

CHAPTER 182.

DOMESTIC CORPORATIONS.

POWERS AND DUTIES.

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182.01 Powers. Every domestic corporation, when no inconsistent provision is made by law or by its articles of organization, shall have the following powers:

(1) To make all contracts necessary and proper to effect its purposes and conduct its business.

(2) To sue and be sued, to appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(3) To have a common seal and alter the same at pleasure.

(4) To elect or appoint, in such manner as shall be fixed by its by-laws, all necessary officers, agents and servants, define their duties and obligations, fix their compensation; and to establish branch offices or places of business in this state or elsewhere.

(5) To make, amend and repeal by-laws and regulations, consistent with law and its articles, for the accomplishment of its purposes, for its government, for the orderly conduct of its affairs and the management of its property, for calling and conducting its meetings, voting by proxy, and the tenure of its several officers; and may prescribe suitable penalties for the violation of its by-laws, not exceeding twenty dollars for any violation.

(6) To take and hold property, both real and personal, and sell, convey or otherwise dispose of the same.

(7) To mortgage its rights, privileges, authority and franchises, and its revenues and property, to secure the payment of its debts, or to borrow money, with the consent of the holders of a majority of its stock entitled to vote, or, if not a stock corporation, a majority of its members, and to establish with a like consent, a sinking fund for the payment of its debts, except as provided in section 180.25.

(8) To cause to be insured for its benefit, the life of any officer or agent thereof and to pay premiums therefor. Whenever any such insured shall cease to be an officer or agent, such corporation shall cease to pay such premiums unless payment is agreed to by a vote of eighty per cent of its stock.

(9) Any corporation organized under chapter 180 of the statutes may subscribe for, take or hold stock in any other corporation except as herein provided. The consideration for such purchase may be paid in the stock or bonds, or both, of the purchasing company; but no corporation organized under chapter 180 of the statutes may subscribe for, take or hold more than ten per cent of the capital stock of any state bank or trust company, unless seventy-five per cent of the stock of both corporations shall vote in favor thereof at a meeting especially called for that purpose, but no state bank or trust company may vote to authorize a foreign corporation to purchase stock in such bank or trust company unless such foreign corporation shall have filed its articles of incorporation with the secretary of state and is authorized to do business in Wisconsin as provided in section 226.02 of the statutes. [1937 c. 143]

Note: A contract between corporations for purchase by one of the stock of the other, but unenforceable because not authorized by stockholders, was validated by the amendment to (2) made in 1927. Wisconsin Club v. John, 202 W 476, 233 NW 79.

Corporation organized to take over residue of estate had capacity to take title to realty not belonging to estate. First Nat. Bank & T. Co. v. Gold, 217 W 522, 259 NW 260.

182.02 Quorum of directors and members. (1) A majority of the directors or trustees of every corporation, regularly convened, shall constitute a quorum for the transaction of business. The members owning a majority of the stock in stock corporations and a majority of the members of other corporations shall constitute a quorum at any meeting, and be capable of transacting any business, except when otherwise specifically provided by law or by the articles of organization.

(2) At any meeting of the stockholders of a farmers' mutual telephone company, members representing twenty per cent of the outstanding stock, shall constitute a quorum. Any member may hold and vote the proxy of not exceeding three stockholders.

(3) Any hospital corporation organized under the laws of this state without capital stock and the articles of which provide that no dividend or pecuniary profits shall be declared or paid to the members thereof, shall have the authority at any general or special meeting called for that purpose to make provision for the payment of any outstanding bonds or indebtedness by the issuance of refunding bonds or other evidences of indebtedness by the vote of a majority of the members present at such general or special meeting. A majority of such members shall have the power and authority to authorize the officers to retire the outstanding bonds or indebtedness of the corporation by the issuance of new bonds or evidences of indebtedness and also shall have the power to authorize the directors and officers to make provision for the borrowing of money to take care of necessary improvements in the buildings of the corporation or additions thereto when deemed necessary, and to issue corporate bonds or other evidences of indebtedness therefor and to secure the same by mortgage on the property of the corporation.

(4) At any meeting of the members of a nonstock, nonprofit corporation, having a total membership of four hundred or more, residing in three or more counties of the state, the articles of organization may be amended by a majority of the members present. A quorum for any meeting of members or directors of any such corporation shall be such number as the articles of organization or the by-laws may provide. [1937 c. 85]

Note: "Capital stock" is amount of stock issued in accordance with statute. Schwemer that corporation may issue, and "voting v. Fry, 212 W 88, 249 NW 62. power of corporation" is confined to stock

182.03 Office in state; books produced; forfeiture; assets. (1) Every domestic corporation, except railroad corporations that own or operate a railroad in another state in connection with their railroad in this state, shall have its principal office in this state, and shall keep in such office its general and principal books of account and stock books; and its principal managing officer or superintendent shall reside within this state.

(2) Any such railroad corporation shall produce before the public service commission, the legislature or any committee of either house, or any court of record, its books of account and stock books, or so many and such parts thereof as may be required, by either of them, or, in the discretion of such commission, legislature, committee or court, transcripts from such books, or such parts thereof as may be called for, duly authenticated; and each such railroad corporation shall designate some office within this state as its principal office and inform the public service commission of such designation, and shall keep there a list of its stockholders, together with a statement of the number of shares of its stock held by each of them, as shown by its books, which list shall be corrected as often as three times in each year, at the times of closing its stock books, if it shall so often close them, and if it shall not so often close them, then such list shall be corrected once at least in each four months. A failure or refusal to comply with any of the foregoing provisions shall be cause of forfeiture of its franchises.

(3) At least once in each year, each stock corporation shall make and file in its principal office, and keep on file there for the use of its stockholders, a statement and abstract of the assets and liabilities of such corporation and of its financial transactions for the previous year, which statement shall be verified by the affidavit of the treasurer, or other proper officer of such corporation, and shall contain a brief statement of the sources whence its receipts have been received, stated in classes, and a similar statement of its expenditures showing the amount disbursed for each class of objects and purposes.

182.04 Failure to report. Any corporation, and any officer, manager, agent, director or trustee of such corporation, who shall fail, neglect or refuse to fully and promptly perform and carry out any of the duties imposed by sections 182.03 and 182.10, shall, in addition to all other penalties, forfeit not less than twenty-five nor more than one hundred dollars for each and every such failure, neglect or refusal, to be collected by civil action in favor of any stockholder or creditor thereby aggrieved.

182.05 Capital stock, nature of, interest on. The capital stock of every corporation, divided into shares, shall be deemed personal property. No stock shall bear interest.

182.055 Stock certificates; signatures, seal, transfer agent. The stock of every stock corporation shall be represented by certificates signed by the president or vice president and by the secretary or assistant secretary, or the treasurer or an assistant treasurer,

and sealed with the seal of the corporation. Such seal may be a facsimile, engraved or printed. Where any such certificate is signed by a transfer agent or transfer clerk and by a registrar, the signatures of any such president, vice president, secretary, assistant secretary, treasurer or assistant treasurer upon such certificate may be facsimile, engraved or printed. In case any such 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 used by the corporation with the same effect as if such officer had not ceased to be such at the date of its issue. [1933 c. 185]

182.06 Stocks and bonds; consideration; fictitious increases. No corporation shall issue any stock other than dividend stock, except in consideration of money or of labor or property estimated at its true money value, actually received by it, equal to the par value thereof, nor any bonds or other evidences of indebtedness, except for money or for labor or property estimated at its true money value, actually received by it, equal to seventy-five per cent of the par value thereof, and all stocks and bonds issued contrary to the provisions of law and all fictitious increase of the capital stock of any corporation shall be void.

Note: This section does not prohibit a compensating one, even an officer of the corporation from expending money necessary for promoting the sale of its stock, Restlaw Memorial Park Ass'n v. Solie, 233 W 425, 289 NW 615.

182.07 Subscriptions. (1) **HOW CALLED.** Unless otherwise expressly provided by law or the articles of organization or the subscription contract, the directors of any corporation may call in the subscriptions to the capital stock by instalments, in such proportion and at such times as they shall think proper, by giving such notice thereof as the by-laws shall prescribe, and may enforce payment thereof by suit in the name of the corporation. In case any stockholder shall neglect or refuse payment of any such instalment for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, the stock of such negligent stockholder may be sold by the directors at public auction, giving at least thirty days' notice in some newspaper published at or nearest to the location of such corporation; and the proceeds of such sale shall be first applied in payment of the instalment called for and the expenses attending the sale, and the residue be refunded to the owner thereof; but if the proceeds of such sale shall not be sufficient to pay such instalment and the expenses of the sale, such delinquent stockholder shall remain liable to the corporation for such deficiency; such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so bought.

(2) **LIABILITY OF TRUSTEES AND ASSIGNEES.** No person holding stock in any corporation as executor, administrator, guardian or trustee, or as collateral security shall be personally liable for any calls or instalments on any part paid stock; but the person pledging such stock shall be considered as holding the same and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator or intestate, ward or person interested would have been if he had been living or competent to act and held the same stock in his own name.

182.08 Stockholders' liability on reduction of stock; contribution. Whenever the capital stock of any corporation shall be diminished by any corporate vote, the stockholders shall be liable to the existing creditors, in an action by any such creditor or a lawfully appointed receiver or assignee of such corporation, to the amount respectively refunded to them and the amount credited upon their debts for unpaid stock. And the stockholders voting for such diminution shall be jointly and severally liable to any creditor whose debt shall then remain unpaid to an amount equal to the whole amount refunded to the stockholders and credited upon their debts for unpaid stock; but all stockholders shall be liable to contribute proportionately to every stockholder compelled to discharge corporate debts under this section.

182.09 Stockholder, release from liability. If any stock shall be transferred which is not fully paid the corporation may, by agreement to be noted on its stock book, discharge the stockholder making such transfer from liability to it for the unpaid part of his stock subscription and accept that of the person to whom the stock is transferred in his place; but the person transferring such stock shall be liable for the amount unpaid thereon to the then creditors of such corporation and those who may become such within six months after such transfer or to any lawfully appointed receiver or assignee of the corporation for their use.

182.10 Stockholder may inspect books; creditor entitled to information. The books of every corporation containing the stock subscriptions and accounts shall at all reasonable times be open to the inspection of the stockholders for any proper purpose; and every creditor of a corporation shall be informed at any time of the amount of capital stock of such corporation subscribed, the amount paid in, who the stockholders are, the number of shares of stock owned by each and the amount unpaid by each stockholder upon the shares owned by him, and if any shares of stock, which were not fully paid for have

been transferred within 6 months of the time of inquiry, the name of the person who transferred the same and the amount due thereon at the date of such transfer. And the officers of such corporation shall furnish any such creditor correct information thereof. And any officer refusing, when requested so to do, shall be liable for any damage caused thereby. [1941 c. 292]

Note: Statute authorizing inspection of associations. State ex rel. Schomberg v. the books of a corporation by the stock- Home Mut. B. & L. Ass'n., 220 W 649, 265 NW holders does not apply to building and loan 701.

182.11 Stockholder credited with payments, not dividends. In actions by or for the benefit of any such creditor against stockholders to recover what may be due and unpaid on any stock such stockholders shall only be credited with such sums as have been actually paid in in money or its equivalent in value on account of such stock and not with any dividend which may have been declared and applied on such stock.

182.12 Corporate records. Every corporation shall keep a correct and complete record of all its proceedings, including such as relate to the election of its officers, and such record may be kept in any other than the English language when so provided in its articles of organization. Every corporation shall also keep a book containing the names of all stockholders or members since its organization, showing the place of residence, amount of stock held, time of acquiring stock or becoming a member, time of transfer of stock or cessation of membership of each respectively. If any officer, agent or servant of any corporation shall omit to make any entry in the books or records thereof which it is his duty to make as such officer, agent or servant he shall forfeit not less than twenty-five nor more than one thousand dollars and be liable for all damages thereby sustained.

182.13 Preferred stock. (1) Any corporation may, in its original articles, or by amendment thereto adopted by a three-fourths vote of the stock, provide for preferred stock; for the payment of dividends thereon at a specified rate before dividends are paid upon the common stock; for the accumulation of such dividends; for a preference of such preferred stock not exceeding the par value thereof, over the common stock in the distribution of the corporate assets other than profits; for the redemption of such preferred stock, and for denying or restricting the voting power of such preferred stock.

(2) Certificates of preferred stock and common stock shall state, on the face thereof, or on the reverse side of such certificates with an appropriate reference thereto on the face thereof, all privileges accorded to and all restrictions imposed on preferred stock.

(3) No change in relation to such preferred stock shall be made, except by amendment to the articles adopted by a vote of three-fourths of the preferred and three-fourths of the common stock.

(4) The articles may be amended by a three-fourths vote of the common stock to provide for a second issue of preferred stock, subject to all the rights and equities of the first issue of preferred stock, and the certificates of such second issue shall have plainly printed across the face the words "Preferred Stock, Second Issue," and shall recite all the terms, restrictions and regulations provided in the articles in relation to such second issue of preferred stock.

Note: One who acquires stock in a corporation consents in advance to the making of such changes in the articles as the statutes permit, and in the manner permitted by statute. Johnson v. Bradley Knitting Co., 228 W 566, 280 NW 688.

Preferred stock may not have exclusive voting rights. This section requires preferred stock to have preference in distribution of dividends. 23 Atty. Gen. 6.

182.14 Shares without nominal or par value. (1) Any corporation, including a public service corporation, may, if so provided in its articles of incorporation or in an amendment thereof, issue shares of stock (other than stock preferred as to dividends or preferred as to its distributive share of the assets of the corporation or subject to redemption at a fixed price) without any nominal or par value. Every share of such stock without nominal or par value shall be equal to every other share of such stock, except that the articles of incorporation may provide that such stock shall be divided into different classes with such designations and voting powers or restrictions or qualifications thereof as shall be stated therein, but all such stock shall be subordinate to the preferences given to preferred stock, if any. Such stock may be issued by the corporation from time to time for such consideration of money or of property or services valued in terms of money, as may be fixed from time to time by the board of directors thereof, pursuant to authority conferred in the articles of incorporation, or by the organizers prior to the first meeting of the stockholders and election of directors, or if the articles shall not so authorize the directors to fix the price, then such consideration shall be determined by the consent of the holders of two-thirds of each class of stock then outstanding and entitled to vote given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws, and any and all such shares so issued, the full consideration for which has been paid or delivered, shall be deemed full paid stock and not liable to any further call or assessment thereon, and the holder of such shares shall not be liable for any further payments under the provisions of this chapter. The amount

of all moneys and the money value of any services or property paid for shares without par value as fixed at the time of the issuance of the shares therefor by the organizers, the directors, or the stockholders, whichever shall have fixed the price for the issuance thereof, shall constitute the capital applicable to such shares, which capital may not be diminished by the payment of dividends. In case, however, of the issuance of such shares in exchange for the shares of an existing business then having a surplus, such surplus may be retained as a surplus available for the payment of dividends, or in case said shares without par value are sold by a corporation which has accumulated a surplus, such portion of the price as shall bear the same proportion to the total price as the surplus bears to the total of capital and surplus of the corporation, may by resolution of the board of directors adopted prior to the sale of such stock be treated as surplus available for dividends. In the event of the payment of a stock dividend in stock without par value, the resolution providing for such dividend shall specify the amount of the surplus distributed by such dividend and such amount shall become capital.

(2) In any case in which the law requires that the par value of the shares of stock of a corporation be stated in any articles, certificate or paper, it shall be stated, in respect of such shares, that such shares are without par value, and wherever the amount of stock, authorized or issued, is required to be stated, the number of shares authorized or issued shall be stated, and it shall also be stated that such shares are without par value. As filing fees, in addition to the fees on account of capital represented by the preferred stock there shall be paid five cents on account of each share of nonpar stock.

Note: Provision of (2), fixing fee of five cents on account of each share of nonpar stock, applies where corporation amends its articles so as to change its capital stock of par value to equal number of shares of nonpar stock. 22 Atty. Gen. 283.

182.15 Vote; proxies; shares in trust. (1) Unless a provision to the contrary is inserted in the articles of incorporation and recited in each certificate for any share of stock issued by the corporation, every stockholder of any corporation shall be entitled to one vote for each share of stock held and owned by him at every meeting of the stockholders and at every election of the officers thereof, and may vote either in person or by proxy at such elections, and by proxy at other meetings when so provided by the by-laws of the corporation; and every executor, administrator, guardian, assignee for creditors, receiver or trustee shall represent the shares of stock in his hands at all meetings of the stockholders and may vote thereat as a stockholder.

(2) Unless a provision to the contrary is inserted in the articles of incorporation, any person entitled to vote at any meeting of any nonstock, nonprofit sharing corporation may vote either in person or by proxy. All such votes heretofore cast not involved in any litigation are hereby validated. [1931 c. 243]

Note: Provision for proxy voting in article of incorporation of nonstock, nonprofit corporation incorporated under chapter 180 is unauthorized. 19 Atty. Gen. 103.

182.16 [Renumbered section 206.08 sub. (5) by 1927 c. 534 s. 53]

182.17 Irregular meeting. When all the members of any corporation shall be present at any meeting, however notified, and shall sign a written consent to the holding of such meeting on the records thereof, they may transact any business at such meeting which could lawfully be transacted at any meeting of the members of such corporation regularly called and notified.

182.18 [Renumbered section 180.14 by 1927 c. 345]

182.19 Dividends; payment of, when; liability. (1) No dividend shall be paid by any corporation until at least fifty per cent of the authorized capital stock has been fully paid in, and then only out of net profits properly applicable thereto, and which shall not in any way impair or diminish the capital; and if any dividend shall be paid contrary to this provision, every stockholder receiving the same shall be liable to restore the full amount thereof unless the capital be subsequently made good; and if the directors shall pay any dividend before the said portion of such capital stock is fully paid in, or when the corporation is insolvent or in danger of insolvency, not having reason to believe that there were sufficient net profits properly applicable thereto to pay the same without impairing or diminishing the capital, they shall be jointly and severally liable to the creditors of the corporation at the time of declaring such dividends to the amount of their claim.

(2) But any corporation which has invested net earnings or income in permanent additions to its property, or whose property shall have increased in value, may declare a dividend either in money or in stock to the extent of the net earnings or income so invested or of the said increase in the value of its property; but the total amount of such dividend shall not exceed the actual cash value of the assets owned by the corporation in excess of its total liabilities, including its capital stock.

(3) No dividend in excess of seven per cent of its capital, shall be paid, in any year by any farmers' mutual telephone company.

Note: The underlying purpose of 180.06 and this section, restricting, respectively, the transaction of business and the payment of dividends by a corporation, is the same—that of protecting the creditors of the corporation. Being in pari materia, the express rule to determine what proportion of stock shall be subscribed and what proportion paid in before the corporation may transact business is applicable to this section, limiting the payment of dividends. Enactment of 182.13 and 182.14, authorizing the issuance of preferred stock and stock without nominal or par value, did not abrogate such limitation, and when the capital stock of a corporation consists in whole or in part of preferred and nonpar value stock, the time when dividends may be paid is to be ascertained by 180.06. *Goetz v. Williams*, 206 W 561, 240 NW 181.

In the construction of a will bequeathing shares of corporate stock to trustees in trust to pay the income to the widow during her life, and giving the stock, at the death of the widow, to a son, a stock dividend declared and paid to the trustees after the testator's death constituted income to which the life beneficiary was entitled, in the proportion that the stock dividend was made from corporate surplus accumulated between the time of the testator's death and the time of the

declaration of the stock dividend. *Estate of Paddock*, 213 W 409, 251 NW 229.

Subsection (2), permitting corporations to declare dividends out of surplus resulting from an increase in value of corporate assets, is not controlling as to the respective rights of life tenant and remainderman to the dividends declared. As between life tenant and remainderman, dividends declared by a corporation out of surplus resulting from an increase in value or appreciation of corporate assets are not "income". *Welch v. Welch*, 235 W 282, 290 NW 758, 293 NW 150.

Under the articles of a corporation limiting the payment of accumulated dividends and a premium on preferred stock in liquidation to profits, and under 182.13 (1), limiting the preference which may be given preferred stock to the par value thereof over the common stock in the distribution of corporate assets other than profits, and 182.19 (1), limiting the payment of dividends to net profits, preferred stockholders, on the liquidation of the corporation were not entitled to the payment of accumulated dividends and the premium on preferred stock out of capital surplus which had been created by a reduction of the common stock. *Hull v. Pfister & Vogel Leather Co.*, 235 W 653, 294 NW 18.

182.20 Examination by attorney-general and legislature. The attorney-general, whenever required by the governor, shall examine into the affairs of any corporation in this state and report in writing a detailed statement of the facts to the governor, who shall lay the same before the legislature, and for that purpose the attorney-general may conduct hearings and examine the vaults, books, papers and documents belonging to such corporation or pertaining to its affairs and condition; and the legislature, or either branch thereof, shall have like power at all times, and for that purpose any legislative committee may examine any person in relation to the affairs and condition of such corporation, and its vaults, safes, books, papers and documents, and compel the production of all keys, books, papers and documents by contempt proceedings.

182.21 Use of property. The property of any corporation organized under any special or general law shall be used only for the purposes prescribed by such law or by its articles of organization in pursuance thereof.

182.22 Legislature may restrict powers. The legislature may at any time limit or restrict the powers of any corporation organized under any law and, for just cause, annul the same and prescribe such mode as may be necessary for the settlement of its affairs.

182.23 Stockholders' liability; wages of employes. The stockholders of every corporation, other than railroad corporations, shall be personally liable to an amount equal to the face or par value stock owned by them respectively, and to the consideration for which their nonpar value stock in such corporation was issued, for all debts which may be due and owing to its clerks, servants and laborers for services performed for such corporation, but not exceeding six months' service in any one case.

Note: Payments by a corporation to employes within the last three months of service rendered by them could not operate as a credit in favor of stockholders who were sued for their personal liability for service rendered by employes where at the time of the suit there were six months' service unpaid. *Kreutzer v. Gallagher*, 229 W 273, 282 NW 22.

The final order in a corporation receivership proceedings which reserved to employes of a corporation the right to proceed against the stockholders for the stockholders' statutory liabilities for the amount owed by the corporation to employes for services did not bar an action under 237.17. *Kreutzer v. Gallagher*, 229 W 273, 282 NW 22.

182.24 Actions. Every corporation may maintain an action against any of its members or stockholders for any cause relating to the business of the corporation the same as against any other person; and like actions may be maintained by any member or stockholder against such corporation for any cause of action in his favor against the same.

182.25 Stockholders, lists to public service commission. Every corporation authorized to transact business in Wisconsin shall, on the written request of the public service commission and within twenty days, furnish a complete list of its stockholders and a statement of the amount of stock held in the corporation by each such stockholder, duly verified by the president or secretary of such corporation. Any corporation violating this section shall forfeit not less than one hundred dollars nor more than one thousand dollars.