

CHAPTER 399

AN ACT to repeal 180.02 (11), 180.38 (2) (b), 180.40 (7), 180.45 (1) (g), 180.55 (1) (a), 180.751, 180.759, 180.825 (5) and 180.833 (1) (d); to renumber 180.38 (2) (c) and (e), 180.55 (1) (b) and (c) and 180.825 (3); to renumber and amend 180.02 (12) and (13), 180.05 and 180.38 (2) (d) (intro. par.); to amend 180.02 (3), 180.12 (2) (e), 180.14 (4), 180.16 (3), 180.20 (2), 180.24, 180.25 (2), 180.27, 180.31, 180.32 (2), 180.34, 180.38 (2) (a), 180.38 (3), 180.39 (introductory paragraph), 180.40 (1) (e), 180.43 (1), (3) and (4), 180.48, 180.61 (3), 180.65 (2), 180.68 (1) (b) 2., 180.70 (1), 180.71 (introductory paragraph) and (1), 180.761 (introductory paragraph), 180.771 (1) (a) 3, 180.777, 180.781, 180.791 (1) (a), 180.801 (2), 180.819, 180.821 (2), 180.831 (1) and (2), 180.843 (1) (e), 180.847 (2), 180.87 (1) (h) and (k), 180.91, 180.93, 184.13, (2), 185.18 and 185.20; to repeal and recreate 180.25 (4) and 180.795; and to create 180.02 (13), 180.105, 180.12 (5), 180.32 (3), 180.395, 180.405, 180.407, 180.49 (4), 180.685, 180.70 (3), 180.765 (6), 180.768, 180.771 (1) (a) 4, 180.824, 180.825 (3), 180.845 (4), 180.85, 180.851, 180.861 and 180.895 of the statutes and section 8 (3) and (4) of chapter 731, laws of 1951, relating to divers changes in the Wisconsin business corporation law and to its application.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 180.02 (3) of the statutes is amended to read:

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

SECTION 2. 180.02 (11) of the statutes is repealed.

SECTION 3. 180.02 (12) and (13) of the statutes are renumbered 180.02 (11) and (12), respectively, and amended to read:

180.02 (11) "Earned surplus" means the * * * balance of * * * *the net profits, income, gains and losses of a corporation from the date of incorporation, or from the latest date when a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Profits, income or gains arising from transactions in shares of the corporation, and losses thereon when charged to capital surplus, do not constitute a part of earned surplus.*

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

SECTION 4. 180.02 (13) of the statutes is created to read:

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

SECTION 5. 180.05 of the statutes is renumbered 180.385 and amended to read:

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

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

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

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

2. Such acquisition is authorized by the board of directors and the corporation has unreserved and unrestricted earned surplus equal to the cost of such shares. To the extent that earned surplus is used as the measure of the corporation's right to acquire its own

shares, earned surplus shall be restricted until such restriction is removed by shareholder vote or consent as aforesaid, but such restriction shall be removed without any further corporate action a. to the extent of the consideration subsequently received upon the sale of any such shares or upon the sale of shares of the same class not held in treasury, or b. to the extent that earned surplus is reduced upon the payment of a stock dividend in treasury shares or authorized but unissued shares, or c. to the extent that earned surplus is transferred to stated capital or capital surplus.

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

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

(b) For the purpose of eliminating fractional shares,

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

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

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

SECTION 6. 180.105 of the statutes is created to read:

180.105 RESIGNATION OF REGISTERED AGENT. (1) A registered agent may resign by executing a statement setting forth:

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

(b) The name of the registered agent.

(c) The address, including street and number, if any, of the corporation's then registered office in this state.

(d) That the registered agent resigns.

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

(3) Such statement shall be filed and recorded. At the time of filing, a triplicate shall be delivered to the secretary of state. On receipt from the register of deeds of the certificate showing the recording of the duplicate original of the statement, the secretary of state shall note on the triplicate the date of recording and mail the same to the corporation at its principal place of business as shown by the records in his office.

(4) If no change of registered agent is previously made, the registration shall be effective on the expiration of 60 days after the date of recording the statement, and the office of the resigned registered agent shall then cease to be the registered office of the corporation.

SECTION 7. 180.12 (2) (e) of the statutes is amended to read:

180.12 (2) (e) Convertible * * * into *authorized* shares of any other class or into *authorized* shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

SECTION 8. 180.12 (5) of the statutes is created to read:

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

SECTION 9. 180.14 (4) of the statutes is amended to read:

180.14 (4) That part of the *unreserved earned surplus or net capital* surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares. The consideration for shares issued in exchange for or on conversion of other shares shall be

deemed to be (a) the stated capital then represented by the shares so exchanged or converted, and (b) that part of *unreserved earned surplus or net capital* surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (c) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

SECTION 10. 180.16 (3) of the statutes is amended to read:

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

SECTION 11. 180.20 (2) of the statutes is amended to read:

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

SECTION 12. 180.24 of the statutes is amended to read:

180.24 Written notice stating the place, day and hour of the meeting and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting (unless a different time shall be provided by *this chapter*, the articles of incorporation or the by-laws), either personally or by mail, by or at the direction of the president, the secretary, or other officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock record books or similar records of the corporation, with postage thereon prepaid.

SECTION 13. 180.25 (2) of the statutes is amended to read:

180.25 (2) * * * Shares of its own stock *belonging to* * * * a corporation * * * shall not be voted, directly * * * or indirectly, at any meeting * * * and shall not be counted in determining the total number of outstanding shares at any given time, *but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.*

SECTION 14. 180.25 (4) of the statutes is repealed and recreated to read:

180.25 (4) Shares standing in the name of another corporation, domestic or foreign, may be voted by the president of such corporation, or any other officer or proxy appointed by such president, in the absence of express notice of the designation of some other person by the board of directors or the by-laws of such other corporation.

SECTION 15. 180.27 of the statutes is amended to read:

180.27 Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares * * * by entering into a written voting trust agreement specifying the terms and conditions of the voting trust by depositing a counterpart of the agreement with the corporation at its registered office and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

SECTION 16. 180.31 of the statutes is amended to read:

180.31 Unless otherwise provided in the articles of incorporation or by-laws, the board of directors, by the affirmative vote of a majority * * * of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, or to delegate such authority to an appropriate committee. *The board of directors also shall have authority to provide for or to delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers and employees and to their estates, families, dependents or beneficiaries on account of prior services rendered by such directors, officers and employees to the corporation.*

SECTION 17. 180.32 (2) of the statutes is amended to read:

180.32 (2) At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except as hereinafter provided. Each director shall hold office for the term for which he is elected and until his successor shall have been elected *and qualified if qualification is required.*

SECTION 18. 180.32 (3) of the statutes is created to read:

180.32 (3) A director may be removed from office by affirmative vote of a majority of the outstanding shares entitled to vote for the election of such director, taken at a special meeting of shareholders called for that purpose. Such power of removal may be limited or denied by the articles of incorporation or by-laws.

SECTION 19. 180.34 of the statutes is amended to read:

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

SECTION 20. 180.38 (2) (a) of the statutes is amended to read:

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

SECTION 21. 180.38 (2) (b) of the statutes is repealed.

SECTION 22. 180.38 (2) (c) of the statutes is renumbered 180.38 (2) (b).

SECTION 23. 180.38 (2) (d) of the statutes is renumbered 180.38 (2) (c) and (introductory paragraph) is amended to read:

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

SECTION 24. 180.38 (2) (e) of the statutes is renumbered 180.38 (2) (d).

SECTION 25. 180.38 (3) of the statutes is amended to read:

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

SECTION 26. 180.39 (introductory paragraph) of the statutes is amended to read:

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

SECTION 27. 180.395 of the statutes is created to read:

180.395 UNCLAIMED DIVIDENDS AND DISTRIBUTIONS. (1) If any amount declared by a corporation as a dividend or authorized for distribution in partial or complete liquidation or for payment in redemption of redeemable shares or in satisfaction of scrip or other rights relating to shares, shall remain unclaimed by the shareholder or other person entitled thereto for a period of 6 years from the date authorized for payment thereof, the right of such shareholder or other person to receive such amount will be forfeited upon declaration of forfeiture made by resolution of the board of directors of such corporation, and such right will then be deemed fully satisfied and discharged and any amount set aside therefor will then revert to the corporation. This section shall not apply unless notice of the availability of such amount shall have been given by the corporation to such shareholder or any other person to whom such right was initially issued or who

may be shown by the corporate records to be entitled thereto, which notice may be given at any time subsequent to the declaration or authorization thereof and at least 6 months prior to the effective date of such forfeiture, in substantially the same manner prescribed in this chapter for the giving of notice of shareholders' meetings. This section shall be a defense in any action for such amount against the corporation, its officers, directors, or shareholders.

(2) This section shall be applicable to all such unclaimed amounts, whether declared or authorized for payment prior to or subsequent to the effective date of this section, except that this section shall not authorize the forfeiture prior to January 1, 1954, of any right to any such amount which would not otherwise have been forfeited or barred prior to January 1, 1954.

SECTION 28. 180.40 (1) (e) of the statutes is amended to read:

180.40 (1) (e) If a corporation shall commence business before it has received the * * * *minimum* amount of consideration * * * *required by this chapter* as the amount to be received for shares before it shall commence business, the directors who assent thereto shall be jointly and severally liable to the corporation for the difference between the amount actually received and the amount that should have been received before commencing business, but such liability shall be terminated when the corporation has actually received the total amount of such consideration.

SECTION 29. 180.40 (7) of the statutes is repealed.

SECTION 30. 180.405 of the statutes is created to read:

180.405 SHAREHOLDERS DERIVATIVE ACTIONS. (1) No action may be instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of shares or of voting trust certificates representing shares, of such corporation unless:

(a) The plaintiff alleges in the complaint that he was a registered shareholder or the holder of voting trust certificates at the time of the transaction or any part thereof of which he complains or that his shares or voting trust certificates thereafter devolved upon him by operation of law from a holder who was a holder at the time of the transaction or any part thereof complained of.

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

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

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

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

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

SECTION 31. 180.407 of the statutes is created to read:

180.407 INDEMNIFYING DIRECTORS, OFFICERS AND EMPLOYEES. Any person made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employe of any corporation shall be indemnified by the corporation against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as to matters as to which such director, officer or employe is guilty of negligence or misconduct in the performance of his duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such director, officer or employe may be entitled apart from this section.

SECTION 32. 180.43 (1), (3) and (4) of the statutes are amended to read:

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

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

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

SECTION 33. 180.45 (1) (g) of the statutes is repealed.

SECTION 34. 180.48 of the statutes is amended to read:

180.48 A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until there has been paid in for its shares * * * *consideration of the value of not less than \$500.*

SECTION 34a. 180.49 (4) of the statutes is created to read:

180.49 (4) A majority of the incorporators or the survivors thereof may, in lieu of action by the shareholders, amend the articles of incorporation or voluntarily dissolve the corporation at any time before there has been paid in the minimum amount of consideration required by this chapter to be received before it commences business, by signing, filing and recording articles of amendment or articles of dissolution, as the case may be, which shall include a statement that such minimum amount of consideration has not been paid in, and which shall contain such other variations in the forms of such documents prescribed by this chapter as may be appropriate to the case. Unless such amendment has been authorized by the affirmative vote or the written consent of not less than two-thirds of the shares subscribed for, any subscriber or shareholder who has not voted in favor thereof or consented thereto shall be released from his subscription and shall be entitled to repayment of any consideration paid in for his shares upon application to the corporation within 10 days after notice of such amendment.

SECTION 35. 180.55 (1) (a) of the statutes is repealed.

SECTION 36. 180.55 (1) (b) and (c) are renumbered 180.55 (1) (a) and (b) respectively.

SECTION 37. 180.61 (3) of the statutes is amended to read:

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

SECTION 38. 180.65 (2) of the statutes is amended to read:

180.65 (2) Such articles of merger or consolidation shall be filed in the office of the secretary of state and shall be recorded, within 40 days of such filing, in the offices of the registers of deeds of the counties of this state in which the respective corporations so

consolidating or merging * * * have their * * * *registered offices*, and in the county where the * * * *surviving or new* corporation is to have its registered office.

SECTION 39. 180.68 (1) (b) 2. of the statutes is amended to read:

180.68 (1) (b) 2. An irrevocable appointment of the secretary of state of this state * * * as its agent to accept service of process in any such proceeding; and

SECTION 40. 180.685 of the statutes is created to read:

180.685 MERGER OF SUBSIDIARY INTO PARENT. Unless otherwise provided in the articles of incorporation or by-laws, no approval by shareholders of the surviving domestic corporation shall be required for a merger if at the time of approval of the plan of merger by the board of directors of each of the corporations, domestic or foreign, who are parties thereto, the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic or foreign, who are parties to the merger, and the plan of merger does not provide for any changes in the articles of incorporation of, or the issuance of any shares by, the surviving corporation; and in such case the articles of merger shall contain statements showing compliance with the conditions of this section and, in lieu of statements relating to the vote of shareholders of the surviving corporation, need only state the approval by its board of directors.

SECTION 41. 180.70 (1) of the statutes is amended to read:

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

SECTION 42. 180.70 (3) of the statutes is created to read:

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

SECTION 43. 180.71 (introductory paragraph) and (1) of the statutes are amended to read:

180.71 (introductory paragraph) A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist, in whole or in part, of money or property, real or personal, including shares of any other corporation, *domestic or foreign*, whether or not such other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(1) Written notice of a special meeting, or of the annual meeting of shareholders, stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of the corporation, and in the event sale, lease or exchange is the purpose, or one of the purposes, that any shareholder desiring to be paid the fair value of his shares must file a written objection to the * * * *proposed* sale, lease or exchange at least 48 hours prior to the meeting, shall be given to each shareholder whether or not entitled to vote at such meeting not less than * * * *10 days (unless a different time is provided by the articles of incorporation or the by-laws)* before such meeting * * * *in the case of a proposed mortgage or pledge and not less than 20 days before such meeting in the case of a proposed sale, lease or exchange, in either case* in the manner provided by this chapter for the giving of notice of meetings of shareholders.

SECTION 44. 180.751 of the statutes is repealed.

SECTION 45. 180.759 of the statutes is repealed.

SECTION 46. 180.761 (introductory paragraph) of the statutes is amended to read:

180.761 REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS. (introductory paragraph) * * * A corporation may, at any time prior to the due recording of articles of dissolution, as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

SECTION 47. 180.765 (6) of the statutes is created to read:

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

SECTION 48. 180.768 of the statutes is created to read:

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

SECTION 49. 180.771 (1) (a) 3 of the statutes is amended to read:

180.771 (1) (a) 3. That the corporate assets are being misapplied or wasted * * *;

or

SECTION 50. 180.771 (1) (a) 4 of the statutes is created to read:

180.771 (1) (a) 4. That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least 2 consecutive annual meeting dates, to elect successors to directors whose term has expired or would have expired upon the election and qualification of their successors.

SECTION 51. 180.777 of the statutes is amended to read:

180.777 In proceedings to liquidate the assets and business of a corporation the court shall require all creditors and claimants of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims, and shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed * * * shall be barred, by order of the court, from participating with other creditors and claimants in the distribution of the assets of the corporation in such proceedings.

SECTION 52. 180.781 of the statutes is amended to read:

180.781 DECREE OF DISSOLUTION. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all claims filed and allowed shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses and claims, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. *Such decree shall state the names and respective addresses, including street and number, of the directors of the corporation as of the date of such decree, or if there be no directors at such time, then of its last acting directors.*

SECTION 53. 180.791 (1) (a) of the statutes is amended to read:

180.791 (1) (a) The name of the corporation, the address, including street and number, if any, of its * * * *principal place of business.*

SECTION 54. 180.795 of the statutes is repealed and recreated to read:

180.795 REPORT OF ELECTION OF INITIAL OFFICERS AND DIRECTORS AND OF CHANGES. (1) Within 20 days after the election of the initial principal officers and directors of the corporation, the corporation shall file with the secretary of state a report setting forth the names and addresses of the officers and directors elected, and the address of the principal place of business of the corporation.

(2) Whenever any change is made in the principal officers or directors of a corporation, the corporation shall, within 20 days after such change, file with the secretary of state a report setting forth the names and addresses of all the principal officers or directors, or both if there have been changes in both.

SECTION 55. 180.801 (2) of the statutes is amended to read:

180.801 (2) Any foreign corporation may, without procuring a certificate of authority, loan money in this state and take, acquire, hold and enforce notes, bonds, mortgages or trust deeds given to represent or secure money loaned or for other lawful consideration, and all such notes, bonds, mortgages or trust deeds which shall be taken, acquired or held by any such foreign corporation shall be as enforceable as though it were an individual, including the right to acquire the mortgaged property upon foreclosure, or pursuant to the provisions of the mortgage or trust deed, and to dispose of the same, provided that any such foreign corporation which shall transact such business shall first file with the secretary of state a statement on forms prescribed and furnished by the secretary of state, signed by its president, secretary, treasurer or general manager that it constitutes the secretary of state its attorney for the service of process *in any action or proceeding in respect to any liability arising out of or relating to any business transacted or property acquired, held or disposed of by such foreign corporation within this state*; provided that nothing herein contained shall be construed as authorizing any foreign corporation to transact the business of a bank or trust company. Service of process shall be made as provided in s. 180.825.

SECTION 56. 180.819 of the statutes is amended to read:

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

SECTION 57. 180.821 (2) of the statutes is amended to read:

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

SECTION 58. 180.824 of the statutes is created to read:

180.824 RESIGNATION OF REGISTERED AGENT OF FOREIGN CORPORATION. (1) A registered agent may resign by executing a statement setting forth:

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

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

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

(4) If no change of registered agent is previously made, the resignation shall be effective on the expiration of 60 days after the date of filing the statement, and the office of the resigned registered agent shall then cease to be the registered office of the foreign corporation.

SECTION 58a. 180.825 (5) of the statutes is repealed.

SECTION 59. 180.825 (3) of the statutes is renumbered 180.825 (5).

SECTION 60. 180.825 (3) of the statutes is created to read:

180.825 (3) Service under this section can be made upon a foreign corporation only

in any action or proceeding arising out of or relating to any business transacted or property acquired, held or disposed of by such foreign corporation within this state.

SECTION 61. 180.831 (1) and (2) of the statutes are amended to read:

180.831 (1) A foreign corporation authorized to transact business in this state shall secure an amended certificate of authority in the event it changes its corporate name, amends its articles of incorporation affecting the purposes therein set forth, or desires to increase or decrease the purposes it may pursue in this state * * * from those covered by * * * the certificate of authority in effect, by making application therefor to the secretary of state.

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

SECTION 62. 180.833 (1) (d) of the statutes is repealed.

SECTION 63. 180.843 (1) (c) of the statutes is amended to read:

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

SECTION 64. 180.845 (4) of the statutes is created to read:

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

SECTION 65. 180.847 (2) of the statutes is amended to read:

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

SECTION 66. 180.85 of the statutes is created to read:

180.85 LIMITATION OF LIABILITY ON TRANSFERS. (1) In registering a transfer of its shares, no corporation is bound to inquire into, or shall be liable to any person suffering loss as a result of such registration for failure to inquire into, the power, authority, or capacity of the person making an indorsement of any certificate for such shares or the rightfulness of the transfer by such person, in any of the following cases:

(a) As to an endorsement made by an executor or administrator or a testamentary or other trustee, provided proof is furnished to the corporation that the signer was such executor, administrator or trustee at the date of signing;

(b) As to an indorsement made by a guardian, conservator, receiver or other successor to or custodian of the interest of any person by operation of law, provided proof is furnished to the corporation that the signer had been appointed such guardian, conservator, receiver, successor or custodian by any state or federal court and was such at the date of signing;

(c) As to an indorsement made by a nominee of a fiduciary or other person, where the shares are registered in the name of such nominee;

(d) As to an indorsement made by an incompetent unless the corporation has actual knowledge that the signer is under adjudication of incompetence or is under guardianship;

(e) As to an indorsement made by an infant unless the corporation has actual knowledge that such infant is under guardianship;

(f) As to an indorsement made by the survivor or survivors of 2 or more individuals who are joint tenants or who are named in a registration describing them as joint tenants or with right of survivorship, provided proof is furnished to the corporation that every individual named in such registration and not joining in such indorsement is dead.

(2) In addition to the registration of transfers, the provisions of this section shall

also apply to transactions and indorsements in connection with the exchange, conversion into other shares, purchase, redemption or retirement by the corporation of its shares.

(3) A corporation acting outside this state in connection with the registration, transfer, exchange, conversion into other shares, purchase, redemption, or retirement of its shares, shall have no greater obligation to the holder or owner of any certificate for the shares than one acting within this state.

(4) This section does not relieve any corporation of liability in any case where the corporation has actual knowledge that the person signing the indorsement had no power, authority or capacity to make such indorsement or was acting wrongfully in making such indorsement or in effecting the transaction for which such indorsement is required.

(5) For the purposes of this section:

(a) "Share" includes rights to subscribe for shares, and "certificate" includes transferable warrants issued in registered form representing such rights.

(b) An "indorsement" of a certificate is made when the person specified by the terms of the certificate or by special indorsement to be entitled to the certificate or the successor to or custodian of his interest by operation of law signs on it or on a separate document an assignment or transfer of the certificate or a power to assign or transfer it or when the signature of such person or such successor or custodian is written without more upon the back of the certificate. An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the certificate is to be transferred. Any person in possession of a certificate may convert a blank indorsement into a special indorsement.

(c) A corporation has "actual knowledge" of a matter for a particular transaction from the time when it becomes actually known to the individual conducting the transaction, and in any event from the time when it would have become actually known to him if every other person who acquired knowledge while acting for the corporation had exercised due diligence in transmitting such information to such individual.

(d) The "date of signing" shall, in the absence of actual knowledge by the corporation to the contrary, be deemed to be such date as is shown on the indorsement.

(e) The term "corporation" in this section includes any transfer agent, registrar or other agent acting for a corporation.

SECTION 67. 180.851 of the statutes is created to read:

180.851 CORPORATION DEALING WITH INFANTS OR INCOMPETENTS.

(1) A corporation may treat an infant or incompetent who holds shares or other securities of such corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments and distributions in respect of such shares or securities, to vote or give consent in person or by proxy in respect thereof, and to make elections and exercise rights relating to such shares or securities, unless, as to an infant, the corporation has actual knowledge that such infant is under guardianship, or unless, as to an incompetent, the corporation has actual knowledge that such person is under adjudication of incompetence or is under guardianship.

(2) An infant or incompetent holder of shares or other securities of a corporation, having received or empowered others to receive payments or distributions in respect of such shares or securities, or having voted or given consent in respect thereof, or having made an election or exercised a right relating to any such shares or security, shall have no right thereafter to disaffirm or avoid, as against the corporation, any such act on his part, unless prior to such receipt, vote or consent, the making of such election or the exercise of such right, the corporation, as to an infant, has actual knowledge that such infant is under guardianship, or, as to an incompetent, has actual knowledge that such person is under adjudication of incompetence or is under guardianship.

SECTION 68. 180.861 of the statutes is created to read:

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

SECTION 69. 180.87 (1) (h) and (k) of the statutes are amended to read:

180.87 (1) (h) Filing a statement of change of address of registered office or change of registered agent, or both, or a *statement of resignation of registered agent*, \$5.

(k) Filing an application of a foreign corporation for amended certificate of authority to transact business in this state, \$5, and in case said * * * *application* shows that the corporation employs in this state capital in excess of \$25,000, computed as provided in s. 180.813, an additional fee which with previous payments made on account of capital employed in this state, will amount to \$1 for each \$1,000 of such excess.

SECTION 70. 180.895 of the statutes is created to read:

180.895 WHEN NOTICE NOT REQUIRED. Whenever any notice is required to be

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

SECTION 71. 180.91 of the statutes is amended to read:

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

SECTION 72. 180.93 of the statutes is amended to read:

180.93 If any corporation transacts business with any others than its subscribers and shareholders before the minimum amount of consideration for its shares to be received by the corporation before it shall commence business as * * * *required by this chapter* has actually been paid in, the corporation offending shall have no right of action with respect to any obligation so contracted and the incorporators and the subscribers for stock, shareholders and officers transacting such business or authorizing the same, or consenting to the incurring of any debt or liability, shall be jointly and severally liable upon the same for the difference between the amount actually received and the amount that should have been received before commencing business, but such liability and such disability of the corporation to bring action shall be terminated when the corporation has actually received the total amount of such consideration.

SECTION 73. 184.13 (2) of the statutes is amended to read:

184.13 (2) Neither preferred nor common stock shall bear interest. Certificates of preferred stock and common stock shall state on the face thereof, or on the reverse side of such certificates with an appropriate reference thereto on the face thereof, all privileges accorded to and all restrictions imposed on preferred stock, *except that the form of certificates of stock hereafter issued by any public service corporation which is subject to ch. 180 shall be governed by s. 180.18.* No change or amendment in relation to any such preferred stock theretofore issued shall be made, except by way of amendment to the articles of organization, adopted by the affirmative vote of the holders of two-thirds of all outstanding stock, both preferred and common, at a special meeting called therefor in accordance with the provisions of the articles of incorporation and the by-laws of such corporation. But if authorized by the articles to provide for the issue of preferred stock of any class or classes in series and subject to any restrictions in the articles contained, the board of directors may, without action by the stockholders, change preferred stock of any series owned by the corporation and held in its treasury, to preferred stock of one or more other series of the same class and then or theretofore provided for by the board of directors, as provided in sub. (1) * * *.

SECTION 74. 185.18 of the statutes is amended to read:

185.18 Every association shall annually, on or before * * * *March 31* make a report to the secretary of state; such report shall contain the name of the association, its principal office, and a statement as to its business, amount of capital stock subscribed for and paid in, the authorized rate of dividends on the paid-up capital stock, number of stockholders and latest operating and financial statements. Any association failing to comply with the provisions of this section shall be subject to and governed by the provisions of s. * * * *180.793* insofar as said section relates to the failure of corporations to file reports and the penalty therefor.

SECTION 75. 185.20 of the statutes is amended to read:

185.20 * * * *Ch. 182* shall apply to all associations, except where said general corporation law expressly exempts such associations, or where the provisions of said general corporation law are opposed to or inconsistent with the provisions of this chapter.

SECTION 76. Chapter 731, laws of 1951, section 8 (3) and (4) are created to read:

(Chapter 731, laws of 1951) Section 8. (3) Any amendment to the articles of incorporation of any domestic corporation subject to ch. 182 of the statutes, which amendment would be permissible as to a corporation subject to ch. 180 of the statutes but not permissible as to a corporation subject to said ch. 182, and any restated articles of incorporation, may be adopted by the shareholders prior to the date on which such corporation becomes subject to said ch. 180, provided that the same are adopted in conformity with the procedure provided in ch. 180; but no such amendment or restated articles of incorporation shall become effective until such corporation shall have become subject to said ch. 180. The secretary of state may decline to file such amendment or restated articles of incorporation prior to the date on which they are permitted to become effective hereunder unless the document tendered for filing expressly provides for deferral of the effective date thereof consistently with this subsection. This subsection shall apply to all such amendments to articles of incorporation or restated articles of incorporation whether adopted prior to or after the effective date of this subsection.

(4) All corporations whose corporate rights have been forfeited under s. 182.008, of the statutes, shall be considered as in bad standing and may be restored to good standing in the manner provided by s. 180.793 (4) of the statutes.

Approved July 2, 1953.
