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1983 Assembly Bill 433

Date of enactment: **April 23, 1984**
Date of publication: **April 30, 1984**

1983 Wisconsin Act 340

AN ACT *to amend* 180.72 (1); and *to create* 180.771 (1) (f) and 180.995 of the statutes, *relating to* statutory close corporations.

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

PREFATORY NOTE: This bill, developed by the legislative council's special committee on close corporations, creates new statutory provisions to accommodate the special needs of closely held corporations within ch. 180 of the statutes, "the Wisconsin business corporation law". Under the bill, a "close

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corporation" is defined as any business corporation with 50 or fewer shareholders which has expressly elected in its articles of incorporation to become a statutory close corporation. The provisions in the draft would only apply to corporations expressly electing to be treated as a statutory close corporation.

The need to establish separate statutory provisions to govern the operations of closely held corporations, which tend to be small and run by only a few shareholders (often family members), has been recognized for some time. As a result, at least 16 states (beginning with New York in 1948) have adopted various laws designed specifically for close corporations. These close corporation statutes are generally intended to give the shareholders of a closely held corporation flexibility to vary the normal corporate rules to meet their particular business and personal needs. In large measure, they are based on the assumption that without special recognition the courts would require small businesses to strictly conform to the statutory norms and requirements that apply to the large corporate model.

The bill is patterned after the close corporation supplement to the model business corporation act, as developed by the American bar association (ABA) committee on corporate laws. The supplement, recently given final approval by the ABA, has not been adopted by any other state to date.

Four interrelated principles were used in drafting the supplement and are reflected in the proposed Wisconsin statute:

1. The need for a flexible, useful statutory framework;

2. The desirability of having adequate basic protection against oppression of minority shareholders;

3. The desirability of codifying some of the customary practices used by experienced practitioners to achieve the objectives and expectations of investors in close corporations; and

4. The necessity of integrating the special close corporation statutory provisions with all other statutory provisions governing business corporations.

Briefly, the bill creates new s. 180.995 of the statutes which includes the following types of provisions relating to the creation, organization and operation of statutory close corporations:

1. General applicability provisions and provisions relating to the election and termination of close corporation status;

2. Statutory restrictions on the transfer of shares;

3. Requirements for proper notice to outsiders of close corporation status;

4. Provisions relating to shareholder approval of mergers, consolidations, the sale of assets and the exchange of shares;

5. Shareholder voting requirements and restrictions, including the authorization of "supermajority" voting requirements;

6. Restrictions on electing directors, including election to operate without a board of directors;

7. Statutory provisions and restrictions on shareholder agreements, proxy voting and consideration for the issuance of shares;

8. Options available upon the death of a shareholder and shareholder options regarding dissolution of a corporation;

9. Shareholder rights and remedies and judicial authority to grant relief; and

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10. Other provisions limiting personal liability for the informal operation of close corporations and authorizing a single individual to hold multiple offices and conduct corporate business.

These provisions are described in greater detail in the SECTION NOTES located throughout the bill.

SECTION 1. 180.72 (1) of the statutes is amended to read:

180.72 (1) Any shareholder of a corporation shall have the right to file with the corporation a written objection, at least 48 hours prior to the meeting of shareholders at which any of the following corporate actions are proposed to be voted upon: a) Any plan of merger or consolidation to which the corporation is a party; or b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash, with or without an assumption of liabilities of the seller, on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale. A shareholder may object as to less than all of the shares registered in his name; and in that event, his rights shall be determined as if the shares as to which he has objected and his other shares were registered in the names of different shareholders. A shareholder in a statutory close corporation formed under s. 180.995 need not file a written objection prior to a meeting of shareholders or the corporate action in order to preserve his or her right to receive the fair value of his or her shares. This subsection shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger. Nor shall it apply to the holders of shares of any class or series if the shares of such class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide.

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

SECTION 2. 180.771 (1) (f) of the statutes is created to read:

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

NOTE: This SECTION amends the general corporation statute relating to the jurisdiction of the circuit court to liquidate the assets and business of a corporation. This new SECTION grants the circuit court the power to liquidate the assets and business of a corporation when entering an order of dissolution under newly created s. 180.995, relating to statutory close corporations.

SECTION 3. 180.995 of the statutes is created to read:

180.995 Statutory close corporations. (1) APPLICABILITY. (a) This section applies to a corporation if its articles of incorporation state that the corporation is a close corporation under this section.

(b) Except as provided in par. (c), if an election is made to be a statutory close corporation this section controls in the event of conflict with other sections of the statutes.

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(c) A service corporation organized under s. 180.99 electing to be a statutory close corporation is subject to s. 180.99 in the event of conflict with this section.

NOTE: Section 180.995 (1) is derived from SECTIONS 2 and 3 of the proposed American Bar Association (ABA) statutory close corporation supplement to the model business corporation act (supplement). SECTION 1 of the supplement designating the act as the "model statutory close corporation act" has not been included; however, the title of the section is designated "statutory close corporations". The bill in this subsection also differs from the supplement in the following respects:

1. The provision in the supplement contained in SECTION 2 (a) is stated positively in s. 180.995 (1) (b).

2. SECTION 2 (b) of the supplement is included but as a permissive rather than mandatory section.

3. SECTION 2 (c), relating to repealing or modifying rules or laws applicable to corporations, is not included in the bill as it appears the provision is unnecessary.

4. The subsection also incorporates the provisions of SECTION 3 of the supplement. SECTION 3 (a) of the supplement is reworded in terms of applicability, rather than words of definition. The supplement provides that a statutory close corporation "is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation".

Paragraph (b) provides that except for a service corporation if an election is made to come under par. (a), the close corporation section controls in the event of any conflict with other sections of the statutes, including the general corporate law provisions in ch. 180.

Paragraph (c) provides a service corporation the option of utilizing the close corporation provisions in the section, but expressly indicates that in case of conflict, the service corporation statutes in s. 180.99 control.

(2) ELECTION. A corporation organized under this chapter and having 50 or fewer shareholders at the time of election may become a statutory close corporation by amending its articles of incorporation to include the statement required under sub. (1). The amendment shall be approved by the holders of at least two-thirds of the shares of each class of shares of the corporation whether or not otherwise entitled to vote. If the amendment is approved, a shareholder who did not vote in favor of the amendment is entitled to receive the fair value of his or her shares under s. 180.72.

NOTE: Section 180.995 (2) is derived from SECTION 3 (b) of the supplement. This provision allows a corporation which is organized under ch. 180 and which has 50 or fewer shareholders at the time of election to become a statutory close corporation by adopting an amendment to its articles of incorporation to include a statement that it is a statutory close corporation. This amendment must be approved by the holders of at least two-thirds of the shares of each class of shares of the corporation whether or not they are otherwise entitled to vote. The subsection also provides that if the amendment is approved any shareholder who did not vote in favor of the amendment is entitled to receive the fair value of his or her shares in accordance with the general corporation law's provision regulating the rights of dissenting shareholders in s. 180.72.

(3) SHARE TRANSFER RESTRICTIONS. (a) Except as provided in this subsection or as otherwise provided in the articles of incorporation, no interest in shares of a statutory close corporation may be transferred.

(b) This subsection does not apply to a transfer:

1. To the corporation or to any other holder of the same class of shares.

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2. To members of the holder's immediate family, or to a trust, all of whose beneficiaries are members of the holder's immediate family. A holder's immediate family shall include only his or her spouse, parents, lineal descendants including any adopted children and stepchildren and the spouse of any lineal descendants, and brothers and sisters.

3. Consented to in writing by all of the holders of the corporation's common shares having voting rights.

4. To a personal representative on the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution or similar proceeding brought by or against a shareholder.

5. By merger, consolidation or share exchange that becomes effective under ss. 180.62 to 180.685 or a share exchange of existing shares for other shares of a different class or series in the corporation.

6. By a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

7. Made after termination of the corporation's status as a statutory close corporation.

(c) Any person desiring to transfer shares in a transaction not exempt under par. (b) shall obtain an offer from a 3rd party to purchase the shares for cash and shall deliver written notice of the 3rd-party offer to the corporation's registered office stating the number and kind of shares, the offering price, the other terms of the offer and the name and address of the 3rd-party offeror. No transfer may be made to a 3rd party unless all of the following conditions are met:

1. The 3rd party is eligible to become a qualified shareholder under any federal or state tax statute that the corporation has elected to be subject to and the 3rd party agrees in writing not to take any action to terminate the election without the approval of the remaining shareholders.

2. The transfer to the 3rd party will not result in the imposition of a personal holding company tax on the corporation under 26 USC 541 or any similar state or federal penalty tax.

(d) The notice under par. (c) constitutes an offer to sell the shares to the corporation on the terms of the 3rd-party offer. Within 20 days after the corporation receives the notice, the president shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to purchase all, but not less than all, of the offered shares. Approval of action to purchase shall be by affirmative vote of the holders of a majority of the shares entitled to vote, excluding the offered shares. With the consent of all of the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders or to other persons, but if the corporation has more than one class of shares the remaining holders of the class of shares being offered for sale shall have a first option to purchase the shares that are not purchased by the corporation in proportion to their shareholdings or in such proportion as shall be agreeable to those desiring to participate in the purchase.

(e) Written notice of the acceptance of the shareholder's offer shall be delivered or sent to the offering shareholder at the address specified in the notice, or, in the absence of any specification, at his or her last-known address as reflected in the records of the corporation, within 75 days after receipt of the shareholder's offer. Notice sent by mail is timely if deposited in the mail before midnight of the 75th day following the day the offer from the shareholder was received by the corporation. If the notice contains terms of purchase different from those contained in the shareholder's notice, the different terms constitute a counteroffer and unless the shareholder wishing to transfer his or her stock accepts in writing the counteroffer, or the shareholder and the purchaser otherwise resolve by written agreement the differences between the offer and counteroffer within 15

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days after receipt by the shareholder of the notice of acceptance, the notice containing the counteroffer is ineffective as an acceptance.

(f) If a contract to sell is created under par. (e), the shareholder shall deliver all of the certificates for the stock sold, duly endorsed, within 20 days after receipt of the notice of acceptance. Breach of any of the terms of the contract entitles the nonbreaching party to specific performance or any other remedy at law or equity for breach of a contract.

(g) If the offer to sell is not accepted under pars. (d) and (e), the shareholder may transfer to the 3rd-party offeror all, but not less than all, of the offered shares within 120 days after delivery of the notice under par. (c), in accordance with its terms.

NOTE: Section 180.995 (3) is derived from SECTION 4 of the supplement. It establishes a standardized set of transfer restrictions which will *automatically apply* unless the articles of incorporation otherwise provide. A general rule is established — that no interest in shares of a statutory close corporation may be transferred. Exceptions are made to this general rule in s. 180.995 (3) (b), which contains the same exceptions found in SECTION 4 (b) of the supplement.

Section 180.995 (3) (c) provides a mechanism for the transfer of shares in situations where there is not a specific exemption. Under this paragraph, a person desiring to transfer shares must obtain an offer to purchase the shares *for cash* from a 3rd party who meets certain specified requirements. The owner then must deliver written notice of this 3rd-party offer to the registered office of the corporation. The notice must set forth the number and kind of shares, the offering price and the other terms of the offer, along with the name and address of the 3rd party. This provision is the same as SECTION 4 (c) of the supplement. The bill provides in s. 180.995 (3) (c) 1 that a transfer may not be made to a 3rd party unless that 3rd party is eligible to become a qualified stockholder under applicable federal or state tax statutes that the corporation has elected to become subject to. Further, the 3rd party must agree, in writing, not to take any action to terminate the election without the approval of the remaining shareholders. In addition, transfers to the 3rd party must not result in the imposition of the federal personal holding company tax or any similar state or federal penalty tax on the corporation. The bill differs from the supplement in that no direct reference is made to a state personal holding company tax since Wisconsin presently has no such specific tax.

Under s. 180.995 (3) (d), the notice to the corporation is considered to be an "offer" to sell the shares to the corporation on the terms made by the 3rd-party offer. The corporation has 20 days from the date of receipt of this notice to call a special meeting, which then must be held not more than 40 days after the call, to determine whether to purchase all, but not less than all, of the offered shares. Approval to purchase must be by an affirmative vote of the holders of a *majority* of the shares entitled to vote, excluding the offered shares. In addition, if there is unanimous consent, the corporation is authorized to allocate some or all of the shares in question to one or more shareholders or to other persons. Provision is also made in par. (d) to protect the proportional interests of shareholders within each class of shares being offered for sale, by offering to them a first option to proportionately purchase those shares.

Under s. 180.995 (3) (e), the corporation must act to accept the shareholders' offer within 75 days of receipt of that offer. If the corporation proposes terms of purchase different from those contained in the initial notice, those terms are deemed to be a counteroffer. Unless the shareholder wishing to transfer his or her stock accepts the counteroffer in writing, or there is a subsequent (and different) agreement within 15 days after receipt by the shareholder, the counteroffer is ineffective as an acceptance.

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Section 180.995 (3) (f) requires that where a contract to sell is created the shareholder must deliver all stock certificates within 20 days after receipt of the notice of acceptance.

Section 180.995 (3) (g) provides that if the offer to sell is not accepted by the corporation, the shareholder is entitled to transfer to the 3rd-party offeror all, but not less than all, of the offered shares. The transfer must be made within 120 days after delivery of the shareholder's original notice and in accordance with the terms specified in the notice.

(4) NOTICE OF STATUTORY CLOSE CORPORATION STATUS. (a) The following notice shall be noted conspicuously on each share certificate issued by a statutory close corporation: "The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, or other documents, which may restrict transfers and affect voting and other rights, may be obtained without charge by a shareholder on written request to the corporation."

(b) All persons claiming an interest in shares of a statutory close corporation complying with the notice requirement of this subsection are bound by the documents referred to in the notice. All persons claiming an interest in shares of a statutory close corporation not complying with the requirement of this subsection are bound by any documents of which they, or any person through whom they claim, have knowledge or notice.

NOTE: Section 180.995 (4) is derived from SECTION 5 of the supplement. The supplement has been modified in the following respects:

1. The required statement permits a shareholder to obtain certain documents *without charge* upon written request to the corporation. The supplement does not include the express language with regard to the ability to obtain the documents without charge.

2. The supplement's statement that providing the required notice satisfies all requirements of the act and the general corporation law that notice of restrictions be given has not been included.

3. The supplement's provisions relating to notice after the issuance of uncertificated shares has been deleted as uncertificated shares are not permitted under Wisconsin law.

Section 180.995 (4) (a) requires that a specific statement be noted conspicuously on each share certificate issued by a statutory close corporation.

The provisions in par. (b) are for the purpose of binding 3rd parties who were not signatories to the original agreements restricting the ability of shareholders to transfer the shares.

(5) TRANSFER OF SHARES IN BREACH OF TRANSFER RESTRICTIONS. (a) Any attempted transfer of shares in a statutory close corporation in violation of any transfer restriction binding on the transferee shall be ineffective.

(b) Any attempted transfer of shares in a statutory close corporation in violation of any transfer restriction not binding on the transferee, either because the notice required by sub. (4) has not been given or because the restriction prohibiting the transfer is held by court order to be unenforceable, shall give the corporation the option, exercisable by notice and payment within 75 days after presentation of the shares for registration in the name of the transferee, to purchase the shares from the transferee for the same price and terms.

NOTE: This subsection is derived from SECTION 6 of the supplement. The subsection provides additional protection for the effectiveness of the transfer restrictions applicable to the shares of a statutory close corporation. If the required notice of the restrictions has not been given and the transferee does

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not have actual notice of the restrictions, then the corporation is given a 75-day option to purchase the stock. If the corporation exercises its option, the proposed transferee may pursue a breach of warranty claim against the transferor or any other appropriate remedy.

This subsection also gives the corporation an option to purchase shares attempted to be transferred in violation of a transfer restriction that has been found to be void by order of a court.

Section 180.995 (5) is derived from SECTION 6 of the supplement. Section 180.995 (5) provides that any attempted transfer of shares in a statutory close corporation in violation of any transfer restriction is *ineffective* if the restriction is binding on the persons attempting to make the transfer. It also provides that where an attempted transfer is made in violation of any transfer restriction which is not binding on the transferee (i.e., because the transferee does not have notice of its existence or the transfer restriction is found unenforceable by a court), the corporation is given the option, exercisable by notice and payment within 75 days, to purchase the shares from that transferee for the same price and terms. The supplement provides only a 30-day option period.

Inclusion of this provision gives additional force and effect to the restrictions on transfers created by sub. (3).

(6) MERGERS, CONSOLIDATIONS, SHARE EXCHANGES AND SALE OF ASSETS. (a) Approval of any plan of merger, consolidation or exchange of shares:

1. That will terminate the status of the corporation as a statutory close corporation requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares of the statutory close corporation, whether or not otherwise entitled to vote.

2. Under which the new or surviving corporation will be a statutory close corporation requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares of the corporation that is not a statutory close corporation, whether or not otherwise entitled to vote.

(b) If a plan to merge, consolidate or exchange shares is approved, any shareholder who does not vote in favor of the plan shall be entitled to receive the fair value of his or her shares under s. 180.72.

(c) A sale, lease, exchange or other disposition of all, or substantially all, of the property and assets, with or without the goodwill, of a statutory close corporation, if not made in the usual and regular course of its business, requires the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote. Any shareholder who does not vote in favor of a disposition under this paragraph shall be entitled to receive the fair value of his or her shares under s. 180.72.

NOTE: Section 180.995 (6) is derived from SECTION 7 of the supplement. The subsection provides that an affirmative vote of at least two-thirds of the outstanding shares of each class of shares of a statutory close corporation is required to approve any plan of merger, consolidation or exchange of shares which would have the effect of *terminating* the close corporation status of the corporation. Also, under s. 180.995 (6) (a) 2, if the new or surviving corporation will be operated as a statutory close corporation following merger, consolidation or share exchange, at least two-thirds of the shares of the predecessor corporation which is not a close corporation must vote affirmatively for close corporation status. Subsection (6) also states that a sale or other disposition of all or substantially all of the property and assets of a statutory close corporation, if not made in the usual and regular course of its business, requires the

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affirmative vote of at least two-thirds of the outstanding shares of each class of shares of the corporation, whether or not otherwise entitled to vote.

Shareholders who *do not vote in favor* of a plan to merge, consolidate or exchange shares under s. 180.995 (6) (b) are given the right to receive the fair value of their shares under s. 180.72. Also, dissenter's rights are given to shareholders who do not vote in favor of a disposition under s. 180.995 (6) (c). The intent of the provisions is to allow dissenter's rights to shareholders who do not support actions by the close corporation. Shareholders are *not* required to comply with the prior notification procedures of s. 180.72, in order to preserve their right to obtain the fair value of their shares under this or other subsections.

(7) TERMINATION OF STATUTORY CLOSE CORPORATION STATUS. (a) A statutory close corporation ceases to be subject to this section upon the effectiveness of articles of amendment deleting from its articles of incorporation the statement that it is a statutory close corporation and, if the corporation has elected under sub. (9) not to have a board of directors, deleting the statement in the articles to that effect and specifying the number, names and addresses of its directors. The amendment shall be approved by the affirmative vote of the holders of at least two-thirds of the shares of each class of shares of the corporation, whether or not otherwise entitled to vote.

(b) If the amendment to terminate the corporation's status as a statutory close corporation is approved, any shareholder who does not vote in favor of the amendment shall be entitled to receive the fair value of his or her shares under s. 180.72.

NOTE: Section 180.995 (7) is derived from SECTION 8 of the supplement.

Section 180.995 (7) and (8) addresses issues that arise when a corporation no longer wishes to continue operating as a statutory close corporation.

Statutory close corporation status may be terminated by shareholder approval of a resolution which amends the articles of incorporation to *delete* the special designation required in s. 180.995 (1). Approval must be by the same two-thirds vote that was necessary to elect close corporation status initially. Shareholders who do not vote in favor of termination are granted a right by this subsection to obtain the fair value of their shares, in accordance with the dissenting shareholders law, s. 180.72. The prior notice requirements under s. 180.72 do not apply. [See NOTE to s. 180.995 (6).]

(8) EFFECT OF TERMINATION OF STATUTORY CLOSE CORPORATION STATUS. (a) The termination of statutory close corporation status does not affect the rights of any shareholder or the corporation under an agreement or the corporation's articles of incorporation, except to the extent that the agreement or the articles are invalid under this chapter.

(b) The corporation shall adopt bylaws if it has no bylaws on termination of statutory close corporation status.

NOTE: Section 180.995 (8) is derived from SECTION 9 of the supplement. In conjunction with s. 180.995 (7), this subsection addresses the basic issues which arise when a corporation terminates its statutory close corporation status. Section 180.995 (8) (a) contains a blanket provision to protect the rights of any shareholder or the corporation under an agreement or the articles of incorporation unless either are held to be invalid. Section 180.995 (8) (b) requires that the corporation must adopt bylaws if no bylaws exist upon termination of statutory close corporation status.

(9) CONSIDERATION FOR SHARES. (a) The consideration for the issuance of shares of a statutory close corporation may be, in whole or in part, money, other property, tangible or intangible, or labor or services actually performed or to be performed for the corporation, or a promissory note or other obligation to transfer money or property to the cor-

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poration. When the consideration for which shares are to be issued is received by the corporation, the shares shall be nonassessable.

(b) Any compromise or forgiveness of any note or other obligation to transfer money or other property to a statutory close corporation in payment for shares is valid only if approved by all of the shareholders of the corporation, unless the articles of incorporation or any final judgment in a proceeding brought to enforce the obligation provides otherwise.

(c) In the absence of fraud, the judgment of the persons responsible for the issuance of shares as to the value of the consideration received for shares is conclusive.

NOTE: This subsection is not derived from the final version of the supplement, but instead is derived from an earlier draft of the supplement. The provisions in s. 180.995 (9) authorize consideration for shares to consist of money, other property, labor or services actually performed or to be performed in the future or a promissory note or other obligation to transfer money or property to the corporation. The subsection is intended to provide some additional statutory authority for close corporations to arrange for consideration for shares to be in a form other than cash. Apparently, the section was not included in the final version of the ABA supplement because it is to be included in the ABA's revision to the model business corporation act.

(10) CUMULATIVE VOTING FOR DIRECTORS. (a) Shareholders in a statutory close corporation do not have a right to cumulate their votes for director unless the articles of incorporation provide for cumulative voting.

(b) The right to cumulate votes entitles any designated shareholders to multiply the number of votes they are entitled to cast by the number of directors they are entitled to elect and cast the total for a single candidate or distribute the total among 2 or more candidates.

(c) Cumulative voting is not authorized at any meeting unless at least one of the following conditions is met:

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

2. Shares were voted cumulatively in the last election of directors.

3. A shareholder gives notice of his or her intent to cumulate his or her votes before the vote is taken during a meeting, and if one shareholder gives this notice, all other shareholders participating in the election are entitled to cumulate their votes without further notice.

NOTE: Section 180.995 (10) is not derived from the supplement but is derived from proposed s. 7.28 of the revised model business corporation act (dated March 1983). The present model business corporation act authorizes cumulative voting for directors under SECTION 33, paragraph 4. The bill authorizes statutory close corporations to permit cumulative voting for directors if a statement to that effect is included in the articles of incorporation. Section 180.995 (10) (b) describes the use of cumulative votes and s. 180.995 (10) (c) sets forth certain restrictions on the use of cumulative voting. It should be noted that according to an attorney general's opinion, cumulative voting is not permitted in Wisconsin corporations [18 OAG 429 (1929)]. This subsection is intended to provide the necessary statutory authority to enable a statutory close corporation to use cumulative voting for directors.

(11) ELECTION NOT TO HAVE A BOARD OF DIRECTORS. (a) A statutory close corporation may operate without a board of directors if the articles of incorporation contain a statement to that effect. While this statement is effective:

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1. All corporate powers shall be exercised by, or under authority of, and the business and affairs of the corporation shall be managed under the direction of, the shareholders of the corporation and all powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed by the shareholders.

2. No liability that would otherwise be imposed on the directors may be imposed on a shareholder by virtue of any act or failure to act unless the shareholder was entitled to vote on the action.

3. Any requirement that an instrument filed with any governmental agency contain a statement that a specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation having no board of directors and that the action was duly approved by the shareholders.

4. The shareholders, by resolution, may appoint one or more shareholders to sign any documents as "Designated Directors".

5. Except as provided in the articles of incorporation, any action requiring director approval or both director and shareholder approval may be authorized by shareholder approval and any action requiring a vote of a majority or greater percentage of the board of directors requires the affirmative vote of the holders of a majority, or such greater percentage, of the shares entitled to vote.

(b) An amendment to the articles of incorporation to operate without a board of directors shall be approved by the holders of all of the shares of the corporation whether or not otherwise entitled to vote, or all of the subscribers to the shares, or the incorporators, as the case may be. An amendment to the articles of incorporation to delete the election shall be approved by the affirmative vote of the holders of at least two-thirds of each class of the shares of the corporation whether or not otherwise entitled to vote.

NOTE: Section 180.995 (11) is derived from SECTION 10 of the supplement. It authorizes a statutory close corporation to elect not to have a board of directors by including a statement to that effect in its articles of incorporation. The subsection also sets out the legal effects of electing to operate without a board of directors. For example, the shareholders of a statutory close corporation operating without a board of directors will have the legal liability imposed by law on directors for managing the business and affairs of the corporation. The shareholders must also undertake the usual obligations imposed on directors.

Section 180.995 (11) (a) 4 authorizes the shareholders, by resolution, to appoint one or more shareholders to sign any documents as "Designated Directors".

Under s. 180.995 (11) (b), the election not to have a board of directors must be made by *unanimous* vote, but the election may be terminated by a *two-thirds* vote of all shares.

(12) AGREEMENTS AMONG SHAREHOLDERS. (a) The shareholders of a statutory close corporation may, by unanimous action, enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation. Except as otherwise provided in an agreement authorized by this subsection, the terms of the agreement are binding on all successors in interest.

(b) Any agreement authorized by this subsection is valid and enforceable according to its terms notwithstanding the elimination of a board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as if it were a partnership or that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.

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(c) If the corporation has a board of directors, the effect of an agreement authorized by this subsection restricting the discretionary powers of the directors is to relieve the directors of, and to impose upon the person or persons in whom such discretion or powers are vested, the liability for acts or omissions imposed by law upon directors to the extent that the discretion or powers of the directors are controlled by the agreement.

(d) An election not to have a board of directors in an agreement authorized by this subsection is not valid unless the articles of incorporation contain a statement to that effect adopted under sub. (11).

(e) A shareholder agreement authorized by this subsection may not be amended except by the unanimous written consent of the shareholders, unless otherwise provided in the agreement.

(f) Any action permitted by this subsection to be taken by shareholders may be taken by the subscribers to shares of the corporation if no shares have been issued at the time of the agreement authorized by this subsection.

(g) This subsection does not prohibit any other agreement among 2 or more shareholders.

NOTE: Section 180.995 (12) is derived from SECTION 11 of the supplement. It authorizes the shareholders of a statutory close corporation, by unanimous action, to enter into one or more written agreements to regulate the business of the corporation and their relationship with one another. Section 180.995 (12) (b) gives express protection to shareholder agreements that have the effect of allowing operation of a corporation as a partnership.

A listing of *examples* of the types of provisions which may be included in a shareholders' agreement are included in the ABA comment to the section and not in the text of the supplement. The special committee recommended that this list be incorporated into the SECTION NOTE as examples of the possible subjects of shareholder agreements. These examples of shareholder agreement subjects, specified without limitation, are as follows:

a. The management of the business and affairs of the corporation by the shareholders or by 3rd parties selected by the shareholders;

b. The right of one or more shareholders to dissolve the corporation at will or upon the occurrence of a specified event or contingency;

c. The exercise or division of voting power by the shareholders and directors, and the use of director as well as shareholder proxies;

d. The terms and conditions of employment of any officer and employe of the corporation;

e. The persons who shall be directors and officers of the corporation;

f. The payment of dividends or division of profits; and

g. The arbitration of issues where deadlock exists, or arbitration of any issue of disagreement between shareholders.

Section 180.995 (12) (e) provides that a shareholder agreement under the subsection cannot be amended without unanimous consent of the shareholders, unless the agreement provides otherwise. Section 180.995 (12) (f) permits subscribers to shares of a corporation to take any action permitted by the subsection if no shares have been issued at the time of the agreement.

If an agreement specifies that the corporation will have no board of directors, the bill provides that the articles of incorporation must include appropriate language indicating these conditions.

Also, s. 180.995 (12) (g) provides that the subsection does not prohibit any *other* agreement among 2 or more shareholders.

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(13) IRREVOCABLE PROXIES. (a) A shareholder in a statutory close corporation may execute a proxy which is irrevocable for the period specified in the proxy when it is held by any of the following or a nominee of any of the following:

1. A pledgee of shares.

2. A person who has purchased or agreed to purchase or holds an option to purchase the shares or a person who has sold a portion of the person's shares in the corporation to the maker of the proxy.

3. A creditor of the corporation or the shareholder who extended or continued credit to the corporation or the shareholder in consideration of the proxy if the proxy states that it was given in consideration of the extension or continuation of credit and the name of the person extending or continuing credit.

4. A person who has contracted to perform services as an employe of the corporation, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employe and the period of employment contracted for.

5. A person, including an arbitrator, designated by or under a shareholders' agreement authorized by sub. (12).

(b) Regardless of the period of irrevocability specified in a proxy executed under par. (a), the proxy becomes revocable when the pledge is redeemed, the option or agreement to purchase is terminated or the seller no longer owns any shares of the corporation or dies, the debt of the corporation or the shareholder is paid, the period of employment provided for in the contract of employment has terminated or the shareholders' agreement has terminated.

(c) In addition to par. (a), a proxy given to secure the performance of a duty or to protect a title, either legal or equitable, may be irrevocable until the happening of events which, under the terms of the proxy agreement, discharge the obligations secured by it.

(d) A proxy may be revoked, regardless of a provision making it irrevocable, by a purchaser of shares without actual knowledge of the existence of the provision, unless the existence of the proxy and its irrevocability appears on the certificate representing the shares.

NOTE: This subsection is not derived from the supplement. The provision, which is based on SEC. 705 (3) of the California corporation code, authorizes a statutory close corporation to use irrevocable proxies. Under the subsection, 3rd parties are not bound by the proxy in the absence of actual knowledge unless notice of the proxy and its irrevocability is contained on the share certificate.

In general, the subsection authorizes an irrevocable proxy when it is given to secure the performance of a duty or to protect a title until events which discharge the duty or obligation have occurred. The subsection is not intended to limit or affect the authority to utilize proxies under the provisions of ch. 180 governing general corporations.

Subsection 180.995 (13) (a) sets out 5 instances where an irrevocable proxy may be executed. Paragraph (b) provides for the revocation of a proxy. Paragraph (c) also permits a proxy to be irrevocable even though not given for one of the purposes listed in par. (a) 1 to 5. Such a proxy can be given to secure the performance of a duty or to protect a title until the occurrence of an event that discharges the obligation.

(14) BYLAWS. Provisions otherwise required by law to be stated in corporate bylaws may be stated with equal effect in the articles of incorporation of a statutory close corporation or in an agreement authorized under sub. (12).

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NOTE: Section 180.995 (14) is derived from SECTION 12 of the supplement. It permits the inclusion of items that are required by law to be stated in corporate bylaws to be contained with "equal effect" in either the articles of incorporation or in a shareholders' agreement.

(15) ANNUAL MEETING. A statutory close corporation may establish in its articles of incorporation or bylaws, or in an agreement authorized under sub. (12), a date at which an annual meeting of shareholders shall be held, if called, and, if not so established, the date shall be the first business day after May 31. Except as provided in the articles of incorporation, no annual meeting need be held unless a written request is delivered to the corporation by any shareholder not less than 30 days before the established date for the meeting.

NOTE: Section 180.995 (15) is derived from SECTION 13 of the supplement.

Section 180.995 (15) provides that the corporation may establish a date for an annual shareholders' meeting in the articles of incorporation bylaws or in a shareholders' agreement. If no date is set, the statute provides that the date of the annual meeting will be the first business day after May 31. However, the statute also provides that unless a provision to the contrary is included in the articles of incorporation, the corporation need *not* hold an annual meeting unless a written request for such a meeting is delivered to the corporation by a shareholder not less than 30 days before the established date for the meeting.

(16) SHAREHOLDER SALE OPTION AT DEATH. (a) If the articles of incorporation of a statutory close corporation make this subsection applicable to the corporation in whole or modified form, a deceased shareholder's personal representative may, subject to the shareholder's will, require the corporation to elect one of the following:

1. To purchase or cause the purchase of, under pars. (d) to (f), all, but not less than all, of the shares of the deceased shareholder.

2. Dissolution of the corporation.

(b) A modification of this subsection is valid if it is stated in the articles of incorporation.

(c) An amendment to the articles of incorporation to provide that this subsection shall apply or to delete or modify the provisions of this subsection shall be approved by the holders of at least two-thirds of each class of shares of the corporation whether or not otherwise entitled to vote, or, if the corporation has no shareholders at the time of the amendment, by two-thirds of all of the subscribers or all of the incorporators, as the case may be. Any shareholder who does not vote in favor of an amendment to delete or modify the provisions of this subsection shall, if the amendment terminates or substantially alters the existing rights of the shareholder under this subsection to have his or her shares purchased, be entitled to receive the fair value of his or her shares under s. 180.72.

(d) A person exercising rights under this subsection shall, within 6 months after the death of the beneficial owner of shares, deliver a written notice to the corporation's registered office specifying the number and class of all shares beneficially owned by the deceased shareholder and stating that an offer by the corporation to purchase the shares is being solicited under this subsection. Within 20 days after receipt of the notice, the president of the corporation shall call a special meeting of shareholders, which shall be held not more than 40 days after the call, for the purpose of determining whether to offer to purchase the shares. Approval of action to offer to purchase the shares shall be by affirmative vote of the holders of a majority of the shares entitled to vote, excluding the shares covered by the notice. With the consent of all of the shareholders entitled to vote for the approval, the corporation may allocate some or all of the shares to one or more shareholders, or to other persons, but if the corporation has more than one class of shares, the remaining holders of the class of shares being offered for sale shall have first option to purchase the shares that are not purchased by the corporation in proportion to

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their shareholdings or such proportion as shall be agreeable to those desiring to purchase. Written notice of any offer to purchase approved by the shareholders, or that no offer to purchase was approved, shall be delivered or sent to the person exercising rights under this subsection within 75 days after delivery of the notice soliciting the offer to purchase. Any offer to purchase shall be accompanied by copies of the corporation's balance sheets as of the end of, and profit and loss statements for, its preceding 2 accounting years and any available interim balance sheet and profit and loss statement.

(e) To the extent the price and other terms for purchasing shares of a transferring shareholder by the corporation or remaining shareholders are fixed or are to be determined under provisions in the articles of incorporation, the bylaws of the corporation, or by written agreement, those provisions shall be binding, except that in the event of a default in any payment due par. (h) shall apply and the person exercising rights under this section shall have the right to petition for dissolution of the corporation. Any offer to purchase shall be accepted or rejected in writing within 15 days after the offer.

(f) If an offer to purchase is rejected, or if no offer to purchase is made, the person exercising rights under this subsection may commence an action to compel purchase or dissolution. The corporation shall be made a party defendant and shall, at its expense, give notice of the commencement of the action to all of its shareholders and other persons as the court may direct. The court shall, under sub. (19) (e), determine the fair value of the shares of the person exercising rights under this subsection and enter an order requiring the corporation to cause the purchase of the shares at fair value and on the other terms so determined or to give the person the right to have the corporation dissolved.

(g) Upon the petition of the corporation, the court may modify its decree to change the terms of payment if it finds that the changed financial or legal ability of the corporation or other purchasers of the shares to complete the purchase justifies a modification. Any person making a payment in order to prevent or cure any default by any purchaser is entitled to recover the excess payment from the defaulting person.

(h) If the corporation or other purchaser fails to make any payment specified in the court order within 30 days after the due date for payment, the court shall, upon the petition of the person to whom the payment is due and in the absence of good cause shown by the corporation, enter an order dissolving the corporation.

(i) 1. If the fair value of the shares as determined by the court does not materially exceed the last offer made by the corporation before the commencement of an action brought under par. (f) and the court finds that the failure of the person exercising rights under this section to accept the corporation's last offer was arbitrary, vexatious or not otherwise in good faith, the court may assess all or a portion of the costs and expenses of the action against the person.

2. If the fair value of the shares as determined by the court materially exceeds the amount of the last offer made by the corporation before an action was commenced under par. (f) and the court finds that the corporation's last offer was arbitrary, vexatious or was otherwise not made in good faith, the court may assess all or a portion of the costs and expenses of the action against the corporation.

3. Expenses assessable under subds. 1 and 2 include reasonable compensation for, and reasonable expenses of, any appraisers appointed by the court and the reasonable fees and expenses of counsel for, and experts employed by, any party.

4. Except as provided in subds. 1 and 2, the legal costs of an action filed under par. (f) shall be assessed on an equal basis between the corporation and any party exercising rights under this section, and all other fees and expenses shall be borne by the party incurring the fees and expenses.

(j) A shareholder may, by signed writing, waive the rights under this subsection of the shareholder and the shareholder's estate and heirs.

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(k) This subsection does not prohibit other agreements for the purchase of shares of the corporation, nor does it prevent the enforcement of other remedies.

NOTE: Section 180.995 (16) is derived from SECTION 14 of the supplement.

This subsection, effective *only if* the articles of incorporation specifically provide, establishes a guaranteed buy-out at the death of a shareholder. The statute gives the personal representative of the shareholder the right to require the corporation to elect either 1) to purchase, or cause to purchase, not less than all of the shares of the deceased shareholder, pursuant to the specified procedures, *or* 2) to be dissolved as a corporation.

The statutory buy-out provisions in the subsection are limited to the estate of a deceased shareholder. Section 180.995 (16) (k), however, does not prohibit the shareholders from having a *different* buy-out agreement drafted by an attorney to reflect the procedures to be followed in particular situations. In addition, s. 180.995 (16) (b) and (c) permits the modification of the statutory provisions by a two-thirds vote of all shares. Section 180.995 (16) (c) also provides that a shareholder who votes against a modification that terminates or substantially alters buy-out rights previously possessed has dissenter's rights to obtain the fair value of their shares. The procedures are similar to those set forth in s. 180.995 (3), relating to 3rd-party offers. It should be noted that s. 180.995 (16) (d) requires the selling shareholder to offer all shares for sale; thus, unless there was an agreement to the contrary, sale of less than all of the shares by the estate would be governed by the stock transfer restrictions in s. 180.995 (3).

Section 180.995 (16) (e) provides that to the extent the price and other conditions relating to transfer of shares are fixed or are to be determined under provisions in the articles of incorporation, the bylaws or by written agreement, those provisions will be binding. However, in the case of a default in any payment due, par. (h) will apply and a person exercising rights under the section is given the authority to petition for dissolution of the corporation. Finally, s. 180.995 (16) (e) provides that any offer to purchase must be accepted or rejected in writing within 15 days.

Section 180.995 (16) (f) creates a cause of action permitting a person exercising rights under the provision to begin a court action if an offer to purchase is rejected or if no offer to purchase is made by the corporation. The court is directed to proceed to determine the fair value of the shares of the person exercising their rights and enter an order requiring the corporation to cause the purchase of the shares at a fair value and on the other terms so determined, or give such person the right to have the corporation dissolved. Section 180.995 (16) (i) also gives the court the power to allocate all costs and attorney fees. Costs associated with the suit are to be equally apportioned, unless a finding is made that the position or conduct of one of the parties to such a proceeding was arbitrary, vexatious or otherwise not made in good faith. In the latter case, the court may assess up to *all* of the costs against that party.

(17) SHAREHOLDER OPTION TO DISSOLVE THE CORPORATION. (a) The articles of incorporation of a statutory close corporation or a shareholders' agreement under sub. (12) may grant to any shareholder, or to the holders of any specified number or percentage of shares of any class or classes, an option to have the corporation dissolved at will or upon the occurrence of any specified event or contingency. The shareholders exercising the option shall give written notice to all other shareholders. After the expiration of 30 days following the sending of the notice, the dissolution of the corporation shall proceed as if a resolution to dissolve the corporation had been adopted under s. 180.753 (1) and (2).

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(b) Unless the articles of incorporation otherwise provide, an amendment to the articles of incorporation to include, modify or delete a provision authorized by par. (a) shall be approved by the holders of all of the outstanding shares, whether or not otherwise entitled to vote, or all of the subscribers or all of the incorporators, as the case may be.

NOTE: This subsection is derived from SECTION 15 of the supplement.

The subsection permits the shareholders in a statutory close corporation to provide an option to any shareholder, or to a specified class of shareholders, to *dissolve* the corporation upon the happening of a specified contingency or event. The shareholder dissolution under this section applies *only* if provided for in the corporation's original or amended articles of incorporation.

Under s. 180.995 (17) (b), unless the articles of incorporation otherwise provide, an amendment to the articles of incorporation to include, modify or delete a provision relating to dissolving the corporation must be approved by the shareholders of *all* outstanding shares, whether or not otherwise entitled to vote.

(18) GREATER QUORUM OR VOTING REQUIREMENTS. (a) The articles of incorporation may impose a greater quorum or voting requirement for shareholders, or classes of shareholders, than is required by this chapter.

(b) An action by shareholders to adopt an amendment to the articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the largest of the greater quorum or voting requirements then in effect or proposed to be added, changed or deleted.

NOTE: The supplement contains no similar provision to this subsection. It is derived from proposed s. 7.27 of the revised model business corporation act (dated March 1983).

The subsection permits the articles of incorporation to increase the quorum or voting requirements for approval of an action by shareholders up to any desired amount, including unanimity.

Section 180.995 (18) (a) allows the imposition of "supermajority" votes for actions by the corporation in addition to those set forth in chapter 180.

Subsection 180.995 (18) (b) requires that any amendment of the articles of incorporation that adds, modifies or repeals a supermajority provision be approved by the highest vote required by the competing provisions. Thus, a supermajority provision that requires an 80% affirmative vote of all votes eligible may not be added to or removed from the articles of incorporation or modified in any way except by an 80% vote of all eligible votes. This requirement protects a supermajority requirement for shareholder action from removal by any lower majority vote required for amendments generally. It also protects veto power of minority shareholders in a statutory close corporation.

(19) POWER OF COURT TO GRANT RELIEF. (a) Any shareholder of record, the beneficial owner of shares held by a nominee or the holder of voting trust certificates of a statutory close corporation may petition the court for relief on the grounds that:

1. The directors or those in control of the corporation have or will have acted in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner in his or her capacity as a shareholder, director or officer of the corporation.

2. The directors or those in control of the corporation are so divided respecting the management of the corporation's affairs that the votes required for action cannot be obtained and the shareholders are unable to break the deadlock, with the consequence that the corporation is suffering or will suffer irreparable injury or that the business and

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affairs of the corporation can no longer be conducted to the advantage of the shareholders generally.

3. Conditions exist that would be grounds for involuntary dissolution of the corporation.

(b) If the court finds that one or more of the conditions specified in par. (a) exist, it shall grant appropriate relief, including any of the following:

1. Canceling, altering or enjoining any resolution or other act of the corporation.

2. Directing or prohibiting any act of the corporation or of shareholders, directors, officers or other persons party to the action.

3. Canceling or altering the articles of incorporation or bylaws of the corporation.

4. Removing from office any director or officer, or ordering that a person be appointed a director or officer.

5. Requiring an accounting with respect to any matters in dispute.

6. Appointing a receiver to manage the business and affairs of the corporation.

7. Appointing a provisional director who shall have all the rights, powers and duties of a duly elected director and shall serve for the term and under the conditions established by the court.

8. Ordering the payment of dividends.

9. If the court finds that it cannot order appropriate relief, ordering that the corporation be liquidated and dissolved unless either the corporation or one or more of the remaining shareholders has purchased all of the shares of another shareholder at their fair value by a designated date, with the fair value and terms of the purchase to be determined under par. (e). If the share purchase is not consummated and the corporation is dissolved and liquidated, any shareholder whose shares were to be purchased shall have the same rights and priorities in the assets of the corporation as would have been the case had no purchase been ordered by the court.

10. Ordering liquidation and dissolution, but only if grounds exist for ordering involuntary dissolution if the corporation were not a statutory close corporation, or if all other relief ordered by the court has failed to resolve the matters in dispute.

11. Awarding damages to any aggrieved party in addition to, or in lieu of, any other relief granted.

(c) In determining whether to grant relief under par. (b) 9 or 10, the court shall take into consideration the financial condition of the corporation but shall not refuse to order liquidation solely on the grounds that the corporation has earned surplus or current operating profits.

(d) If the court determines that any party to a proceeding brought under this subsection has acted arbitrarily, vexatiously or in bad faith, it may award reasonable expenses, including attorney fees and the costs of any appraisers or other experts, to one or more of the other parties.

(e) If the court orders relief under par. (b) 9, it shall:

1. Determine the fair value of the shares to be purchased, considering the going concern value of the corporation, any agreement among the shareholders fixing a price or specifying a formula for determining the value of the corporation's shares for any purpose, the recommendations of any appraisers appointed by the court, any legal constraints on the ability of the corporation to acquire the shares to be purchased and other relevant evidence.

2. Enter an order specifying the identity of the purchaser and the terms of the purchase found to be proper under the circumstances, including payment of the purchase price in instalments, payment of interest on the instalments, subordination of the obliga-

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tion to the rights of other creditors of the corporation, security for the deferred purchase price, and a covenant not to compete or other restriction on the selling shareholder.

3. Order that the selling shareholder shall, concurrently with the payment of the purchase price, or in the event of an instalment purchase, concurrently with the payment of the initial payment called for in the order, make delivery of all his or her shares and, from that date, have no rights or claims against the corporation or its directors, officers or shareholders by reason of having been a director, officer or shareholder of the corporation, except the right to receive the unpaid balance of the amount awarded under this subsection and any amounts due under any agreement with the corporation or the remaining shareholders that are not terminated by the court's orders.

4. Order dissolution of the corporation if the purchase is not completed as ordered.

(f) Except as provided in pars. (g) and (h), the rights of a shareholder to file a proceeding under this section are in addition to, and not in lieu of, any other rights or remedies the shareholder may have.

(g) No shareholder may file an action under this section before exhausting any nonjudicial remedy for resolution of the issues in dispute to which the shareholder has agreed in writing.

(h) If a shareholder has the right to dissent from any proposed action and to receive the fair value of his or her shares under this section or s. 180.72, any action under this section brought in respect to the proposed action shall be filed before the time for a dissenting shareholder to file with the corporation notice of intention to dissent and to demand fair compensation under s. 180.72.

NOTE: Section 180.995 (19) is derived from SECTION 16 of the supplement.

Section 180.995 (19) provides a shareholder of record, the beneficial owner of shares held by a nominee *or* the holder of a voting trust certificate of a statutory close corporation the right to seek court relief in certain specified instances.

The subsection provides that if the court determines that one or more of the enumerated grounds exist, it may grant appropriate relief, including one or more of the specified actions set forth in s. 180.995 (19) (b) 1 to 11.

The court is specifically authorized under s. 180.995 (19) (b) 9 and 10 to order involuntary dissolution of the corporation or liquidation of the corporation's assets. Under s. 180.995 (19) (b) 10, the court may order liquidation and dissolution, but *only* if grounds exist for ordering involuntary dissolution if the corporation were not a statutory close corporation *or* if all other relief ordered by the court has failed to resolve the matters in dispute. Furthermore, par. (c) requires the court to take into consideration the financial condition of the corporation in determining whether to enter a judgment for liquidation or dissolution.

Section 180.995 (19) (b) 11 authorizes the court to award *damages* to any aggrieved party in addition to, or in lieu of, any other relief granted by the court. The court is also expressly authorized in s. 180.995 (19) (d) to award reasonable expenses, including attorney fees and the costs of any appraisers or other experts, to one or more of the parties, if it determines that any party to a proceeding brought under this section has acted arbitrarily, vexatiously or otherwise not in good faith.

Section 180.995 (19) (e) provides that if a court orders a buy-out of interest, it must also determine the fair value and other terms of the buy-out in accordance with the terms of that paragraph. The court is also authorized to require the selling shareholder to enter into a covenant not to compete and also to autho-

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rize an instalment sale, in order to protect the business and to minimize the financial strain on the purchasers.

Finally, s. 180.995 (19) (f) provides that a shareholder must exhaust any nonjudicial remedy for resolution of the issues and dispute to which the shareholder has previously agreed in writing. This provision would cover, for example, situations where a shareholders' agreement includes a provision requiring arbitration of issues.

(20) LIMITED LIABILITY. The failure of a statutory close corporation to observe usual corporate formalities or requirements relating to the exercise of its corporate powers or the management of its business and affairs is not grounds for imposing personal liability on the shareholders for obligations of the corporation.

NOTE: Section 180.995 (20) is derived from SECTION 17 of the supplement.

Section 180.995 (20) provides that where a statutory close corporation fails to observe usual corporate formalities or requirements, that omission will not be grounds for imposing personal liability on the stockholders for obligations of the corporation.

(21) OFFICERS; EXECUTION OF DOCUMENTS. (a) A statutory close corporation may operate and conduct business with one or more officers.

(b) Any individual may hold more than one office in a statutory close corporation and may execute, acknowledge or verify in more than one capacity any instrument required to be executed, acknowledged or verified by the holders of 2 or more offices.

NOTE: Section 180.995 (21) (a) allows a statutory close corporation to operate with only one officer. Currently, under s. 180.41 all corporations are required to have at least 2 officers. This paragraph creates an exception for statutory close corporations.

Section 180.995 (21) (b) authorizes any individual to function in more than one capacity within the corporation to assure that instruments so requiring are validly executed, acknowledged or verified by the holders of 2 or more offices. This paragraph is derived from SECTION 18 of the supplement.

SECTION 4. **Initial applicability.** The treatment of section 180.995 of the statutes by this act applies to corporations filing, on or after the effective date of this act, articles of incorporation or amended articles of incorporation stating that the corporation is a close corporation under section 180.995 of the statutes.

NOTE: SECTION 4 of the bill is derived from SECTION 21 of the supplement. It provides that the close corporation statute first applies to corporations filing on or after the effective date of the act, their articles of incorporation or amended articles of incorporation stating that the corporation is a close corporation under s. 180.995.