

1985 Senate Bill 532

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## 1985 Wisconsin Act 195

AN ACT to repeal 180.02 (1), 180.02 (3m), 180.69, 180.725 (1) (i), 180.725 (3) (a) 2, 180.725 (3) (b) 4, 552.01 (1m) and 552.10; to renumber and amend 180.725 (1) (j); to amend 180.02 (7m), 180.25 (1), 180.25 (5) (b) (intro.), 2 and 3, 180.43 (2) (b), 180.725 (title) and (1) (b) 1 and 3, (c), (d) 1 and 2 and (h), 180.725 (2) (intro.) and (b), 180.725 (3) (a) 1, 180.725 (3) (a) 3, 180.725 (3) (b) (intro.) and 3, 221.25 (1), 552.01 (3), 552.01 (6) (c) and (d), 552.03 (1) (c), 552.05 (7) (b) and (c) and 552.23 (2); to repeal and recreate 180.725 (1) (k) 1 and 180.725 (3) (b) 1; and to create 180.25 (9), 180.725 (1) (nm), 180.725 (1m), 180.725 (3) (a) 1. c, 180.725 (3) (c), 180.791 (1) (f) and 552.02 of the statutes, relating to revisions to laws governing control share acquisitions, business combinations and take-overs and providing for a study.

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

SECTION 1. 180.02 (1) of the statutes is repealed.

SECTION 2. 180.02 (3m) of the statutes is repealed.

SECTION 3. 180.02 (7m) of the statutes is amended to read:

180.02 (7m) "Issuing public corporation" means a domestic corporation, other than an investment company registered under the investment company act of 1940, with at least 100 persons in this state that are holders of record of its common shares and having its principal place of business, its principal executive offices or substantial assets located in this state ~~shareholders of record who are residents of this state as of the date of submission of the corporation's most recent annual report under s. 180.791 (1).~~

SECTION 4. 180.25 (1) of the statutes is amended to read:

180.25 (1) ~~Each~~ Except as the voting rights of shares are modified by operation of sub. (9), each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are enlarged, limited or denied by the articles of incorporation as permitted by this chapter. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this

chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

SECTION 5. 180.25 (5) (b) (intro.), 2 and 3 of the statutes are amended to read:

180.25 (5) (b) (intro.) A proxy appointed in connection with a ~~shareholder authorization of a control share acquisition vote~~ under ~~s. 180.69 sub. (9) (d)~~:

2. Shall be solicited and appointed apart from the sale of or offer to purchase shares of the issuing public corporation.

3. May not be solicited sooner than 30 days before the meeting called under ~~s. 180.69 (3) sub. (9) (d)~~, unless otherwise agreed in writing by the ~~acquiring~~ person under sub. (9) and the directors of the issuing public corporation.

SECTION 6. 180.25 (9) of the statutes is created to read:

180.25 (9) (a) Unless otherwise provided in the articles of incorporation of an issuing public corporation and except as provided in par. (b) or as restored under par. (d), the voting power of shares of an issuing public corporation held by any person, including shares issuable upon conversion of convertible securities or upon exercise of options or warrants, in excess of 20% of the voting power in the election of directors shall be limited to 10% of the full voting power of those shares. In this subsection, "person" includes 2 or more individuals or persons acting as a group for the pur-

pose of acquiring or holding securities of an issuing public corporation, but does not include a bank, broker, nominee, trustee or other person that acquires or holds shares in the ordinary course of business for others in good faith and not for the purpose of avoiding this subsection unless the person may exercise or direct the exercise of votes with respect to the shares at a meeting of shareholders without further instruction from another.

(b) Shares of an issuing public corporation held, acquired or to be acquired in any of the following circumstances are excluded from the application of this subsection:

1. Shares acquired before the effective date of this subdivision .... [revisor inserts date].

2. Shares acquired under an agreement entered into before the effective date of this subdivision .... [revisor inserts date].

3. Shares acquired by a donee under an inter vivos gift not made to avoid this subsection or by a distributee as defined in s. 851.07.

4. Shares acquired under a collateral pledge or security agreement, or similar instrument, not created to avoid this subsection.

5. Shares acquired under s. 180.62, 180.63, 180.68 or 180.685 if the issuing public corporation is a party to the merger or consolidation.

6. Shares acquired from the issuing public corporation.

7. Shares acquired under an agreement entered into at a time when the issuing public corporation was not an issuing public corporation.

8. Shares acquired of the capital stock of a state bank or trust company if the acquisition is subject to a shareholder vote under s. 180.04 (6).

9. Shares acquired in a transaction incident to which the shareholders of the issuing public corporation have voted under par. (d) to approve the person's resolution delivered under par. (c) to restore the full voting power of all of that person's shares.

(c) A person desiring a shareholder vote under par. (d) shall deliver to the issuing public corporation at its principal executive office a form of shareholder resolution with an accompanying notice containing all of the following:

1. The identity of the person.

2. A statement that the resolution and notice are submitted under this subsection.

3. The number of shares of the issuing public corporation owned by the person of record and beneficially under the meaning prescribed in rule 13d-3 under the securities exchange act of 1934.

4. A specification of the voting power the person has acquired or proposes to acquire for which shareholder approval is sought.

5. The circumstances, terms and conditions under which shares representing in excess of 20% of the voting power were acquired or are proposed to be

acquired, set forth in reasonable detail, including the source of funds or other consideration and other details of the financial arrangements of the transactions.

6. If shares representing in excess of 20% of the voting power were acquired or are proposed to be acquired for the purpose of gaining control of the issuing public corporation, the terms of the proposed acquisition, including but not limited to the source of funds or other consideration and the material terms of the financial arrangements for the acquisition, any plans or proposals of the person to liquidate the issuing public corporation, to sell all or substantially all of its assets, or merge it or exchange its shares with any other person, to change the location of its principal executive office or of a material portion of its business activities, to change materially its management or policies of employment, to alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management or personnel, and such other material information as would affect the decision of a shareholder with respect to voting on the resolution.

(d) 1. Within 10 days after receipt of a resolution and notice under par. (c), the directors of the issuing public corporation shall fix a date for a special meeting of the shareholders to vote on the resolution. The meeting shall be held no later than 50 days after receipt of the resolution and notice under par. (c), unless the person agrees to a later date, and no sooner than 30 days after receipt of the resolution and notice, if the person so requests in writing when delivering the resolution and notice.

2. The notice of the meeting shall include a copy of the resolution and notice delivered under par. (c) and a statement by the directors of their position or lack of position on the resolution.

3. Regular voting power is restored if at the meeting called under subd. 1 at which a quorum is present a majority of the voting power of shares represented at the meeting and entitled to vote on the subject matter approve the resolution.

4. An issuing public corporation is not required to hold more than 2 meetings under subd. 1 in any 12-month period with respect to resolutions and notices presented by the same person unless the person pays to the issuing public corporation, in advance of the 3rd or subsequent such meeting the reasonable expenses of the meeting including, without limitation, fees and expenses of counsel, as estimated in good faith by the board of directors of the issuing public corporation and communicated in writing to the person within 10 days after receipt of a 3rd or subsequent resolution and notice from the person. In such event, notwithstanding subd. 1, the directors may fix a date for the meeting within 10 days after receipt of payment in full of such estimated expenses rather than

within 10 days after receipt of the resolution and notice.

(e) Any sale or other disposition of shares by a person holding both shares having full voting power and shares having voting power limited under par. (a) shall be deemed to reduce the number of shares having limited voting power until such shares are exhausted.

(f) A corporation that is not an issuing public corporation may elect, by express provision in its articles of incorporation, to be subject to this subsection as if it were an issuing public corporation unless its articles of incorporation contain a provision stating that the corporation is a close corporation under s. 180.995.

(g) An indication that a corporation is an issuing public corporation or has elected to be subject to this subsection, that is provided in accordance with s. 180.791 (1) (f), is prima facie evidence that the corporation is an issuing public corporation or is subject to this subsection by election, respectively.

SECTION 7. 180.43 (2) (b) of the statutes is amended to read:

180.43 (2) (b) ~~An acquiring A person under s. 180.25 (9) (c) that has delivered the resolution under s. 180.25 (9) (c) may on written demand examine and make extracts from the records of shareholders of an issuing public corporation, in person or by agent or attorney at any reasonable time for the purpose of communicating with them to obtain authorization for a control share acquisition under s. 180.69 the shareholders in connection with the special shareholders' meeting under s. 180.25 (9) (d).~~

SECTION 8. 180.69 of the statutes is repealed.

SECTION 9. 180.725 (title) and (1) (b) 1 and 3, (c), (d) 1 and 2 and (h) of the statutes are amended to read:

**180.725 (title) Special voting requirements for issuing public corporations.**

(1) (b) 1. An organization, other than the issuing public corporation or a subsidiary of the issuing public corporation, of which the person is an officer, director or partner or is, directly or indirectly, the beneficial owner of 10% or more of a class of equity voting securities.

3. A relative or spouse of the person, or a relative of the spouse, who has the same principal residence as the person or who is a director or officer of the issuing public corporation or of an affiliate of the issuing public corporation.

(c) "Beneficial owner" has the meaning prescribed in rule 13d-3 under the securities exchange act of 1934. A person is not a "beneficial owner" solely because of any of the following:

1. The existence of an agreement by or on behalf of the person and by or on behalf of a record or beneficial owner of securities under which the owner agrees to vote the securities in favor of a proposed merger, consolidation, sale, lease, exchange or other disposition of assets.

2. The existence of an option from, or other arrangement with, an issuing public corporation to acquire securities of the issuing public corporation.

(d) 1. Unless the merger or consolidation is subject to s. 180.685, does not alter the contract rights of the shares as set forth in the articles of incorporation or does not change or convert in whole or in part the outstanding shares of the issuing public corporation, a merger or consolidation of the issuing public corporation or a subsidiary of the issuing public corporation with:

a. ~~An interested~~ A significant shareholder; or

b. Any other corporation, whether or not itself ~~an interested a significant~~ a significant shareholder, which is, or after the merger or consolidation would be, an affiliate of ~~an interested a significant~~ a significant shareholder that was ~~an interested a significant~~ a significant shareholder before the transaction.

2. A sale, lease, exchange or other disposition, other than a mortgage or pledge if not made to avoid the requirements of this section, to a significant shareholder, other than the issuing public corporation or a subsidiary of the issuing public corporation, or to an affiliate of the significant shareholder, of all, or substantially all, of the property and assets, with or without goodwill, of a an issuing public corporation, if not made in the usual and regular course of its business.

(h) "Determination date" means the date on which ~~an interested a significant~~ a significant shareholder first becomes ~~an interested a significant~~ a significant shareholder.

SECTION 10. 180.725 (1) (i) of the statutes is repealed.

SECTION 11. 180.725 (1) (j) of the statutes is renumbered 180.725 (1) (Lm) and amended to read:

180.725 (1) (Lm) "~~Interested Significant~~ significant shareholder", with respect to a an issuing public corporation, means a person that is the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting shares of the issuing public corporation; or is an affiliate of the issuing public corporation and within the 2-year period immediately before the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding voting shares of the issuing public corporation. For the purpose of determining whether a person is ~~an interested a significant~~ a significant shareholder, the number of voting shares deemed to be outstanding includes shares deemed owned by the person as the beneficial owner but does not include any other voting shares which may be issuable under an agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise. In this paragraph, "person" includes 2 or more individuals or persons acting as a group for the purpose of acquiring, holding or voting securities of an issuing public corporation.

SECTION 12. 180.725 (1) (k) 1 of the statutes is repealed and recreated to read:

180.725 (1) (k) 1. In the case of shares:

a. If the shares are listed on a national securities exchange registered under the securities exchange act of 1934 or are quoted on any national market system, the highest closing sales price per share reported on the exchange or quoted on the system during the valuation period.

b. If bids for the shares are quoted on the national association of securities dealers automated quotation system, or any successor system operated by the association, the highest closing bid per share quoted on the system during the valuation period.

c. If the shares are listed on an exchange or are quoted on a system under subd. 1. a but no transactions are reported during the valuation period or if the shares are neither listed on an exchange or system under subd. 1. a nor quoted on a system under subd. 1. b, and if at least 3 members of the national association of securities dealers are market makers for the securities, the highest closing bid per share obtained from the association during the valuation period.

d. If no report or quote is available under subd. 1. a, b or c, the fair market value as determined in good faith by the board of directors of the issuing public corporation.

SECTION 13. 180.725 (1) (nm) of the statutes is created to read:

180.725 (1) (nm) "Valuation period" means the 30-day period preceding the date upon which the market value is to be determined.

SECTION 14. 180.725 (1m) of the statutes is created to read:

180.725 (1m) An indication that a corporation is an issuing public corporation or has elected to be subject to this section, provided in accordance with s. 180.791 (1) (f), is prima facie evidence that the corporation is an issuing public corporation or is subject to this section by election, respectively.

SECTION 15. 180.725 (2) (intro.) and (b) of the statutes are amended to read:

180.725 (2) (intro.) In addition to a vote otherwise required by law or the articles of incorporation of the issuing public corporation, a business combination must be recommended by the board of directors and approved by the affirmative vote of at least:

(b) Two-thirds of the votes entitled to be cast by holders of voting shares other than voting shares held beneficially owned by an interested a significant shareholder who is a party to the business combination or an affiliate or associate of an interested a significant shareholder who is a party to the business combination, voting together as a single voting group.

SECTION 16. 180.725 (3) (a) 1 of the statutes is amended to read:

180.725 (3) (a) 1. The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of common shares shareholders of the issuing

public corporation in the business combination is at least equal to the highest of the following:

a. The highest per share price, including brokerage commissions, transfer taxes and soliciting dealers' fees, paid by the ~~interested~~ significant shareholder for common shares of the same class or series acquired by it within the 2-year period immediately before the date of commencement of a tender offer initiated by the ~~interested~~ significant shareholder, or in the transaction in which it became an ~~interested~~ a significant shareholder, whichever is higher.

b. The market value per ~~common~~ share of the same class or series on the date of commencement of a tender offer initiated by the ~~interested~~ significant shareholder ~~or, on the determination date or on the date of the first public announcement of the proposed business combination,~~ whichever is ~~higher~~ highest.

SECTION 17. 180.725 (3) (a) 1. c of the statutes is created to read:

180.725 (3) (a) 1. c. The highest preferential amount per share to which the holder of shares of the class or series of shares is entitled in a voluntary or involuntary liquidation or dissolution of the corporation.

SECTION 18. 180.725 (3) (a) 2 of the statutes is repealed.

SECTION 19. 180.725 (3) (a) 3 of the statutes is amended to read:

180.725 (3) (a) 3. The consideration to be received by holders of a class or series of outstanding shares is to be in cash or in the same form as the ~~interested~~ sig- nificant shareholder has previously paid for shares of the same class or series. If the ~~interested~~ significant shareholder has paid for shares of a class of shares with varying forms of consideration, the form of consideration for the class of shares shall be either cash or the form used to acquire the largest number of shares of the class or series of shares previously acquired by it.

SECTION 20. 180.725 (3) (b) (intro.) and 3 of the statutes are amended to read:

180.725 (3) (b) (intro.) ~~Unless the articles of incorporation of the corporation provide otherwise, sub-~~ Subsection (2) does not apply to a business combination of any of the following:

3. A An issuing public corporation whose shareholders adopt an amendment to the articles of incorporation on or after April 24, 1984, by a vote of at least 80% of the votes entitled to be cast by outstanding shares of voting shares of the issuing public corporation, voting together as a single voting group and two-thirds of the votes entitled to be cast by persons, if any, who are not ~~interested~~ significant shareholders of the issuing public corporation, voting together as a single voting group, expressly electing not to be governed by this section.

SECTION 21. 180.725 (3) (b) 1 of the statutes is repealed and recreated to read:

180.725 (3) (b) 1. A corporation if a business combination involving the corporation is governed by s. 180.04 (6), 186.31, 215.53, 215.73, 221.25 or 223.11.

SECTION 22. 180.725 (3) (b) 4 of the statutes is repealed.

SECTION 23. 180.725 (3) (c) of the statutes is created to read:

180.725 (3) (c) A corporation that is not an issuing public corporation may elect, by express provision in its articles of incorporation, to be subject to this section as if it were an issuing public corporation unless its articles of incorporation contain a provision stating that the corporation is a close corporation under s. 180.995.

SECTION 24. 180.791 (1) (f) of the statutes is created to read:

180.791 (1) (f) An indication of whether the corporation is an issuing public corporation, as defined in s. 180.02 (7m), or has elected to be governed by s. 180.25 (9) under s. 180.25 (9) (f) or by s. 180.725 under s. 180.725 (3) (c), and of whether the corporation is a target company, as defined in s. 552.01 (6), or is a target company both as defined in s. 552.01 (6) and as limited in s. 552.05 (7) for purposes of the application of s. 552.05.

SECTION 25. 221.25 (1) of the statutes is amended to read:

221.25 (1) ~~That any~~ Any 2 or more banks may, with the approval of the commissioner of banking, consolidate into one bank under the charter of either existing bank on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate and be ratified and confirmed by the affirmative vote of the stockholders of each such bank owning at least two-thirds of its capital stock outstanding and at least two-thirds of any outstanding preferred stock having voting rights, at a meeting to be held on call of the directors, after sending notice of the time, place and object of the meeting to each shareholder of record by registered mail at least 30 days prior to said meeting; provided that the capital stock of such consolidated bank shall not be less than that required under existing law for the organization of a state bank in the place in which it is located; ~~and provided further that when~~. When such consolidation ~~shall have been effected and is~~ approved by the commissioner, any shareholder of either of the banks so consolidated, who has not voted for such consolidation, ~~may give notice to~~ shall be given notice of the approval by the bank in which the shareholder holds an interest and of the shareholder's right to receive the appraised value for the shareholder's shares. If within 20 days after the date that notice of approval is mailed or delivered to a shareholder the shareholder notifies the directors of the bank in which he the shareholder is interested, within 20 days from the date of the certificate of approval of the commissioner, that he the shareholder dissents from the plan of consolidation as adopted and

approved and desires to withdraw from such bank, ~~whereupon he the shareholder~~ shall be entitled to receive in cash the value of the shares so held by ~~him~~ the shareholder, to be ascertained by an appraisal made by a committee of 3 persons, one to be selected by the shareholders, one by the directors, and the ~~third~~ 3rd by the 2 so chosen; the expense of such appraisal shall be borne by the bank; and in case the value so fixed shall not be satisfactory to the shareholder he or she may within 5 days after being notified of the appraisal appeal to the commissioner, who shall cause a reappraisal to be made by an appraiser or appraisers to be named by said commissioner, which appraisal shall be final and binding, and if said reappraisal shall exceed the value fixed by said committee the bank shall pay the expense of reappraisal, otherwise the shareholder shall pay said expense, and the value so ascertained and determined shall be deemed to be a debt due and be forthwith paid to said shareholder from said bank, and the share or shares so paid shall be surrendered and after such notice as the board of directors may provide, be sold at public auction within 30 days after the final appraisement provided for by this section.

SECTION 26. 552.01 (1m) of the statutes is repealed.

SECTION 27. 552.01 (3) of the statutes is amended to read:

552.01 (3) "Offeror" means a person who makes or in any way participates in making a take-over offer ~~or control bid~~, and includes all affiliates and associates of that person, and all persons acting jointly or in concert for the purpose of acquiring, holding or disposing of or exercising any voting rights attached to the equity securities for which a take-over offer is made. "Offeror" does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employe, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer.

SECTION 28. 552.01 (6) (c) and (d) of the statutes are amended to read:

552.01 (6) (c) Whose equity securities of any class are or have been registered under ch. 551 or predecessor laws, ~~exempted from registration under s. 551.22 (3), (4) or (5) or predecessor laws~~ or are registered under s. section 12 of the securities exchange act of 1934 or which is an entity identified in s. 551.22 (3), (4) or (5); and

(d) Which has at least 100 record ~~or beneficial~~ holders of securities qualifying under par. (c) who are residents of this state or which has at least 5% of the securities qualifying under par. (c) held by residents of this state.

SECTION 29. 552.02 of the statutes is created to read:

**552.02 Prima facie evidence of target company status.** An indication that a corporation is a target company, provided in accordance with s. 180.791 (1) (f), is prima facie evidence that the corporation is a target company.

SECTION 30. 552.03 (1) (c) of the statutes is amended to read:

552.03 (1) (c) If the purpose of the acquisition is to gain control of the target company, a statement of any plans or proposals which such person has, upon gaining control, to liquidate the target company, to sell its assets, to effect its merger or consolidation, to change the location of its principal executive office or of a material portion of its business activities, to change its management or policies of employment, to materially alter its relationship with suppliers or customers or the communities in which it operates, or to make any other major change in its business, corporate structure, management or personnel and other material information that would affect the shareholders' evaluation of the acquisition.

SECTION 31. 552.05 (7) (b) and (c) of the statutes are amended to read:

552.05 (7) (b) The target company has at least 51% of its securities specified in s. 552.01 (6) (c) held of record or beneficially by residents of this state.

(c) The target company has at least 33% of its securities specified in s. 552.01 (6) (c) held of record or beneficially by residents of this state, has its principal office in this state and its business or operations have a substantial economic effect in this state.

SECTION 34. **Cross-reference changes.** In the sections of the statutes listed in Column A, the cross-references shown in Column B are changed to the cross-references shown in Column C:

A	B	C
Statute Sections	Old Cross-References	New Cross-References
611.01 (1)	180.02 (1) to (3)	180.02 (1m) to (3)

SECTION 35. **Initial applicability.** The treatment of section 180.791 (1) (f) of the statutes by this act first applies to annual reports filed on January 1, 1987.

SECTION 32. 552.10 of the statutes is repealed.

SECTION 33. 552.23 (2) of the statutes is amended to read:

552.23 (2) If the target company is a public utility, public utility holding company, national banking association, bank holding company or savings and loan association subject to regulation by a federal agency; a bank, trust company or savings and loan association organized under the laws of any state and subject to regulation with respect to the issuance or guarantee of its securities by a governmental unit of that state; or a federal savings and loan association; and the take-over of any such company or association is subject to approval by that order of a federal agency, this chapter shall not apply.

SECTION 33m. **Nonstatutory provisions; study.** The legislative council is requested to establish a committee to study issues relating to shareholder approval of corporate takeover defensive tactics and the effects of the business judgment rule. The committee shall include representatives of shareholders and consumers, corporate attorneys, the commissioner of securities or the commissioner's designee and legislators. The committee shall prepare a report of its findings and recommendations and shall submit its report to the chief clerk of each house of the legislature for distribution under section 13.172 (3) of the statutes when the 1987 legislature convenes.