LRBa0888

2003 DRAFTING REQUEST

Senate Amendment (SA-SB218)

Received: **09/04/2003**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Cathy Stepp (608) 266-1832**

By/Representing: **scott**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Bus. Assn. - corporations**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

SA (merger with indirect wholly-owned subsidiary) to SB-218 (corporate law changes)

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	rmarchan 09/10/2003	kgilfoy 09/23/2003					
/P1			pgreensl 09/24/2003	lemery 09/24/2003 lemery 09/24/2003	lemery 09/24/2003	lemery 09/24/2003	

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P2	phurley 01/27/2004 phurley 02/09/2004	wjackson 02/09/2004 kgilfoy 02/09/2004	pgreensl 02/10/2004	_____ _____ _____ _____	lemery 02/10/2004		
/P3	phurley 02/16/2004	kgilfoy 02/16/2004	jfrantze 02/17/2004	_____ _____	mbarman 02/17/2004		
/1	phurley 02/17/2004	kgilfoy 02/17/2004	rschluet 02/17/2004	_____ _____	mbarman 02/17/2004	mbarman 02/17/2004	

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/P1		1 - 2/17 Kmg	pgreensl 09/24/2003		lemery 09/24/2003 lemery 09/24/2003	lemery 09/24/2003	

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P2	phurley 01/27/2004 phurley 02/09/2004	wjackson 02/09/2004 kgilfoy 02/09/2004	pgreensl 02/10/2004	_____ _____ _____ _____	lemery 02/10/2004		
/P3	phurley 02/16/2004	kgilfoy 02/16/2004	jfrantze 02/17/2004	_____ _____	mbarman 02/17/2004		

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/P1		1/03 – 2/16 Kmg	pgreensl 09/24/2003		lemery 09/24/2003	lemery 09/24/2003	NO
					lemery 09/24/2003		

1 – 2/19 Kmg

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/P2	phurley 01/27/2004 phurley 02/09/2004	wjackson 02/09/2004 kgilfoy 02/09/2004	pgreensl 02/10/2004	_____ _____ _____ _____	lemery 02/10/2004		

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By/Representing: **scott**

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Drafter: **rmarchan** RJH

May Contact:

Addl. Drafters:

Subject: **Bus. Assn. - corporations**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Stepp@legis.state.wi.us**

Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

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/?	rmarchan 09/10/2003	kgilfoy 09/23/2003					
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/?	rmarchan	/P1 - 9/23 kmg	9/23 P8	9/24 P8 <END>			/2

FE Sent For:

180.1109 Merger with or into indirect wholly-owned subsidiary with board approval.

(1) In this section,

(a) The term "organizational documents," when used in reference to a corporation, means the articles of incorporation of such corporation and, when used in reference to a limited liability company, means the operating agreement of such limited liability company.

(b) The term "holding company" means a corporation that will issue shares under sub.(2)(b) and that, from its incorporation until consummation of a merger governed by this section, was at all times a direct or indirect wholly-owned subsidiary of the parent corporation.

(2) Unless expressly required by its articles of incorporation, a parent corporation owning indirectly through one or more business entities all of the outstanding shares of each class of another corporation or all of the outstanding interests of each class of another business entity may merge the indirect wholly-owned subsidiary into the parent or the parent into the indirect wholly-owned subsidiary without approval of the shareholders of the parent or the shareholders or other owners of the indirect wholly-owned subsidiary if all of the following are satisfied:

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

(b) Each share or fraction of a share of the parent corporation is converted in the merger into a share or equal fraction of a share of a holding company having the same designation, preferences, limitations and relative rights as the share of the parent corporation being converted in the merger.

(c) The holding company and the parent corporation are domestic corporations and the indirect wholly-owned subsidiary that is the other party to the merger is a domestic corporation or domestic limited liability company.

(d) The articles of incorporation and bylaws of the holding company immediately following the effective date and time of the merger contain provisions identical to the articles of incorporation and bylaws of the parent corporation immediately prior to the effective date and time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent and other than amendments to the articles of incorporation enumerated in s. 180.1002); provided, however, that if the parent corporation is subject to the provisions of s. 180.1706(1) immediately prior to the effective date and time of the merger, then the articles of incorporation and bylaws of the holding company immediately following the effective date and time of the merger must contain provisions that conform to the voting requirements of s. 180.1706(2) and s. 180.1706(3).

(e) As a result of the merger, the parent corporation becomes a direct or indirect wholly-owned subsidiary of the holding company or the indirect wholly-owned subsidiary remains a direct or indirect wholly-owned subsidiary of the holding company.

(f) The directors of the parent corporation become or remain the directors of the holding company upon the effective date and time of the merger.

(g) The organizational documents of the surviving business entity of the merger of the parent corporation and the indirect wholly-owned subsidiary immediately following the effective date and time of the merger contain provisions identical to the articles of incorporation of the parent corporation immediately prior to the effective date and time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, references to members rather than shareholders, references to interests, units or the like rather than shares, references to managers, managing members or other members of the governing body rather than directors and other than amendments enumerated in s. 180.1002 or otherwise not requiring the approval of the shareholders or other owners of the entity); provided, however, that:

1. The organizational documents of the surviving entity shall be amended in the merger, if necessary, to contain provisions requiring that:

a. any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this chapter or its organizational documents the approval of the shareholders or members of the surviving entity shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company (or any successor by merger), by the same vote as is required by this chapter and/or by the organizational documents of the surviving entity; provided, however, that for purposes of this subsection, any surviving entity that is not a corporation shall include in such amendment a requirement that the approval of the shareholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the shareholders of the surviving entity if the surviving entity were a corporation subject to this chapter;

b. any amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this chapter, be required to be included in the articles of incorporation of such corporation, shall, by specific reference to this subsection, require, in addition, the approval of the shareholders of the holding company (or any successor by merger), by the

same vote as is required by this chapter and/or by the organizational documents of the surviving entity; and

c. the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this chapter.

2. The organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares or other interests that the surviving entity is authorized to issue.

(h) The shareholders of the parent corporation do not recognize gain or loss for United States federal income tax purposes as a result of the merger as determined by the board of directors of the parent corporation.

(3) From and after the effective date and time of a merger adopted by a parent corporation by action of its board of directors and without any vote of the shareholders pursuant to this subsection, all of the following apply:

(a) To the extent the restrictions of s. 180.1131, 180.1141 or 180.1150 applied to the parent corporation and its shareholders at the effective date and time of the merger, such restrictions shall apply to the holding company and its shareholders immediately after the effective date and time of the merger as though it were the parent corporation, and for purposes of s. 180.1130, 180.1132, 180.1141, 180.1142, 180.1143 or 180.1150, the shares of the holding company acquired in the merger shall be 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 date and time of the merger, s. 180.1141, 180.1142 or 180.1150 did not apply to any shareholder, then such section or sections shall not solely by reason of the merger apply to such shareholder.

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

(d) To the extent a shareholder of the parent corporation immediately prior to the merger had standing to institute or maintain a derivative proceeding in the right of the parent corporation, nothing in this section shall be deemed to limit or extinguish such standing.

(4) If a plan of merger is adopted by a corporation by action of its board of directors and without approval by shareholders pursuant to this section, then the articles of merger shall state that the plan of merger has been approved in accordance with this section and that the conditions specified in sub.(2) have been satisfied.

* * *

180.1103 Action on plan of merger or share exchange.

(5)

(c) Action by the shareholders of the parties to the merger on a plan of merger is not required if the conditions of s. 180.1109(2) are met.

Marchant, Robert

From: John.Kennedy@jci.com
Sent: Friday, August 29, 2003 8:04 AM
To: WJS@quarles.com
Cc: abourget@bourgetlaw.com; ahd@quarles.com; bla@dewittross.com; bschultz@foleylaw.com; charles.sprague@fiserv.com; CS3@quarles.com; dcoriden@mathy.com; delliott32@wi.rr.com; frank.deguire@marquette.edu; glware@ruder.com; hcooke@uwsi.com; hgh@quarles.com; jason.d.bartel@snapon.com; jbartzen@bgmlaw.com; jboese@wisbar.org; jboucher@neiderboucher.com; jeff_lane@mgic.com; jhkringel@mbf-law.com; joe.kaufman@plexus.com; Joe_Pomeroy@mercmarine.com; karl.dahlen@landsend.com; Johnson, Keith; khowley@reinhartlaw.com; mjk@whdlaw.com; rjjohannes@mbf-law.com; Marchant, Robert; sbarth@foleylaw.com; sbk@susanbking.com; scrawfor@quarles.com; sglaser@dkattorneys.com; susan.marrinan@snapon.com; tfrenn@petriestocking.com; wabraham@foleylaw.com; WJS@quarles.com
Subject: Re: Chapter 180 Bill

StateBar0828_.pdf

I wholeheartedly support the inclusion of the attached provision into the 180 package. It allows a corporate restructuring with substantially less cost and trouble. It provides protection for shareholders in situations where catastrophic liabilities may be housed in the parent corporation and allows such liabilities to be placed with the business they arise in. The shareholder vote is still provided if later transactions are anticipated. This is a well utilized and understood provision of Delaware law. The SEC and IRS are familiar with transactions under this provision and consequently give the needed "no action" or prior approval letters routinely. If we deviate significantly from the Delaware provisions, Wisconsin corporations will lose that advantage. This is a provision which has importance for public companies, like Johnson Controls, and their shareholders. I read the comments suggesting some rewrite of the Delaware provisions. While I'm sure we can all improve on that statute, such revisions come with the very great cost that our restructuring hereunder would not receive the same ease of use as the Delaware provision, which is known. I urge that we forego such tinkering and allow the Delaware model to be incorporated into
the package.

With respect to a separate proposal to do away with the Control Share Act, I can only give you an opinion which I believe is shared by many lawyers who've gone thru takeover defenses. This Act is of little value and, in some instances, can present problems to the target which is trying to buy some more time for its board to consider the situation. Any public company gets downgraded in its corporate governance ratings because it is a Wisconsin corporation and we have a Control Share Act.

WJS@quarles.com
Sent by: CS3@quarles.com
08/28/2003 03:53 PM

To: wabraham@foleylaw.com, abourget@bourgetlaw.com, bla@dewittross.com, charles.sprague@fiserv.com, dcoriden@mathy.com, frank.deguire@marquette.edu, glware@ruder.com, hcooke@uwsi.com, jason.d.bartel@snapon.com, jeff_lane@mgic.com, jbartzen@bgmlaw.com, jboese@wisbar.org, jhkringel@mbf-law.com, john.kennedy@jci.com, joe.kaufman@plexus.com, Joe_Pomeroy@mercmarine.com, jboucher@neiderboucher.com, karl.dahlen@landsend.com,

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@wi.rr.com, hgh@quarles.com,
keith.johnson@swib.state.wi.us
cc: WJS@quarles.com
Subject: Chapter 180 Bill

Ladies and Gentlemen:

As you know, the Chapter 180 bill has had hearings and we hope it will be enacted in due course. Recently a lobbyist has been trying to get some changes added to the bill. This includes items that while the subcommittee conceptually approved, noted that there were numerous problems with the proposal. In particular, Bob Johannes was kind enough to do an analysis noting that this eliminates many of the implications of Delaware law and does not consider all of the protections of the anti-takeover laws. I would appreciate it if you could please consider the attachment and forward any comments. At this time, I think that the subcommittee's initial reaction was that the concept is fine, but the exact terms in the attachment do not provide suitable protections. I suspect that when DFI finds out about this, they will also oppose it. Please let me know if you have any questions or reaction.

Very truly yours,

QUARLES & BRADY LLP

/s/ Walt

Walter J. Skipper

WJS:cls
(See attached file: StateBar0828_.pdf)

Marchant, Robert

From: Manley, Scott
Sent: Monday, September 08, 2003 9:05 AM
To: Marchant, Robert
Subject: FW: rationale for section 180 change

Delaware Section 251(g).pdf

Rob,

Below is an explanation of the Delaware law our amendment is modeled after. The text of our amendment proposal will be forthcoming in another email. Please let me know if you need additional information.

Scott Manley

****

Scott,

Enclosed please find the rationale for Delaware law section 251(g) along with the text of that section. I hope the explanation provides the drafting attorney with an adequate "plain language explanation" of what we hope to accomplish here in Wisconsin. As I mentioned to you on the phone, it is our intention to follow the Delaware law and not to go beyond that. I will send you an electronic version of our draft in a separate e-mail. Thanks again for all your help. Tom

<<Delaware Section 251(g).pdf>>

Delaware Section 251(g)
Merger to Form Holding Company Without Stockholder Approval

The following are (1) a summary of Section 251(g) of the Delaware General Corporation Law ("DGCL") from a Matthew Bender & Company, Inc. treatise and (2) the text of Section 251(g):

1. **Summary of DGCL Section 251(g) (§ 35.04 of *Delaware Corporation Law and Practice*, 2002)**

Section 251(g) exempts a category of merger -- the reorganization of an operating corporation into a holding company -- from the requirements of a stockholder vote under certain conditions. For business and financial reasons, a publicly-owned operating corporation contemplating diversification may find it advantageous to restructure itself into a holding company owning the stock of its separately incorporated operating business. As a holding company, the corporation can then acquire and hold interests in other operating businesses separately from its original business. The conventional method for accomplishing such a restructuring is for the original operating company to create a new wholly-owned subsidiary (the holding company) which in turn creates its own wholly-owned subsidiary. The original parent then enters into an agreement merging itself with the second-tier subsidiary. The merger terms provide that the parent's stockholders will exchange their stock for stock in the holding company, which by the merger becomes the sole stockholder of the corporation owning the assets of the operating company. The financial interests of the stockholders in the venture are unchanged by the transaction.

Notwithstanding the formalistic nature of a holding company reorganization, its effectuation resulted in substantial costs incident to the convening of a stockholders' meeting and registration under the federal securities laws. Relief from these largely unnecessary costs prompted the enactment of Section 251(g) in 1995.

Section 251(g) permits this specialized type of merger to be accomplished by board action alone, so long as the merger agreement makes no substantive changes whatsoever in the rights of the public stockholders that would require stockholder action to accomplish. Thus, to qualify under the exemption several conditions must be met:

(1) the stockholders of the original corporation (designated in the section as the constituent corporation) must receive the same number of shares of the holding company as they owned in the constituent corporation prior to the restructuring;

(2) the stock must have the same voting powers, designations, preferences and rights, and the qualifications, restrictions and limitations thereof, with respect to the holding company as it had with respect to the constituent corporation;

(3) the holding company must be a Delaware corporation with the identical certificate of incorporation (except for provisions that could have been amended or deleted without stockholder approval) and by-laws as the constituent corporation;

(4) the corporation surviving the merger must become a direct or indirect wholly-owned subsidiary of the holding company;

(5) the directors of the constituent corporation must become the directors of the holding company;

(6) any charter provision calling for super-majority or other special vote on any act or transaction originally possessed by stockholders of the constituent corporation must be carried over into the charter of the holding company, and, moreover, the charter of the surviving corporation must grant such special vote to the stockholders of the holding company on a pass through basis; and

(7) the transaction must be structured so as to be without federal income tax consequences to the stockholders of the constituent corporation.

Any restrictions applicable to stockholders of the constituent corporation by reason of Section 203 (regarding business combinations with interested stockholders) will pass through to stockholders of the holding company as if the restructuring had never occurred. If the holding company adopts the corporate name of the constituent corporation, no new stock certificates need be issued. Appraisal rights are not available in a merger effected under Section 251(g).

By a 2001 amendment to Section 251(g), the ability to serve as the holding company in a merger pursuant to its terms was extended to Delaware limited liability companies. To protect the position of the stockholders of the constituent corporation, the limited liability company agreement of the new parent company must contain provisions with respect to stockholder rights that, except for provisions affecting the election of directors or managing members, parallel the requirements of the General Corporation Law, as well as any pre-existing charter provisions of the constituent corporation affecting such rights. Thus, for example, stockholder voting rights granted by the General Corporation Law with respect to charter amendments and mergers are to be maintained in spite of the change in entity and there must be imposed upon the company's managers by the agreement the same fiduciary responsibilities, and liabilities for breach thereof, that would be imposed were they corporate directors.

2. Text of Section 251(g) of the DGCL

251. Merger or consolidation of domestic corporations and limited partnership.

. . .

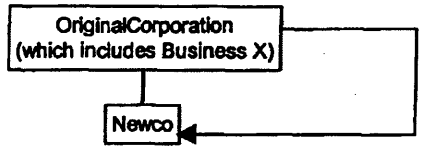
(g) Notwithstanding the requirements of subsection (c) of this section, unless expressly required by its certificate of incorporation, no vote of stockholders of a constituent corporation shall be necessary to authorize a merger with or into a single direct or indirect wholly-owned subsidiary of such constituent corporation if: (1) such constituent corporation and the direct or indirect wholly-owned subsidiary of such constituent corporation are the only constituent entities to the merger; (2) each share or fraction of a share of the capital stock of the constituent corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same

designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share of stock of the constituent corporation being converted in the merger; (3) the holding company and the constituent corporation are corporations of this State and the direct or indirect wholly-owned subsidiary that is the other constituent entity to the merger is a corporation or limited liability company of this State; (4) the certificate of incorporation and by-laws of the holding company immediately following the effective time of the merger contain provisions identical to the certificate of incorporation and by-laws of the constituent corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination, or cancellation has become effective); (5) as a result of the merger the constituent corporation or its successor becomes or remains a direct or indirect wholly-owned subsidiary of the holding company; (6) the directors of the constituent corporation become or remain the directors of the holding company upon the effective time of the merger; (7) the organizational documents of the surviving entity immediately following the effective time of the merger contain provisions identical to the certificate of incorporation of the constituent corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate or entity name, the registered office and agent, the initial board of directors and the initial subscribers for shares, references to members rather than stockholders or shareholders, references to interests, units or the like rather than stock or shares, references to managers, managing members or other members of the governing body rather than directors and such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective); provided, however, that (i) if the organizational documents of the surviving entity do not contain the following provisions, they shall be amended in the merger to contain provisions requiring that (A) any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, that requires for its adoption under this chapter or its organizational documents the approval of the stockholders or members of the surviving entity shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company (or any successor by merger), by the same vote as is required by this chapter and/or by the organizational documents of the surviving entity; provided, however, that for purposes of this clause (i)(A), any surviving entity that is not a corporation shall include in such amendment a requirement that the approval of the stockholders of the holding company be obtained for any act or transaction by or involving the surviving entity, other than the election or removal of directors or managers, managing members or other members of the governing body of the surviving entity, which would require the approval of the stockholders of the surviving entity if the surviving entity were a corporation subject to this chapter; (B) any amendment of the organizational documents of a surviving entity that is not a corporation, which amendment would, if adopted by a corporation subject to this chapter, be required to be included in the certificate of incorporation of such corporation, shall, by specific reference to this subsection, require, in addition, the approval of the stockholders of the holding company (or any successor by merger), by the same vote as is required by this chapter and/or by the organizational documents of the surviving entity; and (C)

the business and affairs of a surviving entity that is not a corporation shall be managed by or under the direction of a board of directors, board of managers or other governing body consisting of individuals who are subject to the same fiduciary duties applicable to, and who are liable for breach of such duties to the same extent as, directors of a corporation subject to this chapter; and (ii) the organizational documents of the surviving entity may be amended in the merger to reduce the number of classes and shares of capital stock or other equity interests or units that the surviving entity is authorized to issue; and (8) the stockholders of the constituent corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the constituent corporation. Neither subdivision (g)(7)(i) of this section nor any provision of a surviving entity's organizational documents required by subdivision (g)(7)(i) shall be deemed or construed to require approval of the stockholders of the holding company to elect or remove directors or managers, managing members or other members of the governing body of the surviving entity. The term "organizational documents", as used in subdivision (g)(7) and in the preceding sentence, shall, when used in reference to a corporation, mean the certificate of incorporation of such corporation, and when used in reference to a limited liability company, mean the limited liability company agreement of such limited liability company.

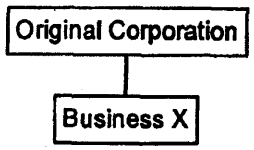
As used in this subsection only, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this subsection, was at all times a direct or indirect wholly-owned subsidiary of the constituent corporation and whose capital stock is issued in such merger. From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection: (i) to the extent the restrictions of § 203 of this title applied to the constituent corporation and its stockholders at the effective time of the merger, such restrictions shall apply to the holding company and its stockholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of stock of the holding company acquired in the merger shall for purposes of § 203 of this title be deemed to have been acquired at the time that the shares of stock of the constituent corporation converted in the merger were acquired, and provided further that any stockholder who immediately prior to the effective time of the merger was not an interested stockholder within the meaning of § 203 of this title shall not solely by reason of the merger become an interested stockholder of the holding company, (ii) 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 constituent corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation capital stock of the constituent corporation and (iii) to the extent a stockholder of the constituent corporation immediately prior to the merger had standing to institute or maintain derivative litigation on behalf of the constituent corporation, nothing in this section shall be deemed to limit or extinguish such standing. If an agreement of merger is adopted by a constituent corporation by action of its board of directors and without any vote of stockholders pursuant to this subsection, the secretary or assistant secretary of the constituent corporation shall certify on the agreement that the agreement has been adopted pursuant to this subsection and that the conditions specified in the first sentence of this subsection have been satisfied. The agreement so adopted and certified shall then be filed and become effective, in accordance with § 103 of this title. Such filing shall constitute a representation by the person who executes the agreement that the facts stated in the certificate remain true immediately prior to such filing.

Asset Drop to a Wholly-Owned Subsidiary



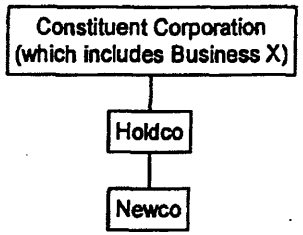
- Original Corporation, which is an operating company and a parent company, creates Newco, a wholly-owned subsidiary.
- Original Corporation drops the assets of Business X into Newco.

Result



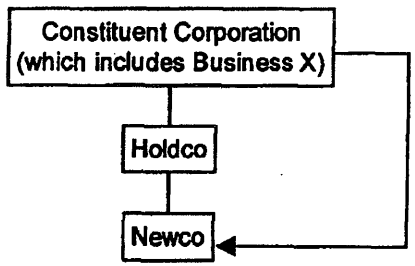
Merger With a Wholly-Owned Subsidiary

Step 1



- Constituent Corporation creates Holdco, a wholly-owned subsidiary. The articles and by-laws of Holdco mirror the Constituent Corporation articles and by-laws.
- Holdco creates Newco, a wholly-owned subsidiary.

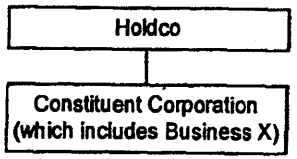
Step 2



- Constituent Corporation merges with Newco. Constituent Corporation is the surviving entity.
- Each outstanding share of Constituent Corporation stock is converted into a share of Holdco. The shares of Holdco owned by Constituent Corporation are cancelled. As a result, the shareholders of Constituent Corporation become shareholders of Holdo holding the same interest in Holdco as they held in Constituent Corporation prior to the merger.
- The outstanding shares of Newco are changed into shares of Constituent Corporation. As a result, Constituent Corporation becomes a wholly-owned subsidiary of Holdco.

Merger With a Wholly-Owned Subsidiary

Result



State of Wisconsin
2003 – 2004 LEGISLATURE

LRBa0888/P1
RJM:

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 218

At the locations indicated, amend the bill as follows:

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

"**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.

History: 1989 a. 303; 1991 a. 16; 2001 a. 44.

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 will issue 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 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 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, when used in reference to a limited liability company, the limited liability company's operating agreement.

(d) "Parent corporation" means a corporation owning 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, resulting from 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 parent 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 parent corporation indirectly through one or more business entities or directly.

(2) MERGER AUTHORIZED. Unless the articles of incorporation specifically provide otherwise, 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 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 fraction of a share of the parent corporation is converted in the merger into a share or equal fraction of a share of a holding company having the same designation, preferences, limitations, and relative rights as the share of the parent corporation.

(c) Except as otherwise provided in this paragraph, the articles of incorporation and bylaws of the holding company immediately after the merger contain provisions identical to the articles of incorporation and bylaws of the parent corporation immediately before 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. If s. 180.1706 (2) and (3) apply to the parent corporation, pursuant to s. 180.1706 (1), immediately before the merger the articles of incorporation and bylaws of the holding company immediately after the merger shall contain provisions implementing s. 180.1706 (2) and (3).

(d) The surviving entity is a wholly-owned subsidiary of the holding company.

(e) The directors of the parent corporation immediately before the merger are the directors of the holding company immediately after the merger.

(f) Except as otherwise provided in this paragraph, the organizational documents of the surviving entity immediately after the merger contain provisions identical to the articles of incorporation of the parent corporation immediately before the merger. This requirement does not apply to provisions regarding the incorporator, incorporators, organizer, or organizers; the corporate or 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, managing members, or other members of the governing body rather than directors; provisions that are subject to amendment under s. 180.1002 or any other law permitting amendment of the articles of incorporation or operating agreement without approval of the shareholders or members. The organizational documents of the surviving entity immediately after the merger may specify a reduced number of classes and shares or other interests that the surviving entity is authorized to issue. The organizational documents of the surviving entity immediately after 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, managing members, or other members of the governing body 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 directors or managers, managing members, or other members of the governing body of the surviving entity, for which approval of the shareholders of the surviving entity would be required under this chapter if the surviving entity was 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 was 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 was 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 governing body 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 before the merger, such restrictions apply to the holding company and its shareholders to the same extent as if the holding company were the parent corporation. 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 before the merger s. 180.1141, 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, then such section does not apply to the shareholder solely by reason of the merger.

(c) If the corporate name of the holding company immediately after the merger is the same as the corporate name of the parent corporation immediately before 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 before the merger retains any right that the shareholder had immediately before the merger to institute or maintain a derivative proceeding in the right of the parent corporation.".

2. Page 14, line 13: after that line insert:

"**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.".

History: 1993 a. 112; 1995 a. 400; 2001 a. 44.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0888/P1dn
RJM:...

Senator Stepp:

Attached is the amendment you requested concerning mergers with certain indirect wholly-owned subsidiaries. The amendment is in preliminary form for your review. As you review the amendment, please note the following issues:

1. The language of the amendment is not identical to the language submitted to me. I was mindful of the desire to keep the language close to Delaware's, but there were some areas of ambiguity and overlap that I felt the need to address. Also, there were gaps that appeared unintentional and that I filled. However, it is important that the amendment be reviewed to ensure that everyone involved is as confident as I am that the draft is consistent with the Delaware language.

2. Under proposed s. 180.11045 (2), there is an exception for the case where the articles of incorporation require shareholder approval of this type of merger. However, there is no similar exception for the case where the operating agreement of the subsidiary LLC requires member approval of the merger. Do you wish to include such an exception?

3. I am unsure whether proposed s. 180.11045 (4) (a) and (b) accomplishes its intended result. It would be helpful to discuss a few hypothetical examples to ensure [redacted] these provisions are satisfactory. You may want to have Walt Skipper and his bar committee review this language, as well.

Please feel free to call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261–4454
E–mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0888/P1dn
RJM:kmg:pg

September 23, 2003

Senator Stepp:

Attached is the amendment that you requested concerning mergers with certain indirect, wholly owned subsidiaries. The amendment is in preliminary form for your review. As you review the amendment, please note the following issues:

1. The language of the amendment is not identical to the language submitted to me. I was mindful of the desire to keep the language close to Delaware's language, but there were some areas of ambiguity, wordiness, and overlap that I felt the need to address. Also, there were gaps that appeared to be unintentional and that I filled. However, it is important that the amendment be reviewed to ensure that everyone involved is as confident as I am that the draft is consistent with the Delaware language.

2. Under proposed s. 180.11045 (2), there is an exception for the case where the articles of incorporation require shareholder approval of this type of merger. However, there is no similar exception for the case where the operating agreement of the subsidiary LLC requires member approval of the merger. Do you wish to include such an exception?

3. I am unsure whether proposed s. 180.11045 (4) (a) and (b) accomplishes its intended result. It would be helpful to discuss a few hypothetical examples to ensure that these provisions are satisfactory. You may want to have Walt Skipper and his bar committee review this language, as well.

Please feel free to call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261–4454
E–mail: robert.marchant@legis.state.wi.us

Hurley, Peggy

From: Manley, Scott
Sent: Tuesday, January 27, 2004 12:43 PM
To: Hurley, Peggy
Subject: Amendment to SB 218

Peggy,

Attached below is the language for the amendment to SB 218. Please call me if you have any questions.

Scott Manley


Redline7.doc

At the locations indicated, amend the bill as follows:

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

"**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 ~~will issue~~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, ~~resulting from~~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 ~~parent~~ 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 ~~parent~~ 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.

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~~were 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 ~~was~~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 ~~governing body~~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 ~~before~~prior to the effective time of the merger, such restrictions apply to the holding company and its shareholders immediately

Hurley, Peggy

From: Manley, Scott
Sent: Monday, February 02, 2004 11:01 AM
To: Hurley, Peggy
Subject: Revision to SB 218 Amendment

Peggy,

Senator Stepp would like to request a change to the language I sent you last week for the amendment to SB 218. Specifically, on page 3 of the language I sent you, the amendment proposes to change wording in s. 180.11045(2)(c). There is repetitive language toward the very end of that section that should be deleted, as this language appears elsewhere in the draft. Therefore, the very last sentence in paragraph (c) should be changed to read as follows:

If s. 180.1706(2) and (3) apply to the parent corporation, pursuant to s. 180.1706(1), immediately prior to the effective time of the merger, the articles of the incorporation of the holding company immediately following the effective time of the merger ~~and 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).

Thank you, and please call me if you have any questions.

Scott Manley
Chief of Staff
Senator Cathy Stepp
State Capitol, Room 7 South
(608) 266-1832

LRBa0888/P1
RJM:kmg:pg

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 218

At the locations indicated, amend the bill as follows:

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

"**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 will issue 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 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 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, when used in reference to a limited liability company, the limited liability company's operating agreement.

(d) "Parent corporation" means a corporation owning 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, resulting from 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 parent 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 parent corporation indirectly through one or more business entities or directly.

Or the parent corporation is a statutory close corporation under ss. 180.1801 to 180.1837,

of the parent corporation

(2) MERGER AUTHORIZED. Unless the articles of incorporation specifically provide otherwise, 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.

Insert A7

(b) Each share or fraction of a share of the parent corporation is converted in the merger into a share or equal fraction of a share of a holding company having the same designation, preferences, limitations, and relative rights as the share of the parent corporation.

(c) Except as otherwise provided in this paragraph, the articles of incorporation and bylaws of the holding company immediately after the merger contain provisions identical to the articles of incorporation and bylaws of the parent corporation immediately before 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. If s. 180.1706 (2) and (3) applies to the parent corporation, pursuant to s. 180.1706 (1), immediately before the merger, the articles of incorporation and bylaws of the holding company immediately after the merger shall contain provisions implementing s. 180.1706 (2) and (3).

prior to the effective time of

Immediately following the effective time of the merger, the

(d) The surviving entity is a wholly owned subsidiary of the holding company.

(e) The directors of the parent corporation immediately before the merger are the directors of the holding company immediately after the merger.

following the effective time of

(f) Except as otherwise provided in this paragraph, the organizational documents of the surviving entity immediately after the merger contain provisions identical to the articles of incorporation of the parent corporation immediately before the merger. This requirement does not apply to provisions regarding the incorporator, incorporators, organizer, or organizers; the corporate or 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, managing members, or other members of the governing body rather than directors; provisions that are subject to amendment under s. 180.1002 or any other law permitting amendment of the articles of incorporation or operating agreement without approval of the shareholders or members. The organizational documents of the surviving entity immediately after the merger may specify a reduced number of classes and shares or other interests that the surviving entity is authorized to issue. The organizational documents of the surviving entity immediately after the merger shall contain provisions that specifically refer to this paragraph and that require all of the following:

Insert B

1. That any act, other than the election or removal of directors or managers, managing members, or other members of the governing body 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 directors or managers, managing members, or other members of the governing body of the surviving entity, for which approval of the shareholders of the surviving entity would be required under this chapter if the surviving entity was 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 was 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 was 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 governing body 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: as the corporation existed immediately prior to the consummation of the merger

(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 before the merger, such restrictions apply to the holding company and its shareholders to the same extent as if the holding company were the parent corporation. 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 before the merger s. 180.1141, 180.1142, or 180.1150 did not apply to a shareholder of the parent corporation, then such section does not apply to the shareholder solely by reason of the merger.

(c) If the corporate name of the holding company immediately after the merger is the same as the corporate name of the parent corporation immediately before 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 before the merger retains any right that the shareholder had immediately before the merger to institute or maintain a derivative proceeding in the right of the parent corporation.

prior to the effective time of

immediately following the effective time of the merger

prior to the effective time of

as a shareholder of the holding company

following the effective time of

prior to the effective time of

Insert C

Insert DPE

2. Page 14, line 13: after that line insert:

"**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.".

(END)

Insert A

(b) Each share or ~~fraction of a share~~ 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 ~~fraction~~ interest of a ~~share of~~ corporation that was a ~~holding company~~ 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, ~~the articles of incorporation and bylaws~~ immediately following the effective time of the merger, the organizational documents of the holding company ~~immediately after~~ issuing shares in the merger pursuant to sub. (2) (b) shall contain provisions identical to the ~~articles of incorporation and bylaws~~ organizational documents of the parent corporation immediately ~~before~~ 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~~ applies to the parent corporation, pursuant to s. 180.1706 (1), immediately ~~before~~ prior to the effective time of the merger, the articles of incorporation ~~and bylaws~~ of the holding company immediately ~~after~~ following the effective time of the merger and 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).

(d) ~~The~~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 ~~before~~prior to the effective time of the merger are the directors of the holding company immediately ~~after~~following the effective time of the merger.

(f) Except as otherwise provided in this paragraph, the organizational documents of the surviving entity immediately ~~after~~following the effective time of the merger shall contain provisions identical to the ~~articles of incorporation~~organizational documents of the parent corporation immediately ~~before~~prior to the effective time of the merger. ~~This~~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 ~~corporate or~~ 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 ~~managing members, or other members of the governing body~~ rather than directors; and provisions that are subject to amendment under ~~s. 180.1002 or~~ any ~~other~~ law permitting amendment of the ~~articles of incorporation~~ operating agreement without approval of the ~~shareholders or~~ members. The organizational documents of the surviving entity immediately ~~after~~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 ~~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 surviving entity immediately following the effective time of the merger shall contain provisions implementing that sentence. If s. 180.1706 (2) and (3) apply 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 ~~after~~ 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~~, managing members, or other members of the governing body~~ of the surviving entity, for which approval of the shareholders or members of the surviving entity is required under this chapter, ch. ~~183,~~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 directors or managers~~, managing members, or other members of the governing body~~ of the surviving entity, for which approval of the shareholders of the surviving entity would be required under this chapter if the surviving entity ~~was~~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 ~~was~~were a corporation.

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. 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 ~~before~~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, ~~then~~ 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 ~~after~~following the effective time of the merger is the same as the corporate name of the parent corporation immediately ~~before~~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 ~~before~~prior to the effective time of the merger retains any right that the shareholder had immediately ~~before~~prior to the effective time of the merger to institute or maintain a derivative proceeding in the right of the parent corporation."

Insert C

(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) (f) shall give rise to dissenters' rights pursuant to ss. 180.1301 to 180.1331 for the shareholders or the beneficial shareholders of the holding company or any successor to the holding company.

all plain text

Insert C, cont — all plain text

(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."

2. Page 14, line 13: after that line insert:

"**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 part 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."

3. Page 11, line 16: after that line insert:

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

180.1130 **(3)** (a) "Business combination" means any of the following:

Insert D, cont

plain text, except where noted

(intro.)

underline

180.1130 (3) (a) 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:

1. A significant shareholder.

2. Any other corporation, whether or not itself a significant shareholder, which is, or after the merger or share exchange would be, an affiliate of a significant shareholder that was a significant shareholder before the transaction.

PWF

Insert E

4. Page 13, line 5: after that line insert: ~~sub. (4) and s. 55.~~

plain text, except where noted

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

underline

180.1302 **(1)** Except as provided in s. 180.1008 (3) and s. 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:".

PWF

(END)

State of Wisconsin
2003 – 2004 LEGISLATURE

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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 218

In 2-16-04

At the locations indicated, amend the bill as follows:

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

"**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 directors or managers of the governing body 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) (f) shall give rise to dissenters' rights pursuant to ss. 180.1301 to 180.1331 for the shareholders or the beneficial 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.".

2. Page 11, line 16: after that line insert:

"**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:".

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

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

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:".

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

"**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.".

(END)

State of Wisconsin
2003 – 2004 LEGISLATURE

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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

SENATE AMENDMENT ,

TO 2003 SENATE BILL 218

today - no changes; just 11

At the locations indicated, amend the bill as follows:

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

"**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) (f) shall give rise to dissenters' rights pursuant to ss. 180.1301 to 180.1331 for the shareholders or the beneficial 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.".

2. Page 11, line 16: after that line insert:

"**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:".

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

"**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:".

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

"**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.".

(END)