TITLE XVII.

Corporations.

CHAPTER 180.

BUSINESS CORPORATIONS.

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180.01 Title. This chapter shall be known and may be cited as the "Wisconsin Business Corporation Law".

History: 1951 c. 731.

180.02 Definitions. As used in this chapter, unless the context otherwise requires, the term:

(1) "Corporation" or "domestic corporation" means a corporation organized for profit with capital stock which is subject to the provisions of this chapter, except a foreign corporation; and also means, to the extent provided in section 180.97, a corporation with capital stock but not organized for profit.

(2) "Foreign corporation" means a corporation, joint stock company or association organized otherwise than under the laws of this state, except a railroad corporation, an association created solely for religious or charitable purposes, an insurance company or fraternal or beneficiary corporation, society, order or association furnishing life or casualty insurance or indemnity upon the mutual or assessment plan, a building and loan association, a common law trust, or a corporation not organized or conducted for profit.

(3) "Articles of incorporation" includes the original articles of incorporation, or special law or charter corresponding thereto, and all amendments, and includes restated articles of incorporation.

(4) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Shareholder" means one who is a holder of shares in a corporation.

(7) "Authorized shares" means the shares of all classes which the corporation is authorized by its articles of incorporation to issue.

(8) "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or otherwise, been cancelled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares.

(9) "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation.

(10) "Stated capital" means, at any particular time, the sum of (a) the par value of all shares of the corporation having a par value that have been issued, (b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (c) such amounts not included in (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law.

(11) "Earned surplus" means the balance of the net profits, income, gains and losses of a corporation from the date of incorporation, or from the latest date when a deficit in earned surplus was eliminated by an application of its capital surplus or stated capital

or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus. Profits, income or gains arising from transactions in shares of the corporation, and losses thereon when charged to capital surplus, do not constitute a part of earned surplus.

(12) "Capital surplus" means the excess of the net assets of a corporation plus the cost of its treasury shares, over its stated capital plus its earned surplus or minus its deficit in earned surplus.

(13) "Net capital surplus" means the capital surplus of a corporation less any deficit in earned surplus.

(14) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

History: 1951 c. 731; 1953 c. 399.

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

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

180.03 Purposes. Corporations may be organized under this chapter for any lawful business or purpose whatever, except banking, insurance and building or operating public railroads, but subject always to provisions elsewhere in the statutes relating to the organization of specified kinds or classes of corporations.

History: 1951 c. 731.

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

180.04 General powers. Each corporation, when no inconsistent provision is made by law or by its articles of incorporation, shall have power:

(1) To exist perpetually.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, and to own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other corporations wherever organized, and of associations, trusts, partnerships, or individuals, or of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality thereof, but no corporation may subscribe for, take or hold more than 10 per cent of the capital stock of any state bank or trust company unless 75 per cent of the shares entitled to vote of each corporation shall vote in favor thereof at a meeting called for that purpose.

(7) To make contracts 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.

(8) To invest its funds from time to time and to lend money for its corporate purposes, and to take and hold real and personal property as security for the payment of funds so invested or loaned.

(9) To conduct its business, 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.

(10) To elect or appoint officers and agents of the corporation, and to define their duties and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(12) To make donations for the public welfare or for charitable, scientific, educational or religious purposes.

(13) In time of war to transact any lawful business in aid of the United States in the prosecution of the war.

(14) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any by-law, agreement, vote of shareholders, or otherwise.

(15) To cease its corporate activities and surrender its corporate franchise.

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

History: 1951 c. 731.

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

180.06 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.

(3) In a proceeding by the attorney-general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney-general to enjoin the corporation from the transaction of unauthorized business.

History: 1951 c. 731.

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

180.07 Corporate name. The corporate name:

(1) Shall contain the word "corporation," "incorporated" or "limited," or an abbreviation of one of such words; this subsection shall apply only to corporations organized after the enactment of this chapter;

(2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than a purpose for which corporations may be organized under this chapter;

(3) Shall not be the same as or deceptively similar to the name of any corporation existing under any law of this state, or any foreign corporation authorized to transact

business in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter.

History: 1951 c. 731.

Revision Committee Note, 1951: 180.02 (1) (b) (1949) requires that the corporate name not contain the names of individuals in such manner as to indicate that the corporation is a partnership or sole proprietorship. 180.07 achieves the same end by providing that "corporation", "incorporated" or "limited", or an abbreviation thereof, be included in the name, excepting from this requirement corporations organized prior to the enactment of this chapter. (2) introduces a new requirement and (3) merely restates a portion of 180.02 (1) (b) (1949). (Bill 763-S)

180.08 Reserved name. (1) The exclusive right to the use of a corporate name may be reserved by:

(a) Any person intending to organize a corporation under this chapter.

(b) Any domestic corporation intending to change its name.

(c) Any foreign corporation intending to make application for a certificate to transact business in this state.

(d) Any foreign corporation authorized to transact business in this state and intending to change its name.

(e) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

(2) The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 60 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

(4) The filing with the secretary of state of articles of incorporation or of an amendment thereof changing the corporate name constitutes a reservation of the corporate name set forth therein for a period of 65 days from such filing.

History: 1951 c. 731.

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

180.09 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

History: 1951 c. 731.

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

180.10 Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, by executing, filing and recording a statement setting forth:

(a) The name of the corporation;

(b) The address, including street and number, if any, of its then registered office;

(c) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent be changed, the name of its successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) That such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by a principal officer of the corporation and the corporate seal shall be thereto affixed. If its new registered office is to be located in a county different from that in which its then registered office is located, an original of the above statement, or a copy of the filed original certified by the secretary of state, shall be recorded in both counties and the original articles with amendments thereto or restated articles, or certified copies thereof, shall be recorded in the county of the new registered office.

(3) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective on completion of the filing and recording herein required.

History: 1951 c. 731.

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

180.105 Resignation of registered agent. (1) A registered agent may resign by executing a statement setting forth:

(a) The name of the corporation for which the registered agent is acting.

(b) The name of the registered agent.

(c) The address, including street and number, if any, of the corporation's then registered office in this state.

(d) That the registered agent resigns.

(2) Such statement shall be executed by the registered agent, if an individual, and, if a corporation or a foreign corporation, by a principal officer and the corporate seal of such corporate registered agent shall be affixed thereto.

(3) Such statement shall be filed and recorded. At the time of filing, a triplicate shall be delivered to the secretary of state. On receipt from the register of deeds of the certificate showing the recording of the duplicate original of the statement, the secretary of state shall note on the triplicate the date of recording and mail the same to the corporation at its principal place of business as shown by the records in his office.

(4) If no change of registered agent is previously made, the resignation shall be effective on the expiration of 60 days after the date of recording the statement, and the office of the resigned registered agent shall then cease to be the registered office of the corporation.

History: 1953 c. 399.

180.11 Registered agent as an agent for service. (1) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

(2) Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office.

(3) The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. The certificate of the secretary of state that he was served with any such process, notice or demand, and that he mailed same as required by law, shall be evidence of service.

(4) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History: 1951 c. 731.

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

180.12 Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of the shares of any class to the extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(c) Having preference over any other class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(e) Convertible into authorized shares of any other class or into authorized shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

(3) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The rate of dividend;

(b) The price at and the terms and conditions on which shares may be redeemed;

(c) The amount payable upon shares in event of voluntary or involuntary liquidation;

(d) Sinking fund provisions for the redemption or purchase of shares;

(e) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

(4) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established. Duplicate copies of a resolution adopted by the directors pursuant to this section with a certificate thereto affixed, signed by the president or a vice president and the secretary or an assistant secretary and sealed with the corporate seal, stating the fact and date of adoption, and that such copies are true copies of the original 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 registered office of the corporation is located, and when so filed and recorded shall constitute an amendment to the articles of incorporation.

(5) Unless otherwise provided by the articles of incorporation, any authority so vested in the board of directors to divide a class into series shall include authority to reclassify into one or more other series of such class, any treasury shares or any authorized but unissued shares, including shares restored to that status upon cancellation, of any previously established series of such class. Whenever shares of any series are so reclassified, the certificate filed and recorded as above provided shall state the number, designation of class and former series of the shares so reclassified, whether such shares are treasury shares or authorized but unissued shares, and the number thereof which have been restored to that status upon cancellation, and the number of authorized shares of each series of such class after such reclassification.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: The first sentence of (1) contains a power which is implicit in 180.02 (1) (d) (1949). The second sentence of (2) permits one or more classes of stock while 1949 statutes only permit common and preferred stock although 182.14 (1) (1949) permits nonpar stock to be divided into classes which have different voting power. The classification under 180.12 is much broader than 182.14 (1) (1949) which permits classification as to voting rights only; any class may be nonpar while 182.14 (1) (1949) permits nonpar common but expressly forbids nonpar preferred. The third sentence of (3) follows the theory of 182.13 (1949) in permitting the denial of voting rights but extends such right of denial to any class—not just to preferred. The rest of the section is a more detailed statement of the nature of limitations, relative rights, etc. than is found in 182.13 (1949) but the theory is the same as 182.13 (1949). (4) permits classification in series and authorizing the delegation of power to directors to fix designations, preferences, powers, etc. (4) adopts the theory of 182.13 (1949) although the language varies considerably. (Bill 763-S)

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

In an action by a corporation to compel a holder of preferred stock to recognize the corporation's redemptive rights in such stock on payment to the defendant of the par value thereof plus a certain premium under articles of incorporation requiring "payment of all dividends due to the date of redemption," wherein the defendant's answer and affidavits set forth the equitable defense that the plaintiff's controlling stockholder in fraud of the defendant's rights so manipulated the plaintiff's affairs as to avoid the payment of dividends on preferred stock and then sought to exercise the redemption privilege when the plaintiff's financial condition became such that the payment of such dividends could no longer be escaped, and the facts were in dispute as to whether the plaintiff did have a surplus sufficient to permit the payment of

cumulative dividends at the time of redemption, the case cannot be disposed of by summary judgment, since such issue of fact must be determined by trial. Lawrence Investment Co. v. Wenzel & Henoch Co. 263 W 13, 56 NW (2d) 507.

180.13 Subscriptions for shares. (1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months unless otherwise provided by the terms of the subscription agreement, or unless all of the subscribers consent to the revocation of such subscription.

(2) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such instalments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or series. In case of default in the payment of any instalment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The by-laws may prescribe other penalties for failure to pay instalments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand, which shall include notice of such penalty. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation, with the postage thereon prepaid. In the event of the sales of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

History: 1951 c. 731.

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

180.14 Consideration for shares. (1) Shares having a par value may be issued for such consideration, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(2) Shares without par value may be issued for such consideration as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

(3) Treasury shares may be disposed of by the corporation for such consideration as may be fixed from time to time by the board of directors.

(4) That part of the unreserved earned surplus or net capital surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares. The consideration for shares issued in exchange for or on conversion of other shares shall be deemed to be (a) the stated capital then represented by the shares so exchanged or converted, and (b) that part of unreserved earned surplus or net capital surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted, and (c) any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

History: 1951 c. 731; 1953 c. 399.

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

180.15 Payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid, and nonassessable by the corporation.

(2) The promissory note of any subscriber shall not constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History: 1951 c. 731.

Revision Committee Note, 1951: The first sentence of (1) employs language similar to 182.06 (1949) and 182.14 (1949). The second sentence of (1) has no counterpart. (2) has no counterpart unless a promissory note were considered not to be "property" within the meaning of that term as used in 182.06 (1949) and 182.14 (1949). (3) has no counterpart. (Bill 763-S)

180.16 Determination of amount of stated capital. (1) In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

(2) In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Prior to or within 60 days after the issuance of any shares without par value, the board of directors may allocate to capital surplus not more than 25 per cent of the consideration received or to be received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

(3) The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the unreserved earned surplus or net capital surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

History: 1951 c. 731; 1953 c. 399.

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

180.17 Expenses of organization, reorganization and financing. The reasonable charges and expenses of organization or reorganization of a corporation and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and nonassessable.

History: 1951 c. 731.

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

180.18 Certificates representing shares. (1) The shares of a corporation shall be represented by certificates signed by the president or a vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employe of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall state upon the face or back of the certificate, in full or in the form of a summary, all of the designations, preferences, limitations and relative rights, as provided by the articles of incorporation, of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority, if any, of the board of directors to fix and determine the relative rights and preferences of subsequent series. In lieu of such statement the certificate may state upon the face or back thereof the designation of each class of shares having preferences or special rights in the payment of dividends, in voting, upon liquidation or otherwise and such other information concerning such shares as may be desired and shall state that the corporation will upon request furnish any shareholder, without charge, information as to the number of such shares authorized and outstanding and a copy of the portions of the articles of incorporation containing the designations, preferences, limitations and relative rights of all shares and any series thereof.

(3) Each certificate representing shares shall also state upon the face thereof:

(a) That the corporation is organized under the laws of this state.

(b) The name of the person to whom issued.

(c) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(d) The par value of each share represented by such certificate, or a statement that the shares are without par value.

(4) No certificate shall be issued for any share until such share is fully paid.

History: 1951 c. 731.

Revision Committee Note, 1951: (1) is substantially the same as 182.055 (1949). The theory of (2) is the same as 182.13 (2) (1949) but is somewhat farther reaching. (3) and (4) have no counterpart but conform to usual corporate practices. (Bill 763-S)

180.19 Issuance of fractional shares or scrip. A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip, in registered or bearer form, which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, to participate in any of the assets of the corporation in the event of liquidation, and to exercise other rights of a shareholder. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable.

History: 1951 c. 731.

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

180.20 Liability of subscribers and shareholders for unpaid subscriptions and status of stock. (1) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

(2) Except as herein otherwise provided, shares issued in violation of the provisions of s. 180.14 and certificates issued in violation of s. 180.18 (4) may be declared void in an action brought by the corporation when such shares or certificates are owned by the person to whom so issued or by a transferee who has not paid value unless such transferee received such shares or certificates after value had been paid therefor by a prior transferee in good faith and without knowledge or notice of such violation. The person to whom shares have been issued in violation of the provisions of s. 180.14 or to whom certificates have been issued in violation of the provisions of s. 180.18 (4) and any transferee from such person who takes with knowledge of such violation or knowledge of such facts that his action in taking the shares or certificates amounted to bad faith shall be liable to the corporation to pay the amount necessary to make such shares fully paid. Any person becoming an assignee or transferee of shares or of a subscription for shares or certificates for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration. Shares issued in violation of the provisions of s. 180.14 and certificates issued in violation of s. 180.18 (4) shall be valid in the hands of a transferee in good faith and without knowledge or notice of such violation who paid value therefor and in the hands of any subsequent transferee.

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

History: 1951 c. 731; 1953 c. 399.

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

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

180.21 Shareholders' preemptive rights. Any preemptive right of a shareholder may be limited or denied to the extent provided in the articles of incorporation.

History: 1951 c. 731.

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

180.22 Bylaws. The subscribers may at their organization meeting adopt bylaws. Thereafter, by-laws may be adopted either by the shareholders or the board of directors, but no by-laws adopted by the subscribers or shareholders shall be amended or repealed by the directors, unless the bylaws adopted by the subscribers or shareholders shall have conferred such authority upon the directors. Any bylaw adopted by the board of directors shall be subject to amendment or repeal by the shareholders as well as by the directors.

History: 1951 c. 731.

Revision Committee Note, 1951: No counterpart in 1949 statutes. The section follows the Wisconsin case law and gives the stockholders the right to control bylaws. The provision differs from the Model Code which would give the authority to the directors to make and amend by-laws unless reserved to the shareholders. (Bill 763-S)

180.23 Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without the state, as may be fixed in or pursuant to the by-

laws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

(2) An annual meeting of the shareholders shall be held at such time as may be fixed in or pursuant to the bylaws, and if not so fixed, an annual meeting shall be held on each anniversary of the beginning of corporate existence. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting or by such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: 1951 c. 731.

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

180.24 Notice of shareholders' meetings. Written notice stating the place, day and hour of the meeting and in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting (unless a different time shall be provided by this chapter, the articles of incorporation or the by-laws), either personally or by mail, by or at the direction of the president, the secretary, or other officer or person calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock record books or similar records of the corporation, with postage thereon prepaid.

History: 1951 c. 731; 1953 c. 399.

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

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

180.25 Voting of shares. (1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, at any meeting and shall not be counted in determining the total number of outstanding shares at any given time, but shares of its own stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(3) A shareholder may vote either in person or by proxy appointed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

(4) Shares standing in the name of another corporation, domestic or foreign, may be voted by the president of such corporation, or any other officer or proxy appointed by such president, in the absence of express notice of the designation of some other person by the board of directors or the by-laws of such other corporation.

(5) Shares held by an administrator, executor, guardian, conservator, trustee in bankruptcy, receiver, or assignee for creditors may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a fiduciary may be voted by him, either in person or by proxy.

(6) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

History: 1951 c. 731; 1953 c. 399.

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

Revision Committee Note, 1953: The change in (2) was recommended by state banks which held shares of their own capital stock in a fiduciary capacity. It is clear that shares of its own stock held by a corporation in a fiduciary capacity are outstanding shares and are entitled to receive dividends. If such shares are outstanding for dividend purposes the same should be deemed outstanding for voting and all other purposes. The suggested amendment is identical with Section 28 of the Illinois Busi-

ness Corporation Act. This section in the 1951 statutes permitted any officer to vote corporation held stock. It was felt that such authority was too general and would lead to confusion should more than one officer claim voting rights. The present proposal represents a compromise between the 1949 law which permitted the president to vote such share, and the 1951 law which allowed any officer to so vote. (Bill 524-S)

180.26 Closing of transfer books and fixing record date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting. In lieu of closing the stock transfer books, the by-laws, or in the absence of an applicable by-law, the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the close of business on the date on which notice of the meeting is mailed or on the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote in any meeting of shareholders has been made as provided in this section, such determination shall be applied to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

History: 1951 c. 731.

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

180.27 Voting trust. Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares by entering into a written voting trust agreement specifying the terms and conditions of the voting trust by depositing a counterpart of the agreement with the corporation at its registered office and by transferring their shares to such trustee or trustees for the purposes of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

History: 1951 c. 731; 1953 c. 399.

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

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

180.28 Quorum of shareholders. Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting.

History: 1951 c. 731.

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

180.29 Voting lists. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least 10 days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of 10 days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the in-

spection of any shareholder during the whole time of the meeting. Th original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders.

(2) Failure to comply with the requirements of this section will not affect the validity of any action taken at such meeting.

History: 1951 c. 731.

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

180.30 Board of directors. The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or by-laws so require. The articles of incorporation or by-laws may prescribe other qualifications for directors.

History: 1951 c. 731.

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

180.31 Director's authority to establish compensation. Unless otherwise provided in the articles of incorporation or by-laws, the board of directors, by the affirmative vote of a majority of the directors then in office, and irrespective of any personal interest of any of its members, shall have authority to establish reasonable compensation of all directors for services to the corporation as directors, officers or otherwise, or to delegate such authority to an appropriate committee. The board of directors also shall have authority to provide for or to delegate authority to an appropriate committee to provide for reasonable pensions, disability or death benefits, and other benefits or payments, to directors, officers and employes and to their estates, families, dependents or beneficiaries on account of prior services rendered by such directors, officers and employes to the corporation.

History: 1951 c. 731; 1953 c. 399.

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

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

180.32 Number and election of directors. (1) The number of directors may be fixed by the articles of incorporation or, if the articles of incorporation so provide, by the by-laws but shall not be less than 3. The first board of directors shall consist of such number as shall be fixed by the articles of incorporation and shall be elected by the subscribers at a meeting held after the filing and recording of the articles of incorporation.

(2) At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except as hereinafter provided. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified if qualification is required.

(3) A director may be removed from office by affirmative vote of a majority of the outstanding shares entitled to vote for the election of such director, taken at a special meeting of shareholders called for that purpose. Such power of removal may be limited or denied by the articles of incorporation or by-laws.

History: 1951 c. 731; 1953 c. 399.

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

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

180.33 Classification of directors. In lieu of electing the whole number of directors annually, the articles of incorporation, or the by-laws, if the articles of incorporation so provide, may provide that the directors be divided into either 2 or 3 classes, each class to be as nearly equal in number as possible and to consist of not less than 3 directors, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be 2

classes, or until the third succeeding annual meeting, if there be 3 classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History: 1951 c. 731.

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

180.34 Vacancies. Unless the articles of incorporation or by-laws provide otherwise, any vacancy occurring in the board of directors, including a vacancy created by an increase in the number of directors, may be filled until the next succeeding annual election by the affirmative vote of a majority of the directors then in office, although less than a quorum.

History: 1951 c. 731; 1953 c. 399.

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

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

180.35 Quorum of directors. A majority of the number of directors fixed pursuant to this chapter shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation or the by-laws.

History: 1951 c. 731.

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

180.36 Committees of directors. If the articles of incorporation or by-laws so provide, the board of directors by resolution adopted by a majority of the number of directors fixed pursuant to this chapter may designate one or more committees, each committee to consist of 3 or more directors elected by the board of directors, which to the extent provided in said resolution or in the articles of incorporation or by-laws, shall have and may exercise, when the board of directors is not in session, the powers of the board of directors in the management of the business and affairs of the corporation, except action in respect to dividends to shareholders, election of officers or the filling of vacancies in the board of directors or committees created pursuant to the authority granted in this section. The board of directors may elect one or more of its members as alternate members of any such committee who may take the place of any absent member or members at any meeting of such committee. The designation of such committe or committees and the delegation thereto of authority shall not operate to relieve the board of directors or any member thereof, of any responsibility imposed upon it or him by law.

History: 1951 c. 731.

Revision Committee Note, 1951: 180.13 (2) (1949) authorizes the board of directors to appoint an executive committee with certain limitations on the powers of said committee. 180.36 authorizes the appointment of one or more committees but keeps the basic limitations on the authority of such committees which is now found in 180.13 (2) (1949). (Bill 763-S)

180.37 Place and notice of directors' meetings. (1) Unless provided otherwise in the articles of incorporation or by-laws, meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting and objects thereat to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the by-laws.

History: 1951 c. 731.

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

180.38 Dividends. (1) The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash,

property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation or in this chapter.

(2) Declarations of dividends are subject to the following provisions:

(a) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section.

(b) Dividends may be declared and paid in its own shares out of any treasury shares.

(c) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved earned surplus or net capital surplus of the corporation upon the following conditions:

1. If a dividend is payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

2. If a dividend is payable in its own shares without par value, such shares shall be issued at such value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(d) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

(3) The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the net capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

(4) A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

History: 1951 c. 731; 1953 c. 399.

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

Revision Committee Note, 1953: See note to 180.02. (Bill 524-S)

180.385 Right of corporation to acquire and dispose of its own shares. (1) Unless otherwise provided in the articles of incorporation, a corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares; provided that no such acquisition, directly or indirectly, of its own shares for a consideration other than its own shares of equal or subordinate rank shall be made unless all of the following conditions are met:

(a) At the time of such acquisition the corporation is not and would not thereby be rendered insolvent;

(b) The net assets of the corporation remaining after such acquisition would be not less than the aggregate preferential amount payable in the event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and

(c) 1. Such acquisition is authorized by the articles of incorporation or by the affirmative vote or the written consent of the holders of at least two-thirds of the outstanding shares of the same class and of each class entitled to equal or prior rank in the distribution of assets in the event of voluntary liquidation; or

2. Such acquisition is authorized by the board of directors and the corporation has unreserved and unrestricted earned surplus equal to the cost of such shares. To the extent that earned surplus is used as the measure of the corporation's right to acquire its own shares, earned surplus shall be restricted until such restriction is removed by shareholder

vote or consent as aforesaid, but such restriction shall be removed without any further corporate action a. to the extent of the consideration subsequently received upon the sale of any such shares or upon the sale of shares of the same class not held in treasury, or b. to the extent that earned surplus is reduced upon the payment of a stock dividend in treasury shares or authorized but unissued shares, or c. to the extent that earned surplus is transferred to stated capital or capital surplus.

(2) If the conditions in sub. (1) (a) and (b) are met, a corporation may, without meeting the conditions of sub. (1) (c), acquire its own shares:

(a) In redemption or purchase of its redeemable shares at not to exceed the redemption price,

(b) For the purpose of eliminating fractional shares,

(c) For the purpose of collecting or compromising indebtedness to the corporation, or

(d) For the purpose of paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter.

(3) This section has no application to any acquisition, redemption or disposition by a corporation of its own shares which was effected prior to July 1, 1953. The effect of any such transaction on the net profits, earned surplus or capital surplus of such corporation shall be determined under the law in effect at the time of such transaction.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: This section has no counterpart in the 1949 statutes. (1) (a) affords creditors of a corporation substantially the same protection now given by Wisconsin case law. (1) (b) and (c) are designed to protect holders of shares which are preferred over the shares being acquired; although there is no Wisconsin case law on the problem, our courts would probably give holders of preferred shares protection equivalent to (1) (b). (2) dispenses with stockholder approval, but preserves the requirements of (1) (a) and (b), when shares are acquired from earned surplus or for the purposes designated in (2) (b), (c) and (d). (Bill 763-S)

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

180.39 Distributions in partial liquidation. The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of stated capital or net capital surplus of the corporation, a portion of its assets, in cash or property, provided all of the following conditions are met:

(1) At the time of such distribution the corporation is not and will not thereby be rendered insolvent;

(2) Such distribution is authorized either by the articles of incorporation or by the affirmative vote or the written consent of the holders of at least two-thirds of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation;

(3) All cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends are fully paid;

(4) The net assets of the corporation remaining after such distribution will not be less than the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and

(5) Each such distribution, when made, is identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

History: 1951 c. 731; 1953 c. 399.

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

180.395 Unclaimed dividends and distributions. (1) If any amount declared by a corporation as a dividend or authorized for distribution in partial or complete liquidation or for payment in redemption of redeemable shares or in satisfaction of scrip or other rights relating to shares shall remain unclaimed by the shareholder or other person entitled thereto for a period of 6 years from the date authorized for payment thereof, the right of such shareholder or other person to receive such amount will be forfeited upon

declaration of forfeiture made by resolution of the board of directors of such corporation, and such right will then be deemed fully satisfied and dicharged and any amount set aside therefor will then revert to the corporation. This section shall not apply unless notice of the availability of such amount shall have been given by the corporation to such shareholder or any other person to whom such right was initially issued or who may be shown by the corporate records to be entitled thereto, which notice may be given at any time subsequent to the declaration or authorization thereof and at least 6 months prior to the effective date of such forfeiture, in substantially the same manner prescribed in this chapter for the giving of notice of shareholders' meetings. This section shall be a defense in any action for such amount against the corporation, its officers, directors or shareholders.

(2) This section shall be applicable to all such unclaimed amounts, whether declared or authorized for payment prior to or subsequent to July 10, 1953, except that this section shall not authorize the forfeiture prior to January 1, 1954, of any right to any such amount which would not otherwise have been forfeited or barred prior to January 1, 1954.

History: 1953 c. 399.

Revision Committee Note, 1953: This section is designed to settle definitely the status of uncashed dividend checks, dividends and similar payments owing to lost stockholders, after they have become as stale as the usual 6-year limitation period on contract claims. Court decisions leave uncertain the applicability of limitation statutes to liquidating distributions and also to ordinary dividends. Forfeiture occurs under this section only upon formal declaration thereof by the corporation. (2) allows a reasonable period before loss of unclaimed rights existing at the time of enactment. (Bill 524-S)

180.40 **Liability of directors and shareholders.** (1) In addition to any other liabilities imposed by law upon directors of a corporation:

(a) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(b) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor, without a violation of the provisions of this chapter or any restrictions in the articles of incorporation.

(c) Directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are not thereafter paid, discharged or barred by statute.

(d) Directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof, unless such directors shall sustain the burden of proof that such loan was made for a proper business purpose.

(e) If a corporation shall commence business before it has received the minimum amount of consideration required by this chapter as the amount to be received for shares before it shall commence business, the directors who assent thereto shall be jointly and severally liable to the corporation for the difference between the amount actually received and the amount that should have been received before commencing business, but such liability shall be terminated when the corporation has actually received the total amount of such consideration.

(2) A director of a corporation who is present at a meeting of its board of directors or a committee thereof at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

(3) A director shall not be liable under subsection (1) (a), (b) or (c) if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or certified by an independent public or certified public accountant or firm of such accountants to fairly reflect the financial condition of such corporation, nor shall

he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

(4) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

(5) In addition to any other liabilities imposed by law upon shareholders of a corporation:

(a) Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(b) Any shareholder receiving any dividend or distribution of the assets of the corporation which dividend is paid or distribution is made contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall be liable to the corporation for the amount received by said shareholder which is paid or distributed in excess of the amount which could have been paid or distributed without a violation of the provisions of this chapter or any restrictions in the articles of incorporation.

(6) The shareholders of every corporation, other than railroad corporations, shall be personally liable to an amount equal to the par value of shares owned by them respectively, and to the consideration for which their shares without par value was issued, for all debts owing to employes of the corporation for services performed for such corporation, but not exceeding 6 months' service in any one case.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: The only specific provisions in the 1949 statutes relating to directors' liability are 182.19 (1) (1949), which provides that directors who authorize the payment of dividends contrary to the provisions of law, not having reason to believe that such payments will not impair the capital, are liable to the creditors of the corporation in the amount of their claims and 182.19 (5) (1949) which protects a director in the performance of his duties if he acts in good faith and in reliance upon certain corporate and financial records.

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

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

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

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

An action to enforce a shareholder's liability under (6) is governed by the 2-year statute of limitations, not by 330.19 (4). Casey v. Trecker, 268 W 87, 66 NW (2d) 724.

A judgment based on (6) may be enforced against the estate of a deceased stockholder notwithstanding the fact that a claim was not filed in the estate proceedings in the county court. Casey v. Trecker, 268 W 87, 66 NW (2d) 724.

180.405 Shareholders' derivative actions. (1) No action may be instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of shares or of voting trust certificates representing shares of such corporation unless:

(a) The plaintiff alleges in the complaint that he was a registered shareholder or the holder of voting trust certificates at the time of the transaction or any part thereof of which he complains or that his shares or voting trust certificates thereafter devolved upon him by operation of law from a holder who was a holder 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, includ-

ing 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 foreign or domestic corporation by the holder or holders of less than 3 per cent of any class of shares issued and outstanding, 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.

History: 1953 c. 399.

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

180.407 Indemnifying directors, officers and employes. Any person made a party to any action, suit or proceeding by reason of the fact that he, his testator or intestate, is or was a director, officer or employe of any corporation shall be indemnified by the corporation against the reasonable expenses, including attorney fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as to matters as to which such director, officer or employe is guilty of negligence or misconduct in the performance of his duties. Such right of indemnification shall not be deemed exclusive of any other rights to which such director, officer or employe may be entitled apart from this section.

History: 1953 c. 399.

Revision Committee Note, 1953: This section was in the 1949 law as s. 180.34, but was omitted in 1951. It is felt that the section should be restored; that indemnification, if warranted, should be automatic and should not lie in the discretion of directors whose association with fellow directors is often too intimate to permit unbiased consideration, and who, in considering indemnification will frequently be faced with the problem of self dealing. It was also felt that this promised section is not inconsistent with s. 180.34 which deals with power to indemnify, and that such latter section should remain in the law also. (Bill 524-S)

180.41 Officers. (1) The principal officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the articles of incorporation or by-laws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the articles of incorporation or by-laws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the articles of incorporation or by-laws. Any 2 or more offices may be held by the same person, except the offices of president and secretary, and the offices of president and vice president.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the articles of incorporation or by-laws, or as may be determined by resolution of the board of directors not inconsistent with the articles of incorporation or by-laws.

History: 1951 c. 731.

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

180.42 Removal of officers. Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create contract rights.

History: 1951 c. 731.

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

180.43 Books and records. (1) Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors; shall keep at its registered office or principal place of business, or at the offices of its transfer agents or registrars, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares

held by each; and shall cause a true statement of its assets and liabilities as of the close of each fiscal year and of the results of its operations and of changes in surplus for such fiscal year, all in reasonable detail, to be made and filed at its registered office within 4 months after the end of such fiscal year or such longer period as may be reasonably necessary for the preparation thereof, and thereat kept available for a period of at least 10 years for inspection on request by any shareholder, and shall mail a copy of the latest such statement to any shareholder upon his written request therefor.

(2) Any person who shall have been a shareholder of record for at least 6 months immediately preceding his demand or who shall be the holder of record of at least 5 per cent of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders and to make extracts therefrom.

(3) A holder of a voting trust certificate evidencing an interest in a voting trust conforming to the provisions of this chapter shall have the same rights as a shareholder to examine and make extracts from the books and records of account, minutes and record of shareholders of such corporation upon submitting to the corporation, officer or agent to whom demand for examination is made, his voting trust certificate or other proof of his interest in the voting trust.

(4) Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of 10 per cent of the value of the shares owned by such shareholder, but not to exceed $500, in addition to any other damages or remedy afforded him by law. In addition to any other meritorious defense, it shall be a defense to any action for penalties under this section that the person suing therefor has at any time sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation, or was not acting in good faith in making his demand.

(5) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes and record of shareholders of a corporation.

(6) In any pending action or proceeding, or upon petition for such purpose, any court of record in this state may, upon notice fixed by the court, hearing and proper cause shown, and upon suitable terms, order any or all of the books and records of account, minutes, and record of shareholders of a corporation, and any other pertinent documents in its possession, or transcripts from or duly authenticated copies thereof, to be brought within this state, and kept therein at such place and for such time and for such purposes as may be designated in such order; and any corporation failing to comply with such order shall be subject to invountary dissolution under this chapter, and all its directors and officers shall be liable to be punished for contempt of court for disobedience of such order.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: 180.43 (1) retains in substance the requirement of 182.03 and 182.12 (1949) that books and records, including lists of stockholders, be kept; it also requires the maintenance for 10 years at the Wisconsin registered office of financial statements in reasonable detail and mailing of current statements to stockholders on request. (2) permits stockholder examinations as under 182.10 (1949) but (except under court order pursuant to (5)) requires that the examining shareholder shall have held his stock for at least 6 months unless he has a stock interest of 5 per cent or more. (3) extends examination rights to the holders of voting trust certificates; there is no counterpart in the 1949 statutes. (4) imposes more strict penalties than 182.04 (1949) for refusal to permit proper stockholder examinations but affords a defense in certain cases where there might be doubt as to the propriety of the purpose. (5) makes it clear that the section does not limit judicial authority to require production of records. (6) imposes strict penalties for failure to bring records into the state when required by court order. It is similar in principle to 182.03 (2) (1949) (relating to certain railroads), but applies to all corporations since 180.43 permits various records of other corporations to be located outside the state, as may be desirable under present business methods and regulatory and stock exchange requirements. (Bill 763-S)

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

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

180.44 Incorporators. One or more natural persons of the age of 21 years or more may act as incorporator or incorporators of a corporation by signing and acknowledging, and filing and recording articles of incorporation for such corporation.

History: 1951 c. 731.

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

180.45 Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) The name of the corporation.

(b) The period of existence, unless perpetual.

(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.

(d) The aggregate number of shares which the corporation shall have authority to issue; if said shares are to consist of one class only, the par value of each of said shares, or a statement that all of said shares are without par value; or, if said shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value.

(e) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class.

(f) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series in so far as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series.

(h) Any provision limiting or denying preemptive rights to shareholders.

(i) The address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address.

(j) The number of directors constituting the initial board of directors.

(k) The name and address, including street and number, if any, of each incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter. The articles of incorporation may include additional provisions, not inconsistent with law, including any provision which under this chapter is required or permitted to be set forth in the by-laws. Whenever a provision of the articles of incorporation is inconsistent with a by-law, the provision of the articles of incorporation shall be controlling.

History: 1951 c. 731.

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

180.46 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 initial registered 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 initial registered office of the corporation is located.

History: 1951 c. 731; 1955 c. 294.

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

180.47 Effect of issuance of certificate of incorporation. The certificate of incorporation issued pursuant to section 180.46 shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and

that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation.

History: 1951 c. 731.

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

180.48 Requirement before commencing business. A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until there has been paid in for its shares consideration of the value of not less than $500.

History: 1951 c. 731; 1953 c. 399.

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

Revision Committee Note, 1953: The repeal of 180.45 (1) (g) (Stats. 1951) eliminates any need for reciting minimum initial capital in the articles, but the mandatory $500 minimum paid-in capital requirement is retained in this section. This avoids complications stemming from inadvertent overstatements of initial capital where it consists of property or where financing plans are changed. (Bill 524-S)

180.49 Organization meetings. (1) After the articles of incorporation are left for record in the office of the register of deeds as provided in section 180.46, the first meeting of subscribers shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of electing directors and for such other purposes as shall be stated in the notice of the meeting. At such first meeting each subscriber shall be entitled to vote to the same extent as though he were then a shareholder of the shares for which he has subscribed. The incorporators so calling the meeting shall give at least 3 days' notice thereof by mail to each subscriber, which notice shall state the time, place, and purpose of the meeting.

(2) After the election by subscribers of the directors constituting the first board of directors, an organization meeting of such board of directors shall be held, either within or without this state, at the call of a majority of the directors so elected, for the purpose of electing officers and for the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least 3 days' notice thereof by mail to each director so elected, which notice shall state the time and place of the meeting.

(3) Until the directors shall be elected, the incorporators shall have direction of the affairs of the corporation and shall make such rules as may be necessary for perfecting its organization or regulating subscriptions for its shares, including the consideration therefor.

(4) A majority of the incorporators or the survivors thereof may, in lieu of action by the shareholders, amend the articles of incorporation or voluntarily dissolve the corporation at any time before there has been paid in the minimum amount of consideration required by this chapter to be received before it commences business, by signing, filing and recording articles of amendment or articles of dissolution, as the case may be, which shall include a statement that such minimum amount of consideration has not been paid in, and which shall contain such other variations in the forms of such documents prescribed by this chapter as may be appropriate to the case. Unless such amendment has been authorized by the affirmative vote or the written consent of not less than two-thirds of the shares subscribed for, any subscriber or shareholder who has not voted in favor thereof or consented thereto shall be released from his subscription and shall be entitled to repayment of any consideration paid in for his shares upon application to the corporation within 10 days after notice of such amendment.

History: 1951 c. 731; 1953 c. 399.

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

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

180.50 Right to amend articles of incorporation. (1) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, provided 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, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

(2) In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of existence.

(c) To change, enlarge or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class or series, which the corporation has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

(g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect to all or any part of its shares, whether issued or unissued.

(h) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(i) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.

(j) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(l) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(p) To limit, deny or grant to shareholders of any class preemptive rights to shares of the corporation, whether then or thereafter authorized.

History: 1951 c. 731.

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

180.51 Procedure to amend articles of incorporation. Amendments to the articles of incorporation may be made at any special meeting duly called for that purpose or at any annual meeting, provided that a statement of the nature of the proposed amendment is included in the notice of meeting. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon, unless any class or series of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders at least two-thirds of the shares of each class of shares and of each series entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

History: 1951 c. 731.

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

180.52 Class voting on amendments. (1) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class, except a decrease of authorized but unissued shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class, except a reclassification of unissued or treasury shares into shares of a subordinate and inferior class or a cancellation thereof.

(d) Effect an exchange, or create a right to exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change in a manner prejudicial to the holders of outstanding shares of such class, the designations, preferences, limitations or relative rights of the shares of such class or of any other class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares either with or without par value, of the same class or another class or classes.

(g) Create a new class or enlarge an existing class of shares having rights or preferences prior or superior to the shares of such class, or increase the rights or preferences of any class having rights or preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to fix and determine the designation and the relative rights and preferences of authorized but unissued shares of such series.

(i) Limit or deny any existing preemptive rights of the shares of such class.

(j) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(k) Authorize the payment of a dividend in shares of such class.

(2) Whenever any such amendment shall affect the holders of shares of one or more but not all of the series of any preferred or special class at the time outstanding, the holders of the outstanding shares of the series affected thereby shall for the purposes of this section be deemed a separate class and entitled to vote as a class on such amendment.

History: 1951 c 731.

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

180.53 Articles of amendment. The articles of amendment shall be executed by the president or a vice president, and the secretary or an assistant secretary and shall be sealed with the corporate seal, if there be any, and shall set forth:

(1) The name of the corporation;

(2) The amendment so adopted;

(3) The date of the adoption of the amendment by the shareholders;

(4) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class or series are entitled to vote thereon as a class, the designation of each such class or series and the number of outstanding shares thereof entitled to vote;

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class or series are entitled to vote thereon as a class, the number of shares of each such class or series voted for and against such amendment, respectively;

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected;

(7) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

History: 1951 c. 731.

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

180.54 Filing and recording articles of amendment. The articles of amendment shall be filed and recorded, and upon receipt of the certificate of the register of deeds, the secretary of state shall issue a certificate of amendment.

History: 1951 c. 731.

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

180.55 Restated articles of incorporation. (1) A corporation may by action taken in the same manner as required for amendment of articles of incorporation adopt restated articles of incorporation consisting of the articles of incorporation as amended to date. Restated articles of incorporation may, but need not be, adopted in connection with an amendment to the articles of incorporation. Restated articles of incorporation shall contain a statement that they supersede and take the place of the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) In lieu of setting forth the address of its initial registered office and the name of its initial registered agent at such address, it shall set forth the address, including street

and number, if any, of its registered office and the name of its registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(b) No statement need be made with respect to the number of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed, filed and recorded in the manner prescribed in this chapter for articles of amendment shall supersede and take the place of the theretofore existing articles of incorporation and amendments thereto. The secretary of state shall upon request certify a copy of the articles of incorporation, or the articles of incorporation as restated, or any amendments to either thereof.

History: 1951 c. 731; 1953 c. 399.

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

180.56 Filing and recording order of U. S. court under bankruptcy laws. The secretary of state and register of deeds shall upon delivery to them respectively file and record in the manner and places and upon payment of fees as provided in this chapter in respect to articles of amendment, duly certified copies of any order of a court of the United States in proceedings under the national bankruptcy laws, if such order effects an amendment to the articles of incorporation of a corporation. It shall be the duty of the principal officers of such corporation to cause each such order to be so filed and recorded promptly after such order has become final.

History: 1951 c. 731.

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

180.57 Effect of amendment. No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

History: 1951 c. 731.

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

180.58 Cancellation of shares by redemption. (1) When shares of a corporation are redeemed by the corporation, the redemption shall effect a cancellation of such shares and such shares shall be restored to the status of authorized but unissued shares. The stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(2) If the articles of incorporation provide that such shares, when redeemed, shall not be reissued, the corporation may file and record a statement of reduction of authorized shares which shall operate as an amendment to its articles of incorporation and shall reduce the authorized number of shares of the class by the number of shares so canceled. Such statement shall be executed by its president or a vice president and by its secretary or an assistant secretary, and the corporate seal shall be thereto affixed, and shall set forth:

(a) The name of the corporation;

(b) The number of shares, canceled through redemption, by which the authorized shares are reduced, itemized by classes and series;

(c) The aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation and reduction.

(3) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this chapter.

History: 1951 c. 731.

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

180.59 Cancellation of shares other than through redemption. (1) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than shares redeemed. The stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

(2) Nothing contained in this section shall be construed to forbid a cancellation of shares or reduction of stated capital in any other manner permitted by this chapter.

History: 1951 c. 731.

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

180.60 Reduction of stated capital in certain cases. (1) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

(a) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at either an annual or special meeting of shareholders.

(b) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided for the giving of notice of meetings of shareholders.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon.

(2) No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

History: 1951 c. 731.

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

180.61 Special provisions relating to surplus and reserves. (1) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be deemed to be capital surplus. Where such reduction is effected by the cancellation of its own shares reacquired by purchase or redemption, the capital surplus, if any, created by such reduction shall not exceed the amount by which the stated capital represented by such shares exceeded the cost thereof to the corporation.

(2) The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

(3) A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit in earned surplus. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(4) A corporation may, by resolution of its board of directors, create a reserve or reserves out of his earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this chapter.

History: 1951 c. 731; 1953 c. 399.

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

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

180.62 Procedure for merger. (1) Any 2 or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(a) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, hereinafter designated the surviving corporation;

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation;

(d) Any change in the articles of incorporation of the surviving corporation to be effected by such merger;

(e) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: 1951 c. 731.

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

180.63 Procedure for consolidation. (1) Any 2 or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, hereinafter designated the new corporation;

(b) The terms and conditions of the proposed consolidation;

(c) The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation;

(d) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History: 1951 c. 731.

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

180.64 Approval by shareholders. (1) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at either an annual or special meeting of shareholders. Written notice shall be given to each shareholder of record whether or not entitled to vote at such meeting not less than 20 days before such meeting and in the manner provided by this chapter for the giving of notice of meetings of shareholders, and shall state the purpose of the meeting. Such notice shall include a statement that any shareholder desiring to be paid the fair value of his shares must file a written objection to the plan at least 48 hours prior to such meeting, and shall be accompanied by a copy or a summary of the plan of merger or consolidation.

(2) At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such corporation, unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

(3) After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing and recording of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: 1951 c. 731.

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

180.65 Articles of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation 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, if there be any, of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) As to each corporation, the number of shares outstanding, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series;

(c) As to each corporation, the number of shares voted for and against such plan, re-

spectively, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series voted for and against such plan, respectively.

(2) Such articles of merger or consolidation shall be filed in the office of the secretary of state and shall be recorded, within 40 days of such filing, in the offices of the registers of deeds of the counties of this state in which the respective corporations so consolidating or merging have their registered offices, and in the county where the surviving or new corporation is to have its registered office.

History: 1951 c. 731; 1953 c. 399.

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

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

180.66 Effective date of merger or consolidation. Upon receipt of the requisite certificates, the certificate of merger or consolidation shall be issued by the secretary of state. 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 may be designated in said articles.

History: 1951 c. 731.

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

180.67 Effect of merger or consolidation. When such merger or consolidation has been effected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the articles of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

(7) The net surplus of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that such surplus is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

History: 1951 c. 731.

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

180.68 Merger or consolidation of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, provided such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of the statutes of this state with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

1. An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

2. An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

3. An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except in so far as the laws of such other state provide otherwise.

History: 1951 c. 731; 1953 c. 399.

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

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

180.685 Merger of subsidiary into parent. Unless otherwise provided in the articles of incorporation or by-laws, no approval by shareholders of the surviving domestic corporation shall be required for a merger if at the time of approval of the plan of merger by the board of directors of each of the corporations, domestic or foreign, who are parties thereto, the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic or foreign, who are parties to the merger, and the plan of merger does not provide for any changes in the articles of incorporation of, or the issuance of any shares by, the surviving corporation; and in such case the articles of merger shall contain statements showing compliance with the conditions of this section and, in lieu of statements relating to the vote of shareholders of the surviving corporation, need only state the approval by its board of directors.

History: 1953 c. 399.

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

180.69 Rights of dissenting shareholders on merger or consolidation. (1) If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, at least 48 hours prior to the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, the new or surviving corporation shall, within 10 days after the effective date of such merger or consolidation, notify each such dissenting shareholder in writing that such merger or consolidation has become effective, by registered mail, return receipt requested, addressed to said shareholder at his last known address as appears upon the books of the corporation. If any such shareholder, within 20 days after the mailing of such notice, shall make written demand on the surviving or new corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing such shares, such fair value thereof. Such demand shall state the number and

class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within such 20-day period shall be bound by the terms of the merger or consolidation, provided, however, that written notice of the effectiveness of such merger or consolidation shall have been given as herein provided.

(2) If within 30 days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation, payment therefor shall be made within 90 days after the date on which such merger or consolidation was effected, upon the surrender of the certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(3) If within such period of 30 days or any extension thereof the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within 60 days after the expiration of the 30-day period or extension thereof, file a petition in the circuit court of the county in which the registered office or principal place of business of the surviving or new corporation is located, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon at the rate of 5 per cent per annum to the date of such judgment. Costs shall be taxed as the court may deem equitable. The judgment shall be payable only upon the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

(4) A dissenting shareholder shall have no right to be paid the fair value of his shares as herein provided if the corporation shall prior to the effective date abandon the merger or consolidation. Written notice of such abandonment shall be given by the corporation to its shareholders within 30 days after such abandonment.

(5) Shares acquired by the surviving or new corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares.

(6) The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving corporation, domestic or foreign, is the owner of all the outstanding shares of the other corporations, domestic or foreign, that are parties to the merger.

History: 1951 c. 731.

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

180.70 Sale, lease, exchange or mortgage of assets without shareholder action. (1) The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, or less than substantially all the property and assets of a corporation, whether or not made in the usual and regular course of the business of the 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 of any other corporation, domestic or foreign, whether or not such other corporation be organized under the provisions of this chapter, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required, unless otherwise provided in the articles of incorporation.

(2) Any corporation, by provision in its articles of incorporation, may authorize any one or more of its officers to sell, lease, exchange, mortgage, pledge, or otherwise convey or dispose of all or any part of its real property, fixtures, improvements or chattels real, by instruments duly executed according to law, and in such case no authorization or consent of the shareholders or directors shall be required.

(3) Where the articles of incorporation of any corporation organized prior to July 1, 1953, expressly provide in substance that such corporation has power or authority to deal in, sell, lease, exchange, mortgage, pledge, or otherwise convey or dispose of all or any part of its real property, fixtures, improvements or chattels real, such action may

be taken by its officers by instruments duly executed according to law, and in such case no authorization or consent of the shareholders or directors shall be required.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: (1) has no counterpart in the 1949 statutes. It serves to affirm and clarify powers possessed generally by corporate directors in the absence of statute in matters falling within the normal and regular course of business. In the interest of clarity and certainty the paragraph is a desirable addition to the corporation statutes. (2) retains the substance of 180.11 (3) (1949) for the reason that the broad powers given to corporate officers by that section have proven desirable and convenient in the organization of corporations dealing primarily in real estate. (Bill 763-S)

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

180.71 Sale, lease, exchange or mortgage of assets with shareholder action. A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without good will, of a corporation, if not made in the usual and regular course of its business, 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 of any other corporation, domestic or foreign, whether or not such other corporation be organized under the provisions of this chapter, as may be authorized in the following manner:

(1) Written notice of a special meeting, or of the annual meeting of shareholders, 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, and in the event sale, lease or exchange is the purpose, or one of the purposes, that any shareholder desiring to be paid the fair value of his shares must file a written objection to the proposed sale, lease or exchange at least 48 hours prior to the meeting, shall be given to each shareholder whether or not entitled to vote at such meeting not less than 10 days (unless a different time is provided by the articles of incorporation or the by-laws) before such meeting in the case of a proposed mortgage or pledge and not less than 20 days before such meeting in the case of a proposed sale, lease or exchange, in either case in the manner provided by this chapter for the giving of notice of meetings of shareholders.

(2) At such meeting the shareholders may authorize such sale, lease, exchange, mortgage, pledge, or other disposition of assets and 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 the holders of at least two-thirds of the shares entitled to vote thereon, unless any class of shares is entitled under the articles of incorporation to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of such class and of the total shares entitled to vote thereon.

(3) After such authorization by a vote of shareholders, 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 shareholders.

History: 1951 c. 731; 1953 c. 399.

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

Revision Committee Note, 1953: The proposed change in the introductory paragraph is covered by the note to 180.70 (1). In regard to the amendment to sub. (1), the 20-day notice provision was mandatorily extended beyond the ordinary 10-day minimum in order to give shareholders full opportunity for decision whether to exercise their payout rights as dissenters. This longer period should not apply to authorization of mortgages to which no dissenting payout right applies under s. 180.72. Since mortgages are a normal financing procedure and may be authorized at an annual meeting if referred to in the notice as one of its purposes, no more than the usual annual meeting notice should be required. (Bill 524-S)

180.72 Rights of dissenting shareholders upon sale, lease or exchange of assets. (1) In the event that a sale, lease or exchange of all or substantially all of the property and assets of a corporation otherwise than in the usual and regular course of its business, and otherwise than in connection with the dissolution and liquidation of the corporation, is authorized by a vote of the shareholders of the corporation, any shareholder who shall

have filed with the corporation a written objection thereto, at least 48 hours prior to the meeting of shareholders at which the sale, lease or exchange is authorized, and who shall not have voted in favor thereof, may, within 20 days after the date on which the vote was taken, make written demand on the corporation for payment of the fair value of his shares as of the day prior to the date on which the vote was taken. If the sale, lease, or exchange is effected, the corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing such shares, the fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the 20-day period shall be bound by the terms of the sale, lease or exchange.

(2) Within 20 days after the sale, lease or exchange is effected, the corporation shall give notice thereof to each dissenting shareholder who has made demand as herein provided for the payment of the fair value of his shares.

(3) If within 30 days after the date on which the sale, lease or exchange was effected the value of such shares is agreed upon between the dissenting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which the sale, lease or exchange was effected, upon the surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

(4) If within such period of 30 days or any extension thereof the shareholder and the corporation do not so agree, then the dissenting shareholder may, within 60 days after the expiration of the 30-day period or extension thereof, file a petition in the circuit court of the county in which the registered office or principal place of business of the corporation is located, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the corporation for the amount of such fair value as of the day prior to the date on which such vote was taken, together with interest thereon at the rate of 5 per cent per annum to the date of such judgment. Costs shall be taxed as the court may deem equitable. The judgment shall be payable only upon the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of such sale, lease or exchange.

(5) Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares.

(6) The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the sale, lease or exchange or the shareholders shall revoke the authority to make such sale, lease or exchange. Written notice of such abandonment shall be given by the corporation to its shareholders within 10 days after such abandonment.

History: 1951 c. 731.

Revision Committee Note, 1951: The 1949 statutes provide no appraisal or other remedy to dissenting shareholders in the event of sale or other disposal of all the corporate assets pursuant to 180.11 (2) (1949). Hence in this sense this section has no 1949 counterpart. This section provides an appraisal remedy to dissenting shareholders in the event of sale, lease or exchange of all or substantially all of the property and assets of a corporation, but not in the event of mortgage, pledge or other disposition. In the interest of simplicity and uniformity of procedure the section follows closely the procedure prescribed in 180.69 with respect to the appraisal remedy afforded dissenting shareholders in the event of merger or consolidation, which 180.69 is in turn similar to 181.06 (10) (1949). See note to 180.69. (Bill 763-S)

180.753 Dissolution by act of corporation. A corporation may be dissolved pursuant to the act of the corporation, in the following manner:

(1) Written notice of a special meeting, or of the annual meeting of shareholders, stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(2) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon, and of the total outstanding shares entitled to vote at such meeting.

(3) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the president or a vice president and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:

(a) The name of the corporation;
(b) The names and respective addresses, including street and number, if any, of its officers and directors;
(c) A copy of the resolution of the shareholders authorizing the dissolution of the corporation;
(d) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of shares of each such class;
(e) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

History: 1951 c. 731.

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

180.755 Filing and recording statement of intent to dissolve and effect thereof. The statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be filed and recorded, and thereupon the corporation shall cease to carry on its business, except in so far as may be necessary for the proper winding up thereof.

History: 1951 c. 731.

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

180.757 Proceedings after filing and recording of statement of intent to dissolve. After the due recording of a statement of intent to dissolve:

(1) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, including those contingent in nature, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(2) The corporation, at any time during the liquidation of its business and affairs, may make application to the circuit court of the county in which the registered office or principal place of business of the corporation is located, to have the liquidation continued under the supervision of the court as provided in this chapter.

History: 1951 c. 731.

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

180.761 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the due recording of articles of dissolution, as hereinafter provided, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) Written notice of a special meeting, or of the annual meeting of shareholders, stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders.

(2) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution revoking the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote at such meeting, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote thereon as a class, and of the total outstanding shares entitled to vote at such meeting.

(3) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the president or a vice president and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:
(a) The name of the corporation;
(b) The names and respective addresses including street and number, if any, of its officers and directors;
(c) A copy of the resolution of the shareholders revoking the voluntary dissolution proceedings;
(d) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of shares of each such class;
(e) The number of shares voted for and against the resolution, respectively, and, if

the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

History: 1951 c. 731; 1953 c. 399.

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

180.763 Filing and recording of statement of revocation of voluntary dissolution proceedings and effect thereof. The statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be filed and recorded, and thereupon such revocation shall become effective and the corporation may again carry on its business.

History: 1951 c. 731.

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

180.765 Articles of dissolution. When all debts, liabilities and obligations of the corporation, including those contingent in nature, have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the president or a vice president and the secretary or an assistant secretary, and shall be sealed with the corporate seal, if there be any, and shall set forth:

(1) The name of the corporation;

(2) That the corporation has theretofore filed with the secretary of state a statement of intent to dissolve, and the date on which such statement was filed, and that said statement has been duly recorded and the date and place of such recording;

(3) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor, and that adequate provision has been made for all debts, obligations and liabilities, contingent in nature, of which the corporation has actual knowledge;

(4) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

(6) The names and respective addresses, including street and number, of its directors as of the date of execution of the articles of dissolution, or if there be no directors at such time, then of its last acting directors.

History: 1951 c. 731; 1953 c. 399.

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

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

180.767 Filing and recording articles of dissolution and effect thereof. The articles of dissolution shall be filed and recorded, and thereupon the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action of shareholders, directors and officers as provided in this chapter. Upon receipt of the certificate of the register of deeds, the secretary of state shall issue a certificate of dissolution.

History: 1951 c. 731.

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

180.768 Property omitted from final distribution. Upon the filing and recording of the articles of dissolution or of a decree of dissolution, the title to any property inadvertently or otherwise omitted from the final distribution shall vest in the directors named in the articles or decree of dissolution as trustees for the benefit of the creditors and shareholders of the corporation as their respective rights and interests may appear. The trustees shall distribute such property or its proceeds to the persons beneficially entitled, and for this purpose a majority of the directors acting as trustees shall have full authority and capacity to collect and administer such property; to adjust and settle any claims against such property; to waive, release or subordinate reversionary rights or interests in real estate, or rights arising out of restrictions or conditions enforceable by the corporation; to sell, assign, or otherwise transfer such property in whole or in part, on such terms and conditions as they in their discretion may determine; and to do such other lawful acts as may be necessary or proper for them to execute their trust. In the event any director named in the articles or decree of dissolution shall cease to be a trustee through death, resignation or otherwise, a majority of the surviving trustees, or the sole

surviving trustee, shall have full powers to act under this section. In the event there shall at any time be no trustee, or in the event any trustee cannot with reasonable diligence be found, then the circuit court for the county in which the last registered office of the corporation was located shall have power to appoint a trustee or trustees, or a successor trustee or trustees, upon application to the court by any person found by the court to have an interest in such property or its disposition. A sole trustee, or a majority of the trustees, may at any time make application to the circuit court of the county where the corporation had its last registered office to have the court liquidate such property pursuant to the jurisdiction of the circuit court to liquidate assets and business of a corporation as provided in this chapter.

History: 1953 c. 399.

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

180.769 Involuntary dissolution. (1) A corporation may be dissolved involuntarily by a decree of any circuit court in an action commenced by the attorney-general when it is established that:

(a) The corporation has failed to file its annual report as required by this chapter; or

(b) The corporation's certificate of incorporation was procured through fraud; or

(c) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(d) The corporation has failed for 30 days to appoint and maintain a registered agent in this state; or

(e) The corporation has failed for 30 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change; or

(f) The corporation has failed to comply with a court order for the production of books, records or other documents of the corporation as provided in this chapter.

(2) If prior to the entry of the court's decree the corporation shall cure its defaults other than those under subsection (1) (b) and (c) and shall pay all penalties and court costs that may have accrued the cause of action with respect to the defaults so cured shall abate.

History: 1951 c. 731.

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

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

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

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

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

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

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

180.769 seems to contain all of the desirable grounds for involuntary dissolution: It omits the grounds specified in 181.01 (1949). It permits action by the attorney-general without seeking leave as now contemplated by 286.36 and 286.37 (1949).

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

180.771 Jurisdiction of the circuit court to liquidate assets and business of corporation. (1) Circuit courts have power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

1. That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

2. That the acts of the directors or those in control of the corporation are illegal or fraudulent; or

3. That the corporate assets are being misapplied or wasted; or

4. That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least 2 consecutive annual meeting dates, to elect successors to directors whose term has expired or would have expired upon the election and qualification of their successors.

(b) In an action by a creditor:

1. When the claim of the creditor has been reduced to judgment and an execution thereupon returned unsatisfied and it is established that the corporation is insolvent; or

2. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court.

(d) In an action commenced by the attorney-general to dissolve a corporation if it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

(2) Proceedings under this section shall be brought in the circuit court for the county in which the principal place of business of the corporation is situated or in the circuit court for the county in which the registered office of the corporation is situated.

(3) It is not necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: 1951 c. 731; 1953 c. 399.

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

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

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

180.773 Procedure in liquidation of corporation by circuit court. (1) In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by subscribers and by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall, for the purposes of this chapter, have exclusive jurisdiction of the corporation and its property, wherever situated.

History: 1951 c. 731.

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

180.775 Qualifications of receivers. A receiver shall in all cases be a citizen of the United States 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.

History: 1951 c. 731.

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

180.777 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation the court shall require all creditors and claimants of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims, and shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed shall be barred, by order of the court, from participating with other creditors and claimants in the distribution of the assets of the corporation in such proceedings.

History: 1951 c. 731; 1953 c. 399.

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

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

180.779 Discontinuance of liquidation proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: 1951 c. 731.

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

180.781 Decree of dissolution. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all claims filed and allowed shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses and claims, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. Such decree shall state the names and respective addresses, including street and number, of the directors of the corporation as of the date of such decree, or if there be no directors at such time, then of its last acting directors.

History: 1951 c. 731; 1953 c. 399.

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

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

180.783 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 filing or recording.

History: 1951 c. 731; 1955 c. 666.

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

180.785 Deposit with the state treasury of amount due certain creditors and shareholders. Upon the voluntary or involuntary dissolution of a corporation the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, may be reduced to cash and deposited with the state treasury and shall be paid over without interest to such creditor or shareholder or to his legal representative, upon proof satisfactory to the state treasurer of his right thereto.

History: 1951 c. 731.

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

180.787 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, or shareholders, for any right or claim existing or any liability incurred, prior to such dissolution if suit or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any such suit or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be 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.

History: 1951 c. 731.

Revision Committee Note, 1951: The comparable provision appears in 181.02 (1949) which provides that the corporation shall continue for 3 years after dissolution for the purpose of settling its affairs. This section provides for the survival of claims for a period of 2 years after dissolution. However, under the new chapter, in voluntary dissolution, articles of dissolution are not filed and the corporation is not dissolved until after the winding up process has been completed. See 180.755, 180.757 and 180.765. In involuntary dissolution notice to creditors and claimants is given during the dissolution proceedings and the winding up is under the supervision of the court. Formal dissolution, either voluntary or involuntary, depends upon an orderly and complete liquidation of the corporate affairs and under such circumstances the 2-year survival period does not seem too short. The new chapter places a limitation upon causes of action which exist against or in favor of the corporation. The 1949 statute limits the corporate existence to 3 years for this purpose. Under the 1949 statute, although a claim cannot be asserted against the corporation after the 3-year period, liability continues in shareholder transferees until the cause of action is barred by other statutes of limitation. See West Milwaukee v. Bergstrom Mfg. Co. 242 W 137. (Bill 763-S)

180.791 Annual report of domestic corporation. (1) Each corporation shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) The name of the corporation, the address, including street and number, if any, of its principal place of business.

(b) The names and respective addresses, including street and number, if any, of its directors and principal officers.

(c) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(d) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(e) A statement whether the corporation was engaged in actual business during the year immediately preceding the date of the report and the general nature of any such business.

(2) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice president, secretary, assistant secretary, or treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. The first annual report of a corporation organized under this chapter shall be filed between January 1 and March 31 of the year next succeeding the calendar year in which its articles of incorporation were filed by the secretary of state.

(3) The secretary of state shall, during each December, forward report blanks to every corporation in good standing required to make an annual report.

History: 1951 c. 731; 1953 c. 399.

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

Revision Committee Note, 1953: Based on the secretary of state's experience with foreign annual reports, it seems inevitable that domestic corporations will make the same mistake that foreign corporations do: i.e., believing that a change of registered office or registered agent can be effected merely by showing a new registered office or agent in the annual report. Moreover, nowhere does the law require a domestic corporation to make public record of its principal office. In a proposed new provision for resignation of registered agent, notice of

the resignation is directed to be mailed to the corporation at its principal office. Having the annual report show the principal office will enable the secretary of state to comply with the mailing requirement if enacted. Since the primary purpose of annual reports is for the use of the public, it is believed that the public will be more interested in learning the principal office of the corporation than in having the report show merely registered office and registered agent, since the latter is already a matter of record. (Bill 524-S)

180.793 Filing of annual report of domestic corporation. (1) The annual report shall be delivered to the secretary of state between January 1 and March 31 of each year. Unless the secretary of state finds that such report fails to conform to the requirements of law, he shall file the same. If he finds that it does not so conform he shall return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days after it shall have been mailed to the corporation for correction.

(2) Any such report not filed before April 1 may be filed only upon payment to the secretary of state of the following fees:

(a) If filed prior to May 1, $5.

(b) If filed thereafter but not later than the following December 31, $10.

(3) If said report is not filed before the following January 1, the corporation shall not be in good standing. Until the corporation is restored to good standing the secretary of state shall not accept for filing any documents respecting such corporation except documents incident to its dissolution.

(4) The corporation may be restored to good standing by delivering to the secretary of state a current annual report conforming to the requirements of law and by paying to the secretary of state $10 for each calendar year or part thereof during which the corporation has not been in good standing, not exceeding a total of $100.

History: 1951 c. 731.

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

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

180.795 Report of election of initial officers and directors and of changes. (1) Within 20 days after the election of the initial principal officers and directors of the corporation, the corporation shall file with the secretary of state a report setting forth the names and addresses of the officers and directors elected, and the address of the principal place of business of the corporation.

(2) Whenever any change is made in the principal officers or directors of a corporation, the corporation shall, within 20 days after such change, file with the secretary of state a report setting forth the names and addresses of all the principal officers or directors, or both if there have been changes in both.

History: 1951 c. 731; 1953 c. 399.

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

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

180.801 Admission of foreign corporation. (1) A foreign corporation shall procure a certificate of authority from the secretary of state before it shall transact business in this state or acquire, hold, or dispose of property in this state. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to regulate the organization or the internal affairs of such corporation.

(2) Any foreign corporation may, without procuring a certificate of authority, loan money in this state and take, acquire, hold and enforce notes, bonds, mortgages or trust deeds given to represent or secure money loaned or for other lawful consideration, and all such notes, bonds, mortgages or trust deeds which shall be taken, acquired or held by

any such foreign corporation shall be as enforceable as though it were an individual, including the right to acquire the mortgaged property upon foreclosure, or pursuant to the provisions of the mortgage or trust deed, and to dispose of the same, provided that any such foreign corporation which shall transact such business shall first file with the secretary of state a statement on forms prescribed and furnished by the secretary of state, signed by its president, secretary, treasurer or general manager that it constitutes the secretary of state its attorney for the service of process in any action or proceeding in respect to any liability arising out of or relating to any business transacted or property acquired, held or disposed of by such foreign corporation within this state; provided that nothing herein contained shall be construed as authorizing any foreign corporation to transact the business of a bank or trust company. Service of process shall be made as provided in s. 180.825.

(3) Without excluding other activities which may not constitute transacting business, or acquiring, holding or disposing of property in this state, a foreign corporation may, without procuring a certificate of authority, carry on in this state any one or more of the following activities:

(a) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

(b) Maintaining bank accounts.

(c) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

(d) Soliciting or procuring orders, whether by mail or through employes or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(e) Creating evidences of debt or mortgages or liens on real or personal property located outside of this state.

History: 1951 c. 731; 1953 c. 399.

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

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

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

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

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

Revision Committee Note, 1953: Amendment restores the limitation applicable under appointments pursuant to 226.02 (2) and 226.02 (3) (f) (Stats. 1949). Without this limitation the appointment might be claimed to permit any Wisconsin resident to sue the foreign corporation in Wisconsin on matters arising elsewhere and having no relation to the conduct of the business authorized under 180.801 (2). (Bill 524-S)

Doubt expressed that the intangible right to the use of a trade name, even if considered property, is what the legislature had in mind in requiring a certificate of authority before doing business or acquiring or disposing of property. Aldrich v. Skycoach Air Lines Agency, 266 W 580, 64 NW (2d) 199.

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

180.807 Powers of foreign corporation. No foreign corporation shall transact in this state any business which a corporation organized under the laws of this state is not permitted to transact. A foreign corporation which has received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in such foreign corporation's articles of incorporation theretofore filed as provided in this chapter, except that it shall not exercise in this state any purpose set forth in or authorized by its articles of incorporation which it has stated in its application for a certificate of authority it will not pursue in this state; and such foreign corporation shall not be subject to any of the provisions of this chapter other than those made expressly applicable to it.

History: 1951 c. 731.

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

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

These provisions are put in in this manner, because it is felt that in many states a corporation may in its articles of incorporation be authorized to transact a number of types of business, including a type business which it would not be permitted to pursue in Wisconsin, or a corporation may be incorporated in another state with authority to transact several types of business and it may desire to be authorized to do only one or more types of business in Wisconsin, so under 180.815 the corporation files a copy of its articles of incorporation. Under 180.813

(1) (f) in its application it sets forth the purposes in its articles which it will not pursue in Wisconsin, and under this section it is then authorized to transact in Wisconsin the purposes set forth in its articles, except those which it has stated it will not pursue. If the corporation transacts in this state business for which it is not authorized, its certificate of authority may be revoked pursuant to 180.841 (1) (b). (Bill 763-S)

180.809 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation which has a name the same as, or deceptively similar to, the name of any domestic corporation existing under any law of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter.

History: 1951 c. 731.

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

180.811 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority to transact business in this state would not be granted to it on application therefor, in addition to becoming subject to revocation of its certificate of authority, it shall not transact business in this state under such new name.

History: 1951 c. 731.

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

180.813 Application for certificate of authority. (1) A foreign corporation may procure a certificate of authority to transact business in this state by making application therefor to the secretary of state, which application shall set forth:

(a) The name of the corporation and the state, territory or country under the laws of which it is organized, and whether now in good standing.

(b) The date of its incorporation and the period of its duration.

(c) The address, including street and number, if any, of its principal office in the state, territory or country under the laws of which it is organized.

(d) The address, including street and number, if any, of its proposed registered office in this state, and the name of its proposed registered agent in this state at such address.

(e) The names of the states, territories and countries, if any, in which it is admitted or qualified to transact business.

(f) Any of the purposes set forth in, or authorized by, its articles of incorporation which it will not pursue in this state.

(g) The names and respective addresses, including street and number, if any, of its directors and principal officers.

(h) A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(i) A statement of the aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(j) The amount of paid-in capital and the number and value of shares of capital stock issued without par value. The value of capital stock without par value, for the purpose of such statement and for the purpose of computing filing fees, shall be taken as the amount by which the entire property of said corporation shall exceed its liabilities other than such capital stock without par value, but each share of the capital stock without par value shall be deemed to be of the value of not less than $10.

(k) The proportion of its capital which is represented in this state by its property to be located or to be acquired herein and by its business to be transacted herein. The proportion of capital employed in this state shall be computed by taking the estimate of the gross business of the corporation to be transacted in this state in the following year and adding the same to the value of its property to be located or to be acquired in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of the estimate of its total gross business for said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. For the purposes of this section, the estimate of the business to be transacted and the property to be located or to be acquired in the state shall cover the period when it is estimated the corporation will commence business in this state to and including December 31 of that year. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he may deem proper in order to determine the accuracy of the report submitted; the additional information so obtained shall not be a public record.

(l) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary.

History: 1951 c. 731.

Revision Committee Note, 1951: This section is substantially the same as 226.02 (3) (1949), except that 226.02 (3) (f), which appoints the secretary of state attorney for service of process, is omitted because of the provisions covering the appointment of a registered agent and of service of process on the secretary of state under certain circumstances, and excepting 226.02 (3) (h) (1949) to the effect that it will comply with the laws of this state. This latter provision was considered unnecessary. (1) (k) has been reworded to set forth in more detail the fraction which is obtained and to conform with 180.833 (1) (k).

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

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

180.815 Filing of documents on application for certificate of authority. (1) The foreign corporation shall deliver to the secretary of state duplicate originals of the application of the corporation for a certificate of authority, and a copy of its articles of incorporation, if any, and all amendments thereto, or of the provisions thereof then in effect duly authenticated by the proper officer of the state, territory or country wherein it is incorporated.

(2) If, according to law, a certificate of authority to transact business in this state should be issued to such corporation, the secretary of state shall, when all fees and charges have been paid as in this chapter prescribed:

(a) Indorse on each of such documents the word "Filed" and the month, day and year of the filing thereof.

(b) File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto or of the provisions thereof then in effect.

(c) Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

(3) The certificate of authority with the duplicate original of the application affixed thereto by the secretary of state shall be returned to the corporation or its representative.

History: 1951 c. 731.

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

180.819 Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the foreign corporation shall have the right to transact business in this state for those purposes set forth in its articles of incorporation, except that it shall not have authority to transact business in this state for those purposes which in its application for certificate of authority it has stated it will not pursue in this state, all subject, however, to the right of this state to suspend or revoke such right to transact business in this state as provided in this chapter.

History: 1951 c. 731; 1953 c. 399.

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

180.821 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its place of business in this state;

(2) A registered agent, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a domestic or foreign corporation authorized to transact business in this state, having a buiness office identical with such registered office.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: This is similar to the provision in 226.02 (3) (f) (1949) that in lieu of appointing the secretary of state as an agent for the service of process, a foreign corporation may designate a resident of the state and place of bssiness where process may be served. (Bill 763-S)

180.823 Change of registered office or registered agent of foreign corporation. (1) A foreign corporation may change the address of its registered office. A foreign corpora-

tion shall change its registered agent if the office of registered agent shall become vacant for any reason, or if its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent.

(2) A foreign corporation may change the address of its registered office or change its registered agent, or both, by filing in the office of the secretary of state a statement setting forth:

(a) The name of the corporation;

(b) The address, including street and number, if any, of its then registered office;

(c) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent be changed, the name of its successor registered agent;

(f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) That such change was authorized by resolution duly adopted by its board of directors.

(3) Such statement shall be executed in duplicate by a principal officer, and the corporate seal shall be thereto affixed, and shall be delivered to the secretary of state. Unless the secretary of state finds that such statement does not conform to the provisions of this chapter, he shall:

(a) Indorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof;

(b) File one of such duplicate originals in his office;

(c) Return the other duplicate original to the corporation or its representative.

(4) The change of address of the registered office, or the change of registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary of state.

History: 1951 c. 731.

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

180.824 Resignation of registered agent of foreign corporation. (1) A registered agent may resign by executing a statement setting forth:

(a) The name of the foreign corporation for which the registered agent is acting.

(b) The name of the registered agent.

(c) The address, including street and number, if any, of the foreign corporation's then registered office in this state.

(d) That the registered agent resigns.

(2) Such statement shall be executed by the registered agent, if an individual and, if a corporation or a foreign corporation, by a principal officer and the corporate seal of such corporate registered agent shall be affixed thereto.

(3) Duplicate originals of such statement shall be filed with the secretary of state. He shall note on the duplicate of the statement the date of filing and mail the same to the foreign corporation at its principal office outside the state as shown by its last annual report on file.

(4) If no change of registered agent is previously made, the resignation shall be effective on the expiration of 60 days after the date of filing the statement, and the office of the resigned registered agent shall then cease to be the registered office of the foreign corporation.

History: 1953 c. 399.

180.825 Service of process on foreign corporation. (1) Service of process in any suit, action or proceeding, or service of any notice or demand required or permitted by law to be served on a foreign corporation, may be made on such corporation by service thereon on the registered agent of such corporation. During any period within which a foreign corporation authorized to transact business in this state shall fail to appoint or maintain in this state a registered agent, or whenever any such registered agent cannot with reasonable diligence be found at the registered office in this state of such corporation, or whenever the certificate of authority of any foreign corporation shall be revoked, then and in every such case the secretary of state shall be an agent and representative of such foreign corporation upon whom any process, notice or demand may be served.

(2) Service on the secretary of state of any such process, notice or demand against any such foreign corporation shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies to be forwarded by registered mail, addressed to such corporation at its principal office as the same appears in the records of the secretary of state.

(3) Service under this section can be made upon a foreign corporation only in any action or proceeding arising out of or relating to any business transacted or property acquired, held or disposed of by such foreign corporation within this state.

(4) The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. The certificate of the secretary of state that he was served with a summons and complaint or notice of object of action or with any notice or demand required or permitted by law and that he mailed the same as required by law, shall be evidence of service. If the address of the foreign corporation is not known or readily ascertainable, mailing is dispensed with, and a copy of the process shall then be published once a week for 3 weeks in a newspaper of general circulation in the county wherein is located the last known registered office of the foreign corporation and, if unknown, in Dane county.

(5) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

History: 1951 c. 731; Sup. Ct. Order, 262 W v; 1953 c. 399.

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

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

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

180.827 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall forthwith file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state, territory or country under the laws of which such corporation is organized; but the filing thereof shall not of itself amend its certificate of authority.

History: 1951 c. 731.

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

180.829 Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state, territory or country under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state, territory or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or an amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: 1951 c. 731.

Revision Committee Note, 1951: 181.06 (9) (1949) covers the merger or consolidation of one or more foreign corporations and one or more domestic corporations. 180.829 covers a foreign corporation authorized to transact business in this state which is a party to a statutory merger. It requires the filing of a copy of the articles of merger, but does not require a new certificate of authority. Since the section covers a qualified foreign corporation which is the surviving corporation, the certificate of authority continues in effect. The statute does not expressly cover the situation if the foreign corporation is not the surviving corporation. It is considered that in this situation the surviving corporation, not having obtained a certificate of authority in this state, would have to obtain one to do business. The statute does not expressly cover a consolidation since in a consolidation a new corporation is formed which would have to secure a certificate of authority. (Bill 763-S)

180.831 Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall secure an amended certificate of authority in the event it changes its corporate name, amends its articles of incorporation affecting the purposes therein set forth, or desires to increase or decrease the purposes it may pursue in this state from those covered by the certificate of authority in effect, by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority; except that if the necessity for securing an amended certificate of authority arises only by reason of a change of corporate name, the filing, as provided for in this chapter, of a copy of amended articles of incorporation or of articles of merger providing for such change of

name shall constitute the application, and the secretary of state, if such name be proper for use by the corporation in this state, shall issue an amended certificate of authority in the name of the corporation as so changed, and no duplicate copy of the application need be filed or attached to the amended certificate of authority so issued.

History: 1951 c. 731; 1953 c. 399.

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

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

180.833 Annual report of foreign corporation. (1) Each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) The name of the corporation and the state, territory or country under the laws of which it is organized;

(b) The date of its incorporation and the period of its duration;

(c) The address, including street and number, if any, of its principal office in the state, territory or country under the laws of which it is organized;

(e) The names of the states, territories and countries other than this state, if any, in which it is admitted or qualified to transact business;

(f) A statement whether the corporation was engaged in actual business in this state during the year immediately preceding the date of the report and the general nature of any such business;

(g) The names and respective addresses, including street and number, if any, of its directors and principal officers;

(h) A statement of the aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value and series, if any, within a class;

(i) A statement of the aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class;

(j) The amount of paid-in capital and the number and value of shares of capital stock issued without par value. The value of capital stock without par value, for the purpose of such statement and for the purpose of computing filing fees shall be taken as the amount by which the entire property of said corporation shall exceed its liabilities other than such capital stock without par value, but each share of capital stock without par value shall be deemed to be of the value of not less than $10;

(k) The proportion of the capital represented in this state by its property located and business transacted therein during the preceding year. The proportion of capital employed in the state shall be computed by taking the gross business of the corporation in the state and adding the same to the value of its property located in the state. The sum so obtained shall be the numerator of a fraction of which the denominator shall consist of its total gross business of said year added to the value of its entire property. The fraction so obtained shall represent the proportion of the capital within the state. The secretary of state may demand, as a condition precedent to the filing of such report, such further information and statements as he may deem proper in order to determine the accuracy of the report submitted; the additional information so obtained shall not be a public record;

(l) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such foreign corporation.

(2) Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subsection (1) (h), (i), (j) and (k), which shall be given as of December 31 next preceding the date herein provided for the filing of such report, or if the corporation keeps its accounts on other than a calendar year basis, then as of the close of its fiscal year next preceding such December 31. It shall be executed by a principal officer or, if the corporation is in the hands of a re-

ceiver, assignee or trustee, it may be executed on behalf of the corporation by such receiver, assignee or trustee.

History: 1951 c. 731; 1953 c. 399.

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

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

180.835 Filing of annual report of foreign corporation. (1) The first annual report of a foreign corporation shall be delivered to the secretary of state between January 1 and March 31 of the year next succeeding the calendar year in which such corporation was authorized to transact business in this state. Subsequent annual reports of a foreign corporation shall be delivered to the secretary of state between January 1 and March 31 of each year. Unless the secretary of state finds such report does not conform to the requirements of this chapter, he shall, when all fees and charges have been paid as in this chapter provided, file the same. If he finds that it does not so conform, he shall return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state not more than 30 days after the date it was mailed back to the foreign corporation by the secretary of state.

(2) If the annual report is delivered to the secretary of state after March 31 and prior to June 1, the corporation shall pay a penalty for late filing of $25, and the secretary of state shall not file such report until said penalty has been paid. If the annual report is delivered to the secretary of state on or after June 1, the corporation shall pay a penalty for late filing of $50 and the secretary of state shall not file such report until said penalty has been paid.

History: 1951 c. 731.

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

180.837 Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall file with the secretary of state an application for withdrawal and final report.

(2) The application for withdrawal and final report shall set forth:

(a) The name of the corporation and the state, territory or country under the laws of which it is organized;

(b) That it is not transacting business in this state;

(c) That it surrenders its authority to transact business in this state;

(d) That it revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any suit, action or proceeding based upon any cause of action arising in this state during the time it was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) Such information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this chapter prescribed.

(3) The application for withdrawal and final report shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice president, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, the same shall be executed on behalf of the corporation by such receiver or trustee.

History: 1951 c. 731.

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

180.839 Filing of application for withdrawal and final report. (1) Duplicate originals of such application for withdrawal and final report shall be delivered to the secretary of state. Unless he finds that it does not conform to the provisions of this chapter, he shall, when all fees and charges have been paid as in this chapter prescribed:

(a) Indorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof.

(b) File one of such duplicate originals in his office.

(c) Issue a certificate of withdrawal to which he shall affix the other duplicate original.

(2) He shall return such certificate of withdrawal with a duplicate original of the application for withdrawal and final report thereto affixed, to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

History: 1951 c. 731.

Revision Committee Note, 1951: See note to 180.837. (Bill 763-S)

180.841 Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state when he finds that:

(a) The certificate of authority of the corporation was procured through fraud practiced upon this state; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(c) The corporation has failed for a period of 90 days to pay any fees, charges or penalties prescribed by this chapter; or

(d) The corporation has failed for 90 days to appoint and maintain a registered agent in this state; or

(e) The corporation has failed to file by June 1 its annual report as required by this chapter; or

(f) The corporation has failed to file in the office of the secretary of state a duly authenticated copy of each amendment to its articles of incorporation within 60 days after such amendment becomes effective; or

(g) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter; or

(h) The corporation has changed its name to one under which a certificate of authority to transact business in this state would not be granted to it on application therefor.

(2) On the happening of any of the above events, the secretary of state shall give not less than 30 days' written notice to the corporation that he intends to proceed to revoke the certificate of authority of such corporation for one of the causes above set forth, specifying the same. Such notice shall be given by mail duly addressed to such corporation at its registered office in this state and at its principal office outside the state, as shown by its last annual report on file. If, before the expiration of the time stated in the notice, the corporation establishes to the satisfaction of the secretary of state the fact that the stated cause for the revocation of its certificate of authority did not exist as of the time the notice was mailed or, if it did exist at said time, has been cured, then the secretary of state shall take no further action. Otherwise, on the expiration of the time stated in the notice, he shall proceed to revoke the certificate of authority.

History: 1951 c. 731.

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

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

180.843 Issuance of certificate of revocation. (1) To revoke any such certificate of authority, the secretary of state shall:

(a) Issue a certificate of revocation in triplicate.

(b) File one of such certificates in his office.

(c) Mail to such corporation at its registered office in this state and at its principal office outside the state, as shown by its last annual report on file, a notice of such revocation accompanied by one of such certificates.

(2) Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

History: 1951 c. 731; 1953 c. 399.

Revision Committee Note, 1951: See note to 180.841. (Bill 763-S)

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

180.845 Application to corporations heretofore licensed to transact business in this state. (1) Foreign corporations subject to this chapter which have been duly licensed to transact business in this state at the time this chapter takes effect, for a pur-

pose or purposes for which a corporation might secure a certificate of authority under this chapter, shall, subject to the conditions set forth in their respective licenses to transact business, be entitled to all the rights and privileges applicable to foreign corporations procuring authority to transact business in this state under this chapter, and from the time this chapter takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring under this chapter authority to transact business in this state.

(2) Provided, however, that it shall not be necessary for a foreign corporation licensed to transact business in this state at the time this chapter takes effect to designate a registered office or appoint a registered agent prior to the time it files its first annual report pursuant to the provisions of this chapter. Such corporation may at any time after this chapter takes effect designate a registered office and appoint a registered agent in the manner provided in this chapter for change of registered office or registered agent.

(3) Any agent for the service of process appointed by such foreign corporation before this chapter takes effect shall continue as such agent until the corporation designates a registered office and appoints a registered agent as above provided. If there is no such agent, then service of process may be made on the secretary of state as provided in this chapter when there is no registered agent.

(4) Notwithstanding the repeal of any law applicable to foreign corporations by chapter 731, laws of 1951, any appointment of the secretary of state as attorney upon whom summons, notices, pleadings or process may be served, and any designation of any other person for such purpose made pursuant to or resulting from the operation of any law theretofore in force with respect to any foreign corporation not licensed to transact business in this state on August 19, 1951, shall continue in full force and effect as to such foreign corporation until such time as such corporation may make such an appointment or designation under this chapter or otherwise become subject thereto.

History: 1951 c. 731; 1953 c. 399.

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

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

180.847 Transacting business without certificate of authority. (1) No foreign corporation transacting business or acquiring, holding or disposing of property in this state without a certificate of authority, if a certificate of authority is required under this chapter, shall be permitted to maintain or defend a civil action or special proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall a civil action or special proceeding be maintained in any court of this state by any foreign corporation or a successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business or the acquiring, holding or disposing of property by such corporation in this state at a time when such corporation was without such certificate of authority until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation or of its title to property in this state.

(3) A foreign corporation which transacts business, acquires, holds or disposes of property in this state without a certificate of authority, if a certificate of authority is required under this chapter, shall be liable to this state, for the years or parts thereof during which it transacted business or acquired, held or disposed of property in this state without a certificate of authority, in an amount equal to all fees and other charges which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter and in addition thereto it shall be liable for a penalty of 50 per cent of such amount. Such fees and penalty shall be paid before a certificate of authority is issued.

(4) A foreign corporation transacting business or acquiring, holding or disposing of property in this state without a certificate of authority, if a certificate of authority is required under this chapter, shall by so doing be deemed to have thereby appointed the secretary of state as its agent and representative upon whom any process, notice or demand may be served in any action or proceeding arising out of or relating to any business so transacted, or property acquired, held or disposed of within this state. Service of such process, notice or demand shall be made by serving a copy upon the secretary of state or by filing such copy in his office, and such service shall be sufficient service upon said foreign corporation, provided that notice of such service and a copy of the process, notice or demand are within 10 days thereafter sent by mail by the plaintiff to the defendant at its

last known address, and that the plaintiff's affidavit of compliance herewith is appended to the process, notice or demand. The secretary of state shall keep a record of all such processes, notices and demands which shows the day and hour of service.

(5) Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

History: 1951 c. 731; 1953 c. 399.

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

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

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

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

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

The fact that an unlicensed foreign corporation had no place of business in Wisconsin where it could make use of the motors ordered by it from the Racine, Wisconsin, seller "f.o.b. Racine," and the practical interpretation of the contract by the parties themselves, establishing the fact that all of the motors supplied by the seller thereunder were shipped to such corporation at Chicago, warranted a determination that the contract contemplated shipment of all of the motors to a point of destination outside of Wisconsin so as to involve interstate commerce only, thereby making the provisions of 226.02, Stats. 1949, inapplicable to bar such corporation from maintaining an action against the seller for breach of the contract, where the only act of such corporation in Wisconsin had been the execution of the contract here. Standard Sewing Equip. Corp. v. Motor Specialty, 263 W 467, 57 NW (2d) 706.

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

See note to 133.25, citing Bulova Watch Co. v. Anderson 270 W 21, 70 NW (2d) 243.

180.849 Suits by and against foreign corporations. The prosecution or defense of an action or proceeding in any court of this state by a foreign corporation shall in itself not constitute the transacting of business within the state, and a foreign corporation is authorized to prosecute or defend any action or proceeding which a domestic corporation may prosecute or defend except as the same is expressly prohibited or limited by this chapter or other applicable provisions of law. But such foreign corporation cannot maintain an action founded upon an act or upon any liability or obligation, express or implied, arising out of, or made, or entered into in consideration of any act which the laws of this state forbid a corporation or any association of individuals to do, without express authority of law.

History: 1951 c. 731.

Revision Commitee Note, 1951: This section is like 226.11 (1949). Since the provisions covering foreign corporations will be made part of the new Business Corporation Law, chapter 226 (1949) should be repealed, except the following:

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

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

180.85 Limitation of liability on transfers. (1) In registering a transfer of its shares, no corporation is bound to inquire into, or shall be liable to any person suffering loss as a result of such registration for failure to inquire into, the power, authority or capacity of the person making an indorsement of any certificate for such shares or the rightfulness of the transfer by such person, in any of the following cases:

(a) As to an indorsement made by an executor or administrator or a testamentary or other trustee, provided proof is furnished to the corporation that the signer was such executor, administrator or trustee at the date of signing;

(b) As to an indorsement made by a guardian, conservator, receiver or other successor to or custodian of the interest of any person by operation of law, provided proof is furnished to the corporation that the signer had been appointed such guardian, conservator, receiver, successor or custodian by any state or federal court and was such at the date of signing;

(c) As to an indorsement made by a nominee of a fiduciary or other person, where the shares are registered in the name of such nominee;

(d) As to an indorsement made by an incompetent unless the corporation has actual knowledge that the signer is under adjudication of incompetence or is under guardianship;

(e) As to an indorsement made by an infant unless the corporation has actual knowledge that such infant is under guardianship;

(f) As to an indorsement made by the survivor or survivors of 2 or more individuals who are joint tenants or who are named in a registration describing them as joint tenants or with right of survivorship, provided proof is furnished to the corporation that every individual named in such registration and not joining in such indorsement is dead.

(2) In addition to the registration of transfers, the provisions of this section shall also apply to transactions and indorsements in connection with the exchange, conversion into other shares, purchase, redemption or retirement by the corporation of its shares.

(3) A corporation acting outside this state in connection with the registration, transfer, exchange, conversion into other shares, purchase, redemption or retirement of its shares, shall have no greater obligation to the holder or owner of any certificate for the shares than one acting within this state.

(4) This section does not relieve any corporation of liability in any case where the corporation has actual knowledge that the person signing the indorsement had no power, authority or capacity to make such indorsement or was acting wrongfully in making such indorsement or in effecting the transaction for which such indorsement is required.

(5) For the purposes of this section:

(a) "Share" includes rights to subscribe for shares, and "certificate" includes transferable warrants issued in registered form representing such rights.

(b) An "indorsement" of a certificate is made when the person specified by the terms of the certificate or by special indorsement to be entitled to the certificate or the successor to or custodian of his interest by operation of law signs on it or on a separate document an assignment or transfer of the certificate or a power to assign or transfer it or when the signature of such person or such successor or custodian is written without more upon the back of the certificate. An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the certificate is to be transferred. Any person in possession of a certificate may convert a blank indorsement into a special indorsement.

(c) A corporation has "actual knowledge" of a matter for a particular transaction from the time when it becomes actually known to the individual conducting the transaction, and in any event from the time when it would have become actually known to him if every other person who acquired knowledge while acting for the corporation had exercised due diligence in transmitting such information to such individual.

(d) The "date of signing" shall, in the absence of actual knowledge by the corporation to the contrary, be deemed to be such date as is shown on the indorsement.

(e) The term "corporation" in this section includes any transfer agent, registrar or other agent acting for a corporation.

History: 1953 c. 399.

Revision Committee Note, 1953: The purpose of this section in its application to court-appointed fiduciaries is to minimize transfer delays and burdens on both the fiduciary and the corporation occasioned by the existing practice of requiring submission and examination of wills, trust instruments, or court orders relative to power or authority to make the requested transfer. Policing of the propriety of such transfers is better left to the supervising court and to its power to require accounting. The section also resolves troublesome questions of responsibility for transfers by nominees, minors, possible incompetents, and persons apparently having survivorship rights. It is expressed to apply to transactions effected by either the Wisconsin corporation or its transfer or other agents, and regardless of whether they act within or without the state in the transaction. (Bill 524-S)

180.851 Corporation dealing with infants or incompetents. (1) A corporation may treat an infant or incompetent who holds shares or other securities of such corporation as having capacity to receive and to empower others to receive dividends, interest, principal and other payments and distributions in respect of such shares or securities, to vote or give consent in person or by proxy in respect thereof, and to make elections and exercise rights relating to such shares or securities, unless, as to an infant, the corporation has actual knowledge that such infant is under guardianship, or unless, as to an incompetent, the corporation has actual knowledge that such person is under adjudication of incompetence or is under guardianship.

(2) An infant or incompetent holder of shares or other securities of a corporation, having received or empowered others to receive payments or distributions in respect of such shares or securities, or having voted or given consent in respect thereof, or having made an election or exercised a right relating to any such shares or security, shall have no right thereafter to disaffirm or avoid, as against the corporation, any such act on his part,

unless prior to such receipt, vote or consent, the making of such election or the exercise of such right, the corporation, as to an infant, has actual knowledge that such infant is under guardianship, or, as to an incompetent, has actual knowledge that such person is under adjudication of incompetence or is under guardianship.

History: 1953 c. 399.

Revision Committee Note, 1953: Today many infants own shares in and securities of corporations, either by purchase, inheritance or gift. Also, many times shares in and securities of corporations are owned by persons who are incompetents. The question arises whether the corporation may pay dividends, interest, principal or make other payments in respect to the shares and securities of the corporation to a minor or incompetent, or whether such persons may vote in person or appoint proxies, or whether they may exercise any rights in respect of the shares and securities of the corporation. Many times a corporation is unaware that a person is a minor or incompetent, and the question arises whether the corporation deals with such persons at its peril or whether the corporation should be protected when it deals with them not having knowledge that they are under guardianship or under adjudication of incompetence. It is felt that when a corporation pays dividends, interest, principal or makes any other payment in respect of its shares or securities to a minor or incompetent, or permits a minor or incompetent to vote or appoint a proxy, or otherwise deals with such individual, then the corporation should be protected and the minor or incompetent should be bound by his act, unless the corporation, as to a minor, has actual knowledge that he is under guardianship, and, as to an incompetent, has actual knowledge that such person is under adjudication of incompetence or is under guardianship. The section will protect a corporation when dealing with a minor or incompetent under such circumstances. (Bill 524-S)

180.86 Procedure on filing and recording of documents. (1) If in this chapter it is required that any document be filed and recorded, duplicate originals of such document shall be delivered to the secretary of state. Unless the secretary of state finds that such document does not conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) Indorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof;

(b) File one of such duplicate originals in his office;

(c) Affix to the other duplicate original a certificate showing the date of such filing, and return the same to the corporation or its representative.

(2) The duplicate original so returned shall be recorded in the office of the register of deeds of the county in which the registered office of the corporation is located. The register of deeds shall forthwith transmit to the secretary of state a certificate stating the time when such duplicate original was recorded, and shall be entitled to a fee of 25 cents therefor to be paid by the person presenting such documents for record. Whenever the register of deeds shall so record any documents, other than original articles of incorporation, he shall note on the margin of the record of the original articles of incorporation the volume and page where such documents are recorded.

(3) If such document is required to be recorded in more than one county, additional originals may be delivered to the secretary of state and by him indorsed and certificates affixed thereto, and any such original, or a copy of the filed original certified by the secretary of state, may be recorded in any county where required, all in the manner as above provided in respect to duplicate originals.

(4) No such document shall be effective until an original or copy, with the certificate of the secretary of state attached, has been recorded in the office of the register of deeds in each county in which such document is required to be recorded. A document shall, for the purposes of this chapter, be deemed to be recorded when such document has been left for record in the proper office and all required fees paid.

(5) The register of deeds shall not accept for recording articles of incorporation, or amendments to articles changing the corporate name, more than 60 days after the date of filing the same by the secretary of state, unless the persons on whose behalf the same were filed shall record therewith a certificate of the secretary of state showing that they hold a reservation of the new corporate name made not more than 60 days prior to such recording.

History: 1951 c. 731.

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

180.861 Omission of seal. Whenever in this chapter it is provided that any document be sealed with the corporate seal, no corporate seal shall be required if the document includes a statement or notation to the effect that the corporation has no seal.

History: 1953 c. 399.

180.87 Fees for filing documents. (1) The secretary of state shall charge and collect for:

(a) Filing articles of incorporation or articles of consolidation, $1 for each $1,000 or fraction thereof of authorized par value shares, and 2 cents for each authorized share without par value, the minimum fee to be $25.

(b) Filing articles of amendment, $10; and an additional sum equal to $1 for each $1,000 or fraction thereof of par value shares and 2 cents for each share without par value as authorized after such amendment, less a credit computed at the foregoing rates upon all shares as authorized immediately prior to such amendment.

(c) Filing articles of merger, $10; and an additional sum equal to $1 for each $1,000 or fraction thereof of par value shares and 2 cents for each share without par value as authorized after such merger, less a credit computed at the foregoing rates upon all shares of domestic corporations which are parties to merger as authorized immediately prior to such merger.

(d) Filing a statement of intent to dissolve, $5.

(e) Filing articles of dissolution, $5.

(f) Filing an application to reserve a corporate name, $5.

(g) Filing a notice of transfer of a reserved corporate name, $5.

(h) Filing a statement of change of address of registered office or change of registered agent, or both, or a statement of resignation of registered agent, $5.

(i) Filing an application of a foreign corporation for certificate of authority to transact business in this state, $25, and $1 for every $1,000 of its capital exceeding $25,000 employed or to be employed in this state, computed as provided in section 180.813, as shown by such application.

(j) Filing an annual report of a foreign corporation, $5, and in case said annual report shows that the corporation employs in this state capital in excess of $25,000, computed as provided in section 180.813, an additional fee which with previous payments made on account of capital employed in this state, will amount to $1 for each $1,000 of such excess.

(k) Filing an application of a foreign corporation for amended certificate of authority to transact business in this state, $5, and in case said application shows that the corporation employes in this state capital in excess of $25,000, computed as provided in s. 180.813, an additional fee which with previous payments made on account of capital employed in this state, will amount to $1 for each $1,000 of such excess.

(l) Filing a copy of amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, $10. If the amendment is filed more than 60 days after the same has become effective in the home state, the corporation shall pay to the secretary of state a penalty of $25.

(m) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state other than with a domestic corporation, $10.

(n) Filing an application for withdrawal and final report of a foreign corporation, $10.

(o) Receiving service of any process, notice or demand authorized to be served on the secretary of state by this chapter, $2.

(p) Filing a resolution declaring the election of a corporation to become subject to this chapter before July 1, 1953, $10.

(2) The liability of any corporation for any fees, charges or penalties which may be due under this chapter may be enforced by suit brought by the attorney-general in the name of the state.

(3) The secretary of state shall not file any document relating to any corporation, domestic or foreign, organized under or subject to the provisions of this chapter, until all fees and charges provided to be paid in connection therewith shall have been paid to him or while the corporation is in default in the payment of any fees, charges or penalties herein provided to be paid by or assessed against it.

History: 1951 c. 731; 1953 c. 399.

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

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

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

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

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

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

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

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

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

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

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

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

(1) (j) provides a fee of $2 for the filing of the annual report of a foreign corporation and provides additional fees in the event an annual report shows the corporation is employing more capital in the state than during the preceding year computed in the same manner as under paragraph (i) of this subsection.

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

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

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

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

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

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

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

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

180.88 Penalties for false statements. Any officer or director or any other person who shall file or cause to be filed with the secretary of state on behalf of any corporation subject to this chapter any certificate, report, statement, application or any other document required or permitted to be so filed under this chapter, known to such director, officer or other person to be false or misleading in any material respect shall be punished by imprisonment in the state prison not more than 3 years or in the county jail not more than one year or by fine not exceeding $1,000.

History: 1951 c. 731.

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

180.89 Waiver of notice. Whenever any notice whatever is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws of any corporation, a waiver thereof in writing signed at any time by the person or persons entitled to such notice, shall be deemed equivalent to the giving of such notice. Such waiver by a shareholder or subscriber in respect to any matter of which notice is required under any provision of this chapter shall contain the same information as would have been required to be included in such notice under any applicable provisions of this chapter, except that time and place of meeting need not be stated.

History: 1951 c. 731.

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

180.895 When notice not required. Whenever any notice is required to be given under the provisions of this chapter, or under the provisions of the articles of incorporation or by-laws of any corporation, to any person with whom communication is made unlawful by any law of the United States now or hereafter enacted, or by any rule, regulation, proclamation or executive order issued under any such law, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person; and any action or meeting which has been or hereafter shall be taken or held without notice to any such person or without giving or without applying for a license or permit to give any such notice to any such person with whom communication is made unlawful as aforesaid, shall have the same force and effect as if such notice had been given as provided under the provisions of this chapter or under the provisions of the articles of incorporation or by-laws. In the event that the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this chapter, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is made unlawful by any law, rule, regulation, proclamation or executive order as aforesaid.

History: 1953 c. 399.

Revision Committee Note, 1953: This section which is patterned largely after section 81 A of the Delaware Code, removes any doubt as to the validity of corporate action where, as was the case during the war, it was legally impossible to give notice to persons in certain countries. (Bill 524-S)

180.90 Voting requirements of articles of incorporation. Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

History: 1951 c. 731.

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

180.91 Informal action by shareholders or directors. Any action required by the articles of incorporation or by-laws of any corporation or any provision of law to be taken at a meeting or any other action which may be taken at a meeting, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders, subscribers, directors or members of a committee thereof entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: 1951 c. 731; 1953 c. 399.

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

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

180.92 Appeal from secretary of state. (1) If the secretary of state finds that any document, other than the annual report of a domestic or foreign corporation, required by this chapter to be filed in his office does not conform to law, he shall, within 10 days after the delivery thereof to him, give written notice of his decision to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Such decision shall be subject to such judicial proceedings as are provided by law, or such person or corporation, within 60 days after receipt of the said notice of decision, may commence an action against the secretary of state in the circuit court of Dane county by service of a summons and complaint to set aside such finding, whereupon proceedings shall be had as in other actions and the matter shall be tried de novo by the court without a jury, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(2) If the secretary of state shall revoke, or give notice of intention to revoke, the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of this chapter, such decision shall be subject to such judicial proceedings as are provided by law, or such foreign corporation, within 60 days after receipt of the notice of revocation or intention to revoke, may commence an action against the secretary of state in the circuit court of Dane county by service of a summons and complaint to set aside such decision, whereupon proceedings shall be had as in other actions and the matter shall be tried de novo by the court without a jury, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper. Upon the commencement of such action the court may stay or suspend the effect of the order of the secretary of state revoking or noticing intention to revoke the certificate of authority to transact business in this state upon such terms and conditions as the court may deem proper.

(3) Appeals from orders or judgments of the circuit court of Dane county under this section shall be taken in the manner provided by law for appeals from the circuit court in other civil cases.

History: 1951 c. 731.

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

180.93 Liability for doing business before minimum amount of capital paid in. If any corporation transacts business with any others than its subscribers and shareholders before the minimum amount of consideration for its shares to be received by the corporation before it shall commence business as required by this chapter has actually been paid in, the corporation offending shall have no right of action with respect to any obligation so contracted and the incorporators and the subscribers for stock, shareholders and officers transacting such business or authorizing the same, or consenting to the incurring of any debt or liability, shall be jointly and severally liable upon the same for the difference between the amount actually received and the amount that should have been received before commencing business, but such liability and such disability of the corporation to bring action shall be terminated when the corporation has actually received the total amount of such consideration.

History: 1951 c. 731; 1953 c. 399.

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

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

180.94 Forms to be furnished by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. The secretary of state may provide such forms for other documents to be filed in his office under this chapter as in his judgment may be deemed necessary for such purpose, but the use thereof, unless otherwise specifically prescribed in this chapter, shall not be mandatory.

History: 1951 c. 731.

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

180.95 Application of chapter to rights existing before enactment. Application of the provisions of this chapter to corporations existing before August 19, 1953 shall not affect the property rights of shareholders in such corporations which were accrued or established at such time, nor shall it affect any liability enforceable at such time, nor shall it affect the validity or enforceability of any contracts existing before such time and not involving the property rights of shareholders as such.

History: 1951 c. 731.

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

180.97 Applicabilty of chapter. (1) DOMESTIC CORPORATIONS. After June 30, 1953 ch. 180 shall apply to all domestic corporations with capital stock, regardless of when they were organized and whether for profit or not, but any domestic corporation organized under provisions other than those in ch. 180 and corresponding prior general corporation laws shall be subject to ch. 180 only to the extent that it is not inconsistent with such provisions; any domestic corporation with capital stock but not organized for profit which has before July 1, 1953, been organized under the general corporation laws or any special statute or law of this state, shall be subject to ch. 180 only to the extent that the provisions of ch. 180 are not inconsistent with the articles or form of organization of such corporation or with any provisions elsewhere in the statutes or under any special law relating to such corporation.

(2) FOREIGN CORPORATIONS. The provisions of this chapter as to foreign corporations shall be applicable to all foreign corporations after August 19, 1951.

History: 1951 c. 731; 1955 c. 661.

Note: Chapter 399, Laws 1953, created the following provision as an addition to section 8 of ch. 731, Laws 1951:

(4) All corporations whose corporate rights have been forfeited under s. 182.008 [1953 Stats.], shall be considered as in bad standing and may be restored to good standing in the manner provided by s. 180.793 (4) of the statutes.