

179.15 History: 1919 c. 449; Stats. 1919 s. 1703—15; 1923 c. 291 s. 3; Stats. 1923 s. 124.15; 1967 c. 92 s. 18; Stats. 1967 s. 179.15.

179.16 History: 1919 c. 449; Stats. 1919 s. 1703—16; 1923 c. 291 s. 3; Stats. 1923 s. 124.16; 1967 c. 92 s. 18; Stats. 1967 s. 179.16.

179.17 History: 1919 c. 449; Stats. 1919 s. 1703—17; 1923 c. 291 s. 3; Stats. 1923 s. 124.17; 1967 c. 92 s. 18; Stats. 1967 s. 179.17.

179.18 History: 1919 c. 449; Stats. 1919 s. 1703—18; 1923 c. 291 s. 3; Stats. 1923 s. 124.18; 1967 c. 92 s. 18; Stats. 1967 s. 179.18.

179.19 History: 1919 c. 449; Stats. 1919 s. 1703—19; 1923 c. 291 s. 3; Stats. 1923 s. 124.19; 1967 c. 92 ss. 18, 22; Stats. 1967 s. 179.19.

179.20 History: 1919 c. 449; Stats. 1919 s. 1703—20; 1923 c. 291 s. 3; Stats. 1923 s. 124.20; 1967 c. 92 s. 18; Stats. 1967 s. 179.20.

179.21 History: 1919 c. 449; Stats. 1919 s. 1703—21; 1923 c. 291 s. 3; Stats. 1923 s. 124.21; 1967 c. 92 s. 18; Stats. 1967 s. 179.21.

179.22 History: 1919 c. 449; Stats. 1919 s. 1703—22; 1923 c. 291 s. 3; Stats. 1923 s. 124.22; 1967 c. 92 s. 18; Stats. 1967 s. 179.22.

179.23 History: 1919 c. 449; Stats. 1919 s. 1703—23; 1923 c. 291 s. 3; Stats. 1923 s. 124.23; 1967 c. 92 s. 18; Stats. 1967 s. 179.23.

179.24 History: 1919 c. 449; Stats. 1919 s. 1703—24; 1923 c. 291 s. 3; Stats. 1923 s. 124.24; 1967 c. 92ss. 18, 22; Stats. 1967 s. 179.24.

179.25 History: 1919 c. 449; Stats. 1919 s. 1703—25; 1923 c. 291 s. 3; Stats. 1923 s. 124.25; 1967 c. 92 ss. 18, 22; Stats. 1967 s. 179.25.

179.26 History: 1919 c. 449; Stats. 1919 s. 1703—26; 1923 c. 291 s. 3; Stats. 1923 s. 124.26; 1967 c. 92 s. 18; Stats. 1967 s. 179.26.

179.27 History: 1919 c. 449; Stats. 1919 s. 1703—27; 1923 c. 291 s. 3; Stats. 1923 s. 124.27; 1967 c. 92 s. 18; Stats. 1967 s. 179.27.

179.28 History: 1919 c. 449; Stats. 1919 s. 1703—28; 1923 c. 291 s. 3; Stats. 1923 s. 124.28; 1943 c. 169; 1967 c. 92 s. 18; Stats. 1967 s. 179.28.

179.29 History: 1919 c. 449; Stats. 1919 s. 1703—29; 1923 c. 291 s. 3; Stats. 1923 s. 124.29; 1967 c. 92 s. 18; Stats. 1967 s. 179.29.

179.30 History: 1919 c. 449; Stats. 1919 s. 1703—30; 1923 c. 291 s. 3; Stats. 1923 s. 124.30; 1943 c. 169; 1967 c. 92 ss. 18, 22; Stats. 1967 s. 179.30.

CHAPTER 180.

Business Corporations.

180.01 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.01.

On impairment of contracts see notes to sec. 12, art. I; on legislative power generally and on the public-purpose doctrine see notes to sec. 1, art. IV; on special and private laws (private corporations) see notes to sec. 31, art. IV; on the formation of corporations see notes to sec. 1, art. XI; and on general banking law see notes to sec. 4, art. XI.

Legislative amendment of corporation statutes—the Wisconsin problem. Luce, 30 MLR 20.

The 1965 amendments to the corporation statutes. Starr, 50 MLR 112.

Accounting in corporation law. Hills, 12 WLR 494.

Blind spots in the present Wisconsin general corporation statutes. Levin, 1939 WLR 173.

Wisconsin business corporation law. Young, 1952 WLR 5.

Trends in legislation for close corporations—a comparison of the Wisconsin business corporation law of 1951 and the New York business corporation law of 1961. Hetherington, 1963 WLR 92.

180.02 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.02; 1953 c. 399 s. 1 to 4; 1965 c. 53.

Revision Committee Note, 1951: The definition of "foreign corporation" follows closely 226.01 (1949); otherwise the section has no counterpart in the 1949 Wisconsin corporation laws. [Bill 763-S]

Revision Committee Note, 1953: The words "articles of merger or consolidation" are deleted; they cause confusion in the definition of articles of incorporation because those parts of articles of merger or of consolidation which are charter provisions automatically become, by reason of 180.67 (6) amendments to the articles of incorporation of the surviving corporation or constitute the articles of incorporation of the new corporation. The inclusion of "restated articles of incorporation" within the definition is to make clear that all of the provisions of the code relating to articles of incorporation are applicable to restated articles. (11), Stats. 1951, with its definition of "surplus" is repealed because the conception of surplus as a single amount and of earned surplus and capital surplus as portions of such amount leads to confusion in case of an earned surplus deficit. In that case capital surplus may be greater than surplus as formerly defined. The uses to which surplus may be put are better defined by reference to the specific type of surplus to be used, and appropriate changes for this purpose are proposed in various sections below. In (11), the new last sentence in the definition of earned surplus is to eliminate capital transactions in accord with proper accounting treatment; and "capital surplus" is redefined in (12) to prevent automatic reduction by an earned surplus deficit or by treasury shares, thus being in accord with 180.61 (3), and 180.385, and accounting practice. In (13), a new term "net capital surplus" is defined and later substituted for "capital surplus" in most places, since the amount of capital surplus permitted to be used in a partial liquidation, for example, should be limited to the excess over any then existing earned surplus deficit. [Bill 524-S]

180.03 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.03.

Revision Committee Note, 1951: This section conforms closely to 180.01 (1949). [Bill 763-S]

On organization and management of railroads see notes to various sections of ch. 190; on insurance corporations in general see notes

to various sections of ch. 201; and on state banks see notes to various sections of ch. 221.

See note to 157.03, citing *Hillier v. Lake View Memorial Park*, 208 W 614, 243 NW 406, and *Blooming Grove v. Roselawn Memorial Park Co.* 231 W 492, 286 NW 43.

Under the plan of a mutual benefit association, which includes levying an assessment on the members of a particular class on the death of a member of such class to pay over to the beneficiary of the deceased member the amount collected less certain deductions, the association is engaged in the business of insurance, and is therefore violating the general incorporation law (ch. 180, Stats. 1931). *State ex rel. Martin v. Dane County Mut. Ben. Asso.* 247 W 220, 19 NW (2d) 303.

A corporation organized under ch. 180, Stats. 1945, cannot act as trustee under 189.13 (4). 34 Atty. Gen. 306.

The secretary of state may refuse to file proposed articles of incorporation where it appears from examination of the articles that the purpose or necessary effect of the operation of the association is unlawful. Proposed articles of incorporation of a trade association, composed of retail food dealers and manufacturers, wholesalers and jobbers selling food products, which state that the object of the association is to oppose direct sales to consumers by any persons other than retail food dealers, are in violation of 133.01, Stats. 1949, forbidding combinations and agreements in restraint of trade. 38 Atty. Gen. 313.

180.04 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.04; 1965 c. 53.

Revision Committee Note, 1951: The introductory sentence conforms with 182.01 (1949). Most of the subsections are merely more precisely phrased statements of the powers set forth in 182.01 (1949). Following the trend of modern corporation laws, (12) specifically empowers corporations to make donations for worthy causes. [Bill 763-S]

A corporation cannot engage in a business separate and distinct from that authorized. A railroad company could not, as a means of raising money to build its road, engage in banking, manufacturing or speculation. *Clark v. Farrington*, 11 W 321.

Independently of ch. 93, R. S. 1878, building and loan associations, unless expressly prohibited by their articles, may borrow money when it is reasonably necessary to carry out the purposes for which they were organized. *North Hudson M. B. & L. Asso. v. First Nat. Bank*, 79 W 31, 47 NW 300.

"The old doctrine that corporations can act only by deed or instrument under seal has been very much modified. It has given way to the pressure put upon it by the great growth of corporate transactions, and the necessity for greater freedom in their operations, for the convenience of business. Such bodies may now act without a seal, very much as individuals can, except when otherwise provided by the statute or their articles of organization." *Ford v. Hill*, 92 W 188, 198, 66 NW 115, 118.

Sale or mortgage of franchises is authorized by sec. 1748, R. S. 1878, and ch. 221, Laws 1883, as amended. *Wright v. Milwaukee E. R. & L. Co.* 95 W 29, 69 NW 791.

The right of a private corporation to make a voluntary assignment, if not expressly or impliedly forbidden by its charter or other positive law, must be regarded as clear and undoubted as that of a natural person. *Goetz v. Knie*, 103 W 366, 79 NW 401.

One telephone company may acquire by purchase or assignment and hold and enjoy any right, privilege or franchise owned by another telephone company. *Badger T. Co. v. Wolf River T. Co.* 120 W 169, 97 NW 907.

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

A commercial cemetery corporation was properly organized under ch. 180, and it was not limited as to its powers by ch. 157, providing for another class of cemetery corporations; it had power to borrow money for its purposes and to create a lien on its property to secure the loan. *Feest v. Hillcrest Cemetery, Inc.* 247 W 160, 19 NW (2d) 246.

Ownership of a controlling interest in stock of a national bank, or of the entire stock of such bank, by a domestic corporation, does not constitute engaging in prohibited lines of business, such as "business of banking, insurance," etc., and is not a violation of 180.01, Stats. 1927. 18 Atty. Gen. 30.

Corporation directors' reimbursement for litigation expenses. *Helstad and Williams*, 1950 WLR 157.

180.06 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.06.

Revision Committee Note, 1951: This has no counterpart in the 1949 Wisconsin statutes. The section is designed to protect third persons dealing with corporations. At the same time, it provides for enjoining performance of ultra vires executory contracts, and preserves the remedies against wrong-doing officers and the right of the state to take appropriate action. [Bill 763-S]

A purchaser from a corporation cannot defend an action for the price on the ground that the corporation exceeded its legal powers in acquiring the property sold. *Farmers' & Millers' Bank v. Detroit & M. R. Co.* 17 W 377.

Where a corporation violates its charter in purchasing real estate its title thereto and right to enjoy the same cannot be inquired into collaterally in actions between private parties or between the corporation and such parties; it can be questioned only by the state. *John V. Farwell Co. v. Wolf*, 96 W 10, 70 NW 289.

After the execution of a contract of agency a corporation cannot avoid it on the ground that it was ultra vires. *McElroy v. Minnesota P. H. Co.* 96 W 317, 71 NW 652.

180.07 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.07.

Revision Committee Note, 1951: 180.02 (1) (b) (1949) requires that the corporate name not contain the names of individuals in such manner as to indicate that the corporation is a partnership or sole proprietorship. 180.07 achieves the same end by providing that "corporation", "incorporated" or "limited", or an abbreviation thereof, be included in the

name, excepting from this requirement corporations organized prior to the enactment of this chapter. (2) introduces a new requirement and (3) merely restates a portion of 180.02 (1) (b) (1949). [Bill 763-S]

180.08 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.08; 1965 c. 53.

Revision Committee Note, 1951: No counterpart in 1949 statutes. At one time, however, the secretary of state informally reserved names for applicants without charge therefor. Another section requires a fee for this service. [Bill 763-S]

The 1965 amendments to the corporation statutes. Starr, 50 MLR 112.

180.09 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.09.

Revision Committee Note, 1951: 182.03 (1) (1949) requires that domestic corporations have their principal office in this state. In lieu, 180.09 requires the maintenance of a local registered office and registered agent upon whom process may be served. [Bill 763-S]

A corporation not organized under ch. 180, such as a bank, an insurance company or a savings and loan association, or one organized under ch. 181, may not be designated as a registered agent under 180.09 (2). 55 Atty. Gen. 1.

180.10 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.10; 1961 c. 220.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

Filing and fee requirements must be met when the address of a corporation is renumbered or renamed by municipal act. 55 Atty. Gen. 24.

180.105 History: 1953 c. 399 s. 6; Stats. 1953 s. 180.105.

180.11 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.11; 1961 c. 220.

Revision Committee Note, 1951: 180.11 makes the registered agent or, if none, the secretary of state, the corporation's agent for service of process. 262.09 (1949) authorizes service on certain local officers and employees within the state but makes no provision for the case where none of them can be found. [Bill 763-S]

Sec. 1750, R. S. 1878, requires that the agent shall actually reside within this state. In the absence of such actual residence service of process made upon the person in the state who seems to have general supervision of the affairs of the corporation therein will be sustained though he is not, strictly, the managing officer. Wickham v. South Shore L. Co. 89 W 23, 61 NW 287.

180.12 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.12; 1953 c. 399 s. 7, 8; 1965 c. 53.

Revision Committee Note, 1951: The first sentence of (1) contains a power which is implicit in 180.02 (1) (d) (1949). The second sentence of (2) permits one or more classes of stock while 1949 statutes only permit common and preferred stock although 182.14 (1) (1949) permits nonpar stock to be divided into classes which have different voting pow-

er. The classification under 180.12 is much broader than 182.14 (1) (1949) which permits classification as to voting rights only; any class may be nonpar while 182.14 (1) (1949) permits nonpar common but expressly forbids nonpar preferred. The third sentence of (3) follows the theory of 182.13 (1949) in permitting the denial of voting rights but extends such right of denial to any class—not just to preferred. The rest of the section is a more detailed statement of the nature of limitations, relative rights, etc. than is found in 182.13 (1949) but the theory is the same as 182.13 (1949). (4) permits classification in series and authorizing the delegation of power to directors to fix designations, preferences, powers, etc. (4) adopts the theory of 182.13 (1949) although the language varies considerably. [Bill 763-S]

Revision Committee Note, 1953: The words "through exchange" in (2) (e) introduce some implications which may be undesirable from a tax or securities law standpoint and, accordingly, they are deleted. These words did not appear in the ABA Model Code. The conversion is limited to "authorized" shares so that the conversion will not effect an automatic change in capitalization as between classes or series. Since the initial director action establishing series has the effect of an amendment to the articles, it is desirable to make express provision permitting like action by the directors to later reclassify unissued, treasury or cancelled shares of a series so established into shares of a new series. Similar reclassification authority is already found in 184.13 as to public utilities. [Bill 524-S]

A provision of articles of incorporation that preferred stock should be redeemed at a definite time is valid as to the corporation and consenting stockholders, if creditors' rights are not prejudiced by payment. A holder of preferred stock redeemable at a fixed date may compel redemption, if the corporation's assets exceed its liabilities. The burden is on a stockholder attempting to compel redemption to show that redemption can be made without prejudice to creditors' rights. Koeppler v. Crocker C. Co. 200 W 476, 228 NW 130.

The legislative will, limiting the preference to be given to certain stock over other stock, cannot be avoided or waived or varied by articles of incorporation or other private conventions of the parties. The legal effect and consequences of those limitations cannot be avoided or defeated by invoking the doctrine of estoppel. Welch v. Land Development Co. 246 W 124, 16 NW (2d) 402.

In an action by a corporation to compel a holder of preferred stock to recognize the corporation's redemptive rights in such stock on payment to the defendant of the par value thereof plus a certain premium under articles of incorporation requiring "payment of all dividends due to the date of redemption" wherein the defendant's answer and affidavits set forth the equitable defense that the plaintiff's controlling stockholder in fraud of the defendant's rights so manipulated the plaintiff's affairs as to avoid the payment of dividends on preferred stock and then sought to exercise the redemption privilege when the plaintiff's financial condition became

such that the payment of such dividends could no longer be escaped, and the facts were in dispute as to whether the plaintiff did have a surplus sufficient to permit the payment of cumulative dividends at the time of redemption, the case cannot be disposed of by summary judgment, since such issue of fact must be determined by trial. *Lawrence Inv. Co. v. Wenzel & Henoch Co.* 263 W 13, 56 NW (2d) 507.

Securities issued by a corporation as a portion of the purchase price of a company acquired by it and represented to everyone including regulatory bodies as preferred stock, even though there appeared to be a definite maturity date, constituted an equity investment by the holders rather than a debt so that payments to holders were dividends and not interest and hence not deductible by the corporation for tax purposes. *Milwaukee & S. T. Corp. v. Commissioner*, 283 F (2d) 279.

Under the statutes in force in 1922, a corporation may have preferred stock, common stock with par value, and common stock without par value, and may classify 2 kinds of common stock with reference to dividend rights. 11 Atty. Gen. 950.

The 1965 amendments to the corporation statutes. Starr, 50 MLR 112.

180.13 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.13.

Revision Committee Note, 1951: No counterpart, except that the first sentence of (2) is quite similar to 182.07 (1) (1949). [Bill 763-S]

A call requiring some shareholders to pay in more than others is invalid; and if some have already contributed more than others it is the duty of the directors to make calls upon those who have paid the least in such amounts as to equalize the contributions of all. An assessment made by the court of another state against a shareholder in a foreign corporation which was unequal, and therefore void, will not be enforced. *Great Western T. Co. v. Burnham*, 79 W 47, 47 NW 373.

Calls cannot be made where stock is full paid by the transfer of property. *Wells v. Green Bay & M. C. Co.* 90 W 442, 64 NW 69.

One who becomes a creditor of a corporation is not affected by its act, prior to the time he became such and when it was solvent, in canceling stock subscribed but not paid for. *Shoemaker v. Washburn L. Co.* 97 W 585, 73 NW 333.

Where a stockholder takes part in the proceedings of a board of directors in making a claim he is estopped from asserting that there were irregularities in the call. *Graebner v. Post*, 119 W 392, 96 NW 783.

The consideration paid or to be paid for the stock must be equal to the par value. The statutes contemplate that the stock may be sold in part at least upon credit and the balance due may be collected from time to time. *Whitewater M. Co. v. Baker*, 142 W 420, 125 NW 984.

Calls by directors are intended to fix the time of payment of a general subscription for stock which fixes no time therefor; when the subscription contract itself fixes such time a call by the directors is unnecessary. *Columbus Institute v. Conohan*, 164 W 219, 159 NW 720.

An oral agreement to take \$2,000 of corporate stock and pay one-half in cash and one-half by the transfer of property, was binding after the property had been transferred to the corporation. *Shadbolt & Boyd I. Co. v. Long*, 172 W 591, 179 NW 785.

A subscriber of corporate stock became a stockholder in the corporation when he paid in an agreed amount and gave his note for the balance of the purchase price, and he was bound to pay the balance due on the subscription as evidenced by the note. *Marshall v. Wittig*, 213 W 374, 251 NW 439.

The provisions of 180.13 (2)—that terms of payment for stock subscriptions shall be determined by the board of directors—and of 180.91—that any informal action by shareholders or directors may be taken only if all persons entitled to vote at such meeting give consent in writing—are to be construed in light of 180.37 (2), which provides that notice of the directors' meeting is waived if the director attends unless he objects. *Columbia Stamping & Mfg. Co. v. Reich*, 28 W (2d) 297, 137 NW (2d) 45.

180.14 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.14; 1953 c. 399 s. 9.

Revision Committee Note, 1951: (1) is substantially the same as 182.06 (1949). (2) is the converse of 182.14 (1949). (2) provides for a majority vote instead of a two-thirds vote as is required by 182.14 (1949). (3) and (4) have no counterpart. [Bill 763-S]

Employees, bringing an action to enforce the statutory liability of stockholders for wages owing to employees of the corporation, cannot disregard the consideration fixed by the board of directors for the issuance of nonpar stock and thereby increase the liability of holders of nonpar stock by showing fixed assets in excess of the consideration for the stock issued, unless there was fraud in fixing the consideration for the issuance of the same. *Parish v. Awschu Properties, Inc.* 43 W 269, 10 NW (2d) 166.

The consideration paid or to be paid for the stock must be equal to the par value. The statutes contemplate that the stock may be sold in part at least upon credit and the balance due may be collected from time to time. *Whitewater M. Co. v. Baker*, 142 W 420, 125 NW 984.

A promoter of a corporation who was also its secretary and treasurer, and who without authority issued capital stock for less than par value, was guilty of fraud in law, as against the corporation, irrespective of his motive. *Whitewater T. & P. B. M. Co. v. Johnson*, 171 W 82, 175 NW 786.

Where articles of organization of a proposed corporation provide for stock of no par value only, the secretary of state should not refuse to file them because such articles provide a price at which the first 50% of shares of such stock are to be sold. 10 Atty. Gen. 675.

180.15 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.15.

Revision Committee Note, 1951: The first sentence of (1) employs language similar to 182.06 (1949) and 182.14 (1949). The second sentence of (1) has no counterpart. (2) has no counterpart unless a promissory note were

considered not to be "property" within the meaning of that term as used in 182.06 (1949) and 182.14 (1949). (3) has no counterpart. [Bill 763-S]

If the complaint by a stockholder against a corporation to cancel stock alleged to have been unlawfully issued shows that other stockholders will be injured in the same manner and from the same cause and demands relief which would inure to the benefit of all stockholders, the action is in behalf of all and any stockholder may become a plaintiff. *Wood v. Union G. Asso.* 63 W 9, 22 NW 756.

If stockholders pay for their stock in property instead of money in good faith, the fact that the property may have been overvalued will not prevent the stock from being full paid even as against a creditor of the corporation. Actual fraud in the payment of stock must be shown but a gross and obvious overvaluation of property is strong evidence of such fraud. *National Bank of Merrill v. Illinois & Wisconsin L. Co.* 101 W 247, 77 NW 185.

The purchaser of corporate stock for less than par value and the corporation making the sale are both participants in an illegal transaction, and the former will not be aided by a court of equity in an action against the corporation to obtain a rescission of the transaction or a recovery of the consideration paid. *Thronson v. Universal M. Co.* 164 W 44, 159 NW 575.

A promoter of a corporation who was also its secretary and treasurer, and who without authority issued capital stock for less than par value, was guilty of fraud in law, as against the corporation, irrespective of his motive. *Whitewater T. & P. B. M. Co. v. Johnson*, 171 W 82, 175 NW 786.

A corporation cannot lawfully issue stock to an employe without consideration, no change being made in the contract of employment, and stock so issued is void. *L. J. Mueller F. Co. v. Holmes*, 175 W 518, 185 NW 641.

A corporation is not prohibited from expending money necessary for promoting the sale of its stock, and is not prohibited from compensating one, even an officer of the corporation, who sells its stock. *Restlawn Memorial Park Asso. v. Solie*, 233 W 425, 289 NW 615.

180.16 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.16; 1953 c. 399 s. 10; 1965 c. 53.

Revision Committee Note, 1951: This section introduces a theory of "stated capital" which does not obtain under 1949 statutes. 182.14 (1) (1949) provides that the consideration received for nonpar stock shall constitute the capital applicable thereto. [Bill 763-S]

180.17 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.17; 1965 c. 53.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.18 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.18; 1965 c. 53.

Revision Committee Note, 1951: (1) is substantially the same as 182.055 (1949). The theory of (2) is the same as 182.13 (2) (1949) but is somewhat farther reaching. (3)

and (4) have no counterpart but conform to usual corporate practices. [Bill 763-S]

Any conveyance of an interest in a corporation, that is, an interest in the corporate entity, can be made only through a sale and transfer of capital stock of the corporation. *Stoelting Brothers Co. v. Stoelting*, 246 W 109, 16 NW (2d) 367.

A stock certificate is merely evidence of the ownership of shares of stock, and is not the stock itself. *Lake Superior D. P. Co. v. Public Service Comm.* 250 W 39, 26 NW (2d) 278.

180.19 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.19.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.20 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.20; 1953 c. 399 s. 11.

Revision Committee Note, 1951: This section changes the rule of 182.06 (1949) so that stock issued for less than par has validity in the hands of an innocent purchaser for value and subsequent transferees. The provisions of 182.23 (1949) with respect to liability of stockholders for wage claims have been retained in 180.40 (6). [Bill 763-S]

Revision Committee Note, 1953: This section has been amended so as to make it clear that it covers the certificates for shares which presumably are negotiable, as well as the shares themselves. [Bill 524-S]

So far as the creditors of the corporation are concerned, its trustees cannot release stockholders who have obtained their shares at less than par from the obligation imposed by secs. 1753 and 1758, R. S. 1878. *Gogebic I. Co. v. Iron Chief M. Co.* 78 W 427, 47 NW 726.

Where a bank stockholder received shares purporting to be fully paid for, but which were not, and where the balance of the price was discharged by application of a fictitious profit, as between the stockholder and the bank, the bank could not recover the unpaid balance, but creditors of the bank could recover in an equitable action. *Gager v. Paul*, 111 W 638, 87 NW 875.

The consideration paid or to be paid for the stock must be equal to the par value. The statutes contemplate that the stock may be sold in part at least upon credit and the balance due may be collected from time to time. *Whitewater M. Co. v. Baker*, 142 W 420, 125 NW 984.

A promoter of a corporation who was also its secretary and treasurer, and who without authority issued capital stock for less than par value, was guilty of fraud in law, as against the corporation, irrespective of his motive. *Whitewater T. & P. B. M. Co. v. Johnson*, 171 W 82, 175 NW 786.

180.21 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.21.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.22 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.22; 1965 c. 53.

Revision Committee Note, 1951: No counterpart in 1949 statutes. The section follows the Wisconsin case law and gives the stock-

holders the right to control bylaws. The provision differs from the Model Code which would give the authority to the directors to make and amend bylaws unless reserved to the shareholders. [Bill 763-S]

The power to make bylaws rests with the stockholders of the corporation and not with the board of directors, unless such power is taken away by the charter or some law of the state. (In re Klaus, 67 W 401, 29 NW 582, overruled.) North Milwaukee T. S. Co. v. Bishop, 103 W 492, 79 NW 785.

It is a general rule that the principles which govern the construction of contracts also govern the construction and interpretation of corporate bylaws. State ex rel. Siciliano v. Johnson, 21 W (2d) 482, 124 NW (2d) 624.

180.23 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.23.

Revision Committee Note, 1951: This section deals with matters contained in 180.14 (1) and (5) (1949). It is somewhat preferable in that it makes provision expressly for annual and special meetings, whereas the 1949 provision is somewhat indefinite as to special meetings. Special meetings may be called by one-tenth of the outstanding shares, whereas the present statute requires one-fifth of the shares. It was felt it was advisable to permit corporate meetings without the United States if provided by the bylaws, but if not so fixed, they must be held at the registered office of the company within this state. [Bill 763-S]

180.24 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.24; 1953 c. 399 s. 12.

Revision Committee Note, 1951: This subject is covered by 180.14 (5) (1949). Provision permitting publication of notice is omitted in 180.24, as it was felt under present conditions that manner of giving notice served no useful purpose. Corporations may set the time for giving notice as now permitted under 180.14 (5) (1949). [Bill 763-S]

Revision Committee Note, 1953: 180.64 and 180.71 provide for 20 day notice on meetings of shareholders to pass upon merger and certain dispositions of substantially all property. While these provisions prevail over the general notice provision, it is preferable to indicate some statutory exceptions in the general notice provision (and would also be good practice to indicate such exception in corporate bylaws to avoid error by officers). [Bill 524-S]

A meeting called for the purpose of electing directors of the corporation, which provides for the election of "officers," was properly called, the directors being "officers" within the meaning of 182.18, Stats. 1925. State ex rel. Matre v. Bergs, 195 W 73, 217 NW 736.

Although the statutory time for delivery of notice of meetings may be varied by the bylaws or articles of incorporation, the requirement that notice of a special meeting must state the purpose for which the meeting is called may not be varied in the absence of a waiver. Generally, under the broad principle of corporation law, defects as to notice of a stockholders' meeting may not be taken advantage of except by the corporation itself or its shareholders. Plaintiff, although a third party within the meaning of the above stated principle, was, under the peculiar circum-

stances of the instant case, entitled to recover the consideration paid for shares of stock which a shareholder agreed to sell subject to the contingency that the latter could effect a transfer within the terms of the bylaws (which then prohibited sale upon the open market without prior tender to the corporation), where the special meeting of the corporation called to amend the bylaws failed to state the purpose for which the meeting had been called, since the proper amendment of the bylaws was of the very essence of the contract, and the defective notice of special meeting, which cast doubt on the propriety of the purported amendment, constituted a breach of a condition in the contract. Mueller v. Merz, 23 W (2d) 588, 127 NW (2d) 774, 129 NW (2d) 442.

180.25 History: 1951 c. 731 s. 7; Stats. 1955 s. 180.25; 1953 c. 399 s. 13, 14; 1959 c. 319; 1965 c. 53.

Revision Committee Note, 1951: The right to limit or deny voting rights to classes of stock permitted under 182.13 (1949) is retained. [Bill 763-S]

Revision Committee Note, 1953: The change in (2) was recommended by state banks which held shares of their own capital stock in a fiduciary capacity. It is clear that shares of its own stock held by a corporation in a fiduciary capacity are outstanding shares and are entitled to receive dividends. If such shares are outstanding for dividend purposes the same should be deemed outstanding for voting and all other purposes. The suggested amendment is identical with Section 28 of the Illinois Business Corporation Act. This section in the 1951 statutes permitted any officer to vote corporation held stock. It was felt that such authority was too general and would lead to confusion should more than one officer claim voting rights. The present proposal represents a compromise between the 1949 law which permitted the president to vote such share, and the 1951 law which allowed any officer to so vote. [Bill 524-S]

Only legal owners of shares of stock have a right to vote in corporate meetings. The stock must be issued to be owned. Schwemer v. Fry, 212 W 88, 249 NW 62.

An option to purchase corporate stock does not in itself transfer to the optionee the right to vote the stock. Proxies procured from stockholders, whose shares were subject to an option to sell and had been deposited in escrow, by the optionees for the sole purpose of validating a stockholders' meeting illegally held by the optionees, were not "coupled with an interest" and were revocable. Stoelting Brothers Co. v. Stoelting, 246 W 109, 16 NW (2d) 367.

Provisions in corporate articles, authorizing the holders of preferred stock to vote whenever default shall exist in the payment of dividends, constitute a denial of the right of preferred stockholders to vote prior to the happening of the specified contingency. A denial of the right to vote preferred stock may exist expressly or by necessary implication, and may exist under an express provision even though the denial may not be express. Unless a denial is clearly manifested, it should not be given

effect, but where it is clear, it should be given effect even though it is not express. *Gottschalk v. Avalon Realty Co.* 249 W 78, 23 NW (2d) 606.

An irrevocable proxy is not against public policy. 1 Atty. Gen. 122.

182.15, Stats. 1929, does not authorize cumulative voting at elections of directors. 18 Atty. Gen. 429.

Under the statutes in force in 1933 preferred stock may not have exclusive voting rights. 23 Atty. Gen. 6.

Shareholder vote buying—a rebuttable presumption of illegality. *Schmitz*, 1968 WLR 927.

180.26 History: 1951 c. 731 s.7; Stats. 1951 s. 180.26.

Revision Committee Note, 1951: No counterpart in 1949 statutes other than 180.13 (4). Similar authority is now generally conferred by statute in other jurisdictions. The section follows the Model Code; it provides a uniform method of closing of the transfer books which might well avoid confusion in the determination of the stockholders entitled to vote. [Bill 763-S]

180.27 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.27; 1953 c. 399 s. 15.

Revision Committee Note, 1951: No counterpart in 1949 statutes. The Model Code provides for a 10-year limitation on voting trusts which was considered too short and was extended to 20 years. [Bill 763-S]

Revision Committee Note, 1953: Study indicates that the 20-year limitation of the 1951 statutes is not essential to the validity of voting trusts and that an arbitrary time limitation could defeat proper purposes of a voting trust as a beneficial means of working out relative rights of security holders on corporate reorganization, carrying out estate planning and voluntary settlement of relative rights of stockholder groups. The remedy for any illegitimate use of such a trust should be left to the courts, regardless of term. [Bill 524-S]

180.28 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.28; 1961 c. 220.

Revision Committee Note, 1951: Under 182.02 (1) (1949), the articles of organization may set a quorum at any number. This section follows the Model Code. [Bill 763-S]

180.29 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.29; 1965 c. 53.

Revision Committee Note, 1951: No counterpart in 1949 statutes. The Model Code was followed in substance except that a provision was included which would penalize the officer or agent who failed to prepare and keep a list as required. It was felt that no penalty should be provided. [Bill 763-S]

180.30 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.30.

Revision Committee Note, 1951: 180.30 is substantially the same as certain of the provisions of 180.13 (1) (1949) except that 180.30 specifically provides that directors need not be residents of this state. [Bill 763-S]

Although technically a corporation cannot act contractually except by or through its board of directors, a contract made at a stockholders' meeting, all the stockholders, including the directors, being present and participating, is valid and binding. *First T. Co. v. Miller*, 160 W 336, 151 NW 813.

Corporate directors stand in a fiduciary relation towards the stockholders. Thus, a contract between a director and a purchaser of stock who became manager of the company, by which it was agreed that if the manager's retention in such service should be discontinued the director would repurchase the stock and pay full par value plus pro rata profits, was void as against public policy unless made with the knowledge and consent of all the stockholders, because it interfered with the free and impartial discharge of official duty by the director. *Timme v. Kopmeier*, 162 W 571, 156 NW 961.

The directors of a corporation have full power to elect its officers and direct and control its policies. Courts of equity will not interfere with such managerial powers unless abused or exercised for an unlawful purpose. In determining net income for a basis upon which to compute a bonus allowed to an officer, the directors were justified in considering an income tax and an excess profits tax as a part of operating expenses. *Fleischer v. Pelton S. Co.* 183 W 451, 198 NW 444.

Where the management of the business of a corporation by its directors is unaccompanied by fraud, illegality or diversion of its funds or property to their own use a court will not interfere to change corporate policy upon the request of minority stockholders, and will not appoint a receiver merely because the directors refuse to pay dividends which such minority allege the corporation is able to pay. Such managerial power belongs, primarily, to the directors and not to the stockholders. *Gesell v. Tomahawk L. Co.* 184 W 537, 200 NW 550.

180.31 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.31; 1953 c. 399 s. 16.

Revision Committee Note, 1951: No counterpart in 1949 statutes. This section is not intended to deal with tenure. See *Stoiber v. Miller Brewing Co.* 257 W 13. [Bill 763-S]

Revision Committee Note, 1953: The first sentence is changed for certainty and to parallel corresponding phraseology elsewhere, as in 180.34. The second sentence is added to answer any doubt of the power to grant reasonable benefits or additional compensation for past services of executives or employes, including pensions, allowances to widows or dependents. [Bill 524-S]

A director or other fiduciary officer of a corporation presumptively serves without compensation, and he is entitled to compensation for performing usual and ordinary duties of his office only when there is a valid express agreement therefor; but he may be entitled to compensation, under an implied contract, where services clearly outside his ordinary duties as director or officer are performed under circumstances showing that it was well understood by proper corporate officers as well as himself that services were to be paid

for. *Security S. & T. Co. v. Coos Bay L. & C. Co.* 219 W 647, 263 NW 187.

180.32 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.32; 1953 c. 399 s. 17, 18; 1961 c. 220; 1965 c. 53.

Revision Committee Note, 1951: The provisions of this section conform substantially with 1949 Wisconsin practice and 180.02 (1) (e) and 180.13 (1) (1949). [Bill 763-S]

Revision Committee Note, 1953: 180.32 (2) in specifying that the term of office of a director shall extend until the next succeeding annual meeting implies that there is no power of removal; although directors are included in the term "officers" as defined in 370.01 (25), 180.42 would not apply because directors are not usually "elected or appointed" by the board. Any doubt concerning the power of removal of a director should be cleared up. A showing of cause should not be required. Removal without cause might be natural in many cases such as transfer of ownership of controlling shares. [Bill 524-S]

An amendment to corporate articles providing that the number of directors may vary, depending upon certain contingencies, is permissible under ch. 180, Stats. 1939. 28 Atty. Gen. 439.

180.33 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.33; 1965 c. 53.

Revision Committee Note, 1951: 180.13 (1) (1949) authorizes classification of directors, but has been criticized as being too loose and indefinite. This section is preferable because it establishes a definite procedure and because it has the effect of establishing 3 years as a maximum term. [Bill 763-S]

180.34 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.34; 1953 c. 399 s. 19; 1965 c. 53.

Revision Committee Note, 1951: Substantially the same as 180.13 (1) (1949). [Bill 763-S]

Revision Committee Note, 1953: Under the simplified articles permitted by the 1951 law, there would normally be no occasion for the articles to say anything more about directors than that their number should be as fixed from time to time by the bylaws. There may be instances where the shareholders would prefer to fill the vacancies. The shareholders' paramount power over the bylaws would under this amendment assure them a means of withdrawing from the directors the power to fill vacancies under any particular situation, without amending the articles or cluttering up the articles with provisions of any internal interest. [Bill 524-S]

180.35 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.35.

Revision Committee Note, 1951: The first sentence of 180.35 is very similar to the first sentence of 182.02 (1) (1949). 180.35 is preferable because it is more definite and includes some matters not specifically covered by 1949 statutes. [Bill 763-S]

180.36 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.36; 1965 c. 53.

Revision Committee Note, 1951: 180.13 (2)

(1949) authorizes the board of directors to appoint an executive committee with certain limitations on the powers of said committee. 180.36 authorizes the appointment of one or more committees but keeps the basic limitations on the authority of such committees which is now found in 180.13 (2) (1949). [Bill 763-S]

180.37 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.37.

Revision Committee Note, 1951: No 1949 statute specifically governs the time and place of directors' meetings. (1) is a desirable addition to the Wisconsin law particularly for the purpose of settling any question as to the propriety of directors' meetings outside of the state. (2) has no counterpart in 1949 statutes. [Bill 763-S]

180.38 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.38; 1953 c. 399 s. 20 to 25; 1965 c. 53.

Revision Committee Note, 1951: The fundamental difference between 180.38 and 182.19 (1949) is that under 182.19 dividends may be paid out of net profits or capital surplus, provided such payment does not impair or limit the capital applicable to outstanding stock; whereas 180.38 provides that dividends, except stock dividends, may only be paid out of unreserved earned surplus as defined in 180.02 (1), and further provides that under certain circumstances cumulative preferred dividends may be paid out of capital surplus. In general, 180.38 and 182.19 (1949) differ in that this section restricts the payments of dividends much more than 182.19; is more definite in its terminology and includes some matters not specifically covered by 182.19. [Bill 763-S]

Revision Committee Note, 1953: See note to 180.02. [Bill 524-S]

Ratable distribution by a corporation to its stockholders of the shares of another corporation, all of which it has lawfully acquired, is not a dividend, but is a valid transaction if consented to by all such stockholders and if it does not involve the rights of the state, creditors or third parties. *Hoberg v. John Hoberg Co.* 170 W 50, 173 NW 639, 952.

The payment of customary trade discounts given by stores generally in a particular locality to their customers is not prohibited. *Breon v. Genger*, 182 W 616, 197 NW 195.

Directors of a corporation are necessary parties to an action to compel the payment of dividends. In declaring dividends they must exercise good-faith discretion. To them belongs the primary managing power and duty as to stock, property, affairs and business of the corporation, not to the stockholders. *Gesell v. Tomahawk L. Co.* 184 W 537, 200 NW 550.

A corporate dividend must not in any way impair or diminish the capital. *Zimmers v. Milwaukee*, 189 W 269, 206 NW 178.

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.

The provisions of 182.19 (2), Stats. 1933, which permitted corporations to declare dividends out of surplus resulting from an increase in value of corporate assets, was 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 were 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), Stats. 1929, 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), Stats. 1929, 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.

Under provisions in articles of incorporation that preferred stock was to be subject to redemption on any dividend date after a certain date at \$105 per share "together with accrued earned dividends due thereon," and where the corporation properly called the stock as of April 1, 1948, which was a quarterly dividend-payment date, the holders were entitled only to dividends declared and unpaid as of that date, and they were not entitled to be paid the quarterly dividends which would have been payable on July 1 and October 1, 1948, by reason of earnings of 1947, and they were not entitled to an additional so-called dividend amounting to interest on the par value of their stock for the first 5 months of the corporation's fiscal year beginning November 1, 1947. Franzen v. Fred Rueping Leather Co. 255 W 265, 38 NW (2d) 517.

A patronage dividend cannot be distributed to preferred stockholders by a corporation organized under provisions of ch. 180. 22 Atty. Gen. 167.

Unrealized appreciation as a source of shareholder distributions. Bugge, 1964 WLR 292.

180.385 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.05; 1953 c. 399 s. 5; Stats. 1953 s. 180.385.

Revision Committee Note, 1951: This section has no counterpart in the 1949 statutes. (1) (a) affords creditors of a corporation substantially the same protection now given by Wisconsin case law. (1) (b) and (c) are designed to protect holders of shares which are preferred over the shares being acquired; although there is no Wisconsin case law on the problem, our courts would probably give holders of preferred shares protection equivalent to (1) (b). (2) dispenses with stock-

holder approval, but preserves the requirements of (1) (a) and (b), when shares are acquired from earned surplus or for the purposes designated in (2) (b), (c) and (d). [Bill 763-S]

Revision Committee Note, 1953: This section (180.05, Stats. 1951) is better located with dividend and partial liquidation provisions to which it is closely related, and expressed as a right rather than as a power. The revisions are to clarify the effect on earned surplus in the case of purchasers not previously authorized by the articles or shareholders, and transactions made prior to general effectiveness of the new law. Pending other shareholder direction of a subsequent restoration of funds by a sale of shares, an amount of earned surplus equal to the cost of shares purchased under the new law is restricted and thus is made unavailable for ordinary dividends. The restriction is removed to the extent that earned surplus is later transferred to stated capital or capital surplus either by director action or by stock dividend. By specific exception such surplus restriction does not apply to redeemable shares which from their nature would be recognized as temporary or subject to substitution. The former limitation based on full payment of accrued dividends is deleted to avoid interference with contracts or other obligations to repurchase shares on various events which might occur at a time when defaults existed; if such protection is desired by the preferred classes it could be provided for in the articles. [Bill 524-S]

A solvent corporation which purchases its stock pursuant to a vote of its stockholders, paying therefor pro rata the assets of the corporation, does not thereby incur any liability to one who subsequently becomes its creditor; nor is there any liability to such creditor on the part of any of the stockholders or officers of the corporation. Shoemaker v. Washburn L. Co. 97 W 585, 73 NW 333.

A corporation with assets substantially in excess of its liabilities may buy its own stock; and an arrangement whereby certain property was conveyed in trust to secure payment of the amounts it had agreed to pay certain dissatisfied stockholders for their stock is within the power of the corporation. Rasmussen v. Schweizer, 194 W 362, 216 NW 481.

Wisconsin business corporation law, treasury stock section. 1953 WLR 480.

180.39 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.39; 1953 c. 399 s. 26.

Revision Committee Note, 1951: No counterpart in the 1949 statutes, where liquidating dividends are not regulated as such. It should be considered in connection with 180.38, dealing with dividends, and with 180.05, dealing with power of a corporation to acquire its own shares. The requirements of this section are parallel in part with those of 180.05, as they should be. [Bill 763-S]

180.40 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.40; 1953 c. 399 s. 28, 29; 1965 c. 53.

Revision Committee Note, 1951: The only specific provisions in the 1949 statutes relating to directors' liability are 182.19 (1) (1949), which provides that directors who authorize

the payment of dividends contrary to the provisions of law, not having reason to believe that such payments will not impair the capital, are liable to the creditors of the corporation in the amount of their claims and 182.19 (5) (1949) which protects a director in the performance of his duties if he acts in good faith and in reliance upon certain corporate and financial records.

180.40 (1) establishes more definite standards to measure and limit directors' liability than 182.19 (1) and (5) (1949) and the theory is that a director's liability is a liability to the corporation rather than to stockholders or creditors. 180.40 (4) specifically provides for contribution as between directors, who may be liable under the provisions of the act, and (5) (a) provides for contribution from stockholders to directors under certain circumstances involving improper declaration of dividends or distributions of assets. There are no such statutory rights in the present Wisconsin law.

180.40 (5) (b) is similar to 182.19 (1) (1949) in imposing liability to the corporation on shareholders who receive improper dividends or distributions.

180.40 (6) is the same as 182.23 (1949). [Bill 763-S]

Revision Committee Note, 1953: Integrates with 180.48 and the repeal of 180.45 (1) (g). [Bill 524-S]

As the liability is limited to the amount of stock held, and the object of such statutes seems to be to provide a fund for the workmen or creditors of an insolvent corporation, and as it is generally necessary to enforce contribution among shareholders, a single creditor cannot sue a single stockholder at law. *Coleman v. White*, 14 W 700; *Cleveland v. Marine Bank of Milwaukee*, 17 W 545; *Merchants' Bank v. Chandler*, 19 W 434.

The dissolution of a corporation by its own election or nonuser of its franchise does not relieve stockholders from their liability under sec. 1769, R. S. 1878. If a corporation has assigned all its property for the benefit of creditors it may be shown that its assignee has none of it in his possession, and when that is shown the court determines the respective liabilities of the stockholders without appointing a receiver or staying proceedings to ascertain whether the assignee will declare any dividends. A servant does not waive his claim against the stockholders by presenting it to the assignee. *Sleeper v. Goodwin*, 67 W 577, 31 NW 335.

The stockholders who are such at the time a debt for services is created are at once liable, and the liability passes on to those who are such when the action is commenced. The right to enforce a claim for services against the stockholders survives to the personal representatives of the claimant and may be assigned. Stockholders sued under sec. 1769, R. S. 1878, for debts due for services performed for the corporation are not prejudiced by an order adding as plaintiffs other servants or their assignees who hold similar claims, notwithstanding the action is brought on behalf of all creditors of the corporation who hold similar claims. *Day v. Buckingham*, 87 W 215, 58 NW 254.

Sec. 1769, R. S. 1878, is to be liberally construed in favor of laborers. All laborers, without reference to the place where the labor is performed, have a right to share equally with laborers who perform work in this state in its benefits. *Clokus v. Hollister M. Co.* 92 W 325, 66 NW 398.

One who holds stock in his own name, if the books of the corporation show that he so holds it, is liable whether it is his absolutely or whether he holds it as collateral. *Gilman v. Gross*, 97 W 224, 72 NW 885.

The liability under sec. 1755, Stats. 1898, is penal in character and the right to its benefits does not survive and is not assignable. This section can be invoked only by creditors who were such at the time of the commission of the act upon which the liability depends and to the extent that the capital stock was diminished by such violation. *Killen v. Barnes*, 106 W 546, 82 NW 536.

Dividends received by a stockholder contrary to law are but property of the corporation and such corporation has the right to recover them in a direct action. This does not prevent one interested either as a creditor or stockholder from compelling such repayment when the corporation will not do so, but in so acting such person is merely enforcing the right which the corporation has. *Gager v. Paul*, 111 W 638, 87 NW 875.

It is not necessary that a director should actively participate in the unlawful payment of a dividend in order to incur liability under sec. 1765, R. S. 1898. All liabilities of officers, stockholders and directors of corporations can in any event be enforced for the benefit of the creditors generally or as a class, may be dealt with in a single suit and constitute one cause of action. *Williams v. Brewster*, 117 W 370, 93 NW 479.

A stockholder of a corporation selling his stock to it with actual or constructive knowledge that the result will be to render the corporation insolvent is estopped from claiming that his relations to the corporation were so severed by the transaction as to prevent statutory liability. *Atlanta & Walworth Asso. v. Smith*, 141 W 377, 123 NW 106.

Brokers who entered into a contract with the principal stockholders of a corporation to find a purchaser for the assets of the corporation, in reliance on the stockholders' representation that they had authority to bind the corporation, may recover their damages in an action against such stockholders in the event that the stockholders had no such authority and the corporation did not convey. *Grieb & Erickson v. Estberg*, 186 W 174, 202 NW 331.

Personal liabilities of stockholders for indebtedness due to laborers at the time of appointment of a receiver, should be determined in receivership proceedings. *Cullen v. Abbott*, 201 W 255, 229 NW 85.

Payments by a corporation to employes within the last 3 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 was 6 months' service unpaid. 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 employees for services did not bar an action under 287.17, Stats. 1937. *Kreutzer v. Gallagher*, 229 W 273, 282 NW 22.

The amendment of 182.23 by ch. 534, Laws 1927, a revision bill, so as to provide that holders of nonpar stock in a corporation shall be personally liable for wages of employees of the corporation "to an amount equal to the consideration for which their nonpar value stock was issued," merely clarified the statute and did not change the law, and both before and after the amendment the basis of liability of a holder of nonpar stock was the consideration paid for such stock. *Parish v. Awschu Properties, Inc.* 243 W 269, 10 NW (2d) 166.

An action to enforce a shareholder's liability under 182.223, Stats. 1951, is governed by the 2-year statute of limitations, not by 330.19 (4). *Casey v. Trecker*, 268 W 87, 66 NW (2d) 724.

A judgment based on 182.223 may be enforced against the estate of a deceased stockholder notwithstanding the fact that a claim was not filed in the estate proceedings in the county court. *Casey v. Trecker*, 268 W 87, 66 NW (2d) 724.

See note to 128.01, citing *In re Supreme Tool & Mfg. Co.* 3 W (2d) 554, 89 NW (2d) 292.

Sec. 1772, Stats. 1898, does not empower a corporation to impose the double liability upon its stockholders. *Central W. T. Co. v. Barter*, 194 F 835.

Where stockholders of the corporate employer paid to wage earners the amount due them and took assignments of their claims, the assignments filed by the stockholders as claims against the corporation in bankruptcy were properly allowed since the assignment placed the stockholders in the shoes of the wage earners. *Dorr Pump & Mfg. Co. v. Heath*, 125 F (2d) 610.

180.405 History: 1953 c. 399 s. 30; Stats. 1953 s. 180.405.

Revision Committee Note, 1953: This section is a substitute for 180.40 (7) (Stats. 1951). The problem in the shareholder's derivative action is the possibility of its abuse for personal profit. This possibility bears no relation to the number of shares held by the plaintiff or his ability to furnish security for expenses. This section is designed to handle the problem directly. The elimination of the chance for personal profit should discourage the strike suit without imposing any obstacles to the good faith action. [Bill 524-S]

The requirement bond for expenses in 180.405 (4) does not apply to a stockholder's action to set aside a corporate merger on claim of injury to his preemptive stock rights. *Borak v. J. I. Case Co.* 317 F (2d) 838.

180.407 History: 1953 c. 399 s. 31; Stats. 1953 s. 180.407; 1959 c. 319.

Revision Committee Note, 1953: This section was in the 1949 law as s. 180.34, but was omitted in 1951. It is felt that the section should be restored; that indemnification, if warranted, should be automatic and should not lie in the discretion of directors whose association with fellow directors is often too in-

timinate to permit unbiased consideration, and who, in considering indemnification, will frequently be faced with the problem of self dealing. It was also felt that this promised section is not inconsistent with s. 180.34 which deals with power to indemnify, and that such latter section should remain in the law also. [Bill 524-S]

Indemnification of officers and employees. *Fitzgerald*, 46 MLR 94.

Corporation directors' reimbursement for litigation expenses. *Helstad and Williams*, 1950 WLR 157.

180.41 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.41.

Revision Committee Note, 1951: 180.41 (1) is in accord with usual corporate practice but, except for the provision in 180.13 (1) (1949), that the directors shall choose the officers, has no direct counterpart in the 1949 statutes. Under 180.41 (2) the duties of officers, as between themselves and the corporation, may be specified by bylaw or consistent board resolution, instead of by the articles as provided in 180.02 (1) (f) (1949). Under 180.45 (2) the duties of officers may be included in the articles if desired. To the extent not specified in the articles, the powers of officers, as between the corporation and outside parties, will be determined by the general law of agency. [Bill 763-S]

Some of the powers of the president of a corporation when acting as its general manager are stated in *Green Bay F. Co. v. Jorgensen*, 165 W 548, 163 NW 142.

A provision in the articles or bylaws that its secretary-treasurer shall be elected by the stockholders conflicts with sec. 1776, Stats. 1919, is illegal, and such an election confers no title to the office. *State ex rel. Badger T. Co. v. Rosenow*, 174 W 9, 182 NW 324.

The executive officers of a corporation are presumed to have authority to carry on its ordinary business, and the corporation may be estopped by their conduct whether originally authorized to act in a given case or not. *Northern Minnesota D. F. L. Co. v. Haswell*, 177 W 635, 180 NW 263.

See note to 180.71, citing *McDermott v. O'Neil O. Co.* 200 W 423, 228 NW 481.

See note to 452.05, citing 50 Atty. Gen. 191.

180.42 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.42.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.43 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.43; 1953 c. 399 s. 32.

Revision Committee Note, 1951: 180.43 (1) retains in substance the requirement of 182.03 and 182.12 (1949) that books and records, including lists of stockholders, be kept; it also requires the maintenance for 10 years at the Wisconsin registered office of financial statements in reasonable detail and mailing of current statements to stockholders on request. (2) permits stockholder examinations as under 182.10 (1949) but (except under court order pursuant to (5)) requires that the examining shareholder shall have held his stock for at least 6 months unless he has a stock interest of 5 per cent or more. (3) extends examina-

tion rights to the holders of voting trust certificates; there is no counterpart in the 1949 statutes. (4) imposes more strict penalties than 182.04 (1949) for refusal to permit proper stockholder examinations but affords a defense in certain cases where there might be doubt as to the propriety of the purpose. (5) makes it clear that the section does not limit judicial authority to require production of records. (6) imposes strict penalties for failure to bring records into the state when required by court order. It is similar in principle to 182.03 (2) (1949) (relating to certain railroads), but applies to all corporations since 180.43 permits various records of other corporations to be located outside the state, as may be desirable under present business methods and regulatory and stock exchange requirements. [Bill 763-S]

Revision Committee Note, 1953: The proposed amendment to (1) is designed to avoid violation in those cases where unusual complexity or other special considerations do not permit completion of annual statements within 4 months after the end of the year. In regard to the proposed amendment to (3), it was felt that the law should not restrict defenses to those named, hence the suggested amendment to include "other meritorious defenses." [Bill 524-S]

Mandamus to permit a stockholder to examine a corporation's accounts is properly directed to the person who has them in his possession and control. On a motion to quash it will not be considered whether the corporation should be a party to the proceeding. State ex rel. Bergenthal v. Bergenthal, 72 W 314, 39 NW 566.

The statutory right of the stockholders to examine the books of the corporation imposes upon the corporation not only the duty of keeping its corporate books open for inspection at all reasonable times, but also the duty of keeping its stock subscriptions and accounts in such form that they may be examined and the condition of the corporate affairs ascertained therefrom. Dunn v. Acme A. & G. Co. 168 W 128, 169 NW 297.

The right to make inspections may be enforced by mandamus. State ex rel. Dempsey v. Werra A. F. Co. 173 W 651, 182 NW 354.

Sec. 1757, Stats. 1921, enlarges the common-law rights of a stockholder to inspect the books and papers of the corporation. This right extends to a schedule sequestering values of corporate property prepared by an expert and delivered to the president, but never entered on the corporation's books, even though the disclosure might involve the corporation in complications with officials charged with the collection of income taxes. State ex rel. McClure v. Malleable I. R. Co. 177 W 582, 187 NW 646.

The right of a stockholder to examine the books of the corporation is considered under the circumstances of the case to permit him to examine them through the agency of a third person. State ex rel. Mandelker v. Mandelker, 197 W 518, 222 NW 786.

The statute authorizing inspection of the books of a corporation by the stockholders does not apply to building and loan associations. State ex rel. Schomberg v. Home Mut. B. & L. Assn. 220 W 649, 265 NW 701.

Prior to the amendment made by ch. 292, Laws 1941, this chapter conferred on a stockholder of a corporation an absolute right of inspection of the corporation's books of account and records. Pick v. Wesbar Stamping Corp. 238 W 93, 298 NW 58.

See note to 324.35, citing Estate of Landauer, 264 W 456, 59 NW (2d) 676.

In respect to the right of access to a corporation's shareholder records under 180.43 (2), Stats. 1967, an "improper purpose" exists when the demanding shareholder seeks not only to communicate with other shareholders about management but also to further his own interest in the corporation not as a shareholder but as a stockbroker. White v. Jacobsen Mfg. Co. 293 F Supp. 1358.

Where the commissioner of banking has taken charge of a bank and is liquidating its assets, he should allow any stockholder to examine the stock subscription books and accounts of such bank; any creditor is entitled to be informed of amount of capital stock subscribed, amount paid in, number of shares owned by each stockholder, and amount unpaid by him, and names of persons by whom any stock not fully paid has been transferred within 6 months, with amount due thereon. 11 Atty. Gen. 655.

180.44 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.44.

Revision Committee Note, 1951: This section differs from 180.01 (1949) in permitting incorporation by less than 3 incorporators, and in eliminating the requirement that incorporators be resident in the state. The real parties in interest will more readily qualify under this section to act as incorporators if desired. [Bill 763-S]

Under sec. 1771, Stats. 1898, a married woman may be an incorporator of a corporation and may join with her husband in the transaction. Good Land Co. v. Cole, 131 W 467, 110 NW 895.

180.45 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.45; 1965 c. 53.

Revision Committee Note, 1951: This section is generally in accord with practice under 180.02 (1) (1949), but with added provision specifying the initial registered office and agent and initial number of directors. As to form of corporate name, see 180.07. As to designation and duties of officers, see 180.41. 180.45 (1) (c) and the first sentence of (2) are designed to eliminate question as to whether extensive or detailed statements of purposes or powers are necessary. [Bill 763-S]

"The words of the statute, or their obvious equivalents, should be used in the articles, to have the effect to determine the place where the corporation is to be assessed on its property by force of the articles themselves against the real facts." Milwaukee S. Co. v. Milwaukee, 83 W 590, 598, 53 NW 839, 841.

Articles of organization constitute a legislative act and cannot be reformed or amended by the courts. Such articles must be construed like other legislative enactments and the testimony of the framers as to what was intended by the language used is not competent. A provision in such articles that if any of the original stockholders wish to sell their stock

they must first offer it to the board of directors and give the board 10 days in which to place it with other stockholders, is valid. *Casper v. Kalt-Zimmers M. Co.* 159 W 517, 149 NW 754, 150 NW 1101.

Provisions in the articles of incorporation and the bylaws requiring the stockholders to offer their stock to remaining stockholders before sale to outsiders are valid, but such provisions do not apply to a sale by one stockholder to another. *Rychwalski v. Baranowski*, 205 W 193, 236 NW 131.

The general corporation laws of the state form a part of the corporate charter of a corporation organized thereunder, and therefore constitute a part of the contract between the corporation and its stockholders. *Hull v. Pfister & Vogel Leather Co.* 235 W 653, 294 NW 18.

The articles of incorporation must give the corporation's name; it can have but one; the articles should not contain a second, or alternate, or trade name. 8 Atty. Gen. 658.

"The" is not a sufficient difference between the names of domestic corporations; and 2 names so nearly identical should not be permitted. 11 Atty. Gen. 402.

There is no authority for naming those who shall act as officers in the articles of organization. The name of a corporation should differ enough from that of any other corporation, authorized to do business in this state, so that the public will not be misled. 11 Atty. Gen. 402.

180.46 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.46; 1955 c. 294.

Revision Committee Note, 1951: This section, with 180.86, provides, with minor changes in phraseology, for the same filing and recording procedure in effect under 180.02 (2) (1949), except that in lieu of verified copies it provides for duplicate originals (which under 180.44 are required to be acknowledged), thus making uniform the requirements for duplicate originals on various filings under this and later sections. [Bill 763-S]

The mere failure of the register to index the record of the incorporation is not material. *Woodman v. Blue G. L. Co.* 125 W 489, 104 NW 920.

The existence of a corporation begins with the filing of its articles with the register of deeds. *Sentinel Co. v. A. D. Meiselbach Co.* 144 W 224, 128 NW 861.

180.47 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.47.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.48 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.48; 1953 c. 399 s. 34.

Revision Committee Note, 1951: 180.48 is similar in effect to the first sentence of 180.06 (4) (1949). [Bill 763-S]

Revision Committee Note, 1953: The repeal of 180.45 (1) (g) (Stats. 1951) eliminates any need for reciting minimum initial capital in the articles, but the mandatory \$500 minimum paid-in capital requirement is retained in this section. This avoids complications stemming from inadvertent over-statements of initial

capital where it consists of property or where financing plans are changed. [Bill 524-S]

An attempted or pretended incorporation which is not perfected as the law requires does not confer upon the incorporators immunity from the liability imposed upon them by the common law. Corporate existence is not complete under secs. 1771-1775, R. S. 1878, until the corporation can transact business with others than its members—that is, until it shall have provided capital stock as required by law. *Wechselberg v. Flour City Nat. Bank*, 64 F 90.

The requirement is met by the required amount in either preferred or common stock. 18 Atty. Gen. 393.

180.49 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.49; 1953 c. 399 s. 34a; 1965 c. 53.

Revision Committee Note, 1951: The organization practice under this section is quite similar to, though differing in minor details from, the practice under 180.06 (1949). [Bill 763-S]

Revision Committee Note, 1953: (4) adds provisions (similar to prior laws 182.006 (5) and (6)) for amendment by incorporators as might be required before completion of organization and sale of shares, and facilitates the desirable dissolution of corporations abandoned before complete organization. [Bill 524-S]

A corporation is liable for its own acts only after it has a legal existence. Until that time no one can sustain to the corporation the relation of agent. But if one assumes to act as agent for a prospective corporation and in form enters into a contract in its behalf it is competent for such corporation, when organized, to ratify such contract. *Buffington v. Bardon*, 80 W 635, 50 NW 776.

From the time its articles are filed a corporation is capable of contracting, notwithstanding the subscribers to the capital stock do not meet to organize it until a later date. *Badger P. Co. v. Rose*, 95 W 145, 70 NW 302.

Promoters may retain their fiduciary relation after organization, and until the corporation's share of the capital has been taken, or it has been provided with directors, or some reasonable means of protection. *Pietsch v. Milbrath*, 123 W 647, 101 NW 388, 102 NW 342.

A subscriber for stock whose agreement was to pay for the same partly in cash and partly by the surrender of a note constituting an obligation which the corporation had assumed was not bound by the agreement until acceptance thereof by the corporation, and was not entitled to notice of the first meeting to organize the corporation, given before such acceptance. *Reilly v. Allen-Spiegel S. M. Co.* 184 W 257, 199 NW 216.

Even though the amount of stock requisite to enable a corporation to transact business as such has not been subscribed and paid in, the subscribers may abandon the organization, revoke the articles, or amend them. In such case the subscribers may cancel a subscription to the stock of the corporation; and where all of the subscribers agree to the cancellation of a subscription contract and thereafter, by unanimous vote, reduce the amount of the capital stock, thereby rendering the contract impossible of performance, and engage in

business on that basis, the receiver of the corporation cannot, there being no rights of creditors and no question of fraud involved, enforce the contract. *Schwemer v. Fry*, 212 W 88, 249 NW 62.

180.50 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.50.

Revision Committee Note, 1951: 180.50 (1) corresponds generally to 180.07 (1) (1949) which permits a corporation by amendment to "provide anything which might have been originally provided in such articles"; (2) sets forth in somewhat greater detail than the 1949 statute certain specific amendments which are to be permitted. (2) (k) resolves a possible question as to the right to make an amendment which affects accrued but undeclared dividends. The provisions of 180.10 as to change of registered office do not require amendment of the articles. Reference is made to 180.58 for optional procedure for reducing authorized shares without stockholder action, in case of redeemed stock which is not reissuable; such procedure has the same effect as an amendment to the articles. [Bill 763-S]

A radical, fundamental change in the character of the enterprise in which the company was engaged when it obtained a stock subscription releases the subscriber from liability. *Kenosha, R. & R. I. R.R. Co. v. Marsh*, 17 W 13.

An amendment to the articles of incorporation which increased the capital stock and number of directors was not filed at the time a conveyance of the entire property of the corporation was made by a vote of the stockholders. Failure to file the amendment did not invalidate the sale. *Werle v. Northwestern F. & S. Co.* 125 W 534, 104 NW 743.

At common law fundamental changes in a corporation's purposes cannot be made by amendment over the dissent of a single stockholder. The majority stockholders cannot turn over to themselves corporate property or advantages to the detriment or fraud of the corporation or of the minority. But the majority stockholders and the board of directors are supreme within the limits of honest administration and discretion. *Martin O. Co. v. Fruit Growers' C. Co.* 203 W 97, 233 NW 603.

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. A stockholder cannot legally object to amendment made to the articles if made in accordance with the articles or with the statutes. *Johnson v. Bradley Knitting Co.* 228 W 566, 280 NW 688.

Whether an authorized amendment to articles of incorporation is in the interest of the corporation is for the judgment of the stockholders as expressed by an affirmative vote of an amount of stock sufficient to adopt the amendment. *Milwaukee Sanitorium v. Lynch*, 238 W 628, 300 NW 760.

Under secs. 1771 and 1772, Stats. 1898, double liability of stockholders cannot be imposed by amendment of the articles. Such corporate power must first be authorized by express general law. *Harris v. Northern B. G. L. Co.* 185 F 192; *Central W. T. Co. v. Barter*, 194 F 835.

A corporation incorporated for the purpose of engaging in a manufacturing business may amend its articles of incorporation so as to permit it to engage in a public warehouse business. 13 Atty. Gen. 41.

180.51 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.51.

Revision Committee Note, 1951: This section retains the two-thirds vote required for amendment under 180.07 (1) (1949) (subject to any requirement in the articles for a greater vote, as permitted by 180.90), and requires that advance notice be given. [Bill 763-S]

180.52 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.52; 1965 c. 53.

Revision Committee Note, 1951: Except as to "changes in relation to preferred stock" under 182.13 (3) (1949) and 184.13, this section requiring class voting on various matters has no counterpart in the 1949 statutes. [Bill 763-S]

"Amendments which could not otherwise be made in the absence of unanimous consent may of course be made in accordance with reserved power in the charter, articles of organization, by-laws, or statutes, on the ground that since those provisions are a part of the contract between the corporation and the shareholders, the shareholder is deemed to have consented in advance to such amendment." 31 Atty. Gen. 354, 356.

180.53 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.53; 1957 c. 111; 1961 c. 220.

Revision Committee Note, 1951: This section provides for a document substantially the same as the certificate of amendment required by 180.07 (2) (1949); (6) and (7) have no counterpart in the 1949 statutes. [Bill 763-S]

180.54 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.54.

Revision Committee Note, 1951: This section and 180.86 require the same filing and recording procedure covered by 180.07 (2) and (3) (1949). [Bill 763-S]

A copy, certified by the secretary of state, of his record of an amendment increasing the capital stock of a corporation, authenticates for admission in evidence the attached certificate of the register of deeds. *Weston v. Dahl*, 162 W 32, 155 NW 949.

An increase of capital stock is not effected until filed and recorded, and until such increased capitalization takes effect the preceding capitalization remains in effect. *Fishback v. Fond du Lac R. Co.* 158 F 88.

The amendment only should be filed, not the entire article as amended. In certifying adoption of amendments of articles of a nonstock corporation, the whole number of members of the corporation should be stated. 4 Atty. Gen. 585.

180.55 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.55; 1953 c. 399 s. 35, 36; 1961 c. 220.

Revision Committee Note, 1953: The repeal of 180.55 (1) (a) (Stats. 1951) integrates with 180.48 and repeal of 180.45 (1) (g) (Stats. 1951). [Bill 524-S]

180.56 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.56.

Revision Committee Note, 1951: Like 182.26 (1949), this section permits the state and local filing and recording of a federal court order under the bankruptcy law. No attempt is made to define the powers of the federal court or to either limit or extend the effectiveness of its orders. The duty of filing and recording is on the corporate officers. [Bill 763-S]

180.57 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.57.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.58 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.58.

Revision Committee Note, 1951: This section provides a method of canceling shares reacquired by a corporation through redemption. It also provides a procedure similar to 180.07 (5) (1949), for effecting an amendment to the articles of incorporation with respect to reduction of authorized capital without formal shareholders' action. [Bill 763-S]

180.59 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.59.

Revision Committee Note, 1951: This section provides a method of canceling shares reacquired by a corporation by purchase or otherwise, except by redemption, and has no counterpart in the 1949 statutes. [Bill 763-S]

180.60 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.60.

Revision Committee Note, 1951: There is no 1949 provision comparable to this section except for 182.14 which provides that the capital applicable to nonpar shares may be increased or diminished. 180.60 (2) imposes a restriction upon the extent of a reduction of stated capital not found in 182.14 (1949). [Bill 763-S]

Reduction of capital stock in a corporation cannot be effected in any way except by treating all stockholders alike. Such reduction can not be effected by purchasing shares of a particular stockholder; each stockholder is entitled to surrender a pro rata share. *Theis v. Durr*, 125 W 651, 104 NW 985.

180.61 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.61; 1953 c. 399 s. 37; 1957 c. 672; 1965 c. 53.

Revision Committee Note, 1951: No counterpart in 1949 statutes. This section permits capital surplus to be applied to reduction or elimination of a deficit. It also permits the board of directors to create a reserve or reserves out of earned surplus and the effect of so doing. It appears to authorize proper accounting and corporate practice. [Bill 763-S]

Revision Committee Note, 1953: The wording of (3) (Stats. 1951) is somewhat confusing; it might be construed to mean that losses are not automatically offset against the prior years' earnings but that formal action by the board of directors is required. The proposed amendment clarifies the intent of the law. [Bill 524-S]

180.62 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.62.

Revision Committee Note, 1951: This section is in substance the same as 181.06 (1) (1949). [Bill 763-S]

180.63 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.63.

Revision Committee Note, 1951: This section is in substance the same as 181.06 (2) (1949). [Bill 763-S]

180.64 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.64; 1965 c. 53.

Revision Committee Note, 1951: This section is similar to 181.06 (3) and 181.06 (4) (1949). 180.64 provides that notice be given to every shareholder of a corporation whether or not entitled to vote, and is more specific about protecting the rights of dissenting shareholders. The applicable portions of this section seem preferable to 181.06 (3) (1949). 180.64 also provides for the abandonment of a merger or consolidation under certain conditions. [Bill 763-S]

The 1965 amendments to the corporation statutes. *Starr*, 50 MLR 112.

180.65 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.65; 1953 c. 399 s. 38; 1965 c. 53.

Revision Committee Note, 1951: This section is in substance the same as 181.06 (5) and 181.06 (6) (1949). [Bill 763-S]

Revision Committee Note, 1953: The words "merged or consolidated" in (2) (Stats. 1951) were apparently in error. The requirement of recording should evidently apply to the counties where the current registered offices of the constituent corporations are located, regardless of the places of recording the articles at former locations and of possible recording of articles for real estate or other purposes. [Bill 524-S]

180.66 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.66; 1965 c. 53.

Revision Committee Note, 1951: This section embodies 181.06 (7) (1949), and in addition permits the merger or consolidation to become effective within a period of 31 days after the due recording of the articles of merger or consolidation, if such a time is designated in such articles. [Bill 763-S]

180.67 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.67; 1965 c. 53.

Revision Committee Note, 1951: This section is in substance the same as 181.06 (8) (1949). There are certain changes in phraseology. There is an apparent error in 181.06 (8) (d) (1949): the word "or" is used after the word "deemed" when it is apparent that the word should have been "to". 180.67 (5) is substantially the same as 181.06 (8) (e) (1949), and likewise embodies in substance the provisions of 181.06 (11) (1949). This duplication seems unnecessary and has been eliminated. 181.06 (8) (g) (1949) has been changed and refers to "net surplus" rather than the "aggregate amount of the net assets". This seems a worthwhile change. [Bill 763-S]

See note to 71.06, citing *Fall River C. Co. v. Dept. of Taxation*, 3 W (2d) 632, 89 NW (2d) 203.

A merger by which corporation A survives and corporation B ceases to exist does not automatically confer on A the right to reissue of B's licenses to operate small loan and finance companies. Such licenses are not "franchises" and the specific provisions of 214.03 (2), 214.05 (1), and 115.09 (3) (a) and (c), Stats. 1957, control over the general provisions of 180.67. 47 Atty. Gen. 264.

180.68 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.68; 1953 c. 399 s. 39; 1965 c. 53.

Revision Committee Note, 1951: This section is in substance the same as 181.06 (9) (1949). [Bill 763-S]

Revision Committee Note, 1953: The law contains no provision for the substitution of the agent for service of process in the cases covered by this section. It seems desirable that in such cases the secretary of state alone be appointed, to assure the desired permanency. [Bill 524-S]

180.685 History: 1953 c. 399 s. 40; Stats. 1953 s. 180.685; 1965 c. 53.

Revision Committee Note, 1953: It is suggested that shareholders' meetings are unnecessary in cases of merger of subsidiary into parent without an amendment of articles or issuance of stock by the survivor. Such mergers are usually routine and do not affect the shareholder's interest in assets of the subsidiary. They are the practical equivalent of a liquidation of the subsidiary into parent (which requires no shareholders' vote of the parent), but the merger form may be dictated by tax or franchise considerations. 180.69 (6) provides that a dissenting shareholders' payout right does not apply to such mergers of subsidiary into parent. Note also that by special provision under 196.80 (1) (c) public utilities may merge a subsidiary into a parent with only board action by the parent, and approval of the public service commission. [Bill 524-S]

180.69 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.69; 1959 c. 319; 1961 c. 626; 1965 c. 53.

Revision Committee Note, 1951: This section is similar to 181.06 (10) (1949). However, 180.69 (1) requires the giving of notice to dissenting shareholders within 10 days after the effective date of the merger or consolidation. This seems a big improvement over the present statutory provision. Further, 180.69 (6) creates an exception in the case of a wholly-owned subsidiary. This is a change in substance. If a corporation merges or consolidates with one or more wholly-owned subsidiaries there would seem to be no sound reason for permitting a shareholder to obtain the fair value of his shares, and this section so provides. [Bill 763-S]

Remedies of dissenting shareholders under Stats. 1947. Luce-Heikkinen, 31 MLR 202.

The 1965 amendments to the corporation statutes. Starr, 50 MLR 112.

180.70 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.70; 1953 c. 399 s. 41, 42.

Revision Committee Note, 1951: (1) has no counterpart in the 1949 statutes. It serves to affirm and clarify powers possessed generally by corporate directors in the absence of stat-

ute in matters falling within the normal and regular course of business. In the interest of clarity and certainty the paragraph is a desirable addition to the corporation statutes. (2) retains the substance of 180.11 (3) (1949) for the reason that the broad powers given to corporate officers by that section have proven desirable and convenient in the organization of corporations dealing primarily in real estate. [Bill 763-S]

Revision Committee Note, 1953: The insertion of "domestic or foreign" will eliminate any doubt concerning the power of sale of assets for stock of a foreign corporation. (3) is created in order to make it unnecessary for corporations organized prior to July 1, 1953 to amend their articles of incorporation pursuant to the requirements of 180.70 (2) in order to give their officers power with respect to real property previously exercised. [Bill 524-S]

As a general rule, a corporation could not, with certain exceptions, dispose of all of its property without the unanimous consent of its stockholders entitled to vote; but the rule has been changed. Under 180.11 (3), Stats. 1943, relating to and limited to real estate corporations, the directors and officers of such a corporation are entitled to dispose of all of its property in the absence of a restriction on their authority in the corporate articles. *Gottschalk v. Avalon Realty Co.* 249 W 78, 23 NW (2d) 606.

Meaning of statute as to corporate conveying, *Armstrong*, 1948 WLR 387.

180.71 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.71; 1953 c. 399 s. 43; 1957 c. 663; 1961 c. 220; 1965 c. 53.

Revision Committee Note, 1951: This section prescribes a carefully considered and easily followed procedure for the disposal of all or substantially all of the assets of a corporation. The only comparable provision is 180.11 (2) (1949), which is vague and incomplete, for instance in failing to provide as to whether stock may or must be voted by classes on the question, and in failing to state whether the consideration for the corporate assets may be stock in another corporation. The uncertainty which has existed as to the meaning of the present section is illustrated in such cases as *McDermott v. O'Neil Oil Co.* 200 W 423, 228 NW 481 (1930), and *Avalon Realty Company v. Gottschalk*, 249 W 78, 23 NW (2d) 606 (1946). The uncertainty inherent in the 1949 section has been removed in 180.71, and a procedure has been provided which is easy to follow and which adequately protects the interests of all interested parties. [Bill 763-S]

Revision Committee Note, 1953: The proposed change in the introductory paragraph is covered by the note to 180.70 (1). In regard to the amendment to sub. (1), the 20-day notice provision was mandatorily extended beyond the ordinary 10-day minimum in order to give shareholders full opportunity for decision whether to exercise their payout rights as dissenters. This longer period should not apply to authorization of mortgages to which no dissenting payout right applies under s. 180.72. Since mortgages are a normal financing procedure and may be authorized at an annual meeting if referred to in the notice as one of

its purposes, no more than the usual annual meeting notice should be required. [Bill 524-S]

Where a corporation found itself unable to raise money by bonding its property and determined to sell the property under a resolution adopted by a majority vote of the stock and stockholders providing that it should be sold for the highest price obtainable but for not less than the amount of indebtedness and that stockholders should have first opportunity of purchasing the property, such act was valid. *Werle v. Northwestern F. S. Co.* 125 W 534, 104 NW 743.

The provision of sec. 1775, Stats. 1898, regarding mortgaging of property, does not render the transaction made in disregard of it void. Such contract may be voidable but one party cannot enjoy the benefit of it and at the same time impeach it as to another party. This provision is also for the protection of the stockholders and neither the corporation nor its creditors can invoke the statute against an executed contract. *Eastman v. Parkinson*, 133 W 375, 113 NW 649.

An assignment of the assets of a corporation which is voidable because not authorized by the stockholders may become binding on the corporation and its stockholders by acquiescence, by receipt of benefits, and by delay in seeking a remedy. *Prefex R. Co. v. Goetz*, 179 W 338, 191 NW 755.

Where the stockholders voted to execute a trust deed to create a lien on corporate property securing such form of indebtedness as the directors might decide on, including not only existing but future indebtedness as contemplated by the directors' resolution, the stockholders' resolution authorized issuance of bonds secured by a trust deed to cover present and future indebtedness, if the directors should decide on such transaction. *Hinkley Co. v. Gerlinger E. S. C. Co.* 200 W 48, 227 NW 308.

A president purchasing the assets of a corporation had the burden of establishing he acted with utmost fidelity and good faith. A stockholder could not object to the sale by the majority of stockholders of the corporation's assets to the president unless the sale was induced by fraud or bad faith. *McDermott v. O'Neil O. Co.* 200 W 423, 228 NW 481.

The purpose of 180.11 (2), Stats. 1939, was to change the common law rule that a solvent business corporation could not dispose of property essential to the continuance of the corporate enterprise, except by unanimous consent of the stockholders. *Fontaine v. Brown County Motors Co.* 251 W 433, 29 NW (2d) 744.

180.72 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.72; 1959 c. 319; 1965 c. 53.

Revision Committee Note, 1951: The 1949 statutes provide no appraisal or other remedy to dissenting shareholders in the event of sale or other disposal of all the corporate assets pursuant to 180.11 (2) (1949). Hence in this sense this section has no 1949 counterpart. This section provides an appraisal remedy to dissenting shareholders in the event of sale, lease or exchange of all or substantially all of the property and assets of a corporation, but not in the event of mortgage, pledge, or other disposition. In the interest of simplicity and

uniformity of procedure the section follows closely the procedure prescribed in 180.69 with respect to the appraisal remedy afforded dissenting shareholders in the event of merger or consolidation, which 180.69 is in turn similar to 181.06 (10) (1949). See note to 180.69. [Bill 763-S]

The 1965 amendments to the corporation statutes. Starr, 50 MLR 112.

180.753 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.753.

Revision Committee Note, 1951: No counterpart in 1949 statutes. See 181.03 (1949) and the note to 180.751. [Bill 763-S]

180.755 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.755.

Revision Committee Note, 1951: No counterpart in 1949 statutes. See the note to 180.751 and see 181.02 (1949). The recording requirement integrates with the uniform recording procedure prescribed in 180.86. [Bill 763-S]

180.757 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.757.

Revision Committee Note, 1951: No counterpart in 1949 statutes. See 181.02 (1949), which continues the directors at the time of dissolution in a sense as trustees for a period of 3 years to wind up the corporate affairs. This section provides that the corporate machinery as a whole shall continue intact after filing of a statement of intent to dissolve, for the purpose of winding up the corporate affairs, with the power at any time to apply for court supervised liquidation. [Bill 763-S]

180.761 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.761; 1953 c. 399 s. 46.

Revision Committee Note, 1951: No counterpart in 1949 statutes. See note to 180.759. [Bill 763-S]

180.763 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.763.

Revision Committee Note, 1951: No counterpart in 1949 statutes. See note to 180.759. The recording requirement integrates with the uniform recording procedure prescribed in 180.86. [Bill 763-S]

180.765 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.765; 1953 c. 399 s. 47.

Revision Committee Note, 1951: No counterpart in 1949 statutes. This section represents the culmination of the dissolution procedure provided in these sections. See note to 180.751. [Bill 763-S]

Revision Committee Note, 1953: (6) is necessary to implement the procedure set forth in new 180.768. [Bill 524-S]

180.767 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.767.

Revision Committee Note, 1951: No counterpart in 1949 statutes. The recording requirement integrates with the uniform recording procedure prescribed in 180.86. [Bill 763-S]

180.768 History: 1952 c. 399 s. 48; Stats. 1953 s. 180.768.

Revision Committee Note, 1953: As enacted in 1951, the Wisconsin Business Corporation Law did not deal with the problem which arises when assets, particularly real property, are omitted from final liquidation or distribution in the dissolution of a corporation. The previous Wisconsin statute (182.104, 1949) vested prima facie title to such property in the stockholders of the dissolved corporation and made no provision for the situation which arises when such stockholders cannot be found. The proposed section vests title to such property in the directors and provides a procedure for the appointment of substitute trustees in the event the directors cannot be found. [Bill 524-S]

180.769 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.769.

Revision Committee Note, 1951: No similar provision exists in the 1949 statutes wherein all the grounds for involuntary dissolution of a corporation are set forth. Provisions for the involuntary dissolution of a corporation or for annulment of its corporate charter are contained in 181.01, 286.35 and 286.36 (1949).

181.01 (1949) provides for the surrender of corporate rights, privileges and franchises whenever any corporation shall have remained insolvent, or shall have neglected or refused to pay and discharge its notes, or other evidence of debt, or shall have suspended its ordinary business for one year. In a proper action the corporation may be adjudged dissolved.

286.35 (1949) creates an action to annul the act of incorporation where it was procured through fraud and provides that such action is to be brought by the attorney general in the name of the state when the legislature shall direct.

286.36 (1949) provides for a similar action on leave granted by the supreme court to vacate a corporate charter when the corporation offends against any law by or under which it was created and upon several other grounds.

180.08 (2) (1949) provides for the forfeiture of the corporate rights and privileges upon failure to file an annual report in the manner provided. It is not a procedure involving the courts or a decree of dissolution but is an administrative procedure under the direction of the secretary of state, and 180.08 (6) (1949) permits the secretary of state to rescind the forfeiture upon the payment of a penalty. Penalty for failure to file the annual report is provided in 180.793.

It seems desirable to have the scattered provisions gathered together in one section and to provide a uniform system of procedure for the commencement of an involuntary dissolution action. It will be noted that 286.35 and 286.36 (1949) provide for procedures different in each case. 181.01 (1949) speaks of dissolution "in a proper action" but gives no indication of what is considered a proper action.

180.769 (1) (d) and (e) are without specific counterpart, except insofar as they are implied in the grounds set forth in 286.36 (1949).

180.769 seems to contain all of the desirable grounds for involuntary dissolution: It

omits the grounds specified in 181.01 (1949). It permits action by the attorney general without seeking leave as now contemplated by 286.36 and 286.37 (1949).

Exceptions applicable to municipal corporations (see 286.36 (1949)) and others specified in 286.46 (1949) present problems of integration. [Bill 763-S]

180.771 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.771; 1953 c. 399 s. 49, 50; 1959 c. 252; 1965 c. 53.

Revision Committee Note, 1951: This section is intended to combine in one place the provisions relating to liquidation which properly appear in a corporation code. It provides for a standardization of liquidation proceedings in all types of action whether by a shareholder, creditor, or as a result of voluntary or involuntary dissolution. Jurisdiction is lodged in the circuit court for the county in which the corporation has its principal place of business or its registered office.

Under the 1949 statutes liquidation proceedings involving the appointment of a receiver are not contained in the corporation chapters; the procedures available are varied and the jurisdiction is not clearly set forth. Liquidation proceedings in connection with the dissolution or annulment of a corporation are contained in chapter 286. Liquidation proceedings in connection with creditors' actions and insolvency are contained in chapter 128, which is not limited to corporations. [Bill 763-S]

Revision Committee Note, 1953: This is a new Illinois provision that is desirable. [Bill 524-S]

The insolvency of a corporation and the appointment of a receiver do not operate ipso facto to dissolve the corporation but simply provide sufficient cause for adjudging a dissolution in a proper action. *Stoltze v. Manitowoc T. Co.* 100 W 208, 75 NW 987; *Re Wisconsin Odd Fellows M. Co.* 101 W 1, 76 NW 775; *West Park R. Co. v. Porth*, 192 W 307, 212 NW 651.

In order for a person to be elected a director at a stockholders' meeting, it is necessary that he receive a majority of the votes cast. The owner of 50% of the outstanding stock of a corporation, and present at a stockholders' meeting, was entitled, in addition to voting for himself for director, to vote against candidates of the owners of the remaining 50% of the stock and, where he did so, the legal result was a deadlock and no election. Whether or not a liquidation of a corporation will be beneficial or detrimental to the stockholders is not a material factor in a proceeding under 180.771 (1) (a), and where there was no alternative corrective remedy, other than that of liquidation, which would permit the corporation to function and be legally managed as required by 180.30 and the corporate bylaws, it was an abuse of discretion for the trial court not to have decreed liquidation. *Strong v. Fromm Laboratories*, 273 W 159, 77 NW (2d) 389.

Directors and managing officers occupy the position of quasi-trustees toward stockholders with respect to their shares of stock, for since the value of the latter's shares and all their rights are affected by the conduct of the di-

rectors, such a trust relationship arises, consequently imposing fiduciary duties on the directors in dealings which may affect the stock and the rights of the stockholders. *Gregnet v. Fox Valley Trucking Service*, 45 W (2d) 235, 172 NW (2d) 812.

180.773 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.773.

Revision Committee Note, 1951: This section contains a simplified procedure for liquidation under the direction of the court and provides for the powers and duties of the receiver. The 1949 statutes contain no comparable provision. Chapter 128 deals with procedure in liquidation proceedings arising out of creditors' actions and 286.12, 286.13, 286.40 and 286.41 set forth procedure for liquidation in connection with dissolution actions. Also see note to 180.771. The powers of a receiver acting under a similar provision of the Illinois act were passed upon in *Savin v. McNeill*, 244 W 552. [Bill 763-S]

If a receiver has been appointed and an injunction restraining a corporation from doing any corporate act has been issued, it is incompetent for the corporation to prosecute an action for libel. *Milwaukee M. F. Ins. Co. v. Sentinel Co.* 81 W 207, 51 NW 440.

180.775 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.775.

Revision Committee Note, 1951: This section is clear, brief and of general application. There is no comparable provision in the statutes. 128.09 deals with bonds in creditors' actions. [Bill 763-S]

180.777 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.777; 1953 c. 399 s. 51.

Revision Committee Note, 1951: The 1949 statutory rule for filing claims in creditors' actions (128.14) is different from the rule in cases of liquidation as a result of dissolution proceedings (286.22). 180.777 provides for a uniform procedure as to notice to creditors and the filing of claims, and grants the court greater latitude with respect to notice. It applies in all types of liquidation proceedings, as covered by 180.771. Claimants failing to file their claims timely are barred only from participating with other claimants in the distribution of assets in such proceeding. [Bill 763-S]

Revision Committee Note, 1953: Establishing a time for filing claims serves little purpose if failure to file within the period does not bar the claim. Efficient liquidation practice requires that a cut-off date for claims be established—the law permits ample time for creditors to file; changing “may” to “shall” should expedite liquidations and promote uniformity of administration. [Bill 524-S]

Where a payee filed a claim on a note, with no mention of security, he could not, after the expiration of time for filing claims, file an amended claim for the purpose of obtaining a preference. 180.787 does not apply. Decisions concerning filing of claims against estates apply to late claims in receivership. In *re Liquidation of La Crosse S. & G. Co.* 13 W (2d) 41, 108 NW (2d) 176.

180.779 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.779.

Revision Committee Note, 1951: No counterpart in 1949 statutes. However, 128.12 (dealing with creditors' action) contains a provision for dismissal when the proceedings are not diligently prosecuted. [Bill 763-S]

180.781 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.781; 1953 c. 399 s. 52.

Revision Committee Note, 1951: 286.40 appears to be the only provision in the 1949 statutes, which provides specifically for a decree dissolving the corporation, although 286.20 and 286.42 seem to contemplate a similar result. It seems wise to have a single provision for a decree of involuntary dissolution, which logically should be in the corporation code. If chapter 128 is to continue to apply to corporate debtors it would seem desirable that some provision be made for dissolution without requiring a separate action for that purpose. Chapter 128 might contain some reference to the provisions of the corporation code with respect to involuntary dissolution. Unlike this section, 286.40 outlines the priority of payments to different classes of creditors. It is noted that 128.17 and 286.40 are not in harmony with respect to the order of distribution of assets. [Bill 763-S]

Revision Committee Note, 1953: The sentence added to 180.781 will implement the procedure set forth in proposed new 180.768. [Bill 524-S]

180.783 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.783; 1955 c. 666.

Revision Committee Note, 1951: No counterpart in 1949 statutes. Although 286.44 requires the attorney general in dissolution actions brought under chapter 286 to file a copy of the judgment roll in the office of the secretary of state. [Bill 763-S]

180.785 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.785.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.787 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.787; 1965 c. 53.

Revision Committee Note, 1951: The comparable provision appears in 181.02 (1949) which provides that the corporation shall continue for 3 years after dissolution for the purpose of settling its affairs. This section provides for the survival of claims for a period of 2 years after dissolution. However, under the new chapter, in voluntary dissolution, articles of dissolution are not filed and the corporation is not dissolved until after the winding up process has been completed. See 180.755, 180.757 and 180.765. In involuntary dissolution notice to creditors and claimants is given during the dissolution proceedings and the winding up is under the supervision of the court. Formal dissolution, either voluntary or involuntary, depends upon an orderly and complete liquidation of the corporate affairs and under such circumstances the 2-year survival period does not seem too short. The new chapter places a limitation upon causes of action which exist against or in favor of the corporation. The

1949 statute limits the corporate existence to 3 years for this purpose. Under the 1949 statute, although a claim cannot be asserted against the corporation after the 3-year period, liability continues in shareholder transferees until the cause of action is barred by other statutes of limitation. See *West Milwaukee v. Bergstrom Mfg. Co.* 242 W 137. [Bill 763-S]

An action against a director of a corporation for wrongful conversion of the good will of the corporation is for an injury to the personal estate and survives. The executors of a deceased director may sue for a claim under sec. 1764, Stats. 1898. *Lindermann v. Rusk*, 125 W 210, 104 NW 119.

During the period allowed after dissolution the stockholder cannot sue on behalf of the corporation without showing a demand upon the corporation to bring a suit or some justifiable reason for failure to make the demand. *Elmergreen v. Weimer*, 138 W 112, 119 NW 836.

An action was commenced by a corporation and by an individual on a contract as to which they were copartners. While the action was pending the corporation was dissolved and at the end of the period allowed thereafter ceased to exist for any purpose. Still later, but before judgment, the individual plaintiff died. The action was then revived and continued by the latter's legal representative. The death of the corporation, as in the case of the death of an individual copartner, gave the surviving partner the entire interest and that her legal representative might recover all that the 2 original plaintiffs were entitled to recover. *Peters v. National S. Co.* 167 W 131, 166 NW 43.

The legal administrators of a corporation, after the lapse of the period allowed them to wind up the affairs of a corporation, have no further functions to perform, cannot represent the corporation, the corporation is defunct and all actions against it are abated. Under 269.13 and 269.14 causes of action against a corporation do not survive after its dissolution and the lapse of 3 years so as to prevent abatement. *State ex rel. Pabst v. Circuit Court*, 184 W 301, 199 NW 213.

Although a corporation ceased to exist after dissolution and the lapse of the period allowed, its debts were not extinguished, and a creditor could follow its assets into the hands of a transferee if the property was transferred to be applied by the transferee so far as necessary to the payment of the transferor's indebtedness, including the plaintiff's demand, or if the property was transferred for the purpose of hindering, delaying, and defrauding the plaintiff, without the transferor receiving fair value or equivalent for its property and leaving it without any funds or property with which to pay its debts. *West Milwaukee v. Bergstrom Mfg. Co.* 242 W 137, 7 NW (2d) 587.

An action to foreclose a mortgage can be maintained more than 2 years after corporate dissolution even if action on the note is barred by 180.787. *Security Nat. Bank v. Cohen*, 31 W (2d) 656, 143 NW (2d) 454.

180.787 bars claims against directors when such claims are brought more than 2 years after the filing of articles of dissolution. The statute limits capacity to sue or be sued, is not a statute of limitations, and is not affected by

the rule that the sovereign is not bound by the statute of limitations. *United States v. Palakow*, 298 F Supp. 1378.

Shareholder liability upon voluntary dissolution of corporation. *Schoone*, 44 MLR 415.

180.791 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.791; 1953 c. 399 s. 53; 1961 c. 220.

Revision Committee Note, 1951: The analogous provision is 180.08 (1949). 180.791 requires the giving of comparable information. It does not require a list of the states in which licensed to transact business. The information is to be given as of the date of the execution of the report instead of as of January 1 preceding. The secretary of state is to prescribe, furnish and mail forms. The antitrust statement required by 133.21 can be included in this annual report in accordance with the present practice. [Bill 763-S]

Revision Committee Note, 1953: Based on the secretary of state's experience with foreign annual reports, it seems inevitable that domestic corporations will make the same mistake that foreign corporations do: i.e., believing that a change of registered office or registered agent can be effected merely by showing a new registered office or agent in the annual report. Moreover, nowhere does the law require a domestic corporation to make public record of its principal office. In a proposed new provision for resignation of registered agent, notice of the resignation is directed to be mailed to the corporation at its principal office. Having the annual report show the principal office will enable the secretary of state to comply with the mailing requirement if enacted. Since the primary purpose of annual reports is for the use of the public, it is believed that the public will be more interested in learning the principal office of the corporation than in having the report show merely registered office and registered agent, since the latter is already a matter of record. [Bill 524-S]

The failure of a corporation to file its annual report does not work a forfeiture of corporate rights and privileges ipso facto. *Lindsey v. Farmers Exch. Inv. Co.* 223 W 565, 271 NW 364.

Where all records of the corporation are kept and its principal officers reside without the state, and the only business it does at its office maintained in this state is to forward mail, addressed to the corporation, to its office without the state, it does not have its principal office here. 10 Atty. Gen. 534.

The secretary of state is under no duty to investigate the correctness of corporate reports filed with him, or to prosecute for perjury in falsifying such reports. 10 Atty. Gen. 867.

180.793 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.793; 1963 c. 224; 1969 c. 154.

Revision Committee Note, 1951: This section requires the filing of the annual report before April 1. Penalties for late filing remain the same as in 1949 except that if the secretary of state returns the form for correction (a new requirement, but consistent with his present practice) the corrected report may be filed before May 1 without pen-

alty and except for the provision dealing with forfeiture as hereinafter mentioned.

There is omitted the 1949 requirement for publication of the names of corporations which have failed to file annual reports, as serving no useful purpose and being an unnecessary expense, especially in view of the ineffectiveness of the forfeiture provision under the decisions in *West Park R. Co. v. Porth*, 192 W 307; *Lindsley v. Farmers Ex. Inv. Co.* 223 W 565, at 571; and *Kegel v. McCormack*, 225 W 19, at 28. Inasmuch as no forfeiture results, it seems unnecessary to require as a condition of reinstatement the statement as to nonsuspension of business or holding title to real estate required by 180.08 (6) (1949). Failure to file the annual report remains a cause for involuntary dissolution under new 180.769. [Bill 763-S]

The penalty for failure to make the annual report in the time specified applies even when the organization has not been perfected by the election of officers. 7 Atty. Gen. 300.

180.795 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.795; 1953 c. 399 s. 54; 1965 c. 53.

Revision Committee Note, 1951: This section retains the provisions of 180.08 (5) (1949). 180.795, however, limits the report to principal officers. [Bill 763-S]

Revision Committee Note, 1953: The 1951 section contains no requirement for reporting the initial election (as here added) and, therefore, there is no record of the initial officers and directors until filing the first annual report. The 1951 section does not require the filing of the address of the principal place of business but this is required so the secretary of state will have this information. (2) requires the filing of names of all the officers or directors after a change so it will be necessary to look at only the last document filed to get complete information. [Bill 524-S]

180.801 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.801; 1953 c. 399 s. 55; 1957 c. 608; 1965 c. 53.

Revision Committee Note, 1951: Provisions relative to foreign corporations qualifying to do business in Wisconsin, annual reports, etc. are contained in chapter 226 (1949). Since chapter 180 of the corporation code covers business corporations, it contains the law relative to foreign business corporations qualifying to do business in Wisconsin.

226.01 (1949) sets forth the definition of a foreign corporation for the purposes of that chapter. In the code this definition is set forth in 180.02.

The first sentence of (1) is substantially the same as 226.02 (1949). The second sentence is new.

(2) is substantially the same as 226.02 (2) (1949). (3) is new.

226.05 (1949) should be retained, but not in the business corporation law, since it applies to corporations and to persons other than corporations. [Bill 763-S]

Revision Committee Note, 1953: Amendment restores the limitation applicable under appointments pursuant to 226.02 (2) and 226.02 (3) (f) (Stats. 1949). Without this limitation the appointment might be claimed

to permit any Wisconsin resident to sue the foreign corporation in Wisconsin on matters arising elsewhere and having no relation to the conduct of the business authorized under 180.801 (2). [Bill 524-S]

1. Certificate required.
2. Certificate not required.
3. Statement required from lenders.
4. Permitted transactions.

1. *Certificate Required.*

It is fully settled that the right of foreign corporations to do business or enforce rights in a state depends on comity, and that the state may absolutely exclude such corporations. *Fire Dept. of Milwaukee v. Helfenstein*, 16 W 136; *Morse v. Home Ins. Co.* 30 W 496; *State ex rel. Continental Ins. Co. v. Doyle*, 40 W 220; *Wyman v. Kimberly-Clark Co.* 93 W 554, 67 NW 932. See also *Doyle v. Continental Ins. Co.* 94 US 535.

The fact that a foreign corporation, which has laid street paving under a contract with a municipality, has failed to comply with sec. 1770b, Stats. 1898, affords no reason why a tax payer should be relieved from a liability to the municipality on assessments for such paving. *Beaser v. Barber A. P. Co.* 120 W 599, 98 NW 525.

Where goods are shipped by a foreign corporation through its agent in this state, not in response to an order from a purchaser but to be held and sold by such agent, such transaction constitutes doing business in this state. *Duluth M. Co. v. Clancey*, 139 W 189, 120 NW 854.

Sec. 1770b, Stats. 1898, applies to a foreign corporation contracting to tow lumber on Lake Superior between points in this state. *Independent T. Line v. Lake Superior L. & B. Co.* 146 W 121, 131 NW 408.

Where a machine was shipped into the state and the sale of it was not made until it had been unloaded and used, the transaction was not one of interstate commerce. *Indiana R. M. Co. v. Lake*, 149 W 541, 136 NW 178.

A foreign corporation is not engaged in interstate commerce when it sells to a Wisconsin corporation machinery already within the state. *Sprout, Waldron & Co. v. Amery M. Co.* 162 W 279, 156 NW 158.

A contract whereby a foreign corporation not licensed to do business in Wisconsin agreed to sell trees and shrubs, then in another state, to a resident of this state and to plant them upon his premises here, does not constitute interstate commerce. The planting was not a mere incident of, nor was it essential to, the sale and delivery of the trees and shrubs, and the agreement in that respect was one relating to business of strictly local character. *Phoenix Nursery Co. v. Trostel*, 166 W 215, 164 NW 995.

Sale of its stock within the state by an unlicensed foreign corporation constitutes transaction of business therein and the contract of sale is one affecting the personal liability of such corporation. (*Southwestern S. Co. v. Stephens*, 139 W 616, 120 NW 408, distinguished.) *American T. & H. Co. v. Christensen*, 206 W 25, 238 NW 897.

Liquor, shipped from another state and deposited in a warehouse in this state as the

property of the consignee by a bank which had loaned the consignee money, ceased to be in interstate commerce. *Holleb Liquor Distributors v. Lincoln F. W. Co.* 223 W 231, 270 NW 545.

Where ships owned and operated by a Canadian corporation engaged in interstate commerce came to the port of Milwaukee, approximately 6 times a year to transport grain from a Wisconsin corporation to Canada, and such Canadian corporation was not acting as an agent for a Wisconsin corporation but was simply an independent contractor carrying grain from Wisconsin to Canada, and it employed an agent in Wisconsin who merely arranged for tugs, advised the captain as to port conditions, ordered trimmers, and further arranged to berth the vessel, it was not "transacting business" in Wisconsin within the purview of 180.801, requiring that a foreign corporation transacting business in Wisconsin must have a certificate of authority to do so; hence it was not subject to 180.847 that no foreign corporation transacting business in Wisconsin without such a certificate shall be permitted to maintain a civil action in any court of this state. *Upper Lakes Shipping v. Seafarers' I. Union*, 18 W (2d) 646, 119 NW (2d) 426.

A contract, between the chamber of commerce of a Wisconsin city and an unlicensed foreign corporation which was not then doing business in the state, for a conveyance of real estate to the corporation upon certain conditions, constituted "doing business" in Wisconsin. *Midwest Sportswear Mfg. Co. v. Baraboo Chamber of Commerce*, 161 F (2d) 918.

A foreign corporation can obtain a detective license in this state only after it has been licensed to do business in the state. 8 Atty. Gen. 691.

Small loan companies licensed in other states but not in Wisconsin may not lawfully engage in the small loan business under ch. 214. 24 Atty. Gen. 745.

A foreign corporation engaged in the real estate business is required to comply with 136.12 and 180.801. 46 Atty. Gen. 1.

Foreign corporations in Wisconsin. *Williams*, 2 MLR 45.

2. Certificate Not Required.

Where a foreign corporation was employed by letter to purchase stocks for the defendant, and the purchase was made outside the state but the stock certificate was delivered and the fee to be collected in the state, the transaction was one of interstate commerce. *Catlin & Powell Co. v. Schuppert*, 130 W 642, 110 NW 818.

A complaint which shows that the plaintiff before incorporation sent a note to defendant for collection with instructions to return the same if not collected is not demurrable as showing that the plaintiff was not licensed to do business within the state. *Kiblinger v. Sauk Bank*, 131 W 595, 111 NW 709.

An agreement to guarantee an agency contract, whereby the agent took orders for goods in Wisconsin, which goods were shipped to him and delivered by him to the purchasers, was an interstate commerce transaction. *Loverin & Browne Co. v. Travis*, 135 W 322, 115 NW 829.

The right of a foreign corporation to sue in

the courts of this state rests on comity and may be exercised in certain cases without compliance with sec. 1770b, Stats. 1911, as in an action to recover damages for breach of a contract neither made nor to be performed in this state. *American F. P. Co. v. American M. Co.* 151 W 385, 138 NW 1123.

A sale in Wisconsin by an unlicensed foreign corporation, of goods to be shipped from the foreign state to the purchaser here, is a transaction of interstate commerce. *Ady v. Barnett*, 142 W 18, 124 NW 1061; *Saint Louis C. P. Co. v. Christopher*, 152 W 603, 140 NW 351.

A contract made in this state with a foreign corporation, to pay for a course of instruction in a correspondence school located in another state, pertains to interstate commerce and such corporation, without being licensed, may enforce the same. *International T. Co. v. Peterson*, 146 W 119, 130 NW 1134; *International T. Co. v. Mabbott*, 159 W 423, 150 NW 429. See also *International T. Co. v. Peterson*, 133 W 302, 113 NW 730, reversed 218 US 664.

A contract made in this state with an unlicensed foreign corporation, which provides that it shall not be binding upon the corporation until approved at its home office outside of the state, is not void; and a provision in such contract that the foreign corporation shall furnish specified property f. o. b. in this state, and a provision for filling of orders for goods and subsequent taking of securities therefor, relate to interstate commerce. *Charles A. Stickney Co. v. Lynch*, 163 W 353, 158 NW 85.

The purchase by a foreign corporation of goods in this state for shipment to and sale in other states, the title passing to the purchaser here, constitutes interstate commerce. *Jerome P. Parker-Harris Co. v. Kissel M. C. Co.* 165 W 518, 163 NW 141.

An unlicensed foreign corporation sold and delivered a unotype machine to a resident of this state under a conditional sale contract by the terms of which title was to be retained by the seller until the purchase price, for which notes were given, was fully paid. The purchaser died before the notes were all paid, and his widow continued his business and the use of the machine. Afterwards she and the seller entered into a new conditional sale contract with somewhat different terms, and she gave new notes, the old agreement being released and the unpaid notes of the deceased surrendered. The title to the machine never having passed and the substitution of the new contract being an ordinary incident of commerce, the interstate character of the whole transaction was not destroyed. (*Sprout, Waldron & Co. v. Amery M. Co.* 162 W 279, 156 NW 158, distinguished.) *Unitype Co. v. Schwittay*, 168 W 489, 170 NW 651.

Where the agent of a foreign corporation, after discussing in Minnesota with a resident of Wisconsin the sale of a machine, brought the machine to Wisconsin for demonstration and here sold and delivered it, there was a transaction in interstate commerce, and that the corporation might bring an action to recover the price, although not licensed in this state. *American S. M. Co. v. Jaworski*, 179 W 634, 192 NW 50.

The installation of glass-lined condensing

tanks by an employe of an unlicensed foreign corporation is, by reason of its technical nature and the complexity of the mechanism, an interstate transaction. Pfaudler Co. v. Westphal, 190 W 486, 209 NW 700.

A transaction whereby the Wisconsin owner of a conditional sales contract, made between it and a Wisconsin buyer, and concerning personal property located in Wisconsin, assigned the contract to a Minnesota corporation, and the contract, with the assignment, was sent to Minnesota and there delivered and paid for, the transaction was one in interstate commerce, so that the Minnesota corporation could enforce the contract by an action brought in Wisconsin, although it was not licensed in Wisconsin as a foreign corporation. Minneapolis Securities Corp. v. Silvera, 254 W 129, 35 NW (2d) 322.

See note to 180.847, citing Standard Sewing Equip. Corp. v. Motor Specialty, 263 W 467, 57 NW (2d) 706.

Failure to plead the lack of a license to do business in Wisconsin precludes a party from introducing proof of the fact if objection is made. Aldrich v. Skycoach Air Lines Agency, 266 W 580, 64 NW (2d) 199.

A foreign corporation engaged in interstate commerce and which, as a mere incident to such commerce, engages in business in Wisconsin, is not "transacting business" in Wisconsin so as to be subject to that state's regulations. In re Bell Lumber Co. 149 F (2d) 980.

A foreign corporation engaged in selling memberships entitling purchasers to market information and purchasing privileges is engaged in interstate commerce and is not required to be licensed. 13 Atty. Gen. 509.

3. Statement Required from Lenders.

Where all of the essential business and all of the decisions by lenders in connection with the making of a loan by a foreign corporation to Wisconsin residents, secured by a mortgage on Wisconsin real estate, were made in foreign states, and the loan was accepted in a foreign state and evidenced by instruments calling for payments at places outside the state, the loan was made outside this state and the transaction did not constitute the loaning of money in the state, and hence the foreign corporation was not required to file with the secretary of state the statement required in the case of foreign corporations loaning money in the state. Where Wisconsin agents of the foreign lender had authority merely to solicit and transmit applications, the fact that the proceedings leading up to the loan in question were initiated by the borrowers through such agents, considered with the other facts stated in connection with the making of the loan, did not make the loan a domestic one. Union Trust Co. of Maryland v. Rodeman, 220 W 453, 264 NW 508.

Where the contract under which a foreign corporation as transferee acquired notes secured by a chattel mortgage on Wisconsin property was neither a contract by which the foreign corporation loaned money in Wisconsin nor a contract which was made in Wisconsin, the contract was not unenforceable in Wisconsin by the foreign corporation merely because it had not filed under the statute.

Muldorney v. McCoy Hotel Co. 223 W 62, 269 NW 655.

Where the original trustee under a trust deed covering land in Wisconsin resigned and a foreign corporation was appointed successor trustee and the entire transaction, including the making of the original loan, occurred without the state, such foreign corporation could maintain an action in the state to foreclose without complying with the filing requirements relating to foreign corporations loaning money here. American Nat. Bank v. Edith R. McCormick Trust, 223 W 590, 270 NW 345.

The Federal National Mortgage Association as an instrumentality of the U. S. government need not comply with 226.02, Stats. 1937, relating to foreign corporations, before the purchase of mortgages upon real estate in Wisconsin. 28 Atty. Gen. 3.

4. Permitted Transactions.

A bank in another state does not violate this section by discounting a draft, with bill of lading attached, drawn by a manufacturing company there against a shipment of goods sold to a resident of Wisconsin. American Thresherman v. Citizens' Bank, 154 W 366, 141 NW 210.

Sale to an unlicensed foreign corporation of the assets of an insolvent domestic corporation will not be set aside where payment has been made, the proceeds distributed and unreasonable delay has intervened before the making of the motion. Goodwin v. Bode, 177 W 269, 189 NW 136.

An unlicensed foreign corporation may maintain a tort action in Wisconsin, and may bring an action of replevin to recover possession of property wrongfully taken or detained. Buckingham R. Corp. v. Persion F. Co. 191 W 391, 211 NW 269.

A corporation not complying with sec. 1770b, Stats. 1913, as amended, may make a loan outside of the state to a resident of the state and secure it by a chattel mortgage on property located in Wisconsin. First S. Bank v. Harrington, 192 W 293, 212 NW 665.

A transaction wherein a dealer for an unlicensed foreign corporation sold goods, the title to which was in the dealer but for which he was indebted to the corporation, to a succeeding dealer and the corporation accepted the new dealer as its debtor in place of the former dealer, did not constitute business forbidden to the foreign corporation. Watkins Co. v. Beyer, 203 W 397, 233 NW 442.

Owning stock by a foreign corporation in a Wisconsin corporation is not "transacting business" nor "holding property" in this state. 18 Atty. Gen. 496.

A foreign corporation shipping merchandise to Wisconsin in original packages upon orders confirmed at the foreign office of the corporation and temporarily storing such goods for subsequent delivery upon orders in original packages is not transacting business within Wisconsin such as to require a license. 21 Atty. Gen. 762.

180.807 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.807.

Revision Committee Note, 1951: This section is new, though the provisions are implied in chapter 226 (1949).

The last part, to the effect that a foreign corporation will not pursue in this state purposes set forth in its articles of incorporation which in its application for certificate of authority it has stated it will not pursue in this state, must be considered with 180.815, which requires the filing of a copy of the articles of incorporation, and 180.813 (1) (f), which states that in the application for certificate of authority a foreign corporation may state that it will not pursue certain of the purposes set forth in its articles of incorporation, and 180.819 setting forth the effect of a certificate of authority.

These provisions are put in in this manner, because it is felt that in many states a corporation may in its articles of incorporation be authorized to transact a number of types of business, including a type business which it would not be permitted to pursue in Wisconsin, or a corporation may be incorporated in another state with authority to transact several types of business and it may desire to be authorized to do only one or more types of business in Wisconsin, so under 180.815 the corporation files a copy of its articles of incorporation. Under 180.813 (1) (f) in its application it sets forth the purposes in its articles which it will not pursue in Wisconsin, and under this section it is then authorized to transact in Wisconsin the purposes set forth in its articles, except those which it has stated it will not pursue. If the corporation transacts in this state business for which it is not authorized, its certificate of authority may be revoked pursuant to 180.841 (1) (b). [Bill 763-S]

180.809 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.809.

Revision Committee Note, 1951: This section is similar to the provisions in 226.03 (1949) stating that a license shall not be issued to a foreign corporation unless its name is such to distinguish it from any other corporation authorized to do business in this state. [Bill 763-S]

A foreign corporation which uses the word "bank" or the word "trust" as part of its name cannot be licensed under sec. 1770b, Stats. 1919. 8 Atty. Gen. 750.

On the application of 180.809 to "Singer" trade mark see 52 Atty. Gen. 308.

180.811 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.811.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.813 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.813.

Revision Committee Note, 1951: This section is substantially the same as 226.02 (3) (1949), except that 226.02 (3) (f), which appoints the secretary of state attorney for service of process, is omitted because of the provisions covering the appointment of a registered agent and of service of process on the secretary of state under certain circumstances, and excepting 226.02 (3) (h) (1949) to the effect that it will comply with the laws of this state. This latter provision was considered unnecessary. (1) (k) has been reworded to set forth in more detail the fraction which is

obtained and to conform with 180.833 (1) (k).

The provision of 226.02 (3) (i) (1949) that the corporation has not violated any of the provisions of 226.07 has been omitted. 226.07 is a provision to the effect that a foreign corporation which has entered into a conspiracy etc. shall have its authority to do business in the state canceled. It is considered that anti-trust provisions are not properly a part of the business corporation law.

The statement in the annual report of a domestic corporation that it has not entered into any restraint of trade is included under present law because of the provision of 133.21 and not because of any provision in the corporation law. If it is considered desirable to have such statement on the annual report of a foreign corporation, a similar requirement should be included in chapter 133. [Bill 763-S]

The mere fact that the articles of a foreign corporation are broad enough to permit it to do banking affords no ground for denying its application. The license does not authorize it to transact banking business, and, should it engage in that business, it would be amenable to the statutes regulating banking. 8 Atty. Gen. 661.

The secretary of state has no authority to issue a license to a corporation which is exempt from the license requirement. 11 Atty. Gen. 892.

An alien corporation may be licensed to do business in this state by following the general provisions for foreign corporations; the officer of the foreign country corresponding to a secretary of state must certify to facts required of the secretary of state; an American consul should authenticate, by his certificate, such application. 18 Atty. Gen. 400.

In determining the value of nonpar stock for the purpose of ascertaining the corporate filing fee, the secretary of state may not consider the fact that articles of incorporation provide that upon the liquidation of the corporation all of the corporate assets in excess of a certain amount must go to the holders of the par-value common stock rather than to the holders of the nonpar-value preferred stock. 39 Atty. Gen. 326.

180.815 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.815.

Revision Committee Note, 1951: This is similar to the provisions of 226.02 (1) (1949) requiring the filing of a copy of articles. The provisions of 226.02 (8) (1949) have been omitted. [Bill 763-S]

180.819 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.819; 1953 c. 399 s. 56.

Revision Committee Note, 1951: See note to 180.807. This provision is similar to 226.03 (1949), except as to the right of a corporation to state that it will not transact in this state certain of the purposes included in its articles. [Bill 763-S]

180.821 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.821; 1953 c. 399 s. 57.

Revision Committee Note, 1951: This is similar to the provision in 226.02 (3) (f) (1949) that in lieu of appointing the secretary of state as an agent for the service of process, a foreign corporation may designate a resident

of the state and place of business where process may be served. [Bill 763-S]

180.823 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.823.

Revision Committee Note, 1951: This section is new, though the right to change the agent is implied in 226.02 (3) (f) (1949). [Bill 763-S]

180.824 History: 1953 c. 399 s. 58; Stats. 1953 s. 180.824.

180.825 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.825; Sup. Ct. Order 262 W v; 1953 c. 399 s. 58a to 60; 1965 c. 53, 252.

Revision Committee Note, 1951: (1) is similar to the provision in 226.02 (3) (f) (1949) that service may be made on the secretary of state when the designated agent cannot be found. (5) is similar to the last sentence in 262.09 (4). [Bill 763-S]

Revision Committee Note, 1953: The limitation on the type of action in which service can be made upon a foreign corporation under (3) parallel those in 180.847. [Bill 524-S]

Comment of Judicial Council, 1952: 180.825 (5) (Stats. 1951) duplicated 262.09 (4) (Stats. 1951). [Re Order effective May 1, 1953]

A foreign corporation is not liable on a lease negotiated by its agent but in which the lessee is the foreign corporation's authorized dealer. *Kloetzner v. Rudolph Wurlitzer Co.* 203 W 282, 234 NW 501.

Where a licensed foreign corporation sold liquid rubber to a domestic corporation for use in the latter's factory and an employe was fatally poisoned by using the liquid rubber, the liability of the foreign corporation arose out of business within this state within the meaning of 226.02 (3), Stats. 1929. *State ex rel. United States R. Co. v. Gregory*, 205 W 189, 236 NW 524.

Service of process may be made on the secretary of state in an action brought to recover personal property taxes assessed against a foreign corporation even though such corporation has removed all of its property out of this state and has ceased doing business in the state. 18 Atty. Gen. 88.

A foreign corporation may have only one agent for service in the state, which it may change from time to time. 20 Atty. Gen. 650.

See note to 452.03, citing 48 Atty. Gen. 6.

180.827 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.827; 1965 c. 53.

Revision Committee Note, 1951: This is similar to 226.02 (5) (1949). [Bill 763-S]

A decrease in the capital stock of a corporation is an amendment to its articles of association. 3 Atty. Gen. 139 and 141.

Mandamus will lie to compel a foreign corporation to file an amendment to its articles and to pay a fee and penalty. The corporation having secured a license, the fact that it may have done only interstate business is immaterial. 20 Atty. Gen. 735.

180.829 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.829; 1965 c. 53.

Revision Committee Note, 1951: 181.06 (9) (1949) covers the merger or consolidation of

one or more foreign corporations and one or more domestic corporations. 180.829 covers a foreign corporation authorized to transact business in this state which is a party to a statutory merger. It requires the filing of a copy of the articles of merger, but does not require a new certificate of authority. Since the section covers a qualified foreign corporation which is the surviving corporation, the certificate of authority continues in effect. The statute does not expressly cover the situation if the foreign corporation is not the surviving corporation. It is considered that in this situation the surviving corporation, not having obtained a certificate of authority in this state, would have to obtain one to do business. The statute does not expressly cover a consolidation since in a consolidation a new corporation is formed which would have to secure a certificate of authority. [Bill 763-S]

Where an insurance company licensed to do business in this state is merged or consolidated with another, not so admitted, the corporation so formed cannot do business in this state on such license. 4 Atty. Gen. 361.

A New York corporation did not acquire a license to do business in this state by reason of merger with a company holding such license. 22 Atty. Gen. 41.

180.831 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.831; 1953 c. 399 s. 61.

Revision Committee Note, 1951: This provision is not found in the 1949 statutes, though 226.02 (5) (1949) requires the filing of amendments to articles of incorporation so that if the name of a foreign corporation is changed, the amendment changing the name would have to be filed and, since under 226.03 (1949) the secretary of state is not to issue a license to a foreign corporation unless its name distinguishes it from any other corporation authorized to do business in the state and the license may be revoked for failure to comply with the laws, it would seem that under the 1949 statutes, if the name of the corporation was changed to a name which was not distinct from any other corporate name, that the secretary of state would revoke the license of the foreign corporation. [Bill 763-S]

Revision Committee Note, 1953: The amendment to (1) adds the requirement that a foreign corporation must get an amended certificate of authority when it amends its articles of incorporation changing its purposes. If the purposes are changed, the foreign corporation should get an amended certificate of authority to pursue changed or additional purposes, or state it will not pursue them in Wisconsin. Compare 180.813 (1) (f) and 180.819. The clause added to (2) simplifies the procedure for obtaining an amended certificate of authority upon a change of name of a foreign corporation. In such cases no separate application for amended certificate of authority is required, the copy of amended articles of incorporation or merger providing for such change of name constituting the application. The filing fees provided by 180.87 (1) (k) and (m) will still apply. [Bill 524-S]

180.833 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.833; 1953 c. 399 s. 62.

Revision Committee Note, 1951: This section is similar to 226.04 (1949). The provision of 226.04 (1949) that the corporation has not violated 226.07 (antitrust) is omitted. Antitrust provisions should be in the antitrust chapter (133). See note to 180.813. [Bill 763-S]

By 261.01 and 226.04, Stats. 1937, the legislature has declared that a foreign corporation may have a principal office in this state in addition to general headquarters elsewhere. State ex rel. Johnson v. Aarons, 231 W 524, 286 NW 27.

A foreign corporation licensed to do business in this state, which has gone into bankruptcy, must file its annual report if it continues in business. The report of a bankrupt foreign corporation may be executed by an assignee or trustee in bankruptcy. 14 Atty. Gen. 166.

See note to 180.813, citing 39 Atty. Gen. 326.

180.835 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.835; 1969 c. 154.

Revision Committee Note, 1951: This is similar to 226.04 (1) (1949) as to the time within which report must be filed. The provision that the secretary of state is to return the report if he finds it is not proper is new. The penalty provisions are increased and graduated. [Bill 763-S]

180.837 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.837.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.839 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.839.

Revision Committee Note, 1951: See note to 180.837. [Bill 763-S]

180.841 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.841; 1965 c. 53.

Revision Committee Note, 1951: 226.03 (1949) states that the license of a foreign corporation may be revoked for failure to comply with the laws applicable to foreign corporations. 180.841 is more desirable, for it is more specific and, together with 180.843, sets forth the procedure to be followed.

180.841 (1) (e) makes failure to file annual report as required by the chapter a cause for revocation of a certificate of authority. 226.04 (2) (1949) states that if an annual report is not filed, a license of the foreign corporation is void and is to be forfeited by the secretary of state. 226.04 (3) (1949) sets forth procedure for rescinding the forfeiture of the license. These provisions of the 1949 statutes are ambiguous and lead to confusion which it is felt the new provisions avoid. [Bill 763-S]

180.843 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.843; 1953 c. 399 s. 63.

Revision Committee Note, 1951: See note to 180.841. [Bill 763-S]

Revision Committee Note, 1953: The 1951 statute requires mailing to the principal place of business. The change will be to principal office to accord with information shown in the annual report. See 180.833 (1) (c). [Bill 524-S]

180.845 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.845; 1953 c. 399 s. 64.

Revision Committee Note, 1951: This section recognizes licenses issued to foreign corporations at the time the new chapter becomes effective. [Bill 763-S]

Revision Committee Note, 1953: The addition of (4) is to insure the continuity of authority under previous law to make service upon foreign corporations not licensed in Wisconsin at the effective date of ch. 731, Laws 1951. [Bill 524-S]

180.847 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.847; 1953 c. 399 s. 65; 1965 c. 53.

Revision Committee Note, 1951: (1) and (2) deny to an unqualified foreign corporation doing business or acquiring, holding or disposing of property in this state the right to use the courts of this state, either as plaintiff or defendant, until a certificate of authority has been obtained. These paragraphs expressly provide that the validity of a contract is not impaired.

226.02 (9) (1949) makes a contract entered into by a foreign corporation "affecting its liability or relating to property within this state" before the corporation has been licensed void on the corporation's behalf and enforceable against it. It is considered that the 1949 law is unduly harsh; that the state is interested in receiving the fees which are due it from a foreign corporation and that provision should be made for this, and that the 1949 statutes making contracts void does not aid the state in collecting such fees.

(3) makes a foreign corporation which transacts business or acquires, holds or disposes of property without a certificate of authority liable for all fees which it would have paid had it received a certificate of authority plus a penalty of 50 per cent.

(4) is new and is for the benefit of residents of the state who do business with foreign corporation that has not obtained a certificate of authority by permitting service on such foreign corporation through service on the secretary of state. This subsection is similar to 85.05 (3) whereby a nonresident driver of a motor vehicle through the use of the highways appoints the commissioner of the motor vehicle department his attorney for service. A similar provision is contained in the laws of several other states. [Bill 763-S]

Revision Committee Note, 1953: While the amendment to (2) is probably implied from the language as to contracts and from the language of the other subsections of s. 180.47, it is desirable to make it clear that absence of qualification does not impair titles. [Bill 524-S]

Although a conveyance of land in this state to a foreign corporation which had not complied with sec. 1770b, Stats. 1911, was void, a grantee of such corporation who goes into possession and his grantees and successors in possession under the same claim of right hold adversely under color of title. Mortenson v. Murphy, 153 W 389, 141 NW 273.

Sec. 1770b, Stats. 1913, is a declaration of public policy in the regulation of business transacted within the state by foreign corporations. Wisconsin T. Co. v. Munday, 168 W 31, 168 NW 393, 169 NW 612.

A foreign corporation which obtains a li-

cense to do business in this state and voluntarily submits to the provisions of the statutes relating to foreign corporations (secs. 1770b and 1770c, Stats. 1921) thereby submits itself to the jurisdiction of the courts of the state. State ex rel. Goldwyn D. Corp. v. Gehrz, 181 W 238, 194 NW 418.

A writ of prohibition was issued to restrain the circuit court from entertaining an action by a foreign corporation, not licensed to do business in this state, against a licensed foreign corporation, on the ground of public policy. State ex rel. Goldwyn D. Corp. v. Gehrz, 181 W 238, 194 NW 418.

As state statutes have no extraterritorial effect, this state must have some jurisdiction over the contract or some feature or element of it to bring it under the statute. A contract made outside this state, whereby an unlicensed foreign corporation agreed to investigate business conditions and advise a domestic corporation regarding the advisability of a contemplated expansion of the latter's plant, did not relate to property in this state, nor did the making of a survey in the state by representatives for the purpose of acquiring information upon which report and advice pursuant to the contract was made and mailed. Ford, Bacon & Davis, Inc. v. Terminal W. Co. 207 W 467, 240 NW 796.

The fact that an unlicensed foreign corporation had no place of business in Wisconsin where it could make use of the motors ordered by it from the Racine, Wisconsin, seller "f.o.b. Racine," and the practical interpretation of the contract by the parties themselves, establishing the fact that all of the motors supplied by the seller thereunder were shipped to such corporation at Chicago, warranted a determination that the contract contemplated shipment of all of the motors to a point of destination outside of Wisconsin so as to involve interstate commerce only, so that such corporation could maintain an action against the seller for breach of the contract, where the only act of such corporation in Wisconsin had been the execution of the contract here. Standard Sewing Equip. Corp. v. Motor Specialty, 263 W 467, 57 NW (2d) 706.

In order for a foreign corporation to transact business in a state, it must be physically present within the state in the sense of having an officer or agent there who is performing some act on behalf of the corporation. Bulova Watch Co. v. Anderson, 270 W 21, 70 NW (2d) 243.

See note to 180.801, on certificate required, citing Upper Lakes Shipping v. Seafarers' I. Union, 18 W (2d) 646, 119 NW (2d) 426.

As to when an unlicensed foreign corporation is suable, see note to 262.09, citing Consolidated T. Corp. v. Gregory, 289 US 85.

The statute of limitations was tolled against a nonresident foreign corporation, although plaintiff could have obtained service on the secretary of state under 180.847 (4) within the period of limitation. Globig v. Greene & Gust Co. 193 F Supp. 544.

180.849 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.849; 1965 c. 53.

Revision Committee Note, 1951: This section is like 226.11 (1949). Since the provisions covering foreign corporations will be made

part of the new Business Corporation Law, chapter 226 (1949) should be repealed, except the following:

- 226.01 Definition
- 226.025 Foreign public utility holding companies
- 226.05 Bank deposits by nonresidents
- 226.07 Combinations and trusts
- 226.09 Ouster
- 226.12 Liability of inactive foreign corporations
- 226.13 Plaintiff's lien
- 226.14 Common law trusts

226.06 is repealed by this bill. In view of the present statutes (chapter 189) and federal Blue Sky Laws, this provision is eliminated. [Bill 763-S]

Contracts arising out of transactions authorized by their charters and not prohibited by the laws or policy of this state will be enforced at the suits of foreign corporations. Connecticut Ins. Co. v. Cross, 18 W 109.

See note to 180.801, on certificate not required, citing American F. P. Co. v. American M. Co. 151 W 385, 138 NW 1123.

A California corporation may be sued by a Montana corporation in Wisconsin if attachable property or credits of the defendant have been garnished here; and the subsequent commencement of similar actions in other states, where defendant had sufficient property to satisfy plaintiff's demand, does not require the dismissal of the action here. State ex rel. Sloan S. Co. v. Wickham, 184 W 74, 198 NW 594.

See note to 180.801, on permitted transactions, citing Buckingham R. Corp. v. Persion F. Co. 191 W 391, 211 NW 269.

Without determining whether a foreign corporation has an absolute right to resort to the courts of Wisconsin for the trial of issues with foreign insurance corporations, there was no abuse of discretion in the entertainment of the action. State ex rel. Aetna Ins. Co. v. Fowler, 196 W 451, 220 NW 534.

A nonresident corporation may sue a nonresident insurance company on a fire insurance policy in Wisconsin, although the property insured was located without the state. State ex rel. Smith v. Belden, 205 W 158, 236 NW 542.

180.86 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.86.

Revision Committee Note, 1951: This section, which follows the procedure now covered by 180.07 (2) and (3) (1949) as to amendments, establishes a uniform filing and recording procedure as to all documents required to be filed and recorded under this chapter. [Bill 763-S]

The secretary of state has no authority to refuse charters to regularly organized private corporations formed for the purpose of conducting a lawful business. He has no such authority as would permit him to revoke charters of any such corporation lawfully doing business in the state. 32 Atty. Gen. 256.

There is no statutory authority to cancel an amendment or other corporate filing, once filed, and no refund of filing fee paid can be made under the facts stated. 46 Atty. Gen. 153.

180.861 History: 1953 c. 399 s. 68; Stats. 1953 s. 180.861.

See note to 180.04, citing *Ford v. Hill*, 92 W 188, 198, 66 NW 115, 118.

180.87 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.87; 1953 c. 399 s. 69; 1963 c. 224; 1965 c. 53; 1969 c. 154.

Revision Committee Note, 1951: (1) (a) is similar to 180.02 (3) (1949) as to filing fees for corporations having par value stock. The fees of no par value stock, 5 cents per share under 182.14 (2) (1949) is reduced to 2 cents per share to minimize the discrepancy in fee between the 2 types of stock. Discrimination as to fees between various types of corporations is also eliminated.

(1) (b) consolidates various present provisions of law and provides for a credit on account of fees previously paid against fees for increase of stock by amendment. Fee computations under this subsection are illustrated as follows:

Immediately prior to amendment a corporation had authorized shares consisting of 100 shares of no par value common stock and 100 shares of \$100 par value preferred stock.

After amendment the total stock consists of 2,000 shares of common stock without par value and 1,500 shares of preferred stock of \$100 per share par value.

The fees are first computed at the new rates on the total amount of shares as authorized after the amendment as follows:

2,000 shares no par value common stock @ 2c per share	\$ 40
1,500 shares preferred stock of \$100 par value @ \$1 per thousand	150
Total	\$190

The credit for shares as authorized immediately prior to the amendment is computed as follows:

Credit for 100 shares without par value @ 2c per share	\$ 2
Credit for 100 shares of \$100 per share par value @ \$1 per thousand	10
Total Credit	\$ 12

Deducting the \$12 credit from the \$190 leaves \$178, in addition to \$10, payable on account of the shares as authorized after the amendment.

(1) (c) has no counterpart in 1949 statutes. Fees payable in case of merger will be the same as in case of amendment to articles of incorporation with a credit given for fees already paid with respect to domestic corporations which are parties to the merger.

(1) (d) to (h) have no counterpart in 1949 statutes.

(1) (i) is similar to 226.02 (4) (1949). The fees to be paid by foreign corporations are determined by reference to 180.813 which section retains and clarifies 1949 law on this subject.

(1) (j) provides a fee of \$2 for the filing of the annual report of a foreign corporation and provides additional fees in the event an annual report shows the corporation is employing more capital in the state than during

the preceding year computed in the same manner as under paragraph (i) of this subsection.

(1) (k) relates to filing applications of foreign corporations for amended certificates of authority and provides for additional fees on the same basis as in paragraph (j).

(1) (l) is similar to 226.02 (5) (1949) restated for purposes of clarification.

(1) (m) and (n) have no counterpart.

(1) (o) incorporates provisions of 262.09 (1949) with respect to the fee therein provided for.

(1) (p) has no counterpart in 1949 statutes.

(2) serves to resolve any doubt as to the power of the attorney general to enforce payment of the fees provided for.

(3) accords with other provisions of the chapter and with various provisions of 1949 statutes. [Bill 763-S]

Revision Committee Note, 1953: Provision having been made by creation of 180.105 and 180.824 for resignation of agent it seems appropriate in (1) (h) to provide a fee for filing the statement of such resignation. The amount of \$5 corresponds to the fee for filing other similar documents. The amendment to (1) (k) corrects an error. [Bill 524-S]

Sec. 1772, Stats. 1911, regulates the fees to be paid upon its capital stock by every corporation, as regards both its original organization and every amendment of its articles of incorporation. State ex rel. Attorney General v. Northern P. R. Co. 157 W 73, 147 NW 219.

Failure of a corporation to pay fees is not a defense to an action on a subscription for stock. *Badger D. Co. v. Hansen*, 189 W 547, 208 NW 477.

An amendment to articles of incorporation providing that when preferred stock is called in it shall be canceled but additional preferred stock in lieu thereof may from time to time be issued, the aggregate amount outstanding at no time to exceed the amount authorized, does not increase authorized capital stock; and no fee for increase of capital stock is required to be paid. 18 Atty. Gen. 608.

See note to 180.10, citing 55 Atty. Gen. 24.

Under 180.87 (1), Stats. 1967, previous fee payments made by a foreign corporation on its capital employed within Wisconsin may be credited to another foreign corporation into which it merges. 57 Atty. Gen. 184.

180.88 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.88.

Revision Committee Note, 1951: This section is similar to 346.64 with some revisions. The committee recommends that 346.64 be repealed. [Bill 763-S]

180.89 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.89.

Revision Committee Note, 1951: No counterpart in 1949 statutes. 182.17 (1949) contains certain provisions on the subject but is not sufficiently complete. [Bill 763-S]

180.895 History: 1953 c. 399 s. 70; Stats. 1953 s. 180.895.

Revision Committee Note, 1953: This section which is patterned largely after section 81 A of the Delaware Code, removes any doubt as to the validity of corporate action where,

as was the case during the war, it was legally impossible to give notice to persons in certain countries. [Bill 524-S]

180.90 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.90.

Revision Committee Note, 1951: No counterpart in 1949 statute. [Bill 763-S]

180.91 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.91; 1953 c. 399 s. 71.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

Revision Committee Note, 1953: Amendment is proposed for the purpose of making it clear that unanimous informal action is authorized by the section even though the articles or bylaws may provide only for action at a meeting. [Bill 524-S]

See note to 66.021, citing *Brown Deer v. Milwaukee*, 16 W (2d) 206, 114 NW (2d) 493.

See note to 180.13, citing *Columbia Stamping & Mfg. Co. v. Reich*, 28 W (2d) 297, 137 NW (2d) 45.

The political act: its application to annexation, third-party attack, and corporate authority. *Carns*, 47 MLR 71.

Trends in legislation for close corporations. *Hetherington*, 1963 WLR 92, 103.

Third-party's right to question corporate officer's authority. 1963 WLR 501.

180.92 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.92.

Revision Committee Note, 1951: No counterpart in 1949 statutes. Because of the requirement of a "contested case", the appeal procedure prescribed in the Administrative Procedure Act, Ch. 227, was not adopted. Rather than provide for the "appeal" set forth in the Model Act, which would have been an innovation in Wisconsin practice, it was considered better to provide for review by "action" in order to fit the procedure into Wisconsin practice. It was deemed advisable not to make this form of review exclusive, and so it was expressly provided that other methods of review, i.e. mandamus, should be preserved. [Bill 763-S]

180.93 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.93; 1953 c. 399 s. 72.

Revision Committee Note, 1951: This section is somewhat similar to 180.06 (4) (1949) except that personal liability is limited to the amount of deficiency in capital with which the corporation may commence business. [Bill 763-S]

Revision Committee Note, 1953: Integrates with amendment to 180.48 and repeal of 180.45 (1) (g). [Bill 524-S]

The object of sec. 1773, R. S. 1878, seems to be to prevent fictitious and fraudulent corporations from extorting money from stockholders and obtaining credit when they have no real basis of capital to do business upon and no resources to meet their liabilities. *Anvil M. Co. v. Sherman*, 74 W 226, 42 NW 226.

A person who subscribed for stock in a corporation and acts as an officer and director thereof is estopped to deny that he is a stockholder when an action is brought to enforce

the liability of stockholders. *Heinze v. South Green Bay L. & D. Co.* 109 W 99, 85 NW 145.

Where a lessee assigned his lease to a corporation organized by himself and 2 others and the corporation assumed the obligation to pay the rent, but the required capital stock was not paid in, the statute was violated and the lessor might maintain an action against the 3 incorporators for the rent. *Zwietusch v. Becker*, 153 W 213, 140 NW 1056.

Facts supporting an action to charge stockholders and officers with personal liability for transacting business before the proper amount of stock was subscribed and paid in are stated in *Weston v. Dahl*, 162 W 32, 155 NW 949.

Stockholders in a corporation taking over assets of a sole trader before minimum capital is paid in are not liable to a creditor of the trader. There was no agreement to pay the creditor, and some question as to whether the corporation ever received the goods. A judgment against the corporation in assignment proceedings is not *res adjudicata* against a judgment creditor proceeding under 180.06, Stats. 1925, against a stockholder. A creditor of the sole trader who files his claim in the insolvency proceedings and accepts a dividend is estopped to proceed against the stockholder hereunder. *Blum Brothers B. Co. v. Stumbaugh*, 189 W 254, 207 NW 270.

A corporation is completely organized when its articles of incorporation are signed and filed and the certificate of organization is issued. A creditor who sues the corporation is not estopped from suing the stockholders individually on their statutory liability. *Bank of Verona v. Stewart*, 223 W 577, 270 NW 534.

180.94 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.94.

Revision Committee Note, 1951: No counterpart in 1949 statutes. [Bill 763-S]

180.95 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.95.

Revision Committee Note, 1951: In considering the difficult subject of this section it was recognized that although existing corporations must come under the new chapter at least after a period of grace in order to avoid the unsatisfactory result of having 2 sets of Wisconsin corporations into the indefinite future, still certain interests of individual stockholders in existing corporations which have generally been recognized as vested should be preserved, and probably must be preserved as a matter of constitutional law. The corresponding sections in the Model Act, and in the corporation codes of Delaware, Illinois, Michigan and other states were considered, but the committee finally decided to use the terminology, "rights accrued or established", which is found in 371.03, which section dealt with the effect of repeal in the general statutory revision of 1898. Of course it was necessary to alter the other language of the section in order to conform it to the narrower field of corporate revision. The last clause of the section, preserving contract relations between existing corporations and third parties, merely states what obviously must be, but nevertheless it was considered advisable to state it. [Bill 763-S]

180.97 History: 1951 c. 731 s. 7; Stats. 1951 s. 180.97; 1955 c. 661 s. 6; 1965 c. 53.

The general corporation law (ch. 86, R. S. 1878) does not repeal, take away or abridge the right and authority of a corporation organized prior to its enactment under a special charter. *Black River F. D. Asso. v. Ketchum*, 54 W 313, 11 NW 551.

While a nonprofit stock corporation lawfully organized prior to July 1, 1953 may continue to operate under ch. 180, 180.97 (1), Stats. 1957, is construed as not authorizing the organization of such corporations under ch. 180 subsequent to July 1, 1953. 47 Atty. Gen. 78.

180.99 History: 1961 c. 350; Stats. 1961 s. 180.99.

Veterinarians licensed under the provisions of ch. 150, Stats. 1967, may form a service corporation under 180.99. 57 Atty. Gen. 150.

Wisconsin professional service corporations under the new "Kintner" regulations. *Andrew*, 49 MLR 564.

The Wisconsin service corporation law of 1961. *Kahn*, 1962 WLR 65.

CHAPTER 181.

Nonstock Corporations.

181.01 History: 1953 c. 554; Stats. 1953 s. 181.01.

Revision Committee Note, 1953: No counterpart in 1951 statutes. The term "nonstock" is used because not all nonprofit corporations are covered by this chapter and because the term is used in 1951 statutes. [Bill 559-S]

On impairment of contracts see notes to sec. 12, art. I; on legislative power generally and on the public-purpose doctrine see notes to sec. 1, art. IV; on special and private laws (private corporations) see notes to sec. 31, art. IV; on the formation of corporations see notes to sec. 1, art. XI; and on general banking law see notes to sec. 4, art. XI.

181.02 History: 1953 c. 554; Stats. 1953 s. 181.02.

Revision Committee Note, 1953: No counterpart in 1951 statutes. Where it is appropriate, these definitions conform to those in ch. 180. The second sentence in (7) is inserted to avoid any question as to the eligibility of corporations, partnerships and associations to membership. [Bill 559-S]

181.03 History: 1953 c. 554; Stats. 1953 s. 181.03.

181.04 History: 1953 c. 554; Stats. 1953 s. 181.04; 1957 c. 97.

A nonstock and nonprofit corporation organized under ch. 181 may file an amendment to its articles providing that the corporation shall not be dissolved without the approval of the FHA as long as such agency holds an outstanding mortgage of the corporation. 48 Atty. Gen. 1.

181.05 History: 1953 c. 554; Stats. 1953 s. 181.05.

A city has no right to raise the issue of ultra vires in an action to defeat tax exemption of a charitable corporation. *Associated*

Hospital Service v. Milwaukee, 13 W (2d) 447, 109 NW (2d) 271.

181.06 History: 1953 c. 554; Stats. 1953 s. 181.06.

181.07 History: 1953 c. 554; Stats. 1953 s. 181.07.

181.08 History: 1953 c. 554; Stats. 1953 s. 181.08.

A corporation not organized or authorized under ch. 180 or this chapter may not be designated as a registered agent under 181.08, Stats. 1965. 55 Atty. Gen. 1.

181.09 History: 1953 c. 554; Stats. 1953 s. 181.09.

181.095 History: 1953 c. 554; Stats. 1953 s. 181.095.

181.10 History: 1953 c. 554; Stats. 1953 s. 181.10.

181.11 History: 1953 c. 554; Stats. 1953 s. 181.11.

Revision Committee Note, 1953: The existence of the corporation without stock should not depend upon the existence of its members. [Bill 559-S]

181.12 History: 1953 c. 554; Stats. 1953 s. 181.12.

Revision Committee Note, 1953: Some provision determining a member's rights upon death, withdrawal or expulsion is needed. The termination of property rights appears to be the only solution to the problem. Property rights accrued or established in existing corporations prior to the enactment of this chapter are protected by 181.75. The corporation probably has a right to expel members without statutory authority, but a specific provision is desirable. [Bill 559-S]

181.13 History: 1953 c. 554; Stats. 1953 s. 181.13.

181.14 History: 1953 c. 554; Stats. 1953 s. 181.14.

181.15 History: 1953 c. 554; Stats. 1953 s. 181.15; 1965 c. 252.

181.16 History: 1953 c. 554; Stats. 1953 s. 181.16.

Revision Committee Note, 1953: The comparatively low quorum requirement seems desirable because of the frequently widespread lack of interest on the part of members. [Bill 559-S]

181.17 History: 1953 c. 554; Stats. 1953 s. 181.17.

181.175 History: 1953 c. 554; Stats. 1953 s. 181.175; 1965 c. 252.

Revision Committee Note, 1953: Large organizations may wish to stimulate the members' interest, but find it impracticable to have meetings of all of the members because of the size of the membership. This section is designed to permit the establishment of local units in which members may meet and elect delegates to represent them at the corporation meetings. The meetings of delegates would