate share of the claim or the corporate assets distributed to him or her in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to him or her. As computed for purposes of this subsection, the shareholder's proportionate share of the claim shall reflect the preferences, limitations and relative rights of the class or classes of shares owned by the shareholder as well as the number of shares owned, and shall be equal to the amount by which payment of the claim from the assets of the corporation before dissolution would have reduced the total amount of assets to be distributed to the shareholder upon dissolution.

**History:** 1989 a. 303.

**180.1420 Grounds for administrative dissolution.** The department may bring a proceeding under s. 180.1421 to administratively dissolve a corporation if any of the following occurs:

(1) The corporation does not pay, within one year after they are due, any fees or penalties due the department under this chapter.

(2) The corporation does not have on file its annual report with the department within one year after it is due.

(3) The corporation is without a registered agent or registered office in this state for at least one year.

(4) The corporation does not notify the department within one year that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued.

(5) The corporation's period of duration stated in its articles of incorporation expires.

(6) The corporation violates s. 940.302 (2) or 948.051 (2).

**History:** 1989 a. 303; 1991 a. 16; 1995 a. 27; 2007 a. 116.

**180.1421 Procedure for and effect of administrative dissolution.** (1) If the department determines that one or more grounds exist under s. 180.1420 for dissolving a corporation, the department shall give the corporation under s. 180.0141 notice of the determination. Notwithstanding s. 180.0141 (2) (b), (3), and (4), the notice shall be in writing and addressed to the registered office of the corporation.

(2) (a) Within 60 days after the notice takes effect under s. 180.0141 (5) (a), the corporation shall correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist.

(b) If the corporation fails to satisfy par. (a), the department shall administratively dissolve the corporation. The department shall enter a notation in its records to reflect each ground for dissolution and the effective date of dissolution and shall give the corporation under s. 180.0141 notice of those facts. Notwithstanding s. 180.0141 (2) (b), (3), and (4), the notice shall be in writing and addressed to the registered office of the corporation.

(2m) (a) If a notice under sub. (1) or (2) (b) is returned to the department as undeliverable, the department shall again give notice to the corporation under s. 180.0141. Notwithstanding s. 180.0141 (2) (b), (3), and (4) and except as provided under par. (b), the notice under this paragraph shall be in writing and addressed to the principal office of the corporation.

(b) If the notice under par. (a) is returned to the department as undeliverable or if the corporation's principal office cannot be determined from the records of the department, the department shall give the notice by posting the notice on the department's Internet site.

(3) Sections 180.1405 (1) and (2) and 180.1406 to 180.1408 apply to a corporation that is administratively dissolved.

(4) The corporation's right to the exclusive use of its corporate name terminates on the effective date of its administrative dissolution.

**History:** 1989 a. 303; 1995 a. 27; 2001 a. 44; 2011 a. 234; 2013 a. 20.

**180.1422 Reinstatement following administrative dissolution.** (1) A corporation that is administratively dissolved may apply to the department for reinstatement. The application shall include all of the following:

(a) The name of the corporation and the effective date of its administrative dissolution.

(b) A statement that each ground for dissolution either did not exist or has been cured.

(c) A statement that the corporation's name satisfies s. 180.0401.

(2) (a) The department shall cancel the certificate of dissolution and issue a certificate of reinstatement that complies with par. (b) if the department determines all of the following:

1. That the application contains the information required by sub. (1) and the information is correct.
2. That all fees and penalties owed by the corporation to the department under this chapter have been paid.

(b) The certificate of reinstatement shall state the department's determination under par. (a) and the effective date of reinstatement. The department shall file the certificate and provide a copy to the corporation or its representative.

(3) When the reinstatement becomes effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the corporation may resume carrying on its business as if the administrative dissolution had never occurred.

**History:** 1989 a. 303; 1991 a. 173; 1993 a. 214; 1995 a. 27; 1997 a. 27.

**180.1423 Appeal from denial of reinstatement.** (1) If the department denies a corporation's application for reinstatement under s. 180.1422, the department shall serve the corporation under s. 180.0504 with a written notice that explains each reason for denial.

(2) The corporation may appeal the denial of reinstatement to the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located, within 30 days after service of the notice of denial is perfected. The corporation shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the department's certificate of dissolution, the corporation's application for reinstatement and the department's notice of denial.

(3) The court may order the department to reinstate the dissolved corporation or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

**History:** 1989 a. 303; 1995 a. 27.

**180.1430 Grounds for judicial dissolution.** The circuit court for the county where the corporation's principal office or, if none in this state, its registered office is or was last located may dissolve a corporation in a proceeding:

(1) By the attorney general, if any of the following is established:

(a) That the corporation obtained its articles of incorporation through fraud.

(b) That the corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) By a shareholder, if any of the following is established:

(a) That the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and, because of the deadlock, either irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally.

(b) That the directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent.

(c) That the shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election and, if necessary, qualification of their successors.

(d) That the corporate assets are being misapplied or wasted.

(3) By a creditor, if any of the following is established:

(a) That the creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied and the corporation is insolvent.

(b) That the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.

(4) By the corporation, to have its voluntary dissolution continued under court supervision.

(5) Under s. 946.87.

**History:** 1989 a. 303, 359; 1991 a. 16.

As used in sub. (2) (b), "oppressive conduct" means: 1) burdensome, harsh, and wrongful conduct; a lack of probity and fair dealing in the affairs of the company to the prejudice of some of its members; or 2) a visual departure from the standards of fair dealing, and a violation of fair play to which every shareholder who entrusts money to the company is entitled to rely. *Jorgensen v. Water Works, Inc.* 218 Wis. 2d 761, 582 N.W.2d 98 (Ct. App. 1998), 97–1729.

To bring an individual claim for breach of fiduciary duty, the complaint must allege facts sufficient, if proved, to show an injury personal to the complainant, rather than primarily to the corporation. The plaintiff must also show that each defendant had a fiduciary duty to the plaintiff in respect to corporate affairs that to each defendant constitutes a breach. Generally a claim of waste of corporate assets must be brought in a derivative action and not as a direct action. *Reget v. Paige*, 2001 WI App 73, 242 Wis. 2d 278, 626 N.W.2d 302, 99–0838.

Lights On: Litigating Shareholder Disputes. Nickels & Lynch. Wis. Law. June 2014.

**180.1431 Procedure for judicial dissolution.** (1) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(2) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver pendente lite with all the powers and duties that the court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.

**History:** 1989 a. 303.

**180.1432 Receivership.** (1) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint as a receiver a natural person, a domestic corporation or a foreign corporation authorized to transact business in this state. The court may require the receiver to post bond, with or without sureties, in an amount that the court directs.

(3) The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. Among other powers, the receiver may do any of the following:

(a) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court.

(b) Sue and defend in the receiver's name as receiver of the corporation in all courts of this state.

(4) The court from time to time during the receivership may order compensation and expense disbursements or reimbursements made to the receiver and the receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

**History:** 1989 a. 303.

**180.1433 Decree of dissolution.** (1) If after a hearing the court determines that one or more grounds for judicial dissolution described in s. 180.1430 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree to the department for filing.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with s. 180.1405 and the notification of claimants in accordance with ss. 180.1406 and 180.1407.

**History:** 1989 a. 303; 1991 a. 16; 1995 a. 27.

**180.1440 Delivery to secretary of revenue.** Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation and are unclaimed shall be reduced to cash and shall be reported and delivered to the secretary of revenue as provided under ch. 177.

**History:** 1989 a. 303; 2013 a. 20.

## SUBCHAPTER XV

## FOREIGN CORPORATIONS

**180.1501 Authority to transact business required.**

(1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the department.

(2) Activities that for purposes of sub. (1) do not constitute transacting business in this state include but are not limited to:

(a) Maintaining, defending or settling any civil, criminal, administrative or investigatory proceeding.

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange and registration of the foreign corporation's securities or maintaining trustees or depositaries with respect to those securities.

(e) Selling through independent contractors.

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

(g) Lending money or creating or acquiring indebtedness, mortgages and security interests in property.

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(i) Owning, without more, property.

(j) Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature.

(k) Transacting business in interstate commerce.

**History:** 1989 a. 303; 1995 a. 27.

**180.1502 Consequences of transacting business without authority.** (1) A foreign corporation transacting business in this state without a certificate of authority, if a certificate of authority is required under s. 180.1501, may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) Neither the successor to a foreign corporation that transacted business in this state without a certificate of authority, if a certificate of authority was required under s. 180.1501, nor the assignee of a cause of action arising out of that business may maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or its title to property in this state or prevent it from defending any civil, criminal, administrative or investigatory proceeding in this state.

(5) (a) A foreign corporation that transacts business in this state without a certificate of authority, if a certificate of authority is required under s. 180.1501, is liable to this state, for each year or any part of a year during which it transacted business in this state without a certificate of authority, in an amount equal to all of the following:

1. All fees and other charges that would have been imposed by this chapter on the foreign corporation had it duly applied for and received a certificate of authority to transact business in this state as required by s. 180.1501 and thereafter filed all reports required by this chapter.

2. Fifty percent of the amount owed under subd. 1. or \$5,000, whichever is less.

(b) The foreign corporation shall pay the amount owed under par. (a) to the department, and the department may not issue a certificate of authority to the foreign corporation until the amount owed is paid. The attorney general may enforce a foreign corporation's obligation to pay to the department any amount owed under this subsection.

**History:** 1989 a. 303; 1995 a. 27.

**180.1503 Application for certificate of authority.** (1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the department for filing. The application shall set forth all of the following:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies s. 180.1506.

(b) The name of the state or country under whose law it is incorporated.

(c) Its date of incorporation and period of duration.

(d) The street address of its principal office.

(e) The address of its registered office in this state and the name of its registered agent at that office.

(f) The name and usual business address of each of its current directors and officers.

(g) 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.

(h) 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.

(i) 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 the foreign corporation exceeds 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.

(j) The proportion of its capital which is represented in this state by its property to be located or to be acquired in this state and by its business to be transacted in this state. The proportion of capital employed in this state shall be computed by taking the estimate of the gross business of the foreign 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 foreign corporation will commence business in this state to and including December 31 of that year. The department may demand, as a condition precedent to issuing a certificate of authority, such further information and statements as the department considers proper in order to determine the accuracy of the application submitted under this section.

(2) The foreign corporation shall deliver with the completed application a certificate of status, or similar document, duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall be dated no earlier than 60 days before its delivery.

**History:** 1989 a. 303; 1993 a. 214; 1995 a. 27.

**180.1504 Amended certificate of authority.** (1) A foreign corporation authorized to transact business in this state shall

obtain an amended certificate of authority from the department if the foreign corporation changes any of the following:

- (a) Its corporate name or the fictitious name under which it has been issued a certificate of authority.
- (b) Its date of incorporation or the period of its duration.
- (c) The state or country of its incorporation.

(2) The requirements of s. 180.1503 (1) (a) to (h) and (2) for obtaining an original certificate of authority apply to obtaining an amended certificate under this section except that a foreign corporation is not required to deliver a certificate of status with an application solely to change a fictitious name.

**History:** 1989 a. 303; 1991 a. 16; 1993 a. 214; 1995 a. 27; 2001 a. 44.

**180.1505 Effect of certificate of authority. (1)** A certificate of authority issued to a foreign corporation authorizes the foreign corporation to transact business in this state, subject to the right of the state to revoke the certificate under ss. 180.1530 to 180.1532.

(2) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and, except as otherwise provided by this chapter, is subject to the same duties, restrictions, penalties and liabilities now or later imposed on, a domestic corporation of like character.

(3) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

**History:** 1989 a. 303.

**180.1506 Corporate name of foreign corporation. (1)**

If the corporate name of a foreign corporation is not available under sub. (2), the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if it delivers to the department for filing a copy of the resolution of its board of directors, certified by any of its officers, adopting the fictitious name.

(2) (a) Except as authorized by sub. (3) or (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable upon the records of the department from all of the following names:

1. The corporate name of a domestic corporation or a foreign corporation authorized to transact business in this state.
2. A corporate name reserved or registered under s. 180.0402, 180.0403, 181.0402 or 181.0403.
3. The corporate name of a dissolved corporation or a dissolved nonstock corporation that has retained the exclusive use of its name under s. 180.1405 (3) or 181.1405 (3), respectively.
4. The fictitious name of another foreign corporation or nonstock corporation authorized to transact business in this state.
5. The corporate name of a nonstock corporation incorporated in this state.
6. The name of a limited partnership formed under the laws of, or registered in, this state.
7. The name of a cooperative association or an unincorporated cooperative association incorporated or authorized to transact business in this state.
8. The name of a limited liability company organized under the laws of, or registered in, this state.
9. The name of a limited liability partnership formed under the laws of, or registered in, this state.

(b) The corporate name of a foreign corporation is not distinguishable from a name referred to in par. (a) 1. to 9. if the only difference between it and the other name is the inclusion or absence of a word or words referred to in s. 180.0401 (1) (a) 1. or of the words “limited partnership”, “limited liability partnership”, “cooperative” or “limited liability company” or an abbreviation of these words.

(3) A foreign corporation may apply to the department for authorization to use in this state a name that is not distinguishable upon the records of the department from one or more of the names

described in sub. (2). The department shall authorize use of the name applied for if any of the following occurs:

(a) The other foreign corporation or the domestic corporation, limited liability company, nonstock corporation, limited partnership, limited liability partnership, cooperative association, or unincorporated cooperative association consents to the use in writing and submits an undertaking in a form satisfactory to the department to change its name to a name that is distinguishable upon the records of the department from the name of the applicant.

(b) The applicant delivers to the department a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant’s right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, that is used in this state by a domestic corporation or another foreign corporation authorized to transact business in this state if the foreign corporation proposing to use the name has done any of the following:

- (a) Merged with the other domestic corporation or foreign corporation.
- (b) Been formed by reorganization of the other domestic corporation or foreign corporation.
- (c) Acquired all or substantially all of the assets, including the corporate name, of the other domestic corporation or foreign corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy sub. (2), it may not transact business in this state under the changed name until it adopts a name satisfying sub. (2) and obtains an amended certificate of authority under s. 180.1504.

**History:** 1989 a. 303; 1993 a. 112; 1995 a. 27, 97; 1997 a. 79; 2005 a. 441.

**180.1507 Registered office and registered agent of foreign corporation. (1)** Each foreign corporation authorized to transact business in this state shall continuously maintain in this state a registered office and registered agent. The registered office may, but need not, be the same as any of its places of business. The registered agent shall be any of the following:

- (1) A natural person who resides in this state and whose business office is identical with the registered office.
- (2) A domestic corporation, a nonstock corporation, a limited partnership, a limited liability partnership, or a limited liability company, incorporated or organized in this state or that has in effect a statement of qualification under s. 178.0901, whose business office is identical with the registered office.
- (3) A foreign corporation, nonstock corporation, limited partnership, registered limited liability partnership, or limited liability company authorized to transact business in this state, whose business office is identical with the registered office.

**History:** 1989 a. 303; 1993 a. 112; 2001 a. 44; 2015 a. 295.

Appointing a registered agent does not signify consent to general personal jurisdiction. This section is devoid of any language regarding either consent or jurisdiction. It merely requires that every foreign corporation authorized to do business in Wisconsin maintain a registered office and registered agent in the state. Subs. (1) to (3) describe the persons and entities eligible to serve as registered agents. Section 180.1510 (1) does mention “service of process” but service of process is an act distinct from the grounds necessary to confer general jurisdiction. The Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc. 2017 WI 71, \_\_\_ Wis. 2d \_\_\_, 898 N.W.2d 70, 15–1493.

**180.1508 Change of registered office or registered agent of foreign corporation. (1)** A foreign corporation authorized to transact business in this state may change its registered office or registered agent, or both, by delivering to the department for filing a statement of change that, except as provided in sub. (2), includes all of the following:

- (a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated.
- (b) The street address of its registered office, as changed.
- (d) The name of its registered agent, as changed.
- (f) A statement that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of his or her business office, he or she may change the street address of the registered office of any foreign corporation for which he or she is the registered agent by notifying the foreign corporation in writing of the change and by signing, either manually or in facsimile, and delivering to the department for filing a statement of change that complies with sub. (1) and recites that the foreign corporation has been notified of the change.

**History:** 1989 a. 303; 1991 a. 269; 1995 a. 27.

**180.1509 Resignation of registered agent of foreign corporation.** (1) The registered agent of a foreign corporation may resign by signing and delivering to the department for filing a statement of resignation that includes all of the following information:

- (a) The name of the foreign corporation for which the registered agent is acting.
- (b) The name of the registered agent.
- (c) The street address of the foreign corporation's current registered office and its principal office.
- (d) A statement that the registered agent resigns.
- (e) If applicable, a statement that the registered office is also discontinued.

(2) After filing the statement, the department shall mail a copy to the foreign corporation at its principal office.

(3) The resignation is effective and, if applicable, the registered office is discontinued on the earlier of the following:

- (a) Sixty days after the department receives the statement of resignation for filing.
- (b) The date on which the appointment of a successor registered agent is effective.

**History:** 1989 a. 303; 1995 a. 27.

**180.1510 Service on foreign corporation.** (1) Except as provided in subs. (2) and (3), the registered agent of a foreign corporation authorized to transact business in this state is the foreign corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.

(2) A foreign corporation authorized to transact business in this state may be served in the manner provided in sub. (4) if the foreign corporation has no registered agent or its registered agent cannot with reasonable diligence be served.

(3) A foreign corporation formerly authorized to transact business in this state may be served in the manner provided in sub. (4) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business in this state, if the foreign corporation has done any of the following:

(a) Withdrawn from transacting business in this state under s. 180.1520.

(b) Had its certificate of authority revoked under s. 180.1531.

(4) (a) With respect to a foreign corporation described in sub. (2) or (3), the foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the foreign corporation at its principal office as shown on the records of the department, except as provided in par. (b). Service is perfected under this paragraph at the earliest of the following:

1. The date on which the foreign corporation receives the mail.
2. The date shown on the return receipt, if signed on behalf of the foreign corporation.
3. Five days after it is deposited in the U.S. mail, if mailed postpaid and correctly addressed.

(b) Except as provided in s. 180.1531 (2m) (b), if the address of the foreign corporation's principal office cannot be determined from the records of the department, the foreign corporation may be served by publishing a class 3 notice, under ch. 985, in the com-

munity where the foreign corporation's principal office or registered office, as most recently designated in the records of the department, is located.

(5) This section does not 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:** 1989 a. 303; 1995 a. 27; 2011 a. 234.

Appointing a registered agent does not signify consent to general personal jurisdiction. Section 180.1507 is devoid of any language regarding either consent or jurisdiction. It merely requires that every foreign corporation authorized to do business in Wisconsin maintain a registered office and registered agent in the state. Subs. (1) to (3) describe the persons and entities eligible to serve as registered agents. Sub. (1) does mention "service of process" but service of process is an act distinct from the grounds necessary to confer general jurisdiction. The Segregated Account of Ambac Assurance Corporation v. Countrywide Home Loans, Inc. 2017 WI 71, \_\_\_ Wis. 2d \_\_\_, 898 N.W.2d 70, 15–1493.

**180.1520 Withdrawal of foreign corporation.** (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the department.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the department for filing. The application shall include all of the following:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated.

(b) A statement that it is not transacting business in this state and that it surrenders its authority to transact business in this state.

(c) A statement that it revokes the authority of its registered agent to accept service on its behalf and that it consents to service of process under s. 180.1510 (3) and (4) in any civil, criminal, administrative or investigatory proceeding based on a cause of action arising while it was authorized to transact business in this state.

(d) The mailing address of its principal office, if different from that shown on its most recent annual report.

(e) A commitment to notify the department in the future of any change in the mailing address of its principal office.

(f) The highest proportion of its capital which is or was represented in this state by its property located and business transacted in this state 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. 180.1622 (1) (i) except that reference shall be to the current year rather than the preceding one.

**History:** 1989 a. 303; 1995 a. 27.

**180.1530 Grounds for revocation.** (1) Except as provided in sub. (1m), the department may bring a proceeding under s. 180.1531 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if any of the following applies:

(a) The foreign corporation fails to file its annual report with the department within 4 months after it is due.

(b) The foreign corporation does not pay, within 4 months after they are due, any fees or penalties due the department under this chapter.

(c) The foreign corporation is without a registered agent or registered office in this state for at least 6 months.

(d) The foreign corporation does not inform the department under s. 180.1508 or 180.1509 that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued, within 6 months of the change, resignation or discontinuance.

(e) The foreign corporation obtained its certificate of authority through fraud.

(f) The department receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

(g) The foreign corporation violates s. 940.302 (2) or 948.051 (2).

(1m) If the department receives a certificate under sub. (1) (f) and a statement by the foreign corporation that the certificate is submitted by the foreign corporation to terminate its authority to transact business in this state, the department shall revoke the foreign corporation's certificate of authority under s. 180.1531 (2) (b).

(2) A court may revoke under s. 946.87 the certificate of authority of a foreign corporation authorized to transact business in this state. The court shall notify the department of the action, and the department shall revoke the foreign corporation's certificate of authority under s. 180.1531 (2) (b).

History: 1989 a. 303, 359; 1993 a. 35, 214; 1995 a. 27; 2001 a. 44; 2007 a. 116.

**180.1531 Procedure for and effect of revocation. (1)** If the department determines that one or more grounds exist under s. 180.1530 (1) for revocation of a certificate of authority, the department shall give the foreign corporation under s. 180.0141 notice of the determination. Notwithstanding s. 180.0141 (2) (b), (3), and (4), the notice shall be in writing and addressed to the registered office of the foreign corporation.

(2) (a) Within 60 days after the notice takes effect under s. 180.0141 (5) (a), the foreign corporation shall correct each ground for revocation or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist.

(b) If the foreign corporation fails to satisfy par. (a), the department may revoke the foreign corporation's certificate of authority by entering a notation in the department's records to reflect each ground for revocation and the effective date of the revocation. The department shall give the foreign corporation under s. 180.0141 notice of each ground for revocation and the effective date of the revocation. Notwithstanding s. 180.0141 (2) (b), (3), and (4), the notice shall be in writing and addressed to the registered office of the foreign corporation.

(c) 1. If a foreign corporation's certificate of authority is revoked after December 31, 1991, the department shall reinstate the certificate of authority if the foreign corporation does all of the following within the later of October 4, 1993 or 6 months after the effective date of the certificate of revocation:

a. Corrects each ground for revocation.

b. Pays any fees or penalties due the department under s. 180.1502 (5) (a) or \$5,000, whichever is less.

2. A reinstatement under this paragraph shall relate back to and take effect as of the effective date of the revocation, and the foreign corporation may resume carrying on its business as if the revocation never occurred.

(2m) (a) If a notice under sub. (1) or (2) (b) is returned to the department as undeliverable, the department shall again give notice to the corporation under s. 180.0141. Notwithstanding s. 180.0141 (2) (b), (3), and (4) and except as provided under par. (b), the notice under this paragraph shall be in writing and addressed to the principal office of the foreign corporation.

(b) If the notice under par. (a) is returned to the department as undeliverable or if the corporation's principal office cannot be determined from the records of the department, the department shall give the notice by posting the notice on the department's Internet site.

(3) The authority of a foreign corporation to transact business in this state, other than as provided in s. 180.1501 (2), ends on the date shown on the certificate revoking its certificate of authority.

(4) If the department or a court revokes a foreign corporation's certificate of authority, the foreign corporation may be served under s. 180.1510 (3) and (4) or the foreign corporation's registered agent may be served until the registered agent's authority is terminated, in any civil, criminal, administrative or investigatory

proceeding based on a cause of action which arose while the foreign corporation was authorized to transact business in this state.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of its registered agent.

History: 1989 a. 303; 1991 a. 269; 1993 a. 35; 1995 a. 27; 2001 a. 44; 2011 a. 234; 2013 a. 20.

**180.1532 Appeal from revocation. (1)** A foreign corporation may appeal the department's revocation of its certificate of authority under s. 180.1530 (1) to the circuit court for the county where the foreign corporation's principal office or, if none in this state, its registered office is located, within 30 days after the notice of revocation takes effect under s. 180.0141 (5) (a). The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the department's notice of revocation.

(2) The court may order the department to reinstate the certificate of authority or may take any other action that the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

History: 1989 a. 303; 1995 a. 27; 2001 a. 44.

## SUBCHAPTER XVI

### RECORDS AND REPORTS

**180.1601 Corporate records. (1)** A corporation shall keep as permanent records any of the following that has been prepared:

(a) Minutes of meetings of its shareholders and board of directors.

(b) Records of actions taken by the shareholders or board of directors without a meeting.

(c) Records of actions taken by a committee of the board of directors in place of the board of directors and on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, by class or series of shares and showing the number and class or series of shares held by each shareholder.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

History: 1989 a. 303.

**180.1602 Inspection of records by shareholders.**

(1) In this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

(1m) Except as provided in sub. (4), a shareholder of a corporation may inspect and copy the corporation's bylaws, if any, as then in effect, during regular business hours at the corporation's principal office. To inspect bylaws under this subsection, the shareholder shall give the corporation written notice that complies with s. 180.0141 of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy the bylaws.

(2) (a) Except as provided in par. (c) and sub. (4), a shareholder of a corporation who satisfies par. (b) may inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation:

1. Excerpts from any minutes or records that the corporation is required to keep as permanent records under s. 180.1601 (1).

2. Accounting records of the corporation.

3. The record of shareholders, except as provided in s. 180.1603 (3).

(b) To inspect and copy any of the records under par. (a), the shareholder must satisfy all of the following requirements:

1. The shareholder has been a shareholder of the corporation for at least 6 months before his or her demand under subd. 2., or the shareholder holds at least 5 percent of the outstanding shares of the corporation.

2. The shareholder gives the corporation written notice that complies with s. 180.0141 of his or her demand at least 5 business days before the date on which he or she wishes to inspect and copy the records.

3. The shareholder's demand is made in good faith and for a proper purpose.

4. The shareholder describes with reasonable particularity his or her purpose and the records that he or she desires to inspect.

5. The records are directly connected with his or her purpose.

(c) A person that has delivered the resolution under s. 180.1150 (4) may, by giving written notice to the resident domestic corporation, as defined in s. 180.1150 (1) (c), that complies with s. 180.0141, inspect and copy the record of shareholders of the resident domestic 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. 180.1150 (5).

(3) The rights under this section may not be abolished or limited by the domestic corporation's articles of incorporation or bylaws.

(4) This section does not affect any of the following:

(a) The right of a shareholder to inspect records under s. 180.0720 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant.

(b) The power of a court, independently of this chapter, to compel the production of corporate records for examination.

**History:** 1989 a. 303; 1995 a. 400; 1997 a. 27.

Under s. 180.43 (2) (a) [now sub. (2) (b) 3.], a court's inquiry does not end whenever a shareholder states any proper purpose for an inspection demand. The court is required to conduct an inquiry into the *bona fides* of a shareholder's demand. *Advance Concrete Form v. Accuform*, 158 Wis. 2d 334, 462 N.W.2d 271 (Ct. App. 1990).

**180.1603 Scope of inspection right.** (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder whom he or she represents.

(2) Except as provided in ss. 180.0720 (4) and 180.1604 (2), the corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(3) Instead of allowing a shareholder to inspect and copy its record of shareholders under s. 180.1602 (2) (a) 3., the corporation may provide the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand.

**History:** 1989 a. 303.

**180.1604 Court-ordered inspection.** (1) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any record described in s. 180.1602 (1) or (2), the shareholder who complies with s. 180.1602 (1m) or (2), as applicable, may apply to the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located for an order to permit inspection and copying of the records demanded.

(2) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs and expenses, including reasonable attorney fees, notwithstanding s. 814.04 (1), incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded. The order shall also spec-

ify whether the corporation may impose a charge under s. 180.1603 (2) for copying the records demanded.

(3) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

(4) Notwithstanding sub. (1) and s. 180.1602 (2), the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located may, in the proper exercise of its discretion, order the corporation to permit a shareholder of the corporation to inspect and copy any of the records described in s. 180.1602 (2) (a) 1. to 3., irrespective of the period of time during which the shareholder has been a shareholder or the number of shares that he or she owns, if the shareholder proves in a proceeding by the shareholder that he or she satisfies s. 180.1602 (2) (b) 3., 4. and 5.

**History:** 1989 a. 303; 1995 a. 400.

**180.1620 Financial statements for shareholders.**

(1) Within 120 days after the close of each fiscal year, a corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(2) On written request from any shareholder, the corporation shall mail him or her the latest financial statements.

**History:** 1989 a. 303.

**180.1622 Annual report for department of financial institutions.** (1) Except as provided in s. 180.1921, each domestic corporation and each foreign corporation authorized to transact business in this state shall file with the department an annual report that includes all of the following information:

(a) The name of the domestic corporation or foreign corporation and the state or country under whose law it is incorporated.

(b) The address of its registered office and the name of its registered agent at that office in this state.

(c) The address of its principal office.

(d) The name and business address of each director and principal officer.

(e) A brief description of the nature of its business.

(f) The total number of authorized shares, itemized by class and series, if any, within each class. A foreign corporation shall itemize the total number of authorized shares by par value of shares and shares without par value. An investment company that has an indefinite number of authorized shares shall state that it has declared an indefinite number of authorized shares.

(g) The total number of issued and outstanding shares, itemized by class and series, if any, within each class and, with respect to a foreign corporation, by par value of shares and shares without par value.

(h) With respect to a foreign corporation, 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 the foreign corporation exceeds 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.

(i) With respect to a foreign corporation, the proportion of the capital represented in this state by its property located and business transacted in this state during the preceding year. The proportion of capital employed in the state shall be computed by taking the gross business of the foreign 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 department may demand, as a condition precedent to the filing of the annual report, such further information and statements as the department considers proper in order to determine the accuracy of the report submitted.

(2) (a) Information in the annual report shall be current as of the date on which the annual report is executed on behalf of a domestic corporation, except that the information required by sub. (1) (f) and (g) shall be current as of the close of the domestic corporation's fiscal year immediately before the date by which the annual report is required to be delivered to the department.

(b) Information in the annual report shall be current as of the date on which the annual report is executed on behalf of a foreign corporation, except that the information required by sub. (1) (f) to (i) shall be current as of the date of the close of the foreign corporation's fiscal year in the 12 months ending on the September 30 immediately before the date by which the annual report is required to be delivered to the department.

(3) (a) A domestic corporation shall deliver its annual report to the department in each year following the calendar year in which the domestic corporation was incorporated, during the calendar year quarter in which the anniversary date of the incorporation occurs.

(b) A foreign corporation authorized to transact business in this state shall deliver its annual report to the department during the first calendar quarter of each year following the calendar year in which the foreign corporation becomes authorized to transact business in this state.

(4) If an annual report does not contain the information required by this section, the department shall promptly notify the reporting domestic corporation or foreign corporation in writing and return the report to it for correction. The notice shall comply with s. 180.0141. If the annual report is corrected to contain the information required by this section and delivered to the department within 30 days after the effective date of the notice under s. 180.0141 (5), the annual report is timely filed.

(5) An annual report is effective on the date that it is filed by the department.

History: 1989 a. 303; 1991 a. 269; 1993 a. 35; 1995 a. 27, 271.

## SUBCHAPTER XVII

### APPLICATION OF THIS CHAPTER

**180.1701 Definition.** In this subchapter, “shares of a preexisting class” means shares of a class for which shares were authorized before January 1, 1991, whether the shares were issued before, on or after January 1, 1991.

History: 1989 a. 303.

**180.1703 Application to domestic corporations.** Except as provided in ss. 180.1705 to 180.1708, beginning on January 1, 1991, this chapter applies to all of the following:

(1) Except as provided in sub. (2), any domestic corporation with capital stock, regardless of when it was organized and whether for profit or not, but a domestic corporation organized under provisions other than those in this chapter and corresponding prior general corporation laws is subject to this chapter only to the extent that it is not inconsistent with those provisions.

(2) Any domestic corporation with capital stock but not organized for profit that was organized before July 1, 1953, under the general corporation laws or any special statute or law of this state and that has not elected to be subject to ch. 181, only to the extent that the provisions of this chapter are not inconsistent with the articles of incorporation or form of organization of the domestic cor-

poration or with any provisions elsewhere in the statutes or under any special law relating to the domestic corporation.

History: 1989 a. 303.

**180.1704 Application to foreign corporations.** Except as provided in s. 180.1708, this chapter applies to all foreign corporations transacting business in this state on or after January 1, 1991. The enactment of this chapter does not require a foreign corporation authorized to transact business in this state on January 1, 1991, to obtain a new certificate of authority under subch. XV.

History: 1989 a. 303.

As evidenced by the enactment of this section, the state has an interest in having its laws applied to corporations, and their officers and directors, transacting business within the state. *Beloit Liquidating Trust v. Grade*, 2004 WI 39, 270 Wis. 2d 356, 677 N.W.2d 298, 02–2035.

**180.1705 Existing preemptive rights preserved.** Section 180.0630 does not apply to shares of a preexisting class. Except to the extent limited or denied by this section or by the articles of incorporation, shareholders of shares of a preexisting class have a preemptive right to acquire unissued shares or securities convertible into unissued shares or carrying a right to subscribe to or acquire shares. Unless otherwise provided in the articles of incorporation, all of the following apply to shareholders of shares of a preexisting class:

(1) No preemptive rights exist to acquire any of the following:

(a) Any shares issued to directors, officers or employees 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 approved by such a vote of shareholders.

(b) Any shares, convertible securities or rights issued for a consideration other than cash.

(c) Treasury shares.

(2) Holders of shares of any class that is preferred or limited as to dividends or assets are not entitled to any preemptive right.

(3) Holders of shares of common stock are not 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.

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

(5) The preemptive right is 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: 1989 a. 303; 1991 a. 16.

**180.1706 Certain voting requirements preserved.**

(1) Except to the extent that the corporation's articles of incorporation are amended to provide that the voting requirements of s. 180.1003 (3), 180.1103 (3), 180.1202 (3), 180.1402 (3) or 180.1404 (2) apply, subs. (2) and (3) govern the shareholder vote required on a proposal concerning a subject covered by s. 180.1003 (3), 180.1103 (3), 180.1202 (3), 180.1402 (3) or 180.1404 (2) if the corporation was organized before January 1, 1973, and has not expressly elected, before January 1, 1991, majority or greater affirmative voting requirements under s. 180.25 (2) (a), 1987 stats., with respect to the subject matter of the proposal.

(2) Except as provided in sub. (3), in lieu of the vote required by s. 180.1003 (3), 180.1103 (3), 180.1202 (3), 180.1402 (3) or 180.1404 (2), whichever is applicable to the subject matter of a proposal, a proposal described in sub. (1) must be approved as follows:

(a) By the affirmative vote of the holders of two-thirds of the shares entitled to vote on the proposal, unless par. (b) applies.

(b) If any class or series of shares is entitled to vote on the proposal as a class, by the affirmative vote of all of the following:

1. The holders of two-thirds of the shares of each class of shares and of each series entitled to vote as a class.

2. The holders of two-thirds of the total shares entitled to vote on the proposal.

(3) Whenever, with respect to a proposal described in sub. (1), 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 of shares, than is required by sub. (2), the provisions of the articles of incorporation shall control.

(4) If a corporation has a bylaw in effect on December 31, 1990, that establishes a greater shareholder voting requirement than one required under this chapter, that voting requirement applies until the bylaw is amended or repealed.

**History:** 1989 a. 303; 1991 a. 16, 173.

#### 180.1707 Certain class voting rights preserved.

(1) Sections 180.1004 and 180.1103 (4) (a) do not apply to shares of a preexisting class if a corporation in existence on January 1, 1991 provides in its articles of incorporation that subs. (2) and (3), in lieu of ss. 180.1004 and 180.1103, govern whether shares of a preexisting class are entitled to vote as a class on a proposed amendment to the articles of incorporation or plan of merger.

(2) (a) The holders of the outstanding shares of a preexisting class subject to this subsection may vote as a class upon a proposed amendment to the articles of incorporation, whether or not entitled to vote thereon by the articles of incorporation, if the amendment would do any of the following with respect to that class:

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

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

3. 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 the class.

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

5. Change the shares of the class into a different number of shares of the same class or into the same or a different number of shares of another class or classes.

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

7. In the case of a preferred or special class of shares, divide the shares of the class into series and fix and determine the designation of the series and the variations in the relative rights and preferences between the shares of the 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 the series.

8. Limit or deny any existing preemptive rights of the shares of the class.

9. Cancel or otherwise affect dividends on the shares of the class which have accrued but have not been declared.

10. Authorize the payment of a dividend in shares of the class.

(b) Whenever an amendment described in par. (a) shall affect the holders of shares of one or more but not all of the series of any preferred or special class of shares of a preexisting class that are at the time outstanding, the holders of the outstanding shares of the series affected thereby shall for the purposes of this section be considered a separate class and entitled to vote as a class on such amendment.

(3) Shares of a preexisting class subject to this subsection may vote as a class on a plan of merger if the plan of merger contains any provision which, if contained in a proposed amendment to the articles of incorporation, would entitle the shares of a preexisting class to vote as a class.

**History:** 1989 a. 303; 1991 a. 16.

**180.1708 Applicability of various provisions.** (1) FILING DUTY; APPEAL. Sections 180.0125 and 180.0126 apply to a document delivered to the department for filing on or after January 1, 1991.

(2) DISTRIBUTIONS TO SHAREHOLDERS. Section 180.0640 applies to a distribution authorized by the board of directors on or after January 1, 1991.

(3) SPECIAL SHAREHOLDERS' MEETING. Section 180.0702 (1) (b) and (2) applies to a demand for a special meeting of shareholders that is delivered to the corporation on or after January 1, 1991.

(3m) DERIVATIVE PROCEEDINGS. Sections 180.0741 to 180.0747 apply to a derivative proceeding, as defined in s. 180.0740 (2), that is commenced on or after January 1, 1991.

(4) AMENDMENT OR RESTATEMENT. (a) Sections 180.1003, 180.1004 and 180.1007 (3) apply to an amendment to or restatement of the articles of incorporation requiring shareholder approval about which notice of a shareholders' meeting is delivered on or after January 1, 1991.

(b) Sections 180.1006 and 180.1007 (4) apply to articles of amendment or restatement for any of the following:

1. An amendment or restatement adopted by the board of directors or incorporators on or after January 1, 1991.

2. An amendment or restatement requiring shareholder approval about which a notice of a shareholders' meeting is delivered on or after January 1, 1991.

(5) MERGERS. Sections 180.1101 and 180.1103 to 180.1106 apply to a merger, and ss. 180.1301 to 180.1331 apply to dissenters' rights arising from a merger, for which a plan of merger is approved by the board of directors on or after January 1, 1991.

(6) SALE OF ASSETS. Section 180.1202 applies to a sale, lease, exchange or other disposition of property requiring shareholder approval, and ss. 180.1301 to 180.1331 apply to dissenters' rights arising from a sale, lease, exchange or other disposition of property requiring shareholder approval, that is approved by the board of directors on or after January 1, 1991.

(7) DISSOLUTION. (a) Sections 180.1401 to 180.1404 apply to a dissolution authorized as follows:

1. By the incorporators or board of directors under s. 180.1401 on or after January 1, 1991.

2. By the shareholders, if the corporation delivers notice of the shareholders' meeting under s. 180.1402 (2) on or after January 1, 1991.

(b) Sections 180.1420, 180.1421 and 180.1423 apply to an administrative dissolution based on grounds arising under s. 180.1420 on or after January 1, 1991.

(bm) Sections 180.1422 and 180.1423 apply to an administrative dissolution before, on or after January 1, 1991.

(c) Sections 180.1430 to 180.1433 apply to a judicial dissolution based on a cause of action arising under s. 180.1430 on or after January 1, 1991.

(8) REVOCATION OF CERTIFICATE OF AUTHORITY. (a) Except as provided in par. (b), ss. 180.1530 (1), 180.1531 and 180.1532 apply to an administrative revocation based on grounds arising under s. 180.1530 (1) on or after January 1, 1991.

(b) Sections 180.1530 (2) and 180.1531 (2) (b) and (3) to (5) apply to a judicial revocation under s. 946.87 of which the department is notified under s. 180.1530 (2) on or after January 1, 1991. Section 180.1531 (2) (c) applies to a revocation based on grounds arising before, on or after January 1, 1991.

**History:** 1989 a. 303, 359; 1991 a. 173, 269; 1995 a. 27; 1997 a. 27; 2003 a. 321.

## SUBCHAPTER XVIII

## STATUTORY CLOSE CORPORATIONS

**180.1801 Applicability.** (1) Sections 180.1801 to 180.1837 apply to a corporation if its articles of incorporation state that the corporation is a close corporation under ss. 180.1801 to 180.1837.

(2) Except as provided in sub. (3), if an election is made to be a statutory close corporation, ss. 180.1801 to 180.1837 control in the event of conflict with other sections of this chapter.

(3) If a service corporation organized under ss. 180.1901 to 180.1921 elects to be a statutory close corporation, ss. 180.1901 to 180.1921 control in the event of conflict with ss. 180.1801 to 180.1837.

**History:** 1989 a. 303.

The enactment of the statutory close corporation statutes did not preempt existing common law rights, and those statutes do not provide exclusive remedies for close corporations. *Jorgensen v. Water Works, Inc.* 218 Wis. 2d 761, 582 N.W.2d 98 (Ct. App. 1998), 97–1729.

**180.1803 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 s. 180.1801. The amendment shall be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is approved, a shareholder who did not vote in favor of the amendment is entitled to assert dissenters' rights under ss. 180.1301 to 180.1331.

**History:** 1989 a. 303.

**180.1805 Share transfer restrictions.** No interest in shares of a statutory close corporation may be transferred without the written consent of all shareholders holding voting stock, unless the interest is transferred in any of the following circumstances:

(1) As provided in s. 180.1807.

(2) To the corporation or to any other holder of the same class or series of shares.

(3) To members of the shareholder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. In this subsection, "shareholder's immediate family" means the shareholder's spouse, parents, lineal descendants, including any adopted children and stepchildren, and the spouse of any lineal descendants, and brothers and sisters.

(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 or share exchange that becomes effective under ss. 180.1101 to 180.1106 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) After termination of the corporation's status as a statutory close corporation.

(8) As otherwise provided in the corporation's articles of incorporation or in an agreement among shareholders under s. 180.1823.

**History:** 1989 a. 303; 1991 a. 16; 2003 a. 321.

**180.1807 Transfer after corporation's first refusal.**

(1) NOTICE OF 3RD-PARTY OFFER. A person desiring to transfer shares in a transaction without the consent described in s. 180.1805 (intro.) and that is not exempt under s. 180.1805 (2) to (8) shall obtain a written and signed offer from a 3rd party to purchase the shares for cash and shall deliver to the statutory close corporation written notice and a copy of the 3rd-party offer. The notice shall comply with s. 180.0141 and shall state the number and kind of shares, the offering price, the other material 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:

(a) 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.

(b) 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.

(2) SHAREHOLDER APPROVAL. (a) The notice under sub. (1) constitutes an offer to sell the shares to the statutory close corporation and other shareholders on the same terms as the 3rd-party offer. Within 20 days after the corporation receives the notice, the corporation shall give notice of a special meeting of shareholders, which shall be held within 60 days after the corporation received notice of the offer, for the purpose of determining whether to purchase all, but not less than all, of the offered shares. The notice shall comply with s. 180.0141.

(b) The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(c) With the consent of all of the shareholders entitled to vote for approval of the purchase, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, except as provided in par. (d).

(d) 1. If all shares are not accepted for purchase by the corporation, the remaining shares shall be offered to shareholders of the class or series being offered for sale in proportion to their ownership of shares of that class or series.

2. If all shares are not accepted for purchase by shareholders under subd. 1., the remaining shares shall be allocated among shareholders of the class or series being offered for sale who are willing to purchase the shares in proportion to their ownership of shares of that class or series after the acquisitions under subd. 1.

3. If all shares are not accepted for purchase by shareholders under subds. 1. and 2., the remaining shares shall be offered to all other shareholders in proportion to their ownership of shares of the corporation.

4. If all shares are not accepted for purchase by shareholders under subd. 3., the remaining shares shall be allocated among shareholders who are willing to purchase the shares in proportion to their ownership of shares of the corporation before the acquisitions under subd. 3.

(3) ACCEPTANCE. If the statutory close corporation accepts the shareholder's offer, it must deliver written notice of acceptance to the offering shareholder within 75 days after receipt of the shareholder's offer. The notice shall comply with s. 180.0141. If sent by mail, the notice is timely if deposited in the mail before midnight of the 75th day following the day that the offer from the shareholder was received by the corporation.

(4) TRANSFER OF SHARES TO OTHER THAN 3RD PARTY. If a contract to sell is created under sub. (3), the shareholder shall deliver duly endorsed certificates for all of the shares sold, or instruct the corporation in writing to transfer the shares if uncertificated, 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.

(5) TRANSFER OF SHARES TO 3RD PARTY. If the offer to sell is not accepted under subs. (2) and (3), 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 sub. (1), in accordance with the terms of the offer as described in the notice under sub. (1).

**History:** 1989 a. 303; 2005 a. 253.

**180.1809 Notice of statutory close corporation status.**

(1) (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, the bylaws, if any, and 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) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall deliver to the shareholders a written notice containing the information required by par. (a). The notice shall comply with s. 180.0141.

(c) Written notice given under this subsection satisfies the notice requirement under s. 180.0627 (3).

(2) A person claiming an interest in shares of a statutory close corporation that has given the written notice required by sub. (1) is bound by the documents referred to in the notice. A person claiming an interest in shares of a corporation that has not given the written notice required by sub. (1) is bound by any documents of which he or she, or any person through whom he or she claims, has knowledge or notice.

History: 1989 a. 303.

**180.1811 Transfer of shares in breach of transfer restrictions.** (1) An attempted transfer of shares in a statutory close corporation in violation of a transfer restriction that is binding on the transferee is ineffective.

(2) An attempted transfer of shares in a statutory close corporation in violation of a transfer restriction that is not binding on the transferee, either because the corporation fails to give written notice under s. 180.1809 or because a court orders that the restriction prohibiting the transfer is unenforceable, gives the corporation the option to purchase the shares from the transferee for the same price paid and terms agreed to by the transferee. To exercise the option, the corporation shall give the transferee written notice that complies with s. 180.0141 and shall make payment within 75 days after the shares are presented for registration in the transferee’s name.

History: 1989 a. 303.

**180.1813 Merger, share exchange and sale of assets.**

(1) (a) Notwithstanding ss. 180.1103 (3) to (5) and 180.1104, a plan of merger or share exchange that will terminate the status of the corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(b) Notwithstanding ss. 180.1103 (3) to (5) and 180.1104, a plan of merger under which the surviving corporation will become a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(c) Notwithstanding s. 180.1103 (3) and (4), if under a plan of share exchange the corporation whose shares will be acquired in the share exchange will become a statutory close corporation, the share exchange must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation whose shares will be acquired, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(d) If a plan of merger or share exchange is approved, a shareholder who did not vote in favor of the plan is entitled to assert dissenters’ rights under ss. 180.1301 to 180.1331.

(2) (a) Notwithstanding s. 180.1202 (3), 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, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

(b) A shareholder who did not vote in favor of a disposition under this subsection is entitled to assert dissenters’ rights under ss. 180.1301 to 180.1331.

History: 1989 a. 303.

**180.1815 Termination of statutory close corporation status.** (1) A statutory close corporation ceases to be subject to ss. 180.1801 to 180.1837 upon the effectiveness of articles of amendment deleting from its articles of incorporation the statement that it is a statutory close corporation.

If the corporation has elected under s. 180.1821 not to have a board of directors, the amendment shall also delete the statement in the articles of incorporation to that effect and shall specify the number, names and addresses of its directors.

(2) An amendment under sub. (1) must be approved by the holders of two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If the amendment to terminate the corporation’s status as a statutory close corporation is approved, a shareholder who did not vote in favor of the amendment is entitled to assert dissenters’ rights under ss. 180.1301 to 180.1331.

History: 1989 a. 303.

**180.1817 Effect of termination of statutory close corporation status.** (1) 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 of incorporation are invalid under this chapter.

(2) The corporation shall adopt bylaws if it has no bylaws on termination of statutory close corporation status.

History: 1989 a. 303.

**180.1819 Payment for shares.** (1) A compromise or forgiveness of a 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 a final judgment in a proceeding brought to enforce the obligation provides otherwise.

(2) 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.

History: 1989 a. 303.

**180.1821 Election not to have a board of directors.** (1) A statutory close corporation may operate without a board of directors if the articles of incorporation contain a statement to that effect. All of the following apply while a statement under this subsection is effective:

(a) 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.

(b) Liability that would otherwise be imposed on the directors may not be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.

(c) A requirement that an instrument filed with a 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 without a board of directors and that the action was duly approved by the shareholders.

(d) A requirement that an instrument filed with a 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 without a board of directors and that the action was duly approved by the shareholders.

(e) A requirement that an instrument filed with a 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 without a board of directors and that the action was duly approved by the shareholders.

(d) The shareholders may appoint, by resolution, one or more shareholders to sign documents as “Designated Directors”.

(e) Except as provided in the articles of incorporation:

1. An action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders.

2. An action requiring a vote of a majority or greater percentage of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action.

(2) (a) An amendment to the articles of incorporation to operate without a board of directors must be approved by the holders of all of the shares of the statutory close corporation whether or not otherwise entitled to vote on amendments, or, if no shares have been issued, by all of the subscribers for shares, if any, or if none, by all of the incorporators.

(b) An amendment to the articles of incorporation to delete the election must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

History: 1989 a. 303.

**180.1823 Agreements among shareholders.** (1) 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 section, the terms of the agreement are binding on all successors in interest.

(2) An agreement authorized by this section is valid and enforceable according to its terms even if the agreement does any of the following:

(a) Eliminates the board of directors, if sub. (4) is satisfied.

(b) Restricts the discretion or powers of the board of directors or authorizes director proxies or weighted voting rights.

(c) Has the effect of treating the statutory close corporation as a partnership.

(d) Creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the statutory close corporation has a board of directors, an agreement authorized by this section that restricts the discretion or powers of the directors relieves the directors of, and imposes upon each person in whom the directors’ discretion or powers are vested, the liability for acts or omissions imposed by law upon directors, unless the agreement provides otherwise.

(4) An election not to have a board of directors in an agreement authorized by this section is not valid unless the articles of incorporation contain a statement to that effect adopted under s. 180.1821.

(5) A shareholder agreement authorized by this section may not be amended except by the unanimous written consent of the shareholders, unless otherwise provided in the agreement.

(6) Any action permitted by this section to be taken by shareholders may be taken by the subscribers for shares of the statutory close corporation if no shares have been issued at the time of the agreement authorized by this section.

(7) This section does not prohibit any other agreement among 2 or more shareholders.

History: 1989 a. 303.

**180.1824 Irrevocable proxies.** (1) 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:

(a) A pledgee of shares.

(b) 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.

(c) 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 continuation of credit and the name of the person extending or continuing credit.

(d) A person who has contracted to perform services as an employee 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 employee and the period of employment contracted for.

(e) A person, including an arbitrator, designated by or under a shareholders’ agreement authorized by s. 180.1823.

(2) Regardless of the period of irrevocability specified in a proxy executed under sub. (1), 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.

(3) In addition to sub. (1), 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.

(4) 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.

History: 1989 a. 303.

**180.1825 Bylaws.** A statutory close corporation need not adopt bylaws if provisions required by law to be contained in corporate bylaws are contained in the articles of incorporation or in an agreement authorized under s. 180.1823.

History: 1989 a. 303.

**180.1827 Annual meeting.** (1) Notwithstanding s. 180.0701 (1), the annual meeting date for a statutory close corporation is the first business day after May 31, unless the corporation’s articles of incorporation or bylaws or an agreement authorized under s. 180.1823 fixes a different date.

(2) Notwithstanding s. 180.0701 (1), except as otherwise provided in the articles of incorporation, a statutory close corporation need not hold an annual meeting unless a written request is delivered to the corporation by a shareholder at least 30 days before the meeting date determined under sub. (1).

History: 1989 a. 303.

**180.1829 Shareholder sale option at death.** (1) OPT-IN OR MODIFY. (a) This section applies to a statutory close corporation only if so provided in the articles of incorporation. A modification of this section by the corporation is valid if it is stated in the articles of incorporation.

(b) An amendment to the articles of incorporation to provide that this section applies or to delete or modify the provisions of this section must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of all of the subscribers for shares, if any, or, if none, by all of the incorporators.

(c) A shareholder who did not vote in favor of an amendment to delete or modify the provisions of this section is entitled to assert dissenters’ rights under ss. 180.1301 to 180.1331, if the amendment terminates or substantially alters the existing rights of

the shareholder under this section to have his or her shares purchased.

(2) **PURCHASE SHARES OR DISSOLVE.** If the articles of incorporation of a statutory close corporation make this section 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:

(a) To purchase or cause the purchase of, under subs. (3) and (4), all, but not less than all, of the decedent's shares.

(b) Dissolution of the corporation.

(3) **EXERCISE OF COMPULSORY PURCHASE.** (a) A person exercising rights under this section shall, within 6 months after the death of the beneficial owner of shares, deliver a written notice to the statutory close corporation. The notice shall comply with s. 180.0141, shall specify the number and class or series of all shares beneficially owned by the deceased shareholder and shall state that an offer by the corporation to purchase the shares is being solicited under this section.

(b) Within 20 days after receipt of the notice, the corporation shall call a special meeting of shareholders, which shall be held within 60 days after receipt of the notice, for the purpose of determining whether to offer to purchase the shares. A purchase offer must be approved by the holders of a majority of the votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(c) With the consent of all of the shareholders entitled to vote for approval of the purchase offer, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, except as provided in par. (d).

(d) 1. If all shares are not accepted for purchase by the corporation, the remaining shares shall be offered to shareholders of the class or series being offered for sale in proportion to their ownership of shares of that class or series.

2. If all shares are not accepted for purchase by shareholders under subd. 1., the remaining shares shall be allocated among shareholders of the class or series being offered for sale who are willing to purchase the shares in proportion to their ownership of shares of that class or series after the acquisitions under subd. 1.

3. If all shares are not accepted for purchase by shareholders under subs. 1. and 2., the remaining shares shall be offered to all other shareholders in proportion to their ownership of shares of the corporation.

4. If all shares are not accepted for purchase by shareholders under subd. 3., the remaining shares shall be allocated among shareholders who are willing to purchase the shares in proportion to their ownership of shares of the corporation before the acquisitions under subd. 3.

(e) The corporation must deliver written notice of an offer to purchase approved by the shareholders or written notice that no offer to purchase was approved, to the person exercising rights under this section, within 75 days after receipt of the notice under par. (a) soliciting the offer to purchase. The notice must comply with s. 180.0141. An offer to purchase must 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.

(f) 1. To the extent that 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 or bylaws of the corporation, or by written agreement, those provisions are binding, except as provided in subd. 2.

2. In the event of a default in any payment due, sub. (4) (e) applies, and the person exercising rights under this section may petition for dissolution of the corporation.

(g) A person exercising rights under this section must accept or reject an offer to purchase in writing within 15 days after the offer.

(4) **ACTION TO COMPEL.** (a) If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this section may commence an action in the circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located to compel purchase or dissolution. The statutory close 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.

(b) The court shall, under s. 180.1833 (3), determine the fair value of the shares of the person exercising rights under this section and enter an order requiring the corporation to cause the purchase of the shares at fair value and on other terms determined by the court or to give the person the right to have the corporation dissolved.

(c) 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.

(d) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the excess payment from the defaulting person.

(e) If the corporation or other purchaser fails to make a payment specified in the court order within 30 days after it is due, 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.

(5) **COURT COSTS AND OTHER EXPENSES.** (a) The court may assess all or a portion of the costs and expenses of an action commenced under sub. (4) as follows:

1. Against the person exercising rights under this section if the fair value of the shares as determined by the court does not materially exceed the last offer made by the statutory close corporation before the person commenced the action under sub. (4) and the court finds that the failure of the person to accept the corporation's last offer was arbitrary, vexatious or not otherwise in good faith.

2. Against the corporation 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 sub. (4) and the court finds that the corporation's last offer was arbitrary, vexatious or otherwise not made in good faith.

(b) Expenses assessable under par. (a) include reasonable compensation for, and reasonable expenses of, appraisers appointed by the court and the reasonable fees and expenses of counsel for, and experts employed by, any party.

(c) Except as provided in par. (a), the legal costs of an action filed under sub. (4) shall be assessed on an equal basis between the corporation and the party exercising rights under this section, and all other fees and expenses shall be borne by the party incurring the fees and expenses.

(6) **SHAREHOLDER WAIVER.** A shareholder may, by signed writing, waive the rights under this section of the shareholder and the shareholder's estate and heirs.

(7) **OTHER AGREEMENTS AND REMEDIES.** This section does not prohibit other agreements for the purchase of shares of the corporation, nor does it prevent the enforcement of other remedies.

*History:* 1989 a. 303.

### **180.1831 Shareholder option to dissolve corporation.**

(1) The articles of incorporation of a statutory close corporation or a shareholders' agreement under s. 180.1823 may grant to any shareholder, or to the holders of any specified number or percentage of shares of any class or series, 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 of the intent to dissolve to all other shareholders. Any notice given under this subsection shall comply with s.

**180.0141.** Upon the expiration of 30 days after the effective date of the notice, the corporation shall do all of the following:

(a) File articles of dissolution that satisfy s. 180.1403 except the statement under s. 180.1403 (1) (c) shall specify that dissolution was authorized in accordance with this section.

(b) Begin to wind up and liquidate its business and affairs under ss. 180.1405 to 180.1407.

**(2)** Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to include, modify or delete a provision authorized by sub. (1) must be approved by the holders of all of the outstanding shares, whether or not the holders are otherwise entitled to vote on amendments, or, if no shares have been issued, by all of the subscribers for shares, if any, or, if none, by all of the incorporators.

**History:** 1989 a. 303.

**180.1833 Power of court to grant relief. (1) GROUNDS FOR RELIEF.** Subject to sub. (4) (b) and (c), a 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 circuit court for the county where the corporation's principal office or, if none in this state, its registered office is located for relief on any of the following grounds:

(a) That the directors or those in control of the corporation have acted, are acting or will act 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.

(b) That 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.

(c) That conditions exist that would be grounds for judicial dissolution of the corporation under s. 180.1430 (2).

**(2) TYPE OF RELIEF.** (a) If the court finds that one or more of the conditions specified in sub. (1) exist, it shall grant appropriate relief, including any of the following:

1. Canceling, altering or enjoining any resolution or other act of the statutory close corporation.

2. Directing or prohibiting any act of the corporation or of shareholders, directors, officers or other persons who are 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 of 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 purchase all of the shares of the petitioning shareholder at their fair value by a designated date, with the fair value and terms of the purchase to be determined under sub. (3).

10. Ordering dissolution if the court finds that one or more grounds exist for judicial dissolution under s. 180.1430 (2) or that 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.

(b) In determining whether to grant relief under par. (a) 9. or 10., the court shall consider the financial condition of the corporation but may not refuse to order liquidation solely on the grounds that the corporation has net worth or current operating profits.

(c) If the court determines that a party to a proceeding brought under this section 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.

**(3) SHARE PURCHASE.** (a) If the court orders relief under sub. (2) (a) 9., it shall do all of the following:

1. Determine the fair value of the shares to be purchased, considering the going concern value of the statutory close 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 corporation's ability to acquire the shares to be purchased and other relevant evidence.

2. Enter an order specifying all of the following:

a. The identity of the purchaser by name and the purchaser's status as a current shareholder or 3rd-party purchaser.

b. The terms of the purchase found to be proper under the circumstances, including payment of the purchase price in installments, payment of interest on the installments, subordination of the obligation to the rights of the corporation's other creditors, security for the deferred purchase price, and a covenant not to compete or other restriction on the selling shareholder.

3. Order the selling shareholder to deliver all of his or her shares to the court, and order the purchaser to deliver each payment for shares to the court.

4. Order that after the selling shareholder delivers his or her shares, the shareholder has 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 section and any amounts due under any agreement with the corporation or the remaining shareholders that are not terminated by the court's orders.

5. Order dissolution of the corporation if the purchase is not completed as ordered.

(b) If the share purchase is not consummated and the corporation is dissolved, a shareholder whose shares were to be purchased has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

**(4) OTHER RIGHTS; CONDITIONS ON EXERCISE.** (a) Except as provided in pars. (b) and (c), the rights of a shareholder to commence a proceeding under this section are in addition to, and not in lieu of, any other rights or remedies that the shareholder may have.

(b) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, the shareholder may not commence a proceeding under this section with respect to those matters until he or she has exhausted the nonjudicial remedy.

(c) If a shareholder has dissenters' rights under this subchapter or s. 180.1302 with respect to proposed corporate action, the shareholder must commence a proceeding under this section before the shareholder is required to give notice of his or her intent to demand payment under s. 180.1321 or to demand payment under s. 180.1323 or the proceeding is barred.

**History:** 1989 a. 303.

Corporate Control Contests: Judicial Dissolution of Closely Held Corporations. Lafer. Wis. Law. Feb. 1994.

**180.1834 Greater quorum or voting requirements.**

**(1)** The articles of incorporation of a statutory close corporation may impose a greater quorum or voting requirement for shareholders, or classes of shareholders, than is required by this chapter.

**(2)** 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.

(3) Section 180.0727 does not apply to a statutory close corporation.

**History:** 1989 a. 303.

**180.1835 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.

**History:** 1989 a. 303.

**180.1837 Officers; execution of documents. (1)** A statutory close corporation may operate and conduct business with one or more officers.

(2) If an individual holds more than one office in a statutory close corporation, the individual 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:** 1989 a. 303.

## SUBCHAPTER XIX

### SERVICE CORPORATIONS

**180.1901 Definitions.** In ss. 180.1901 to 180.1921:

(1) “Employee” means an individual who is hired by a service corporation and who is 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. “Employee” does not include any of the following:

(a) An individual who is hired by a service corporation and who provides services as an administrator, technician, clerk or bookkeeper.

(b) An individual who performs all of his or her employment for a service corporation under the direct supervision and control of a licensed, registered or certified officer or employee of the service corporation.

(1m) “Health care professional” means an individual who is licensed, registered or certified by any of the following:

(ag) The massage therapy and bodywork therapy affiliated credentialing board under ch. 460.

(am) Chiropractic examining board under ch. 446

(ar) Board of nursing under ch. 441.

(at) Dentistry examining board under ch. 447.

(b) Medical examining board under subch. II of ch. 448.

(bg) Physical therapy examining board under subch. III of ch. 448.

(bk) Podiatry affiliated credentialing board under subch. IV of ch. 448.

(br) Dietitians affiliated credentialing board under subch. V of ch. 448.

(bs) Athletic trainers affiliated credentialing board under subch. VI of ch. 448.

(bu) Occupational therapists affiliated credentialing board under subch. VII of ch. 448.

(c) Optometry examining board under ch. 449.

(d) Pharmacy examining board under ch. 450.

(e) Psychology examining board under ch. 455.

(f) Marriage and family therapy, professional counseling, and social work examining board under ch. 457.

(g) Hearing and speech examining board under subch. II of ch. 459.

(2) “Service corporation” means a corporation organized under ss. 180.1903 to 180.1921.

**History:** 1989 a. 303; 1993 a. 473; 1995 a. 167; 1997 a. 75, 156, 175; 1999 a. 9, 32, 180; 2001 a. 74, 80; 2003 a. 41; 2009 a. 113, 149, 355.

**180.1903 Formation of service corporation. (1)** Except as provided in sub. (1m), one or more natural persons licensed, certified, or registered pursuant to any provisions of the statutes, if all have the same license, certificate, or registration or if all are health care professionals, may organize and own shares in a service corporation. A service 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.

(1m) A service corporation for carrying on the profession of certified public accounting may be organized under sub. (1) if more than 50 percent of the shareholders are certified public accountants.

(2) Professional or other personal services, consultation or advice in any form may be rendered only by directors, officers, agents or employees of the service corporation who are licensed, certified or registered pursuant to statute in the field of endeavor designated in the articles of incorporation of the service corporation.

(3) Liability may not accrue to a service corporation or its shareholders solely as a result of a decision to organize under sub. (1) or solely as a result of a decision to include or exclude a category of health care professionals as eligible to become shareholders of the service corporation.

(4) Each health care professional, other than a physician or nurse anesthetist, who is a shareholder of a service corporation and who has the authority to provide health care services that are not under the direction and supervision of a physician or nurse anesthetist shall carry malpractice insurance that provides coverage of not less than the amounts established under s. 655.23 (4).

**History:** 1989 a. 303; 1993 a. 473; 2001 a. 16.

**180.1905 Business corporation law applicable.**

(1) Other provisions of this chapter shall be applicable to service corporations, including their organization, and service corporations shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other stock corporations, except as provided in ss. 180.1901 to 180.1921. A service corporation may not engage in any business other than that for which it was specifically organized and for which its charter was granted.

(2) Sections 180.1901 to 180.1921 control in the event of conflicts with any other provision of this chapter.

**History:** 1989 a. 303.

**180.1907 Corporate name.** The service corporation may bear the last name of one or more persons formerly or currently associated with it. A service corporation may adopt a name which does not include the surname of any present or former shareholder. The corporate name shall end with the word “chartered” or “limited”, or the words “service corporation”, or the abbreviation “Ltd.” or “S.C.”. A service corporation in existence on January 1, 1991, need not change its name to comply with this section.

**History:** 1989 a. 303; 1991 a. 16, 173.

**180.1909 Filing articles of incorporation.** Before commencing operations, a service corporation shall deliver its articles of incorporation to the department for filing.

**History:** 1989 a. 303; 1995 a. 27.

**180.1911 Participants; conflict of interest. (1)** Except as provided in ss. 180.1903 (1m) and 180.1913, each shareholder, director and officer of a service corporation must at all times be licensed, certified or registered by a state agency in the same field of endeavor or be a health care professional. An individual who



is not so licensed, certified or registered may not have any part in the ownership or control of the service corporation, except that the nonparticipant spouse of a married individual has the rights of ownership provided under ch. 766. A proxy to vote any shares of the service corporation may not be given to a person who is not so licensed, certified or registered.

(2) If any shareholder, director, officer or employee of a service corporation 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 by 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 immediately sever all employment with, and financial interest in, the service corporation. A service corporation's failure to require prompt compliance with this subsection is a ground for the suspension or forfeiture of its franchise.

**History:** 1989 a. 303; 1993 a. 473; 2005 a. 215.

**180.1913 Alternative incorporation by one or 2 persons.** (1) A service corporation which has only one shareholder need have only one director, who shall be the shareholder. The shareholder shall also serve as the president and treasurer of the service corporation. The other officers of a service corporation described in this subsection need not be licensed, certified or registered in the same field of endeavor as the president.

(2) A service corporation which has only 2 shareholders need have only 2 directors, who shall be the shareholders. The 2 shareholders shall fill all of the general offices of the service corporation between them.

**History:** 1989 a. 303.

**180.1915 Professional relationships and liability.** Except as provided in this section, ss. 180.1901 to 180.1921 do 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 those professional services and who are shareholders, directors, officers or employees in the same service corporation. A shareholder, director, officer or employee of a service corporation is not personally liable for the debts or other contractual obligations of the service corporation nor for the omissions, negligence, wrongful acts, misconduct and malpractice of any person who is not under his or her actual supervision and control in the specific activity in which the omissions, negligence, wrongful acts, misconduct and malpractice occurred. A service corporation may charge for the services of its shareholders, directors, officers, employees or agents, may collect such charges and may compensate those who render such personal services. Nothing in this section shall affect any of the following:

(1) The liability of a service corporation for the omissions, negligence, wrongful acts, misconduct and malpractice of a shareholder, director, officer or employee while the person, on behalf of the service corporation, provides professional services.

(2) The personal liability of a shareholder, director, officer or employee of a service corporation for his or her own omissions, negligence, wrongful acts, misconduct and malpractice and for the omissions, negligence, wrongful acts, misconduct and malpractice of any person acting under his or her actual supervision and control in the specific activity in which the omissions, negligence, wrongful acts, misconduct and malpractice occurred.

**History:** 1989 a. 303; 1993 a. 473; 1995 a. 400.

A service corporation and its shareholders are not jointly and severally liable for the intentional tort of a shareholder that was not committed in the ordinary course of the corporation's business with the authority of the tortfeasor's fellow shareholders or within the tortfeasor's authority in the course of his or her employment. *Anderson v. McBurney*, 160 Wis. 2d 866, 467 N.W.2d 158 (Ct. App. 1991).

**180.1917 Corporate agents.** The relationship of an individual to a service corporation with which the individual is associated, whether as shareholder, director, officer or employee, does not modify or diminish the jurisdiction over him or her of any state

agency that licensed, certified or registered him or her for a particular field of endeavor.

**History:** 1989 a. 303.

**180.1919 Continuity; dissolution; stock transfer or redemption.** (1) (a) A service corporation has perpetual existence until dissolved in accordance with other provisions of this chapter.

(b) 1. Except as provided in subd. 2., if all shareholders of a service corporation cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which the service corporation was organized, the service corporation is converted into and shall operate solely as a business corporation under applicable provisions of this chapter, exclusive of ss. 180.1901 to 180.1921.

2. If not more than 50 percent of the shareholders in a service corporation described in s. 180.1903 (1m) at any one time are not certified public accountants, the service corporation is converted into and shall operate solely as a business corporation under applicable provisions of this chapter, exclusive of ss. 180.1901 to 180.1921.

(2) (a) Within 90 days after a shareholder's date of death or disqualification under s. 180.1911 (2) to own shares in the service corporation, all of the shares of the shareholder shall be transferred to, and acquired by, the service corporation or persons qualified to own the shares. If no other provision to accomplish the transfer and acquisition is in effect and carried out within the 90-day period, the service corporation shall purchase and redeem all of the deceased or disqualified shareholder's shares of the service corporation at the book value of the shares, determined as of the end of the month immediately before death or disqualification.

(b) For purposes of par. (a), the book value is determined from the books and records of the service corporation in accordance with the regular methods of accounting used by the service corporation to determine its net taxable income for federal income tax purposes. A subsequent adjustment of the service corporation's net taxable income, whether by the service corporation, by federal income tax audit made and agreed to, or by a court decision which has become final, does not alter the redemption price.

(c) This section does not prevent the parties involved from making any other arrangement, or providing in the service corporation's articles of incorporation or bylaws or by contract, to transfer the shares of a deceased or disqualified shareholder to the service corporation or to persons qualified to own the shares, whether made before or after the death or disqualification of the shareholder, if all of the shares involved are transferred within the 90-day period under par. (a).

**History:** 1989 a. 303; 2005 a. 215.

**180.1921 Annual report.** (1) A service corporation shall deliver to the department for filing a report in each year following the year in which the service corporation's articles of incorporation were filed by the department, during the calendar year quarter in which the anniversary of the filing occurs.

(2) The report shall show the address of this service corporation's principal office and the name and post-office address of each shareholder, director, and officer of the service corporation and shall certify that, with the exceptions permitted in ss. 180.1903 (1m) and 180.1913, each shareholder, director, and officer is licensed, certified, registered, or otherwise legally authorized to render the same professional or other personal service in this state or is a health care professional. The service corporation shall prepare the report on forms prescribed and furnished by the department, and the report shall contain no fiscal or other information except that expressly called for by this section. The department shall forward report forms by 1st class mail to every service corporation in good standing, at least 60 days before the date on which the service corporation is required by this section to file an annual report.

(3) A report under this section is in lieu of an annual report required by s. 180.1622.

(4) An annual report is effective on the date that it is filed by the department.

**History:** 1989 a. 303; 1991 a. 269; 1993 a. 214, 473, 491; 1995 a. 27; 2001 a. 16, 107.