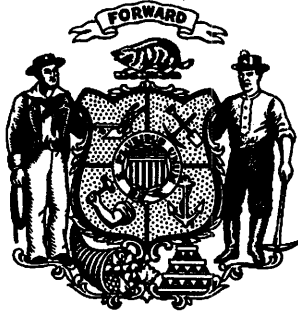


State of Wisconsin



2003 Senate Bill 218

Date of enactment:
Date of publication*:

2003 WISCONSIN ACT

AN ACT to repeal 180.0825 (2) (a), 180.0825 (5) (a), (b) and (c) to (h) and 180.1105 (1) (a) and (b); to renumber and amend 180.0602 (3); to consolidate, renumber and amend 180.0825 (2) (intro.) and (b); to amend 179.02 (1), 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3), 180.0825 (1), 180.1103 (1), 180.1106 (1) (b), 180.1130 (3) (a) (intro.), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c), 180.1201 (title), 180.1201 (2), 180.1302 (1), 180.1302 (4), 180.1805 (5), 181.1106 (2), 181.1161 (4) (c), 183.1202 (1), 183.1205 (2) and 183.1207 (4) (c); to repeal and recreate 180.1130 (14); and to create 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and (bm), 180.11045, 180.1105 (1) (am), (bm) and (c) to (f) and 180.1201 (1) (d) of the statutes; relating to: the authority of the board of directors of business corporations and corporate committees; corporate shareholder notices and meetings; mergers, conversions, and other business combinations; the transfer of corporate property to certain affiliates; and naming limited partnerships.

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

SECTION 1. 179.02 (1) of the statutes is amended to read:

179.02 (1) Shall contain, with or without abbreviation, the words "limited partnership".

SECTION 2. 179.76 (4) (c) of the statutes is amended to read:

179.76 (4) (c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment, ~~provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of con-~~

~~veyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 3. 179.77 (6) (c) of the statutes is amended to read:

179.77 (6) (c) The title to all property owned by each business entity that is a party to the merger is vested in the surviving business entity without reversion or impairment, ~~provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity shall transfer that interest to the business entity surviving the merger and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the merger shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 4. 180.0502 (3) of the statutes is amended to read:

180.0502 (3) If the name of a registered agent changes or if the street address of his or her a registered

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

~~agent's business office, he or she changes, the registered agent may change the name of the registered agent or street address of the registered office of any corporation for which he or she, or it is the registered agent by notifying. To make a change under this subsection, the registered agent shall notify the corporation in writing of the change and by signing, either manually or in facsimile, and delivering deliver to the department for filing a signed statement that complies with sub. (2) and recites that the corporation has been notified of the change.~~

SECTION 5. 180.0602 (3) of the statutes is renumbered 180.0602 (3) (a) and amended to read:

180.0602 (3) (a) After the articles of amendment are filed under sub. (2) and before the corporation issues any shares of the class or series that is the subject of the articles of amendment, the board of directors may alter or revoke ~~any the distinguishing designation of the class or series and the preferences, limitations, or relative rights described in the articles of amendment, by adopting another resolution appropriate for that purpose. The If the board of directors adopts such a resolution, the corporation shall file with the department revised articles of amendment that comply with sub. (2).~~ ~~A- Except as provided in par. (b), a distinguishing designation, preference, limitation, or relative right may not be altered or revoked after the issuance of any shares of the class or series that are subject to the distinguishing designation, preference, limitation, or relative right, except by amendment of the articles of incorporation under s. 180.1003.~~

SECTION 6. 180.0602 (3) (b) of the statutes is created to read:

180.0602 (3) (b) 1. Except as otherwise provided in this subdivision, after the articles of amendment are filed under sub. (2), the board of directors may decrease the number of shares of the class or series that is the subject of the articles of amendment by adopting another resolution appropriate for that purpose. The shares specified in the resolution shall resume the status applicable to them immediately before their inclusion in the class or series. The board of directors may not decrease the number of shares under this subdivision below the number of such shares that are then outstanding.

2. After the articles of amendment are filed under sub. (2), if no shares of the class or series that is the subject of the articles of amendment are then outstanding, the board of directors may eliminate from the articles of incorporation all matters set forth in the articles of amendment with respect to that class or series by adopting another resolution for that purpose. The board of directors shall prepare a certificate setting forth the content of any resolution under this subdivision, stating that none of the authorized shares of the class or series are outstanding, and stating that no such shares will be issued under the articles of amendment and shall deliver the signed certificate to the department for filing. A resolution under this subdivision takes effect upon filing of the

certificate by the department and has the effect of eliminating from the articles of incorporation all matters set forth in the articles of amendment with respect to the applicable class or series.

3. Except as otherwise provided in this subdivision, after the articles of amendment are filed under sub. (2), the board of directors may increase the number of shares of the class or series that is the subject of the articles of amendment by adopting another resolution appropriate for that purpose. The board of directors may not increase the number of shares under this subdivision to be greater than the total number of authorized shares of the class or series as specified in the articles of incorporation.

SECTION 7. 180.0706 (title) of the statutes is amended to read:

180.0706 (title) Waiver of and exemption from notice.

SECTION 8. 180.0706 (3) of the statutes is created to read:

180.0706 (3) (a) Except as provided in par. (b), any notice required to be given by a corporation to a shareholder under this chapter is not required to be given if any of the following applies:

1. Notice of 2 consecutive annual meetings, and all notices of meetings during the period between these annual meetings, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned as undeliverable.

2. All, but not less than 2, payments of dividends on securities during a one-year period, or 2 consecutive payments of dividends on securities during a period of more than one year, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned as undeliverable.

(b) If a shareholder to whom par. (a) applies delivers to the corporation a written notice containing the shareholder's current address, then, beginning 30 days after receipt of the notice by the corporation, the requirement that notice be given to the shareholder is reinstated, until such time as par. (a) may again apply.

SECTION 9. 180.0708 of the statutes is created to read:
180.0708 Conduct of meeting. Unless the articles of incorporation or bylaws provide otherwise, every meeting of the shareholders shall be conducted as follows:

(1) A chairperson shall preside over the meeting. The chairperson shall be appointed by the board of directors.

(2) The chairperson shall determine the order of business and the time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all shareholders.

(3) The chairperson shall determine and announce at the meeting the time at which the polls will close for each matter voted upon at the meeting. The polls close at the announced time, except that, if no such announcement is made, the polls close upon final adjournment of the meet-

ing. After the polls close, no ballots, proxies, or votes, or revocations or changes thereto, may be accepted.

SECTION 10. 180.0824 (3) of the statutes is amended to read:

180.0824 (3) Except as provided in ss. 180.0825 (2) and (3), 180.0831 (4) and 180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors or a committee of the board of directors created under s. 180.0825, unless the articles of incorporation or bylaws require the vote of a greater number of directors.

SECTION 11. 180.0825 (1) of the statutes is amended to read:

180.0825 (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees, appoint members of the board of directors to serve on the committees and designate other members of the board of directors to serve as alternates. Each committee shall have ~~2 or more members at least one member~~. Unless otherwise provided by the board of directors, members of the committee shall serve at the pleasure of the board of directors.

SECTION 12. 180.0825 (2) (intro.) and (b) of the statutes are consolidated, renumbered 180.0825 (2) and amended to read:

180.0825 (2) Except as provided in sub. (3), the creation of a committee, appointment of members to it and designation of alternate members, if any, shall be approved by the greater of the following: ~~(b) The number of directors required by the articles of incorporation or bylaws to take action under s. 180.0824 (3).~~

SECTION 13. 180.0825 (2) (a) of the statutes is repealed.

SECTION 14. 180.0825 (5) (a), (b) and (c) to (h) of the statutes are repealed.

SECTION 15. 180.0825 (5) (am) and (bm) of the statutes are created to read:

180.0825 (5) (am) Approve or recommend to shareholders for approval any action or matter expressly required by this chapter to be submitted to shareholders for approval.

(bm) Adopt, amend, or repeal any bylaw of the corporation.

SECTION 15p. 180.1103 (1) of the statutes is amended to read:

180.1103 (1) **SUBMIT TO SHAREHOLDERS.** After adopting and approving a plan of merger or share exchange, the board of directors of each corporation that is party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in sub. (5) and s. 180.11045 (2), or share exchange for approval by its shareholders.

SECTION 15t. 180.11045 of the statutes is created to read:

180.11045 Merger of indirect wholly owned subsidiary or parent. (1) **DEFINITIONS.** In this section:

(a) "Holding company" means a corporation that issues shares under sub. (2) (b) and that, during the period beginning with its incorporation and ending with the consummation of a merger under this section, was at all times a wholly owned subsidiary of the parent corporation that is party to the merger.

(b) "Indirect wholly owned subsidiary" means any of the following:

1. A corporation, all of the outstanding shares of each class of which are, prior to the consummation of a merger under this section, owned by a parent corporation indirectly through one or more business entities.

2. A limited liability company organized under ch. 183, all of the outstanding interests of each class of which are, prior to the consummation of a merger under this section, owned by a parent corporation indirectly through one or more business entities.

(c) "Organizational documents" means, when used in reference to a corporation, the corporation's articles of incorporation and bylaws and, when used in reference to a limited liability company, the limited liability company's operating agreement.

(d) "Parent corporation" means a corporation owning, prior to the consummation of a merger under this section, all of the outstanding shares of each class of another corporation or all of the outstanding interests of each class of another business entity.

(e) "Surviving entity" means the limited liability company or corporation, other than the holding company, surviving a merger under sub. (2).

(f) "Wholly owned subsidiary" means any of the following:

1. A corporation, all of the outstanding shares of each class of which are owned by a corporation indirectly through one or more business entities or directly.

2. A limited liability company organized under ch. 183, all of the outstanding interests of each class of which are owned by a corporation indirectly through one or more business entities or directly.

(2) **MERGER AUTHORIZED.** Unless the articles of incorporation of the parent corporation specifically provide otherwise, or the parent corporation is a statutory close corporation under ss. 180.1801 to 180.1837, a parent corporation may merge with or into one of its indirect wholly owned subsidiaries pursuant to s. 180.1101 without approval of the shareholders of the parent corporation or the shareholders or members of the indirect wholly owned subsidiary if all of the following conditions are satisfied:

(a) The parent corporation and the indirect wholly owned subsidiary are the only parties to the merger.

(b) Each share or other interest of the parent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or

equal interest of a corporation that was a wholly owned subsidiary of the parent corporation immediately prior to the consummation of the merger having the same designation, preferences, limitations, and relative rights as the share or other interest of the parent corporation outstanding immediately prior to the effective time of the merger.

(c) Except as otherwise provided in this paragraph, immediately following the effective time of the merger, the organizational documents of the holding company issuing shares in the merger pursuant to sub. (2) (b) shall contain provisions identical to the organizational documents of the parent corporation immediately prior to the effective time of the merger. This requirement does not apply to provisions regarding the incorporator or incorporators, the corporate name, the registered office and agent, and provisions that are subject to amendment under s. 180.1002. To the extent that the second sentence of s. 180.0852 applied to the parent corporation immediately prior to the effective time of the merger, the organizational documents of the holding company immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective time of the merger, the articles of incorporation of the holding company immediately following the effective time of the merger shall contain provisions implementing s. 180.1706 (2) and (3).

(d) Immediately following the effective time of the merger, the surviving entity is a wholly owned subsidiary of the holding company.

(e) The directors of the parent corporation immediately prior to the effective time of the merger are the directors of the holding company immediately following the effective time of the merger.

(f) Except as otherwise provided in this paragraph, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions identical to the organizational documents of the parent corporation immediately prior to the effective time of the merger. With respect to a surviving entity that is a corporation, this requirement does not apply to provisions regarding the incorporator or incorporators; the corporate name; the registered office and agent; and provisions that are subject to amendment under s. 180.1002 or any other law permitting amendment of the articles of incorporation without approval of the shareholders. With respect to a surviving entity that is a limited liability company, this requirement does not apply to provisions regarding the organizer or organizers; the entity name; the registered office and agent; references to members rather than shareholders; references to interests, units, or similar terms rather than shares; references to managers rather than directors; and provisions that are subject to amendment under any law permitting amendment of the operating agreement without approval

of the members. The organizational documents of the surviving entity immediately following the effective time of the merger may specify a reduced number of classes and shares or other interests that the surviving entity is authorized to issue. To the extent that the 2nd sentence of s. 180.0852 applied to the parent corporation immediately prior to the effective time of the merger, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior to the effective time of the merger, the organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions implementing s. 180.1706 (2) and (3). The organizational documents of the surviving entity immediately following the effective time of the merger shall contain provisions that specifically refer to this paragraph and that require all of the following:

1. That any act, other than the election or removal of directors or managers of the surviving entity, for which approval of the shareholders or members of the surviving entity is required under this chapter, ch. 183, or the surviving entity's organizational documents may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding company, by the same vote as is required for approval of the shareholders or members of the surviving entity under this chapter, ch. 183, or the surviving entity's organizational documents.

2. If the surviving entity is a limited liability company, that any act, other than the election or removal of managers of the surviving entity, for which approval of the shareholders of the surviving entity would be required under this chapter if the surviving entity were a corporation may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding company, by the same vote as would be required for approval of the shareholders under this chapter if the surviving entity were a corporation.

3. If the surviving entity is a limited liability company, that any amendment of the organizational documents of the surviving entity which would be required under this chapter to be included in the articles of incorporation of the surviving entity if the surviving entity was a corporation, other than an amendment specified in s. 180.1002, may be accomplished only with the additional approval of the shareholders of the holding company or any successor to the holding company, by the same vote as would be required for approval of the shareholders under this chapter if the surviving entity were a corporation.

4. If the surviving entity is a limited liability company, that the affairs of the surviving entity be managed

by or under the direction of a group of managers consisting of individuals who have the same fiduciary duties toward the surviving entity and its members as the directors of a corporation have toward the corporation and its shareholders and who are liable for breach of such duties to the same extent as directors of a corporation.

(g) In the opinion of the board of directors of the parent corporation, the shareholders of the parent corporation do not have a gain or loss under the Internal Revenue Code as a result of the merger.

(3) ARTICLES OF MERGER. The surviving entity shall include in the articles of merger under s. 180.1105 a statement that the merger was approved in accordance with this section and that the requirements of sub. (2) have been satisfied.

(4) EFFECT OF MERGER. All of the following occur when a merger under sub. (2) takes effect:

(a) To the extent that the restrictions of s. 180.1131, 180.1141, or 180.1150 applied to the parent corporation and its shareholders immediately prior to the effective time of the merger, such restrictions apply to the holding company and its shareholders immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as the corporation existed immediately prior to the consummation of the merger. For purposes of ss. 180.1130, 180.1132, 180.1141, 180.1142, 180.1143, and 180.1150, the shares of the holding company acquired in the merger are deemed to have been acquired at the time and for the price and form of consideration that the shares of the parent corporation that were converted in the merger were acquired.

(b) If immediately prior to the effective time of the merger s. 180.1141, 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, such section does not apply to the shareholder as a shareholder of the holding company solely by reason of the merger.

(c) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the parent corporation immediately prior to the effective time of the merger, the shares of the holding company into which the shares of the parent corporation are converted in the merger are represented by the certificates that previously represented shares of the parent corporation.

(d) A shareholder of the parent corporation immediately prior to the effective time of the merger retains any right that the shareholder had immediately prior to the effective time of the merger to institute or maintain a derivative proceeding in the right of the parent corporation.

(e) No act of the surviving entity that requires the additional approval of the shareholders of the holding company or any successor company pursuant to sub. (2) shall give rise to dissenters' rights pursuant to ss. 180.1301 to 180.1331 for the shareholders or the benefi-

cial shareholders of the holding company or any successor to the holding company.

(f) To the extent that shares of the parent corporation immediately prior to the effective time of the merger constituted shares of a preexisting class, the shares of the holding company immediately following the effective time of the merger constitute shares of a preexisting class to the same extent as if the holding company were the parent corporation as the parent corporation existed immediately prior to the consummation of the merger. Shares or interests of the surviving entity will not constitute shares of a preexisting class for purposes of s. 180.1705. For purposes of s. 180.1707, to the extent that shares of the parent corporation immediately prior to the effective time of the merger constituted shares of a preexisting class, the shares or interests of the surviving entity constitute shares of a preexisting class to the same extent as if the surviving entity were the parent corporation as the parent corporation existed immediately prior to the consummation of the merger.

(g) To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, such provisions apply to the holding company immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as such corporation existed immediately prior to the consummation of the merger. To the extent that the provisions of s. 180.1706 (4) applied to the parent corporation immediately prior to the effective time of the merger, if the surviving entity is a corporation, such provisions apply to the surviving entity immediately following the effective time of the merger to the same extent as if the surviving entity were the parent corporation as such corporation existed immediately prior to the consummation of the merger. To the extent that the provisions of s. 180.1706(4) applied to the parent corporation immediately prior to the effective time of the merger, if the surviving entity is a limited liability company, such provisions apply to the corresponding provisions of the organizational documents of the surviving entity immediately following the effective time of the merger to the same extent as if the surviving entity were the parent corporation as such corporation existed immediately prior to the consummation of the merger.

(h) To the extent that immediately prior to the effective time of the merger shareholders of the parent corporation had rights or were subject to obligations or restrictions of the types referred to in s. 180.0627 (2), 180.0630 (4), 180.0722 (2), 180.0730 (1), or 180.0731 (1), such rights, obligations, or restrictions apply to the shareholders of the holding company immediately following the effective time of the merger to the same extent as if the holding company were the parent corporation as such corporation existed immediately prior to the consummation of the merger, unless the agreement, waiver, proxy,

or trust establishing the rights, obligations, or restrictions specifies otherwise.

SECTION 16. 180.1105 (1) (a) and (b) of the statutes are repealed.

SECTION 17. 180.1105 (1) (am), (bm) and (c) to (f) of the statutes are created to read:

180.1105 (1) (am) The name and state of incorporation of each corporation that is a party to the merger or share exchange.

(bm) That a plan of merger or share exchange has been approved and adopted by each corporation that is a party to the merger or share exchange as required under s. 180.1103 or 180.1104, as applicable.

(c) The name of the surviving or acquiring corporation.

(d) In the case of a merger, any amendments in the articles of incorporation of the surviving corporation that are intended by the parties to the merger to take effect upon the merger or, if there are no such amendments, a statement that the articles of incorporation of the surviving corporation or another corporation that is a party to the merger will be the articles of incorporation of the surviving corporation.

(e) That the executed plan of merger or share exchange is on file at the principal place of business of the surviving or acquiring corporation.

(f) That the surviving or acquiring corporation will provide a copy of the plan of merger or share exchange, upon request and without cost, to any shareholder of a corporation that was a party to the merger or share exchange or, upon payment to the surviving or acquiring corporation of an amount equal to the cost of producing the copy, to any other interested person.

SECTION 18. 180.1106 (1) (b) of the statutes is amended to read:

180.1106 (1) (b) The title to all property owned by each business entity that is party to the merger is vested in the surviving business entity without reversion or impairment, ~~provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity shall transfer that interest to the business entity surviving the merger and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the merger shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 18m. 180.1130 (3) (a) (intro.) of the statutes is amended to read:

180.1130 (3) (a) (intro.) Unless the merger or share exchange is subject to s. 180.1104 or s. 180.11045, 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 resident domestic corporation, a merger or share exchange of the

resident domestic corporation or a subsidiary of the resident domestic corporation with any of the following:

SECTION 19. 180.1130 (14) of the statutes is repealed and recreated to read:

180.1130 (14) "Valuation date" means the time at which the closing price of the stock is determined on the day before the first public announcement of the proposed business combination.

SECTION 20. 180.1140 (11) of the statutes is amended to read:

180.1140 (11) "Stock acquisition date", with respect to any person, means the date time that that person first becomes an interested stockholder of that resident domestic corporation.

SECTION 21. 180.1150 (2) of the statutes is amended to read:

180.1150 (2) Unless otherwise provided in the articles of incorporation of a resident domestic corporation or otherwise specified by the board of directors of the resident domestic corporation in accordance with s. 180.0824 (3) and except as provided in sub. (3) or as restored under sub. (5), the voting power of shares of a resident domestic 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.

SECTION 22. 180.1161 (4) (c) of the statutes is amended to read:

180.1161 (4) (c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment, ~~provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 23. 180.1201 (title) of the statutes is amended to read:

180.1201 (title) Sale of assets in regular course of business; mortgage of assets; transfer of assets to subsidiary.

SECTION 24. 180.1201 (1) (d) of the statutes is created to read:

180.1201 (1) (d) Transfer any or all of its assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation, unless the transfer is in connection with a plan or action involving the sale, exchange, or disposal of all or substantially

all of the assets of the corporation and requires shareholder approval under s. 180.1202.

SECTION 25. 180.1201 (2) of the statutes is amended to read:

180.1201 (2) Unless required by the articles of incorporation, approval by the shareholders of a transaction described permitted in sub. (1) is not required.

SECTION 25m. 180.1302 (1) of the statutes is amended to read:

180.1302 (1) Except as provided in sub. (4) and ~~s. ss.~~ 180.1008 (3) and 180.11045 (4), a shareholder or beneficial shareholder may dissent from, and obtain payment of the fair value of his or her shares in the event of, any of the following corporate actions:

SECTION 26. 180.1302 (4) of the statutes is amended to read:

180.1302 (4) ~~Except in a business combination or unless~~ Unless the articles of incorporation provide otherwise, subs. (1) and (2) do not apply to the holders of shares of any class or series if the shares of the class or series are registered on a national securities exchange or quoted on the National Association of Securities Dealers, Inc., automated quotations system on the record date fixed to determine the shareholders entitled to notice of a shareholders meeting at which shareholders are to vote on the proposed corporate action.

SECTION 27. 180.1805 (5) of the statutes is amended to read:

180.1805 (5) By merger or share exchange that becomes effective under ss. 180.1101 to ~~180.1107~~ 180.1106, or a share exchange of existing shares for other shares of a different class or series in the corporation.

SECTION 28. 181.1106 (2) of the statutes is amended to read:

181.1106 (2) **TITLE TO PROPERTY.** The title to all real estate and other property owned by each business entity that is a party to the merger is vested in the surviving business entity without reversion or impairment subject to any conditions to which the property was subject before the merger, ~~provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity shall transfer that interest to the business entity surviving the merger and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the merger shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 29. 181.1161 (4) (c) of the statutes is amended to read:

181.1161 (4) (c) The business entity continues to be vested with title to all property owned by the business

entity that was converted without reversion or impairment, ~~provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 29m. 183.1202 (1) of the statutes is amended to read:

183.1202 (1) Unless otherwise provided in an operating agreement and except as provided in s. 180.11045 (2), a limited liability company that is a party to a proposed merger shall approve the plan of merger by an affirmative vote of members as described in s. 183.0404 (1) (a). Unless otherwise provided in an operating agreement or waived by the members, a limited liability company may obtain the approving vote of its members only after providing the members with not less than 10 nor more than 50 days' written notice of its intent to merge accompanied by the plan of merger.

SECTION 30. 183.1205 (2) of the statutes is amended to read:

183.1205 (2) The title to all property owned by each business entity that is a party to the merger is vested in the surviving business entity without reversion or impairment, ~~provided that, if a merging business entity has an interest in real estate in Wisconsin on the date of the merger, the merging business entity shall transfer that interest to the business entity surviving the merger and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the merger shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SECTION 31. 183.1207 (4) (c) of the statutes is amended to read:

183.1207 (4) (c) The business entity continues to be vested with title to all property owned by the business entity that was converted without reversion or impairment, ~~provided that, if the converting business entity has an interest in real estate in Wisconsin on the date of the conversion, the converting business entity shall transfer that interest to the business entity surviving the conversion and shall execute any real estate transfer return required under s. 77.22. The business entity surviving the conversion shall promptly record the instrument of conveyance under s. 59.43 in the office of the register of deeds for each county in which the real estate is located.~~

SENATE BILL 218 (LRB -2166)

An Act to repeal 180.0825 (2) (a), 180.0825 (5) (a), (b) and (c) to (h) and 180.1105 (1) (a) and (b); to renumber and amend 180.0602 (3); to consolidate, renumber and amend 180.0825 (2) (intro.) and (b); to amend 179.02 (1), 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3), 180.0825 (1), 180.1106 (1) (b), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c), 180.1201 (title), 180.1201 (2), 180.1302 (4), 180.1805 (5), 181.1106 (2), 181.1161 (4) (c), 183.1205 (2) and 183.1207 (4) (c); to repeal and recreate 180.1130 (14); and to create 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and (bm), 180.1105 (1) (am), (bm) and (c) to (f) and 180.1201 (1) (d) of the statutes; relating to: the authority of the board of directors of business corporations and corporate committees; corporate shareholder notices and meetings; mergers, conversions, and other business combinations; the transfer of corporate property to certain affiliates; and naming limited partnerships.

2003

- 07-30. S. Introduced by Senators **Stepp, Kanavas, Darling, Leibham, Roessler, George and Reynolds**; cosponsored by Representatives **McCormick, Ladwig, Gronemus, Jensen, Suder, Ott, Nischke, Hahn, J. Fitzgerald, Krawczyk, Albers, Gundrum, Weber, Kreibich, Gunderson, Vrakas, Hundertmark and Van Roy.**
- 07-30. S. Read first time and referred to committee on Economic Development, Job Creation and Housing 275
- 08-14. S. Public hearing held.

2004

- 02-20. S. Executive action taken.
- 02-20. S. Report introduction and adoption of Senate Amendment 1 recommended by committee on Economic Development, Job Creation and Housing, Ayes 5, Noes 0 (**LRB a0888**) 620
- 02-20. S. Report passage as amended recommended by committee on Economic Development, Job Creation and Housing, Ayes 5, Noes 0 620
- 02-20. S. Available for scheduling.
- 02-26. S. Placed on calendar 3-2-2004 by committee on Senate Organization.
- 03-02. S. Read a second time 653
- 03-02. S. Senate amendment 1 **adopted** 653
- 03-02. S. Ordered to a third reading 653
- 03-02. S. Rules suspended 653
- 03-02. S. Read a third time and **passed** 653
- 03-02. S. Ordered immediately messaged 655
- 03-04. A. Received from Senate 787
- 03-04. A. Read first time and referred to committee on Economic Development 788
- 03-08. A. Public hearing held.
- 03-08. A. Executive action taken.
- 03-08. A. Report concurrence recommended by committee on Economic Development, Ayes 8, Noes 0 802
- 03-08. A. Referred to committee on Rules 802
- 03-10. A. Made a special order of business at 9:13 A.M. on 3-11-2004 pursuant to Assembly Resolution 39 860
- 03-11. A. Read a second time.
- 03-11. A. Ordered to a third reading.
- 03-11. A. Rules suspended.
- 03-11. A. Read a third time and **concurred in.**
- 03-11. A. Ordered immediately messaged.
- 03-11. S. Received from Assembly concurred in.

**2003
ENROLLED BILL**

03en S B- 218

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

03-2166/2

Amendments to above (if none, write "NONE"): SA1

Corrections - show date (if none, write "NONE"): None

Topic relax

3/12/04
Date

[Signature]
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2003 SENATE BILL 218

July 30, 2003 – Introduced by Senators STEPP, KANAVAS, DARLING, LEIBHAM, ROESSLER, GEORGE and REYNOLDS, cosponsored by Representatives McCORMICK, LADWIG, GRONEMUS, JENSEN, SUDER, OTT, NISCHKE, HAHN, J. FITZGERALD, KRAWCZYK, ALBERS, GUNDRUM, WEBER, KREIBICH, GUNDERSON, VRAKAS, HUNDERTMARK and VAN ROY. Referred to Committee on Economic Development, Job Creation and Housing.

1 **AN ACT to repeal** 180.0825 (2) (a), 180.0825 (5) (a), (b) and (c) to (h) and 180.1105
2 (1) (a) and (b); **to renumber and amend** 180.0602 (3); **to consolidate,**
3 **renumber and amend** 180.0825 (2) (intro.) and (b); **to amend** 179.02 (1),
4 179.76 (4) (c), 179.77 (6) (c), 180.0502 (3), 180.0706 (title), 180.0824 (3),
5 180.0825 (1), 180.1106 (1) (b), 180.1140 (11), 180.1150 (2), 180.1161 (4) (c),
6 180.1201 (title), 180.1201 (2), 180.1302 (4), 180.1805 (5), 181.1106 (2), 181.1161
7 (4) (c), 183.1205 (2) and 183.1207 (4) (c); **to repeal and recreate** 180.1130 (14);
8 and **to create** 180.0602 (3) (b), 180.0706 (3), 180.0708, 180.0825 (5) (am) and
9 (bm), 180.1105 (1) (am), (bm) and (c) to (f) and 180.1201 (1) (d) of the statutes;
10 **relating to:** the authority of the board of directors of business corporations and
11 corporate committees; corporate shareholder notices and meetings; mergers,

SENATE BILL 218

1 conversions, and other business combinations; the transfer of corporate
2 property to certain affiliates; and naming limited partnerships.

Analysis by the Legislative Reference Bureau

This bill makes numerous changes to the laws governing business corporations. It also makes changes to the laws governing limited partnerships, nonstock corporations, and limited liability companies. Significant changes include:

BUSINESS CORPORATIONS***Classes or series of stock***

Under current law, a corporation's articles of incorporation may authorize the board of directors of the corporation to determine the preferences, limitations, and relative rights of a class or series of shares of stock. Generally, the board must set the terms of a class or series in an amendment to the articles of incorporation, which need not be approved by the shareholders. Current law permits the board to revise the terms by resolution, as long as no shares have been issued. After shares are issued, any such revision must be by amendment to the articles of incorporation.

This bill similarly permits the board to set and revise the distinguishing designation of a class or series. The bill also permits the board, at any time after the required articles of amendment are filed, to decrease the number shares of the applicable class or series (but not below the number of such shares that are outstanding), to eliminate the class or series (if no shares are outstanding), or to increase the number of shares of the class or series (but not beyond the number of such shares that are authorized).

Shareholder notices and meetings

Current law contains several requirements pursuant to which a corporation must provide notice to a shareholder. In addition, a corporation's articles of incorporation and bylaws may also contain such requirements. This bill provides an exemption from any such requirement if a specified number of notices or dividend payments are returned to the corporation as undeliverable. The bill permits a shareholder to reinstate the notice requirements by delivering to the corporation a written statement setting forth the shareholder's current address. Current law does not have any similar exemption, although current law does permit a shareholder to waive any notice required under the corporate laws or the corporation's articles of incorporation or bylaws.

This bill permits a corporation's articles of incorporation or bylaws to specify the manner in which shareholder meetings will be conducted. The bill also sets default rules for the conduct of these meetings if the articles of incorporation or bylaws do not so specify. Under these default rules, a chairperson appointed by the board of directors must preside over the meeting. The chairperson must determine the order of business and time of adjournment and may establish rules for the conduct of the meeting which the chairperson believes are fair to the interests of all shareholders. In addition, the chairperson must provide notice of when the polls

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close for each item voted upon at the meeting, except that if no such notice is provided the polls close upon final adjournment of the meeting.

Committees

Current law permits the board of directors to create committees, unless the articles of incorporation or bylaws provide otherwise. Currently, a committee must have at least two members. This bill allows a committee to have only one member.

With certain exceptions, the creation of a committee, appointment of members to it, and designation of alternative members currently must be approved by the greater of: 1) a majority of all directors currently in office; or 2) the number of directors required by the articles of incorporation or bylaws to take action (typically, a majority of directors present, if a quorum is present). This bill deletes the possible necessity for a majority vote of all directors currently in office, unless that requirement is specified in the articles of incorporation or bylaws.

Current law prohibits a committee from doing any of the following: 1) authorizing distributions; 2) approving or proposing to shareholders action that this chapter requires be approved by shareholders; 3) filling vacancies on the board of directors or, with certain exceptions, on any of its committees; 4) amending articles of incorporation without shareholder action; 5) adopting, amending, or repealing bylaws; 6) approving a plan of merger not requiring shareholder approval; 7) authorizing or approving reacquisition of shares, except according to a formula or method prescribed by the board of directors; or 8) authorizing or approving the issuance or sale or contract for sale of shares, or determining the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits prescribed by the board of directors. This bill deletes all of these restrictions, except items 2) and 5).

Mergers, share exchanges, and business combinations

Currently, when a corporation approves a merger or share exchange, it must file articles of merger or share exchange with the Department of Financial Institutions. Among other things, the articles of merger or share exchange must include the plan of merger or share exchange. This bill deletes this requirement and, instead, requires the articles of merger to state that a plan of merger or share exchange has been approved and adopted as required by law, that the plan is on file at the principle place of business of the surviving corporation, and that the surviving corporation will provide a copy of the plan, upon request and without cost, to any shareholder or, upon payment of the cost of producing the copy, to any other interested person. The bill also specifies other information that must be included in the articles of merger or share exchange.

Currently, a corporation may not engage in a business combination (including certain mergers) unless a specified supermajority of shareholders vote to approve the combination. However, this requirement does not apply if the shareholders receive a price for their shares that satisfies a specified formula. One factor in applying this formula is to determine the valuation date of the shares. Currently, the valuation date is defined as the later of the day before the date on which the shareholders' vote concerning the combination or the day that is 20 days before the consummation of

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the combination. This bill specifies, instead, that the valuation date is the day before the first public announcement of the proposed business combination.

Current law restricts the ability of a corporation to engage in a business combination (including certain mergers) for three years following the “stock acquisition date,” which is defined as the date on which any person first acquires at least 10% of the corporation’s stock. Under this bill, the “stock acquisition date” is the *time* at which a person first acquires at least 10% of the corporation’s stock.

With certain exceptions, the voting power of any person owning greater than 20% of a corporation’s stock is currently limited to 10% of the full voting power of those shares, unless the articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This bill also permits the board of directors to specify that regular voting power will apply.

Under current law, if a shareholder dissents from certain mergers, share exchanges, or other business combinations, the shareholder may obtain payment of the fair value of his or her shares. Currently, the fair value is determined pursuant to several specified criteria. With limited exceptions, this bill provides an exemption from these dissenter’s rights if the applicable shares are registered on a national securities exchange or quoted in the National Association of Securities Dealers, Inc. This exemption is identical to the exemption that applies generally to other dissenter’s rights provisions.

Transfer of property to certain affiliates

Current law authorizes the board of directors of a corporation to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; to sell, lease, exchange, or otherwise dispose of less than substantially all of its property whether or not in the usual and regular course of business; and to encumber any or all of its property whether or not in the usual and regular course of business. Unless the articles of incorporation require otherwise, the board may take these actions without shareholder approval. This bill similarly permits the board to transfer any or all of its assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation, unless the transfer is in connection with a plan or action involving the sale, exchange, or disposal of all or substantially all of the assets of the corporation and requires shareholder approval.

OTHER CHANGES

Currently, the name of a limited partnership must contain the words “limited partnership” without abbreviation. This bill allows the name to include abbreviated versions of those words.

Under current law, when a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity (or when a business corporation enters into a share exchange), title to all personal property transfers, by operation of law, to the surviving entity. Title to real estate generally must be transferred by deed, which must be recorded in the appropriate office of the register of deeds. This bill deletes this special treatment for real estate.

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As a result, under this bill, title to all property transfers, by operation of law, to the surviving entity.

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

1 **SECTION 1.** 179.02 (1) of the statutes is amended to read:

2 179.02 (1) Shall contain, with or without abbreviation, the words “limited
3 partnership”.

4 **SECTION 2.** 179.76 (4) (c) of the statutes is amended to read:

5 179.76 (4) (c) The business entity continues to be vested with title to all
6 property owned by the business entity that was converted without reversion or
7 impairment, ~~provided that, if the converting business entity has an interest in real~~
8 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
9 ~~transfer that interest to the business entity surviving the conversion and shall~~
10 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
11 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
12 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
13 ~~is located.~~

14 **SECTION 3.** 179.77 (6) (c) of the statutes is amended to read:

15 179.77 (6) (c) The title to all property owned by each business entity that is a
16 party to the merger is vested in the surviving business entity without reversion or
17 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
18 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
19 ~~that interest to the business entity surviving the merger and shall execute any real~~
20 ~~estate transfer return required under s. 77.22. The business entity surviving the~~

SENATE BILL 218**SECTION 3**

1 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
2 ~~office of the register of deeds for each county in which the real estate is located.~~

3 **SECTION 4.** 180.0502 (3) of the statutes is amended to read:

4 180.0502 (3) If the name of a registered agent changes or if the street address
5 of his or her a registered agent's business office, he or she changes, the registered
6 agent may change the name of the registered agent or street address of the registered
7 office of any corporation for which he or, she, or it is the registered agent by notifying.
8 To make a change under this subsection, the registered agent shall notify the
9 corporation in writing of the change and by signing, either manually or in facsimile,
10 and delivering deliver to the department for filing a signed statement that complies
11 with sub. (2) and recites that the corporation has been notified of the change.

12 **SECTION 5.** 180.0602 (3) of the statutes is renumbered 180.0602 (3) (a) and
13 amended to read:

14 180.0602 (3) (a) After the articles of amendment are filed under sub. (2) and
15 before the corporation issues any shares of the class or series that is the subject of
16 the articles of amendment, the board of directors may alter or revoke any the
17 distinguishing designation of the class or series and the preferences, limitations, or
18 relative rights described in the articles of amendment, by adopting another
19 resolution appropriate for that purpose. The ~~If the board of directors adopts such a~~
20 resolution, the corporation shall file with the department revised articles of
21 amendment that comply with sub. (2). ~~A~~ Except as provided in par. (b), a
22 distinguishing designation, preference, limitation, or relative right may not be
23 altered or revoked after the issuance of any shares of the class or series that are
24 subject to the distinguishing designation, preference, limitation, or relative right,
25 except by amendment of the articles of incorporation under s. 180.1003.

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1 **SECTION 6.** 180.0602 (3) (b) of the statutes is created to read:

2 180.0602 (3) (b) 1. Except as otherwise provided in this subdivision, after the
3 articles of amendment are filed under sub. (2), the board of directors may decrease
4 the number of shares of the class or series that is the subject of the articles of
5 amendment by adopting another resolution appropriate for that purpose. The
6 shares specified in the resolution shall resume the status applicable to them
7 immediately before their inclusion in the class or series. The board of directors may
8 not decrease the number of shares under this subdivision below the number of such
9 shares that are then outstanding.

10 2. After the articles of amendment are filed under sub. (2), if no shares of the
11 class or series that is the subject of the articles of amendment are then outstanding,
12 the board of directors may eliminate from the articles of incorporation all matters set
13 forth in the articles of amendment with respect to that class or series by adopting
14 another resolution for that purpose. The board of directors shall prepare a certificate
15 setting forth the content of any resolution under this subdivision, stating that none
16 of the authorized shares of the class or series are outstanding, and stating that no
17 such shares will be issued under the articles of amendment and shall deliver the
18 signed certificate to the department for filing. A resolution under this subdivision
19 takes effect upon filing of the certificate by the department and has the effect of
20 eliminating from the articles of incorporation all matters set forth in the articles of
21 amendment with respect to the applicable class or series.

22 3. Except as otherwise provided in this subdivision, after the articles of
23 amendment are filed under sub. (2), the board of directors may increase the number
24 of shares of the class or series that is the subject of the articles of amendment by
25 adopting another resolution appropriate for that purpose. The board of directors

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1 may not increase the number of shares under this subdivision to be greater than the
2 total number of authorized shares of the class or series as specified in the articles of
3 incorporation.

4 **SECTION 7.** 180.0706 (title) of the statutes is amended to read:

5 **180.0706 (title) Waiver of and exemption from notice.**

6 **SECTION 8.** 180.0706 (3) of the statutes is created to read:

7 180.0706 (3) (a) Except as provided in par. (b), any notice required to be given
8 by a corporation to a shareholder under this chapter is not required to be given if any
9 of the following applies:

10 1. Notice of 2 consecutive annual meetings, and all notices of meetings during
11 the period between these annual meetings, have been sent to the shareholder at the
12 shareholder's address as shown on the records of the corporation and have been
13 returned as undeliverable.

14 2. All, but not less than 2, payments of dividends on securities during a
15 one-year period, or 2 consecutive payments of dividends on securities during a period
16 of more than one year, have been sent to the shareholder at the shareholder's address
17 as shown on the records of the corporation and have been returned as undeliverable.

18 (b) If a shareholder to whom par. (a) applies delivers to the corporation a
19 written notice containing the shareholder's current address, then, beginning 30 days
20 after receipt of the notice by the corporation, the requirement that notice be given
21 to the shareholder is reinstated, until such time as par. (a) may again apply.

22 **SECTION 9.** 180.0708 of the statutes is created to read:

23 **180.0708 Conduct of meeting.** Unless the articles of incorporation or bylaws
24 provide otherwise, every meeting of the shareholders shall be conducted as follows:

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1 (1) A chairperson shall preside over the meeting. The chairperson shall be
2 appointed by the board of directors.

3 (2) The chairperson shall determine the order of business and the time of
4 adjournment and may establish rules for the conduct of the meeting which the
5 chairperson believes are fair to the interests of all shareholders.

6 (3) The chairperson shall determine and announce at the meeting the time at
7 which the polls will close for each matter voted upon at the meeting. The polls close
8 at the announced time, except that, if no such announcement is made, the polls close
9 upon final adjournment of the meeting. After the polls close, no ballots, proxies, or
10 votes, or revocations or changes thereto, may be accepted.

11 **SECTION 10.** 180.0824 (3) of the statutes is amended to read:

12 180.0824 (3) Except as provided in ss. 180.0825 (2) and (3), 180.0831 (4) and
13 180.0855 (1) and (2), if a quorum is present when a vote is taken, the affirmative vote
14 of a majority of directors present is the act of the board of directors or a committee
15 of the board of directors created under s. 180.0825, unless the articles of
16 incorporation or bylaws require the vote of a greater number of directors.

17 **SECTION 11.** 180.0825 (1) of the statutes is amended to read:

18 180.0825 (1) Unless the articles of incorporation or bylaws provide otherwise,
19 a board of directors may create one or more committees, appoint members of the
20 board of directors to serve on the committees and designate other members of the
21 board of directors to serve as alternates. Each committee shall have ~~2 or more~~
22 ~~members at least one member.~~ Unless otherwise provided by the board of directors,
23 members of the committee shall serve at the pleasure of the board of directors.

24 **SECTION 12.** 180.0825 (2) (intro.) and (b) of the statutes are consolidated,
25 renumbered 180.0825 (2) and amended to read:

SENATE BILL 218**SECTION 12**

1 180.0825 (2) Except as provided in sub. (3), the creation of a committee,
2 appointment of members to it and designation of alternate members, if any, shall be
3 approved by the ~~greater of the following:~~ (b) The number of directors required by the
4 articles of incorporation or bylaws to take action under s. 180.0824 (3).

5 **SECTION 13.** 180.0825 (2) (a) of the statutes is repealed.

6 **SECTION 14.** 180.0825 (5) (a), (b) and (c) to (h) of the statutes are repealed.

7 **SECTION 15.** 180.0825 (5) (am) and (bm) of the statutes are created to read:

8 180.0825 (5) (am) Approve or recommend to shareholders for approval any
9 action or matter expressly required by this chapter to be submitted to shareholders
10 for approval.

11 (bm) Adopt, amend, or repeal any bylaw of the corporation.

12 **SECTION 16.** 180.1105 (1) (a) and (b) of the statutes are repealed.

13 **SECTION 17.** 180.1105 (1) (am), (bm) and (c) to (f) of the statutes are created to
14 read:

15 180.1105 (1) (am) The name and state of incorporation of each corporation that
16 is a party to the merger or share exchange.

17 (bm) That a plan of merger or share exchange has been approved and adopted
18 by each corporation that is a party to the merger or share exchange as required under
19 s. 180.1103 or 180.1104, as applicable.

20 (c) The name of the surviving or acquiring corporation.

21 (d) In the case of a merger, any amendments in the articles of incorporation of
22 the surviving corporation that are intended by the parties to the merger to take effect
23 upon the merger or, if there are no such amendments, a statement that the articles
24 of incorporation of the surviving corporation or another corporation that is a party
25 to the merger will be the articles of incorporation of the surviving corporation.

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1 (e) That the executed plan of merger or share exchange is on file at the principal
2 place of business of the surviving or acquiring corporation.

3 (f) That the surviving or acquiring corporation will provide a copy of the plan
4 of merger or share exchange, upon request and without cost, to any shareholder of
5 a corporation that was a party to the merger or share exchange or, upon payment to
6 the surviving or acquiring corporation of an amount equal to the cost of producing
7 the copy, to any other interested person.

8 **SECTION 18.** 180.1106 (1) (b) of the statutes is amended to read:

9 180.1106 (1) (b) The title to all property owned by each business entity that is
10 party to the merger is vested in the surviving business entity without reversion or
11 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
12 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
13 ~~that interest to the business entity surviving the merger and shall execute any real~~
14 ~~estate transfer return required under s. 77.22. The business entity surviving the~~
15 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
16 ~~office of the register of deeds for each county in which the real estate is located.~~

→ INS. 11-16 (SA-1)

17 **SECTION 19.** 180.1130 (14) of the statutes is repealed and recreated to read:

18 180.1130 (14) “Valuation date” means the time at which the closing price of the
19 stock is determined on the day before the first public announcement of the proposed
20 business combination.

21 **SECTION 20.** 180.1140 (11) of the statutes is amended to read:

22 180.1140 (11) “Stock acquisition date”, with respect to any person, means the
23 ~~date~~ time that that person first becomes an interested stockholder of that resident
24 domestic corporation.

25 **SECTION 21.** 180.1150 (2) of the statutes is amended to read:

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1 180.1150 (2) Unless otherwise provided in the articles of incorporation of a
2 resident domestic corporation or otherwise specified by the board of directors of the
3 resident domestic corporation in accordance with s. 180.0824 (3) and except as
4 provided in sub. (3) or as restored under sub. (5), the voting power of shares of a
5 resident domestic corporation held by any person, including shares issuable upon
6 conversion of convertible securities or upon exercise of options or warrants, in excess
7 of 20% of the voting power in the election of directors shall be limited to 10% of the
8 full voting power of those shares.

9 **SECTION 22.** 180.1161 (4) (c) of the statutes is amended to read:

10 180.1161 (4) (c) The business entity continues to be vested with title to all
11 property owned by the business entity that was converted without reversion or
12 impairment, ~~provided that, if the converting business entity has an interest in real~~
13 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
14 ~~transfer that interest to the business entity surviving the conversion and shall~~
15 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
16 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
17 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
18 ~~is located.~~

19 **SECTION 23.** 180.1201 (title) of the statutes is amended to read:

20 **180.1201 (title) Sale of assets in regular course of business; mortgage**
21 **of assets; transfer of assets to subsidiary.**

22 **SECTION 24.** 180.1201 (1) (d) of the statutes is created to read:

23 180.1201 (1) (d) Transfer any or all of its assets to one or more corporations or
24 other entities, all of the shares or interests of which are owned by the corporation,
25 unless the transfer is in connection with a plan or action involving the sale, exchange,

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1 or disposal of all or substantially all of the assets of the corporation and requires
2 shareholder approval under s. 180.1202.

3 **SECTION 25.** 180.1201 (2) of the statutes is amended to read:

4 180.1201 (2) Unless required by the articles of incorporation, approval by the
5 shareholders of a transaction ~~described~~ permitted in sub. (1) is not required.

→ Ins. 13-5 (SA-1)

6 **SECTION 26.** 180.1302 (4) of the statutes is amended to read:

7 180.1302 (4) ~~Except in a business combination or unless~~ Unless the articles of
8 incorporation provide otherwise, subs. (1) and (2) do not apply to the holders of shares
9 of any class or series if the shares of the class or series are registered on a national
10 securities exchange or quoted on the National Association of Securities Dealers, Inc.,
11 automated quotations system on the record date fixed to determine the shareholders
12 entitled to notice of a shareholders meeting at which shareholders are to vote on the
13 proposed corporate action.

14 **SECTION 27.** 180.1805 (5) of the statutes is amended to read:

15 180.1805 (5) By merger or share exchange that becomes effective under ss.
16 180.1101 to ~~180.1107~~ 180.1106, or a share exchange of existing shares for other
17 shares of a different class or series in the corporation.

18 **SECTION 28.** 181.1106 (2) of the statutes is amended to read:

19 181.1106 (2) **TITLE TO PROPERTY.** The title to all real estate and other property
20 owned by each business entity that is a party to the merger is vested in the surviving
21 business entity without reversion or impairment subject to any conditions to which
22 the property was subject before the merger, ~~provided that, if a merging business~~
23 ~~entity has an interest in real estate in Wisconsin on the date of the merger, the~~
24 ~~merging business entity shall transfer that interest to the business entity surviving~~
25 ~~the merger and shall execute any real estate transfer return required under s. 77.22.~~

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1 ~~The business entity surviving the merger shall promptly record the instrument of~~
2 ~~conveyance under s. 59.43 in the office of the register of deeds for each county in~~
3 ~~which the real estate is located.~~

4 **SECTION 29.** 181.1161 (4) (c) of the statutes is amended to read:

5 181.1161 (4) (c) The business entity continues to be vested with title to all
6 property owned by the business entity that was converted without reversion or
7 impairment, ~~provided that, if the converting business entity has an interest in real~~
8 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
9 ~~transfer that interest to the business entity surviving the conversion and shall~~
10 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
11 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
12 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
13 ~~is located.~~

→ Ins. 14-13 (SA-1)

14 **SECTION 30.** 183.1205 (2) of the statutes is amended to read:

15 183.1205 (2) The title to all property owned by each business entity that is a
16 party to the merger is vested in the surviving business entity without reversion or
17 impairment, ~~provided that, if a merging business entity has an interest in real estate~~
18 ~~in Wisconsin on the date of the merger, the merging business entity shall transfer~~
19 ~~that interest to the business entity surviving the merger and shall execute any real~~
20 ~~estate transfer return required under s. 77.22. The business entity surviving the~~
21 ~~merger shall promptly record the instrument of conveyance under s. 59.43 in the~~
22 ~~office of the register of deeds for each county in which the real estate is located.~~

23 **SECTION 31.** 183.1207 (4) (c) of the statutes is amended to read:

24 183.1207 (4) (c) The business entity continues to be vested with title to all
25 property owned by the business entity that was converted without reversion or

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1 ~~impairment, provided that, if the converting business entity has an interest in real~~
2 ~~estate in Wisconsin on the date of the conversion, the converting business entity shall~~
3 ~~transfer that interest to the business entity surviving the conversion and shall~~
4 ~~execute any real estate transfer return required under s. 77.22. The business entity~~
5 ~~surviving the conversion shall promptly record the instrument of conveyance under~~
6 ~~s. 59.43 in the office of the register of deeds for each county in which the real estate~~
7 ~~is located.~~

8

(END)

**SENATE AMENDMENT 1,
TO 2003 SENATE BILL 218**

February 20, 2004 - Offered by COMMITTEE ON ECONOMIC DEVELOPMENT, JOB
CREATION AND HOUSING.

1 At the locations indicated, amend the bill as follows:

2 ✓ 1. Page 10, line 11: after that line insert:

3 **SECTION 15p.** 180.1103 (1) of the statutes is amended to read:

4 180.1103 (1) SUBMIT TO SHAREHOLDERS. After adopting and approving a plan of
5 merger or share exchange, the board of directors of each corporation that is party to
6 the merger, and the board of directors of the corporation whose shares will be
7 acquired in the share exchange, shall submit the plan of merger, except as provided
8 in sub. (5) and s. 180.11045 (2), or share exchange for approval by its shareholders.

9 **SECTION 15t.** 180.11045 of the statutes is created to read:

10 **180.11045 Merger of indirect wholly owned subsidiary or parent. (1)**

11 DEFINITIONS. In this section:

12 (a) "Holding company" means a corporation that issues shares under sub. (2)

13 (b) and that, during the period beginning with its incorporation and ending with the

Jms.
10-11

1 consummation of a merger under this section, was at all times a wholly owned
2 subsidiary of the parent corporation that is party to the merger.

3 (b) "Indirect wholly owned subsidiary" means any of the following:

4 1. A corporation, all of the outstanding shares of each class of which are, prior
5 to the consummation of a merger under this section, owned by a parent corporation
6 indirectly through one or more business entities.

7 2. A limited liability company organized under ch. 183, all of the outstanding
8 interests of each class of which are, prior to the consummation of a merger under this
9 section, owned by a parent corporation indirectly through one or more business
10 entities.

11 (c) "Organizational documents" means, when used in reference to a
12 corporation, the corporation's articles of incorporation and bylaws and, when used
13 in reference to a limited liability company, the limited liability company's operating
14 agreement.

15 (d) "Parent corporation" means a corporation owning, prior to the
16 consummation of a merger under this section, all of the outstanding shares of each
17 class of another corporation or all of the outstanding interests of each class of another
18 business entity.

19 (e) "Surviving entity" means the limited liability company or corporation, other
20 than the holding company, surviving a merger under sub. (2).

21 (f) "Wholly owned subsidiary" means any of the following:

22 1. A corporation, all of the outstanding shares of each class of which are owned
23 by a corporation indirectly through one or more business entities or directly.

1 2. A limited liability company organized under ch. 183, all of the outstanding
2 interests of each class of which are owned by a corporation indirectly through one or
3 more business entities or directly.

4 (2) MERGER AUTHORIZED. Unless the articles of incorporation of the parent
5 corporation specifically provide otherwise, or the parent corporation is a statutory
6 close corporation under ss. 180.1801 to 180.1837, a parent corporation may merge
7 with or into one of its indirect wholly owned subsidiaries pursuant to s. 180.1101
8 without approval of the shareholders of the parent corporation or the shareholders
9 or members of the indirect wholly owned subsidiary if all of the following conditions
10 are satisfied:

11 (a) The parent corporation and the indirect wholly owned subsidiary are the
12 only parties to the merger.

13 (b) Each share or other interest of the parent corporation outstanding
14 immediately prior to the effective time of the merger is converted in the merger into
15 a share or equal interest of a corporation that was a wholly owned subsidiary of the
16 parent corporation immediately prior to the consummation of the merger having the
17 same designation, preferences, limitations, and relative rights as the share or other
18 interest of the parent corporation outstanding immediately prior to the effective time
19 of the merger.

20 (c) Except as otherwise provided in this paragraph, immediately following the
21 effective time of the merger, the organizational documents of the holding company
22 issuing shares in the merger pursuant to sub. (2) (b) shall contain provisions
23 identical to the organizational documents of the parent corporation immediately
24 prior to the effective time of the merger. This requirement does not apply to
25 provisions regarding the incorporator or incorporators, the corporate name, the

1 registered office and agent, and provisions that are subject to amendment under s.
2 180.1002. To the extent that the second sentence of s. 180.0852 applied to the parent
3 corporation immediately prior to the effective time of the merger, the organizational
4 documents of the holding company immediately following the effective time of the
5 merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and
6 (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately prior
7 to the effective time of the merger, the articles of incorporation of the holding
8 company immediately following the effective time of the merger shall contain
9 provisions implementing s. 180.1706 (2) and (3).

10 (d) Immediately following the effective time of the merger, the surviving entity
11 is a wholly owned subsidiary of the holding company.

12 (e) The directors of the parent corporation immediately prior to the effective
13 time of the merger are the directors of the holding company immediately following
14 the effective time of the merger.

15 (f) Except as otherwise provided in this paragraph, the organizational
16 documents of the surviving entity immediately following the effective time of the
17 merger shall contain provisions identical to the organizational documents of the
18 parent corporation immediately prior to the effective time of the merger. With
19 respect to a surviving entity that is a corporation, this requirement does not apply
20 to provisions regarding the incorporator or incorporators; the corporate name; the
21 registered office and agent; and provisions that are subject to amendment under s.
22 180.1002 or any other law permitting amendment of the articles of incorporation
23 without approval of the shareholders. With respect to a surviving entity that is a
24 limited liability company, this requirement does not apply to provisions regarding
25 the organizer or organizers; the entity name; the registered office and agent;

1 references to members rather than shareholders; references to interests, units, or
2 similar terms rather than shares; references to managers rather than directors; and
3 provisions that are subject to amendment under any law permitting amendment of
4 the operating agreement without approval of the members. The organizational
5 documents of the surviving entity immediately following the effective time of the
6 merger may specify a reduced number of classes and shares or other interests that
7 the surviving entity is authorized to issue. To the extent that the 2nd sentence of s.
8 180.0852 applied to the parent corporation immediately prior to the effective time
9 of the merger, the organizational documents of the surviving entity immediately
10 following the effective time of the merger shall contain provisions implementing that
11 sentence. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s.
12 180.1706 (1), immediately prior to the effective time of the merger, the organizational
13 documents of the surviving entity immediately following the effective time of the
14 merger shall contain provisions implementing s. 180.1706 (2) and (3). The
15 organizational documents of the surviving entity immediately following the effective
16 time of the merger shall contain provisions that specifically refer to this paragraph
17 and that require all of the following:

18 1. That any act, other than the election or removal of directors or managers of
19 the surviving entity, for which approval of the shareholders or members of the
20 surviving entity is required under this chapter, ch. 183, or the surviving entity's
21 organizational documents may be accomplished only with the additional approval of
22 the shareholders of the holding company or any successor to the holding company,
23 by the same vote as is required for approval of the shareholders or members of the
24 surviving entity under this chapter, ch. 183, or the surviving entity's organizational
25 documents.

1 2. If the surviving entity is a limited liability company, that any act, other than
2 the election or removal of managers of the surviving entity, for which approval of the
3 shareholders of the surviving entity would be required under this chapter if the
4 surviving entity were a corporation may be accomplished only with the additional
5 approval of the shareholders of the holding company or any successor to the holding
6 company, by the same vote as would be required for approval of the shareholders
7 under this chapter if the surviving entity were a corporation.

8 3. If the surviving entity is a limited liability company, that any amendment
9 of the organizational documents of the surviving entity which would be required
10 under this chapter to be included in the articles of incorporation of the surviving
11 entity if the surviving entity was a corporation, other than an amendment specified
12 in s. 180.1002, may be accomplished only with the additional approval of the
13 shareholders of the holding company or any successor to the holding company, by the
14 same vote as would be required for approval of the shareholders under this chapter
15 if the surviving entity were a corporation.

16 4. If the surviving entity is a limited liability company, that the affairs of the
17 surviving entity be managed by or under the direction of a group of managers
18 consisting of individuals who have the same fiduciary duties toward the surviving
19 entity and its members as the directors of a corporation have toward the corporation
20 and its shareholders and who are liable for breach of such duties to the same extent
21 as directors of a corporation.

22 (g) In the opinion of the board of directors of the parent corporation, the
23 shareholders of the parent corporation do not have a gain or loss under the Internal
24 Revenue Code as a result of the merger.

1 (3) ARTICLES OF MERGER. The surviving entity shall include in the articles of
2 merger under s. 180.1105 a statement that the merger was approved in accordance
3 with this section and that the requirements of sub. (2) have been satisfied.

4 (4) EFFECT OF MERGER. All of the following occur when a merger under sub. (2)
5 takes effect:

6 (a) To the extent that the restrictions of s. 180.1131, 180.1141, or 180.1150
7 applied to the parent corporation and its shareholders immediately prior to the
8 effective time of the merger, such restrictions apply to the holding company and its
9 shareholders immediately following the effective time of the merger to the same
10 extent as if the holding company were the parent corporation as the corporation
11 existed immediately prior to the consummation of the merger. For purposes of ss.
12 180.1130, 180.1132, 180.1141, 180.1142, 180.1143, and 180.1150, the shares of the
13 holding company acquired in the merger are deemed to have been acquired at the
14 time and for the price and form of consideration that the shares of the parent
15 corporation that were converted in the merger were acquired.

16 (b) If immediately prior to the effective time of the merger s. 180.1141,
17 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, such
18 section does not apply to the shareholder as a shareholder of the holding company
19 solely by reason of the merger.

20 (c) If the corporate name of the holding company immediately following the
21 effective time of the merger is the same as the corporate name of the parent
22 corporation immediately prior to the effective time of the merger, the shares of the
23 holding company into which the shares of the parent corporation are converted in the
24 merger are represented by the certificates that previously represented shares of the
25 parent corporation.

1 (d) A shareholder of the parent corporation immediately prior to the effective
2 time of the merger retains any right that the shareholder had immediately prior to
3 the effective time of the merger to institute or maintain a derivative proceeding in
4 the right of the parent corporation.

5 (e) No act of the surviving entity that requires the additional approval of the
6 shareholders of the holding company or any successor company pursuant to sub. (2)
7 (f) shall give rise to dissenters' rights pursuant to ss. 180.1301 to 180.1331 for the
8 shareholders or the beneficial shareholders of the holding company or any successor
9 to the holding company.

10 (f) To the extent that shares of the parent corporation immediately prior to the
11 effective time of the merger constituted shares of a preexisting class, the shares of
12 the holding company immediately following the effective time of the merger
13 constitute shares of a preexisting class to the same extent as if the holding company
14 were the parent corporation as the parent corporation existed immediately prior to
15 the consummation of the merger. Shares or interests of the surviving entity will not
16 constitute shares of a preexisting class for purposes of s. 180.1705. For purposes of
17 s. 180.1707, to the extent that shares of the parent corporation immediately prior to
18 the effective time of the merger constituted shares of a preexisting class, the shares
19 or interests of the surviving entity constitute shares of a preexisting class to the same
20 extent as if the surviving entity were the parent corporation as the parent
21 corporation existed immediately prior to the consummation of the merger.

22 (g) To the extent that the provisions of s. 180.1706 (4) applied to the parent
23 corporation immediately prior to the effective time of the merger, such provisions
24 apply to the holding company immediately following the effective time of the merger
25 to the same extent as if the holding company were the parent corporation as such

1 corporation existed immediately prior to the consummation of the merger. To the
2 extent that the provisions of s. 180.1706 (4) applied to the parent corporation
3 immediately prior to the effective time of the merger, if the surviving entity is a
4 corporation, such provisions apply to the surviving entity immediately following the
5 effective time of the merger to the same extent as if the surviving entity were the
6 parent corporation as such corporation existed immediately prior to the
7 consummation of the merger. To the extent that the provisions of s. 180.1706(4)
8 applied to the parent corporation immediately prior to the effective time of the
9 merger, if the surviving entity is a limited liability company, such provisions apply
10 to the corresponding provisions of the organizational documents of the surviving
11 entity immediately following the effective time of the merger to the same extent as
12 if the surviving entity were the parent corporation as such corporation existed
13 immediately prior to the consummation of the merger.

14 (h) To the extent that immediately prior to the effective time of the merger
15 shareholders of the parent corporation had rights or were subject to obligations or
16 restrictions of the types referred to in s. 180.0627 (2), 180.0630 (4), 180.0722 (2),
17 180.0730 (1), or 180.0731 (1), such rights, obligations, or restrictions apply to the
18 shareholders of the holding company immediately following the effective time of the
19 merger to the same extent as if the holding company were the parent corporation as
20 such corporation existed immediately prior to the consummation of the merger,
21 unless the agreement, waiver, proxy, or trust establishing the rights, obligations, or
22 restrictions specifies otherwise.”

23 ✓ **2.** Page 11, line 16: after that line insert:

24 **SECTION 18m.** 180.1130 (3) (a) (intro.) of the statutes is amended to read:

*end
of 10-11*
INS. 11-16

1 180.1130 (3) (a) (intro.) Unless the merger or share exchange is subject to s.
 2 180.1104 or s. 180.11045, does not alter the contract rights of the shares as set forth
 3 in the articles of incorporation or does not change or convert in whole or in part the
 4 outstanding shares of the resident domestic corporation, a merger or share exchange
 5 of the resident domestic corporation or a subsidiary of the resident domestic
 6 corporation with any of the following.”

end
11-16

7 **3.** Page 13, line 5: after that line insert:

8 “SECTION 25m. 180.1302 (1) of the statutes is amended to read:

9 180.1302 (1) Except as provided in sub. (4) and s. ss. 180.1008 (3) and
 10 180.11045 (4), a shareholder or beneficial shareholder may dissent from, and obtain
 11 payment of the fair value of his or her shares in the event of, any of the following
 12 corporate actions.”

INS.
13-510

13 **4.** Page 14, line 13: after that line insert:

14 “SECTION 29m. 183.1202 (1) of the statutes is amended to read:

15 183.1202 (1) Unless otherwise provided in an operating agreement and except
 16 as provided in s. 180.11045 (2), a limited liability company that is a party to a
 17 proposed merger shall approve the plan of merger by an affirmative vote of members
 18 as described in s. 183.0404 (1) (a). Unless otherwise provided in an operating
 19 agreement or waived by the members, a limited liability company may obtain the
 20 approving vote of its members only after providing the members with not less than
 21 10 nor more than 50 days’ written notice of its intent to merge accompanied by the
 22 plan of merger.”

INS.
14-13