CHAPTER 180

BUSINESS CORPORATIONS

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

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

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

(2) "Foreign corporation" means a corporation, joint stock company or association organized otherwise than under the laws of this state, except a railroad corporation, an association created solely for religious or charitable purposes, an insurance company or fraternal or beneficiary corporation, society, order or association furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, a building and loan association, a common law trust, or a corporation not organized or conducted for profit.

(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.

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

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

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

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

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

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

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

(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. Earned surplus also includes any portion of surplus allocated to earned surplus in mergers, consolidations or acquisitions of all or substantially all of the outstanding shares or of the property and assets of another corporation, domestic or foreign, in accordance with s. 180.16 (4).

(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.

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

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

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

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

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

(1) To exist perpetually.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

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

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations wherever organized, and of the associations, trusts, partnerships, or individuals, or of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof, but no corporation may subscribe for, take or hold more than 10% of the capital stock of any state bank or trust company unless 75% of the shares entitled to vote of such bank or trust company shall vote in favor thereof at a meeting called for that purpose.

(7) To make contracts, including guarantees, and incur liabilities; to borrow money at such rates of interest as the corporation determines; to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(8) To invest its funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(9) To conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter within or without this state.

(10) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

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

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

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

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

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

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

History: 1971 c. 52, 285

Revision committee note, 1971: Sub. (14) is amended so as to specifically grant power to a corporation to be a "promoter, partner, member, associate or manager of any partnership, enterprise or venture". This specific grant is primarily confirmatory of a power that has heretofore existed by virtue of the grant under sub. (17) to exercise "all powers necessary or convenient to effect its purposes". However, some early decisions questioning the power of a corporation to become a partner led to the conclusion that the widespread practice of corporate participation in joint ventures should be placed beyond judicial misinterpretation [Bill 745-A]

180.05 Indemnification of officers, directors, employes and agents. (1) A corporation shall have power to indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was

unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employe or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in sub. (1) or (2), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under sub. (1) or (2), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employe or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in sub. (1) or (2). Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding;

(b) If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) By the shareholders.

(5) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in sub. (4) upon receipt of an undertaking by or on behalf of the director, officer, employe or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employe or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(7) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

History: 1971 c 285

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

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are

parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

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

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

180.07 Corporate name. The corporate name:

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

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than a purpose for which corporations may be organized under this chapter;

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

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

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state. A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all of the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this state.

History: 1971 c. 285

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

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

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

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

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

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

(2) The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 60 days.

(3) Any corporation, domestic or foreign, entitled to the use of its corporate name under the laws of this state, may upon merger, consolidation, change of name or dissolution reserve the exclusive right to such corporate name for a period of not to exceed 10 years by then filing with the secretary of state an application to reserve the right to such name, executed by the corporation.

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

(5) The filing with the secretary of state of articles of incorporation or of an amendment thereof changing the corporate name constitutes a reservation of the corporate name set forth therein for a period of 65 days from such filing.

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

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

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

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

(a) The name of the corporation;

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

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

(d) The name of its then registered agent;

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

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

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

(2) Such statement shall be executed by a principal officer of the corporation and the corporate seal shall be thereto affixed. If its new registered office is to be located in a county different from that in which its then registered office is located, an original of the above statement, or a copy of the filed original certified by the secretary of state, shall be recorded in both counties and the original articles with amendments thereto or restated articles, or certified copies thereof, shall be recorded in the county of the new registered office.

(3) The change of address of the registered office, or the change of registered agent or both, as the case may be, shall become effective on completion of the filing and recording herein required.

(4) In lieu of change pursuant to subs. (1), (2) and (3), a corporation may change its registered office or change its registered agent, or both, by setting forth the address of its registered office and name of its registered agent, as changed, in articles of amendment of its articles of incorporation or in restated articles of incorporation filed and recorded as provided in this chapter.

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

History: 1971 c. 285.

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 resignation 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.

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

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

registered mail, addressed to the corporation at its principal place of business as shown by the most recently filed annual report of the corporation, or if none at its registered office.

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

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

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

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

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

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

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

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

(e) Convertible into authorized shares of any other class or into authorized shares of any series of the same or any other class. Shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted or the amount of any such deficiency is transferred from surplus to stated capital.

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

(a) The rate of dividend;

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

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

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

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

(f) Voting rights, if any.

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

(5) Unless otherwise provided by the articles of incorporation, any authority so vested in the board of directors to divide a class into series shall include authority to reclassify into one or more other series of such class, any treasury shares or any authorized but unissued shares, including shares restored to that status upon cancellation, of any previously established series of such class. Whenever shares of any series are so reclassified, the certificate filed and recorded

as above provided shall state the number, designation of class and former series of the shares so reclassified, whether such shares are treasury shares or authorized but unissued shares, and the number thereof which have been restored to that status upon cancellation, and the number of authorized shares of each series of such class after such reclassification.

History: 1971 c. 285.

Revision committee note, 1971: Sub. (3) enumerates the rights and preferences as to which there may be variations between different series. It does not specify voting rights. Variations in voting rights may be a useful tool in allocating interests in a close corporation and may be of significance in preferred series in the merger of publicly held corporations. Consequently, express provision for such variation is to be added. [Bill 745-A]

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

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

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

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

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

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

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

History: 1971 c. 285.

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: [As to sub. (2)] The words "the issuance of" immediately preceding "shares", is added to give express effect to the intent of the prohibition. [Bill 745-A]

180.155 Stock rights and options. Subject to any provisions set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time within which and the price at which such shares may be purchased from the corporation upon the exercise of any such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

History: 1971 c 285

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

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

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

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

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

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

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall state upon the face or back of the certificate, in full or in the form of a summary, all of the designations, preferences, limitations and relative rights, as provided by the articles of incorporation, of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority, if any, of the board of directors to fix and determine the relative rights and preferences of subsequent series. In lieu of such statement the certificate may state upon the face or back

thereof the designation of each class of shares having preferences or special rights in the payment of dividends, in voting, upon liquidation or otherwise and such other information concerning such shares as may be desired and shall state that the corporation will upon request furnish any shareholder, without charge, information as to the number of such shares authorized and outstanding and a copy of the portions of the articles of incorporation containing the designations, preferences, limitations and relative rights of all shares and any series thereof.

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

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

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

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

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

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

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

History: 1971 c. 285.

180.19 Fractional shares. A corporation may:

(1) Issue fractions of a share;

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: This section provides expressly for issuance of a certificate for a fractional share or for the issuance of scrip convertible, in proper multiples, into a full share. Both alternatives involve cumbersome procedures and time consuming paper work. Their disadvantages have led to use of other alternatives. One is the outright payment in cash of the value of the fractions. The second and more frequently used procedure is the sale, by an agent designated by the corporation but acting for the shareholders, of all fractional interests at the market evaluation and distribution pro rata of the proceeds. This additional flexibility is allowed by this section. [Bill 745-A]

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

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

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable as a holder of or subscriber to shares of a

corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

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

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

(a) No preemptive right shall exist:

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

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

3. To acquire treasury shares.

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

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: As preemptive rights are a common law concept, not clearly or uniformly defined by all courts, the indicated exclusions afford certainty of interpretation in cases where the articles of incorporation are not express. The above is the alternate Model Act provision, edited to exclude treasury shares in accordance with existing Wisconsin law. The Wisconsin Committee deems it unwise to adopt the Model Act primary recommendation (1969 Addendum Item 51), that all preemptive rights be denied by statute except as expressly preserved in the articles of incorporation, since that would be unduly disruptive of existing relationships created in reliance on common law rights. [Bill 745-A]

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

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

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

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting or by such other officers or persons as may be provided in the articles of incorporation or the bylaws.

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

180.25 Voting of shares. (1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are enlarged, limited or denied by the articles of incorporation as permitted by this chapter. If the articles of incorporation provide

for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

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

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

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

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

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

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

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

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

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

History: 1971 c 285.

Revision committee note, 1971: Sub. (1). This change reconciles the numerous statutory references to voting requirements by number of shares, to the previously permitted Wisconsin practice that some classes may have multiple or fractional votes per share on some or all matters where classes vote together.

Sub. (2). Because the two-thirds affirmative voting requirement on special matters has been statutory in Wisconsin for many years, it has in effect become an implied provision in the articles of incorporation of existing corporations and undoubtedly many corporate relationships have been created in reliance thereon. Therefor, the two-thirds requirement is preserved for preexisting corporations (and also until 1973 to avoid entrapment in use of old forms or old organization procedures or check lists), but all such corporations are permitted to amend their articles by a two-thirds vote so as to change for the future to the majority vote rule on any or all of these special subjects. Furthermore, any corporation formed in 1973 or thereafter is free to adopt the two-thirds rule (or any other proportion greater than a majority) by express election of such two-thirds or other proportion in its articles of incorporation. [Bill 745-A]

180.26 Closing of transfer books and fixing record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days. If the stock transfer books shall be closed for the purpose of

determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the stock transfer books, the by-laws, or in the absence of an applicable by-law, the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the close of business on the date on which notice of the meeting is mailed or on the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote in any meeting of shareholders has been made as provided in this section, such determination shall be applied to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

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

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

History: 1971 c. 285.

Revision committee note, 1971: This section is to be implemented in 2 respects:

1. Where a voting trust exists, the trustee will be required to keep a record of the holders of voting trust certificates, as in the manner of shareholder records, and to deposit a copy with the corporation, where it is to be subject to examination by a holder of shares or voting trust certificates as are the records of the corporation

2. Agreements among shareholders regarding the voting of their shares differ basically from voting trust agreements. The latter involves a transfer in legal title to which the corporation is a party, while a voting agreement is primarily an instrument for allocating representation on the board of directors. Hence, in the latter case the safeguards developed for voting trusts are not essential. However, any doubts as to the enforceability of voting agreements should be removed. This is to be done by adding the additional provision [sub (2)]. [Bill 745-A]

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

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

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

History: 1971 c. 285.

180.30 Board of directors. The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise

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

History: 1971 c. 285

Revision committee note, 1971: Traditionally, the management of a corporation has in legal theory been vested in the board of directors. In publicly held and in most larger corporations the theory has been followed generally in practice, even though a dominating chief executive may have left little except affirmation to the acts of the board. In smaller and closely held corporations, whether of a family nature or a corporate joint venture, the actual management has in most cases been exercised directly by the shareholders, with varying degrees of lip service paid to the formalities of board meetings and minutes. In recognition of this fact, the first sentence of this section is amended. [Bill 745-A]

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

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

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

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

History: 1971 c. 285

Revision committee note, 1971: Sub. (1) Where family corporations have in fact followed the practice of having board meetings, a director other than the shareholder owner is frequently a dummy who performs no useful function. Under these circumstances maintenance of the fiction of a board of directors of not less than 3 is merely an illusion. Consequently, this requirement should be eliminated, thus permitting one-man boards. At the same time the requirement that the number of directors be fixed in the charter or bylaws is to be amended to provide that it shall be fixed by "or in the manner" provided in the charter or bylaws. [Bill 745-A]

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

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

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

History: 1971 c. 285, 307

Revision committee note, 1971: Correlates with revision of s 180.32 (1). [Bill 745-A]

180.355 Director conflicts of interest. No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if 1) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or 2) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or 3) the contract or transaction is fair and reasonable to the corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

History: 1971 c. 285

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1971 c. 285

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

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

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

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

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

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

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

(b) For the purpose of eliminating fractional shares,

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

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

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

History: 1971 c 285.

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

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

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

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

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

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

History: 1971 c 285.

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

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

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

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

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

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

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

available for any such dividend or distribution he considered the assets to be of their book value.

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

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

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

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

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

History: 1971 c. 285

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

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

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

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

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

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

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

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

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

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

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

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

180.41 Officers. (1) The principal officers of a corporation shall consist of a president, one or

more vice presidents as may be fixed by, or in the manner provided in, the articles of incorporation or bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the articles of incorporation or bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the articles of incorporation or bylaws. Any 2 or more offices may be held by the same person, except the offices of president and secretary, and the offices of president and vice president.

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

History: 1971 c. 285

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

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

(2) Any person who shall have been a shareholder of record for at least 6 months immediately preceding his demand or who shall be the holder of record of at least 5% of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its relevant books and records of account, minutes and record of shareholders and to make extracts therefrom.

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

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

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

minutes and record of shareholders of a corporation.

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

History: 1971 c 285.

Revision committee note, 1971: Three significant changes are made in this section:

First: An additional sentence is to be added to the first paragraph to permit flexibility as to the form of record-keeping, subject to convertibility to written form for inspection.

Second: The right to examine books and records is to be limited to "relevant" books and records, thus narrowing the scope for fishing expeditions

Third: Holders of voting trust certificates are to be given the same rights of examination as are accorded to shareholders. [Bill 745-A]

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

History: 1971 c 213 s 5

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

(a) The name of the corporation.

(b) The period of existence, unless perpetual.

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

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

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

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

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

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

(j) The number of directors or manner of fixing the number of directors, or a provision that the number of directors shall be fixed by or in the manner provided in the bylaws.

(k) The name and address, including street and number, if any, of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. The articles of incorporation may include additional provisions, not inconsistent with law, including any provision which under this chapter is required or permitted to be set forth in the by-laws. Whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

History: 1971 c. 307

180.46 Filing and recording of articles of incorporation. Duplicate originals of the articles of incorporation shall be filed in the office of the secretary of state, and recorded in the office of the register of deeds of the county in which the initial registered office of the corporation is located, and upon leaving such duplicate original for record, the legal existence of such corporation shall begin. Upon receipt of the certificate of such register of deeds that such duplicate original has been recorded, the secretary of state shall issue a certificate of incorporation. Certified duplicate original articles or copies certified by a register of deeds or the secretary of state of articles of incorporation may also be recorded in other counties than the county in which the initial registered office of the corporation is located.

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the

draftsman of the instrument before it may be filed by the secretary of state.

180.47 Effect of issuance of certificate of incorporation. The certificate of incorporation issued pursuant to section 180.46 shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation.

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

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

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

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

History: 1971 c. 285

Revision committee note, 1971: Sub. (4) coordinates with repeal of s. 180.48. Under the unusual circumstances of the last sentence of sub. (4), requirement of two-thirds approval is retained, despite the majority rule permitted in other cases under revised s. 180.25 (2). [Bill 745-A]

180.50 Right to amend articles of incorporation. (1) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, provided that its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

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

(a) To change its corporate name.

(b) To change its period of existence.

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

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

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

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

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

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

(i) To change the shares of any class, whether issued or unissued, and whether with or without

par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

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

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

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

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

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

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

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

180.51 Procedure to amend articles of incorporation. Amendments to the articles of incorporation may be made at any special meeting duly called for that purpose or at any annual meeting, provided that a statement of the nature of the proposed amendment is included in the notice of meeting. The proposed amendment shall be adopted upon receiving the requisite affirmative votes as provided in s. 180.25. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

History: 1971 c. 285.

Revision committee note, 1971: This section is altered to make the adoption of an amendment to the articles effective upon the affirmative vote of the holders of a majority of the shares entitled to vote instead of the holders of two-thirds of such shares. This decision by the committee is part of its overall conclusion that in accord with contemporary practice, all such basic decisions should be in the control of a majority (unless a higher percentage is required by the articles of incorporation) rather than any arbitrarily selected higher percentage. This change in effect removes the possibility of a veto power being exercised by a minority.

New s. 180.25 (2) covers transitional rights and procedures. [Bill 745-A]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The name of the corporation;

(2) The amendment so adopted;

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

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

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

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: Sub. (4) is responsive to s. 180.51 revision and to transitional procedures under revised s. 180.25.

Sub. (8) provides the same flexibility on the effective time of amendments to articles, as under merger s. 180.66. This permits advance fixing of effective times of stock-splits and recapitalizations at "close of business" or selected other hours or dates not dependent on the exact recording time by the register of deeds, thereby simplifying record date determinations and minimizing securities trading and notification problems, as well as the hazards of failures or delays in transmission by mail or messenger. [Bill 745-A]

180.54 Filing and recording articles of amendment. The articles of amendment shall be filed and recorded, and upon receipt of the certificate of the register of deeds, the secretary of state shall issue a certificate of amendment.

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state.

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

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

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

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

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state.

180.56 Filing and recording order of U. S. court under bankruptcy laws. The secretary of state and register of deeds shall upon delivery to them respectively file and record in the manner and places and upon payment of fees as provided in this chapter in respect to articles of amendment, duly certified copies of any order of a court of the United States in proceedings under

the national bankruptcy laws, if such order effects an amendment to the articles of incorporation of a corporation. It shall be the duty of the principal officers of such corporation to cause each such order to be so filed and recorded promptly after such order has become final.

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

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

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

(a) The name of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

of the earned surplus of the corporation be transferred to capital surplus.

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

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

180.62 Procedure for merger. (1) Any 2 or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, hereinafter designated the surviving corporation;

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

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

(d) Any change in the articles of incorporation of the surviving corporation to be effected by such merger;

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

History: 1971 c. 285.

Revision committee note, 1971: This section [sub. (2) (c)] brings the general merger provisions into accord with the more recently adopted s. 180.685 and also with changes in the federal tax laws relating to reorganizations. [Bill 745-A]

180.63 Procedure for consolidation. (1) Any 2 or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, hereinafter designated the new corporation;

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

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: See NOTE for s. 180.62. [Bill 745-A]

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: Under sub. (1) the statement concerning written objection need not be made if the shares are listed on a national stock exchange or for any

other reason there can be no pay-out right under new s 180.72.

New s. 180.25 (2) covers transitional voting rights and procedures. [Bill 745-A]

180.65 Articles of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed by the president or a vice president and the secretary or an assistant secretary of each corporation, and shall be sealed with the corporate seal, if there be any, of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

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

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

(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.

(3) The certificate of merger or consolidation shall be issued by the secretary of state upon expiration of the period for filing a certificate of abandonment, and after receipt of the requisite certificates from the registers of deeds.

History: 1971 c. 285.

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state.

Revision committee note, 1971: Responsive to s. 180.64 revision and transitional procedures under revised s. 180.25 [Bill 745-A]

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

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

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

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

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

180.68 Merger or consolidation of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

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

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

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

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

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

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

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

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

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

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

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

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

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

the president or a vice president and the secretary or an assistant secretary of each corporation, and shall be sealed with the corporate seal of each corporation, and shall set forth:

(a) The plan of merger;

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

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

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

(4) After the expiration or waiver of all rights of such shareholders to make written demands for payment under s. 180.72, such articles of merger shall be filed in the office of the secretary of state and shall be recorded, 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 merging have their registered offices.

History: 1971 c. 285.

Cross reference: Sec. 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state.

Revision committee note, 1971: This section is a recreation of the old s. 180.685. The change in sub. (1) (c) is only for uniformity of language with revised ss. 180.62 and 180.63.

New sub. (2) provides for notice to the minority in advance of filing or effectiveness, so that the effect of objectors cash payout claims made within 20 days thereafter can be weighed, if the plan is conditioned on the number of shares objecting. [Bill 745-A]

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: These changes adopt the model act principles that, in modern commercial life, mortgages or pledges are an ordinary incident of borrowing and should not require shareholder approval unless so provided in the articles of incorporation or in other statutes. [Bill 745-A]

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

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

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 20 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the

proposed sale, lease, exchange or other disposition. Such notice shall further state, if applicable, that any shareholder desiring to be paid the fair value of his shares must file a written objection to the proposed sale, lease, exchange or other disposition at least 48 hours prior to the meeting.

(3) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition and fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the requisite affirmative votes as provided in s. 180.25.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by shareholders.

History: 1971 c. 285.

Revision committee note, 1971: This section is the old s. 180.71 with changes.

Sub. (1). Since dispositions of substantially all assets not in the ordinary course of business, may be the practical equivalent of merger, they should be approved in advance by the board of directors as under s. 180.64.

Sub. (3). Incorporates the revised majority/two-thirds rules in s. 180.25. See NOTES to ss. 180.25 and 180.51. [Bill 745-A]

180.72 Rights of objecting shareholders. (1) Any shareholder of a corporation shall have the right to file with the corporation a written objection, at least 48 hours prior to the meeting of shareholders at which any of the following corporate actions are proposed to be voted upon: a) Any plan of merger or consolidation to which the corporation is a party; 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. 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.

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

(3) No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, at the effective time of the merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section, or if a court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored,

without prejudice to any corporate proceedings which may have been taken during the interim.

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

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

(6) If within such period of 30 days an objecting shareholder and the corporation do not so agree, then the corporation, within 30 days after receipt of written demand from any objecting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, commence a special proceeding by serving and filing a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located requesting that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any objecting shareholder may do so in the name of the corporation. All objecting shareholders, wherever residing, who have made demands as herein provided and whose rights to payment have not otherwise terminated, shall be made parties to the special proceeding. A copy of the petition and any process or notice shall be served on each such objecting shareholder, whether a resident or nonresident of this state, as provided in ch. 262. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a finding of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the objecting shareholder shall cease to have any interest in such shares.

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

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

(9) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation together with the name of the original

objecting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original objecting shareholder had after making demand for payment of the fair value thereof.

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

History: 1971 c. 285

Revision committee note, 1971: This new s. 180.72 integrates the former provisions of repealed s. 180.69 and former s. 180.72, and with minor editing adopts the model act provisions including the above 1969 addendum changes. The new Wisconsin provision retains the prior nonmodel requirement of objection at least 48 hours before the meeting in order to permit advance consideration of the possible effect of potential cash payments on the feasibility of the proposal. [Bill 745-A]

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

(1) Written notice of a special meeting, or of the annual meeting of shareholders, stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

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

(3) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the president or a vice president and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:

(a) The name of the corporation;

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

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

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

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

History: 1971 c. 285

Revision committee note, 1971: This incorporates the revised majority/two-thirds rules in s. 180.25, with integrating recitals of the vote requirement in the statement of intent to dissolve. [Bill 745-A]

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

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state

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

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

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

180.761 Revocation of voluntary dissolution proceedings. 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:

(1) Written notice of a special meeting, or of the annual meeting of shareholders, stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings,

shall be given to each shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

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

(3) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the president or a vice president and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:

(a) The name of the corporation;

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

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

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

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

History: 1971 c. 285.

Revision committee note, 1971: See NOTE to changes in s. 180.753. [Bill 745-A]

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

180.765 Articles of dissolution. When all debts, liabilities and obligations of the corporation, including those contingent in nature, have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the president or a vice president and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:

(1) The name of the corporation;

(2) That the corporation has theretofore filed with the secretary of state a statement of intent to dissolve, and the date on which such statement was filed, and that said statement has been duly recorded and the date and place of such recording;

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

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

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

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

180.767 Filing and recording articles of dissolution and effect thereof. The articles of dissolution shall be filed and recorded, and thereupon the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action of shareholders, directors and officers as provided in this chapter. Upon receipt of the certificate of the register of deeds, the secretary of state shall issue a certificate of dissolution.

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state.

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 trustee, 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.

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

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

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

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

(d) The corporation has failed for 30 days to appoint and maintain a registered agent in this state; or

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

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

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

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

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

1. That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

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

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

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

(b) In an action by a creditor:

1. When the claim of the creditor has been reduced to judgment and an execution thereupon returned unsatisfied and it is established that the corporation is insolvent; or

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

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

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

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

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

180.773 Procedure in liquidation of corporation by circuit court. (1) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the

court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers and by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

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

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

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

History: 1971 c. 285

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

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

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

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

180.785 Deposit with the state treasury of amount due certain creditors and shareholders. Upon the voluntary or involuntary dissolution of a corporation the portion of the assets distributable to a creditor or

shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, may be reduced to cash and deposited with the state treasury and shall be paid over without interest to such creditor or shareholder or to his legal representative, upon proof satisfactory to the state treasurer of his right thereto.

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

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

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

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

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

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

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

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

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

(2) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, assistant secretary, or treasurer, or, until the first election of officers, by one of its incorporators, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. The first annual report of a corporation organized under this chapter shall be filed between January 1 and March 31 of the year next succeeding the calendar year in which its articles of incorporation were filed by the secretary of state.

(3) The secretary of state shall, during each December, forward report blanks to every corporation in good standing required to make an annual report.

180.793 Filing of annual report of domestic corporation. (1) The annual report shall be delivered to the secretary of state between January 1 and March 31 of each year. Unless the secretary of state finds that such report fails to conform to the requirements of law, he shall file the same. If he finds that it does not so conform he shall return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days after it shall have been mailed to the corporation for correction.

(2) Any such report not filed before April 1 may be filed only upon payment to the secretary of state of the following fees:

(a) If filed prior to May 1, $15.

(b) If filed on May 1 or thereafter, but not later than the following December 31, $20.

(3) If said report is not filed before the following January 1, the corporation shall not be in good standing. Until the corporation is restored to good standing the secretary of state shall not accept for filing any documents respecting such corporation except documents incident to its dissolution.

(4) The corporation may be restored to good standing by delivering to the secretary of state a current annual report conforming to the requirements of law and by paying to the secretary of state the $20 late filing fee plus $10

for each calendar year or part thereof during which the corporation has not been in good standing, not exceeding a total of $110.

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

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

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

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

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

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

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

(b) Maintaining bank accounts.

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

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

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

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

180.807 Powers of foreign corporation. No foreign corporation shall transact in this state any business which a corporation organized

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

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

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

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

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

History: 1971 c 285

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

History: 1971 c 285

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

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

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

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

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

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

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

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

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

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

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

(k) The proportion of its capital which is represented in this state by its property to be located or to be acquired herein and by its business to be transacted herein. The proportion of capital employed in this state shall be computed by taking the estimate of the gross business of the corporation to be transacted in this state in the following year and adding the

same to the value of its property to be located or to be acquired in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the estimate of its total gross business for said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. For the purposes of this section, the estimate of the business to be transacted and the property to be located or to be acquired in the state shall cover the period when it is estimated the corporation will commence business in this state to and including December 31 of that year. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he may deem proper in order to determine the accuracy of the report submitted; the additional information so obtained shall not be a public record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The name of the corporation;

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

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

(d) The name of its then registered agent;

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

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

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

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

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

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

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

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

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

History: 1971 c. 285.

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

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

(b) The name of the registered agent.

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

(d) That the registered agent resigns.

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

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

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

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

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

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

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

(5) Nothing herein contained shall limit or affect the right to serve any process, notice or

demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) The proportion of the capital represented in this state by its property located and business transacted therein during the preceding year. The proportion of capital employed in the state shall be computed by taking the gross business of the corporation in the state and adding the same

to the value of its property located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of its total gross business of said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he may deem proper in order to determine the accuracy of the report submitted; the additional information so obtained shall not be a public record;

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

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

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

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

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

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

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

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

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

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

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

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

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

180.839 Filing of application for withdrawal and final report. (1) Duplicate originals of such application for withdrawal and

final report shall be delivered to the secretary of state. Unless he finds that it does not conform to the provisions of this chapter, he shall, when all fees and charges have been paid as in this chapter prescribed:

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

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

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

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

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

(a) The certificate of authority of the corporation was procured through fraud practiced upon this state; or

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

(c) The corporation has failed for a period of 90 days to pay any fees, charges or penalties prescribed by this chapter; or

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

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

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

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

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

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

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

(a) Issue a certificate of revocation in triplicate.

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

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

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

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

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

chapter for change of registered office or registered agent.

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

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

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

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

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

(4) A foreign corporation transacting business in this state without a certificate of authority, if a certificate of authority is required under this chapter, shall by so doing be deemed to have thereby appointed the secretary of state as its agent and representative upon whom any process, notice or demand may be served in any action or proceeding arising out of or relating to any business so transacted within this state. Service of such process, notice or demand shall be made by serving a copy upon the secretary of state or by filing such copy in his office, and such service shall be sufficient service upon said foreign corporation, provided that notice of such service and a copy of the process, notice or demand are within 10 days thereafter sent by mail by the plaintiff to the defendant at its last known address, and that the plaintiff's affidavit of compliance herewith is appended to the process, notice or demand. The time within which the defendant may demur or answer shall not start to run until 10 days after the date of such mailing. The secretary of state shall keep a record of all such processes, notices and demands which shows the day and hour of service, and the date of mailing.

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

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

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

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

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

180.849 Proceedings by and against foreign corporations. Maintaining or defending any action or special proceeding or any administrative or arbitration proceeding, or effecting the settlement thereof or settlement of claims or disputes by a foreign corporation shall

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

180.86 Procedure on filing and recording of documents. (1) If in this chapter it is required that any document be filed and recorded, duplicate originals of such document shall be delivered to the secretary of state. Unless the secretary of state finds that such document does not conform to law, he shall, when all fees have been paid as in this chapter prescribed:

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

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

(c) Affix to the other duplicate original a certificate showing the date of such filing, and return the same to the corporation or its representative.

(2) The duplicate original so returned shall be recorded in the office of the register of deeds of the county in which the registered office of the corporation is located. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such duplicate original was recorded, and shall be entitled to a fee of 25 cents therefor to be paid by the person presenting such documents for record. Whenever the register of deeds shall so record any documents, other than original articles of incorporation, he shall note on the margin of the record of the original articles of incorporation the volume and page where such documents are recorded.

(3) If such document is required to be recorded in more than one county, additional originals may be delivered to the secretary of state and by him indorsed and certificates affixed thereto, and any such original, or a copy of the filed original certified by the secretary of state, may be recorded in any county where required, all in the manner as above provided in respect to duplicate originals.

(4) No such document shall be effective until an original or copy, with the certificate of the secretary of state attached, has been recorded in the office of the register of deeds in each county in which such document is required to be recorded. A document shall, for the purposes of this chapter, be deemed to be recorded when such document has been left for record in the proper office and all required fees paid.

(5) The register of deeds shall not accept for recording articles of incorporation, or amendments to articles changing the corporate name, more than 60 days after the date of filing the same by the secretary of state, unless the persons on whose behalf the same were filed shall record therewith a certificate of the secretary of state showing that they hold a reservation of the new corporate name made not more than 60 days prior to such recording.

(6) The secretary of state may waive any requirement under this chapter for recital in any document presented to him for filing, of the votes requisite for adoption or the votes requisite for approval and may waive any omission of or deficiency in any other recital of fact required under this chapter or otherwise made in such document, if under the particular circumstances it appears to him without burdensome investigation or inquiry that the vote was in fact sufficient or that such other omission or deficiency is not material. Such waiver shall be conclusively evidenced by his acceptance of such document for filing, either with or without notation thereon by him in respect thereto, and thereupon the form of such document shall be deemed in compliance with this chapter.

History: 1971 c 285.

Cross reference: See 14.38 (14) for requirement that articles of incorporation, amendment, merger, consolidation and statements of dissolution must bear the name of the draftsman of the instrument before it may be filed by the secretary of state.

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

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

(a) Filing articles of incorporation, $1 for each $1,000 or fraction thereof of authorized par value shares, and 2 cents for each authorized share without par value, the minimum fee to be $50.

(b) Filing articles of amendment, $15; and an additional sum equal to $1 for each $1,000 or fraction thereof par value shares and 2 cents for each share without par value as authorized after such amendment, less a credit computed at the foregoing rates upon all shares as authorized immediately prior to such amendment.

(c) Filing articles of merger, or consolidation, $20; and an additional sum equal to $1 for each $1,000 or fraction thereof par value shares and 2 cents for each share without par value as authorized after such merger or consolidation, less a credit computed at the foregoing rates upon all shares of domestic corporations which are parties to merger or consolidation as authorized immediately prior to such merger or consolidation.

(d) Filing a statement of intent to dissolve, $5.

(e) Filing articles of dissolution, $5.

(f) Filing an application to reserve a corporate name for 60 days, $5; and filing an application to reserve a corporate name pursuant to s. 180.08 (3), $50, plus $10 for each year of reservation in excess of 5 years.

(g) Filing a notice of transfer of a reserved corporate name, $5.

(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. If simultaneous filings are made by one registered agent such fee shall be reduced to $1 each on such filings in excess of 200.

(i) Filing an application of a foreign corporation for certificate of authority to transact business in this state, $50, and $1 for every $1,000 of its capital exceeding $50,000 employed or to be employed in this state, computed as provided in s. 180.813, as shown by such application.

(j) Filing an annual report of a foreign corporation $15, and in case said annual report shows that the corporation employs in this state capital in excess of the amount of capital on which a fee has previously been paid, computed as provided in s. 180.813, an additional fee which with previous payments made on account of capital employed in this state, will amount to $1 for each $1,000 of such excess.

(k) Filing an application of a foreign corporation for amended certificate of authority to transact business in this state, $10, and in case said application shows that the corporation employs in this state capital in excess of the amount of capital on which a fee has previously been paid, computed as provided in s. 180.813, an additional fee which with previous payments made on account of capital employed in this state, will amount to $1 for each $1,000 of such excess.

(l) Filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $15. If the amendment is filed more than 60 days after the same has become effective in the home state, the corporation shall pay to the secretary of state a penalty of $25.

(m) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state other than with a domestic corporation, $15.

(n) Filing an application for withdrawal and final report of a foreign corporation, $10.

(o) Receiving service of any process, notice or demand authorized to be served on the secretary of state by this chapter, $4.

(p) Filing an annual report of a domestic corporation, $7.

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

(r) Checking each domestic or foreign corporate record, and answering inquiry thereon including giving a list of officers and directors, $2 plus 50 cents for each additional list of officers and directors. Answering a request for verification of corporate existence or status or for information as to the current registered office or agent, if written, $1; otherwise no charge.

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

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

History: 1971 c. 285.

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

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

180.89 Waiver of notice. Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of any

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

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

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

180.92 Appeal from secretary of state. (1) If the secretary of state finds that any document, other than the annual report of a domestic or foreign corporation, required by this chapter to be filed in his office does not conform to law, he shall, within 10 days after the delivery thereof to him, give written notice of his decision to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Such decision shall be subject to such judicial proceedings as are provided by law, or such person or corporation, within 60 days after receipt of the said notice of decision, may commence an action against the secretary of state in the circuit court of Dane county by service of a summons and complaint to set aside such finding, whereupon proceedings shall be had as in other actions and the matter shall be tried de novo by the court without a jury, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(2) If the secretary of state shall revoke, or give notice of intention to revoke, the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of this chapter, such decision shall be subject to such judicial proceedings as are provided by law, or such foreign corporation, within 60 days after receipt of the notice of revocation or intention to revoke, may commence an action against the secretary of state in the circuit court of Dane county by service of a summons and complaint to set aside such decision, whereupon proceedings shall be had as in other actions and the matter shall be tried de novo by the court without a jury, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper. Upon the commencement of such action the court may stay or suspend the effect of the order of the secretary of state revoking or noticing intention to revoke the certificate of authority to transact business in this state upon such terms and conditions as the court may deem proper.

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

180.94 Forms to be furnished by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. The secretary of state may provide such forms for other documents to be filed in his office under this chapter as in his judgment may be deemed necessary for such purpose, but the use

thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory.

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

180.97 Applicability of chapter. (1) DOMESTIC CORPORATIONS. After June 30, 1953 ch. 180 shall apply to all domestic corporations with capital stock, regardless of when they were organized and whether for profit or not, but any domestic corporation organized under provisions other than those in ch. 180 and corresponding prior general corporation laws shall be subject to ch. 180 only to the extent that it is not inconsistent with such provisions; any domestic corporation with capital stock but not organized for profit which has before July 1, 1953, been organized under the general corporation laws or any special statute or law of this state, shall be subject to ch. 180 only to the extent that the provisions of ch. 180 are not inconsistent with the articles or form of organization of such corporation or with any provisions elsewhere in the statutes or under any special law relating to such corporation.

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

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

180.98 Offer and sale of securities. No domestic corporation organized under this chapter and no foreign corporation shall offer or sell any of its securities in this state, unless the securities are registered under ch. 551 or unless the securities or the offer or sale thereof are exempted from registration under ch. 551.

History: 1971 c. 84

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

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

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

(4) CORPORATE NAME. The corporation may bear the last name of one or more persons formerly or currently associated with it. A corporation organized under this section may also adopt a name which does not include the surname of any present or former shareholder; provided, that if it does so, it must record such

name and the names of its shareholders with the register of deeds of the county in which it is located, or has its principal office. The corporate name shall end with the word "Chartered", or "Limited", or the abbreviation "Ltd.", or the words "Service Corporation", or the abbreviation "S.C.".

(5) FILING AND RECORDING OF ARTICLES. Before commencing operations, a service corporation shall file and record its articles as required by s. 180.46 and shall also comply with s. 180.48 relating to minimum paid in capital.

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

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

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

(9) CORPORATE AGENTS. The relationship of an individual to a corporation organized under this section, with which such individual is associated, whether as shareholder, director, officer or employe, shall in no way modify or diminish the jurisdiction over him of whatever state agency licensed, certified or registered him for a particular field of endeavor. The term "employe" as used in this section does not include administrators, technicians, clerks, bookkeepers or others hired by a service corporation who are not usually and ordinarily considered by custom, practice or law to be rendering professional or other personal services for which a license, certificate, registration or other legal authorization is required, nor does it include any other person who performs all his employment under the direct supervision and control of an officer or employe of such corporation who is himself licensed, certified or registered.

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

(b) Whenever all shareholders of a corporation licensed under this section shall cease at any one time and for any reason to be licensed, certified or registered in the particular field of endeavor for which such corporation was organized, said corporation shall thereupon be treated as converted into and shall operate henceforth solely as a business corporation under applicable provisions of this chapter, exclusive of this section.

(c) Within 90 days following the date of death of a shareholder, or his disqualification as hereinbefore provided, to own shares in the corporation, all of the shares of such shareholder shall be transferred to, and acquired by, the corporation or persons qualified to own such shares. If no other provision to accomplish such transfer and acquisition is in effect and carried out within said period, the corporation shall thereafter purchase and redeem all of his shares of its stock at the book value thereof, determined as of the end of the month immediately preceding death or disqualification. For this purpose, the book value shall be determined from the books and records of the corporation in

accordance with the regular methods of accounting used by it for the purposes of determining its net taxable income for federal income tax purposes; and no subsequent adjustment of such income, whether by the corporation itself, by federal income tax audit made and agreed to, or by a court decision which has become final, shall alter the redemption price. Nothing contained in this section shall prevent the parties involved from making any other arrangement or provision in the corporate articles, bylaws, or by contract to transfer the shares of a deceased or disqualified shareholder to the corporation or to persons qualified to own the same, whether made before or after the death or disqualification of the shareholder, provided that within the 90-day period herein specified all the stock involved shall have been so transferred.

(11) ANNUAL REPORT. A corporation organized and operating under this section shall furnish a report to the office of the secretary of state by March 31 of each year showing the names and post-office addresses of all its shareholders, directors and officers, which shall certify that, with the exceptions permitted in sub. (7), all such persons are duly licensed, certified, registered or otherwise legally authorized to render the same professional or other personal service in this state. This report shall be made on forms prescribed and furnished by the secretary of state, but shall contain no fiscal or other information except that expressly called for by this subsection. It shall be signed by the president or vice president and the secretary or an assistant secretary of the corporation, and acknowledged before a notary public by the persons signing the report, shall be filed in the office of the secretary of state, and shall be in lieu of the regular annual report of corporations otherwise required by ch. 180. The filing of such reports shall be governed by s. 180.793 (2), (3) and (4).