

1973 Assembly Bill 417

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CHAPTER 128 , Laws of 1973

AN ACT to renumber 181.07 (3); to renumber and amend 181.04 (15); to amend 181.04 (7) and (9), 181.06 (3) and (4), 181.20 (1), 181.27 (1), 181.31 (1) (c) and (h), 181.32, 181.35, 181.47 (2), 181.49, 181.59, 181.63, 181.65, 611.07 (1), 611.10, 611.57, 611.62 (2) and (4) and 611.63 (1); to repeal and recreate 181.04 (13) and 181.46; and to create 181.04 (15), 181.045, 181.06 (5), 181.07 (3), 181.09 (3) and (4), 181.225, 181.295, 181.45 (3), 181.67 (6) and 181.705 of the statutes, relating to various changes in the laws on nonstock corporations and related changes affecting insurance corporations.

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

SECTION 1. 181.04 (7) and (9) of the statutes are amended to read:

181.04 (7) To make contracts, including guarantees, and incur liabilities; to borrow money at such rates of interest as the corporation may determine; to issue its notes, bonds and other obligations; and to secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To conduct its business and affairs, carry on its operations, and have offices and exercise the powers granted by this chapter ~~in any state, territory, district, or possession of the United States, or in any foreign country~~ within or without this state.

SECTION 2. 181.04 (13) of the statutes is repealed and recreated to read:

181.04 (13) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

SECTION 3. 181.04 (15) of the statutes is renumbered 181.04 (16) and amended to read:

181.04 (16) To have and exercise all powers necessary or convenient to effect ~~any or all of the~~ its purposes for which the corporation is organized.

SECTION 4. 181.04 (15) of the statutes is created to read:

181.04 (15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans and other incentive plans for directors, officers and employes of the corporation and its subsidiaries.

SECTION 5. 181.045 of the statutes is created to read:

181.045 Indemnification of officers, directors, employes and agents. (1) A corporation shall have power to indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise

against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employe or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in sub. (1) or (2), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith.

(4) Any indemnification under sub. (1) or (2), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employe or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in sub. (1) or (2). Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding;

(b) If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

(c) By the members.

(5) Expenses, including attorneys' fees, incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in sub. (4) upon receipt of an undertaking by or on behalf of the director, officer, employe or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(6) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employe or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(7) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employe or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employe or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

SECTION 6. 181.06 (3) and (4) of the statutes are amended to read:

181.06 (3) Shall not be the same as or deceptively similar to the name of any corporation, whether profit or nonprofit, existing under any law of this state, or any

foreign corporation, whether profit or nonprofit, authorized to transact business or conduct affairs in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter, or ch. 180, except that this subsection shall not apply if the applicant files with the secretary of state either of the following:

(a) The written consent of such other corporation or holder of a reserved name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

~~(4) The provisions of this section Subsections (1), (2) and (3) shall not apply to any corporation organized under the provisions of any other chapter of the statutes which may elect to become subject to this chapter.~~

SECTION 7. 181.06 (5) of the statutes is created to read:

181.06 (5) A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all of the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business or conduct affairs in, this state.

SECTION 8. 181.07 (3) of the statutes is renumbered 181.07 (5).

SECTION 9. 181.07 (3) of the statutes is created to read:

181.07 (3) Any corporation, domestic or foreign entitled to the use of its corporate name under the laws of this state, may upon merger, consolidation, change of name or dissolution reserve the exclusive right to such corporate name for a period of not to exceed 10 years by then filing with the secretary of state an application to reserve the right to such name, executed by the corporation.

SECTION 10. 181.09 (3) and (4) of the statutes are created to read:

181.09 (3) In lieu of change pursuant to subs. (1) and (2), a corporation may change the name or address of its registered agent, or both, by setting forth the name and address of its registered agent, as changed, in articles of amendment of its articles of incorporation or in restated articles of incorporation filed and recorded as provided in this chapter.

(4) If a registered agent's address is changed to another place within the county, such change of address may be indicated by executing and filing a statement as required in sub. (1), except it need be signed only by the registered agent and need not be responsive to sub. (1) (c) and shall state that a copy of the statement has been mailed to the corporation.

SECTION 10m. 181.20 (1) of the statutes is amended to read:

181.20 (1) The number of directors of a corporation shall not be less than 3. Subject to such limitation, the number of directors shall be fixed by or in the manner provided in the articles of incorporation, or, if the articles of incorporation so provide, by or in the manner provided in the by-laws bylaws.

SECTION 11. 181.225 of the statutes is created to read:

181.225 Director conflicts of interest. No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or has a material financial interest, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if 1) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or 2) the fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or 3) the contract or transaction is fair and reasonable to the corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

SECTION 12. 181.27 (1) of the statutes is amended to read:

181.27 (1) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its principal office or at the office of its secretary a record giving the names and addresses of members entitled to vote, or records showing where such information can be obtained. Any books, records or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. All relevant books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

SECTION 13. 181.295 of the statutes is created to read:

181.295 Members' derivative actions. (1) No action may be instituted or maintained in the right of any corporation by a member of such corporation unless:

(a) The plaintiff alleges in the complaint that he was a member at the time of the transaction or any part thereof of which he complains, or that his membership thereafter devolved upon him by operation of law from a member who was a member at the time of the transaction or any part thereof complained of.

(b) The plaintiff alleges in the complaint with particularity his efforts to secure from the board of directors such action as he desires and alleges further that he has either informed the corporation or such board of directors in writing of the ultimate facts of each cause of action against each such defendant director or delivered to the corporation or such board of directors a true copy of the complaint which he proposes to file, and the reasons for his failure to obtain such action or the reasons for not making such effort.

(c) The complaint in any such action shall be filed within 20 days after the action is commenced.

(2) The action shall not be dismissed or compromised without the approval of the court.

(3) If anything is recovered or obtained as the result of the action whether by means of a compromise and settlement or by a judgment, the court may, out of the proceeds of the action, award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and may direct the plaintiff to account to the corporation for the remainder of such proceeds.

(4) In any action brought in the right of any corporation by fewer than 3% of the members, the defendants shall be entitled on application to the court to require the plaintiff or plaintiffs to give security for the reasonable expenses, including attorney's fees. The amount of such security may thereafter from time to time be increased or decreased in the discretion of the court having jurisdiction of such action upon showing that the security provided has or may become inadequate or is excessive.

SECTION 14. 181.31 (1) (c) and (h) of the statutes are amended to read:

181.31 (1) (c) The purpose or purposes for which the corporation is organized. It shall be a sufficient compliance with this paragraph to state, either alone or with other purposes, that the corporation may engage in any lawful activity within the purposes for which corporations may be organized under this chapter, and all such lawful activities shall by such statement be deemed within the purposes of the corporation, subject to expressed limitations, if any.

(h) ~~The number of directors constituting the initial board of directors or manner of fixing the number of directors, or a provision that the number of directors shall be fixed by or in the manner provided in the bylaws, and the name and address of each such director of the initial directors.~~

SECTION 15. 181.32 of the statutes is amended to read:

181.32 Filing and recording of articles of incorporation. Duplicate originals of the articles of incorporation shall be filed in the office of the secretary of state, and recorded in the office of the register of deeds of the county in which the principal office of the corporation is located, and upon leaving such duplicate original for record, the legal existence of such corporation shall begin. Upon receipt of the certificate of such register of deeds that such duplicate original has been recorded, the secretary of state shall issue a certificate of incorporation. Certified duplicate original articles or copies certified by a register of deeds or the secretary of state of articles of incorporation may also be recorded in other counties than the county in which the principal office of the corporation is located.

SECTION 15m. 181.35 of the statutes is amended to read:

181.35 Right to amend articles of incorporation. A corporation may amend its articles of incorporation in any and as many respects as may be desired, provided that ~~the amendment does not change substantially the original purposes of the corporation and that~~ its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation if made at the time of making such amendment.

SECTION 16. 181.45 (3) of the statutes is created to read:

181.45 (3) The certificate of merger or consolidation shall be issued by the secretary of state upon expiration of the period for filing a certificate of abandonment, and after receipt of the requisite certificates from the registers of deeds.

SECTION 17. 181.46 of the statutes is repealed and recreated to read:

181.46 Effective date of merger or consolidation; abandonment. The merger or consolidation shall be effected upon the due recording of the articles of merger or consolidation, or at such time within 31 days thereafter as is designated in said articles. If, after the filing of articles of merger or consolidation, the merger or consolidation is abandoned pursuant to provisions therefor set forth in the plan of merger or consolidation, there shall be executed by the president or a vice president and the secretary or an assistant secretary of each corporation, and shall be sealed with the

corporate seal of each corporation, a certificate of abandonment setting forth the fact and date of such abandonment; and such certificate shall within 30 days of such abandonment be filed in the office of the secretary of state and recorded in each office in which such articles of merger or consolidation were recorded.

SECTION 18. 181.47 (2) of the statutes is amended to read:

181.47 (2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease. The authority of the officers of any corporation, the separate existence of which has so ceased, to act thereafter on behalf of such corporation shall continue with respect to the due execution in the name of such corporation of tax returns, instruments of transfer or conveyance and other documents where the execution thereof is required or convenient to comply with any provision of law, of any contract to which such corporation was a party or of the plan of merger or consolidation.

SECTION 19. 181.49 of the statutes is amended to read:

181.49 (title) Sale, lease or exchange of assets. (1) A sale, lease, exchange, ~~mortgage, pledge~~ or other disposition of less than substantially all of the property and assets of a corporation, and the mortgage or pledge of any or all property and assets of a corporation, whether or not made in the usual and regular course of its affairs, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of property, real or personal, including shares, obligations or other securities of any other corporation for profit, domestic or foreign, whether or not such other corporation is organized under this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the members shall be required, unless otherwise provided by law or in the articles of incorporation.

(2) A sale, lease, exchange, ~~mortgage, pledge~~ or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations or other securities of any corporation for profit, domestic or foreign, whether or not such other corporation is organized under this chapter, as may be authorized in the following manner:

(a) Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, ~~mortgage, pledge~~ or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, ~~mortgage, pledge~~ or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, ~~mortgage, pledge~~ or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of at least two-thirds of the members present or represented by proxy at such meeting. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, ~~mortgage, pledge~~ or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(b) Where there are no members, or no members having voting rights, a sale, lease, exchange, ~~mortgage, pledge~~ or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

SECTION 20. 181.59 of the statutes is amended to read:

181.59 Qualifications of receivers. A receiver shall in all cases be a ~~citizen of the United States~~ natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

SECTION 21. 181.63 of the statutes is amended to read:

181.63 Filing of decree of dissolution. In case the court enters a decree dissolving a corporation the clerk of such court shall cause a certified copy of the decree to be filed and recorded. Upon receipt of the certificate of the register of deeds the secretary of state shall issue a certificate of dissolution. No fee shall be charged for such filing or recording.

SECTION 22. 181.65 of the statutes is amended to read:

181.65 Survival of remedy after dissolution. The dissolution of a corporation shall not take away or impair any remedy available to or against such corporation, its directors, officers or members, for any right or claim existing or any liability incurred, prior to such dissolution if suit action or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any such suit action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as ~~shall be~~ is appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 2 years so as to extend its period of duration.

SECTION 23. 181.67 (6) of the statutes is created to read:

181.67 (6) The secretary of state may waive any omission of or deficiency in any recital of fact required under this chapter or otherwise made in such document, if under the particular circumstances it appears to him without burdensome investigation or inquiry that the vote was in fact sufficient or that such other omission or deficiency is not material. Such waiver shall be conclusively evidenced by his acceptance of such document for filing, either with or without notation thereon by him in respect thereto, and thereupon the form of such document shall be deemed in compliance with this chapter.

SECTION 24. 181.705 of the statutes is created to read:

181.705 When notice not required. Section 180.895 shall apply to corporations subject to this chapter.

SECTION 25. 611.07 (1) of the statutes is amended to read:

611.07 (1) POWERS. Section 180.04 (1) to (12), (14), (15) and (17) ~~applies~~ apply to stock corporations and s. 181.04 (1) to ~~(12)~~, (14) and ~~(15)~~ applies (16) apply to mutuals.

SECTION 26. 611.10 of the statutes is amended to read:

611.10 Reservation of corporate name. Section 180.08 applies to stock corporations and s. 181.07 applies to mutuals. For such purposes references therein to "this chapter" shall include ch. 611.

SECTION 27. 611.57 of the statutes is amended to read:

611.57 Interlocking directorates and other relationships. No person may simultaneously be a director or officer in one insurance corporation and a director, officer, employe or agent for another insurer if the effect is to lessen competition substantially or if the 2 insurers have materially adverse interests.

SECTION 28. 611.62 (2) and (4) of the statutes are amended to read:

611.62 (2) INDEMNIFICATION. Section 180.05 applies to stock ~~and mutual~~ corporations and s. 181.045 applies to mutuals but no indemnification may be made until at least 30 days after notice to the commissioner, containing full details about the proposed indemnification.

(4) (title) DERIVATIVE ACTIONS. Section 180.405 applies to stock corporations and s. 181.295 applies to mutuals.

SECTION 29. 611.63 (1) of the statutes is amended to read:

611.63 (1) GENERAL POWER. Subject to this section, ss. 180.04 (16) and 180.31 apply to stock ~~and mutual~~ corporations and ss. 181.04 (15) and 181.19 apply to mutuals.

SECTION 30. If this act and 1973 senate bill 175 are both enacted, the amendment of section 611.07 (1) of the statutes by this act shall stand.
