1971 Assembly Bill 745

Date published:
April 29, 1972

CHAPTER 285, Laws of 1971

AN ACT to repeal 180.40 (1) (e), 180.407, 180.48, 180.69, 180.90 and 180.93; to amend 180.04 (9), (14) and (17), 180.07 (3), 180.12 (2) (e), 180.14 (4), 180.15 (2), 180.18 (1), 180.29 (1), 180.30, 180.32, 180.35, 180.38 (1) and (2) (c) 1, 180.385 (1) (c) 1, 180.39 (2), 180.41 (1), 180.43 (1), (2), (3) and (5), 180.49 (2) and (4), 180.51, 180.53 (4), 180.62 (2) (c), 180.63 (2) (c), 180.64 (1) and (2), 180.65 (1) (b), 180.70 (1), 180.753 (2) and (3) (d), 180.761 (2) and (3) (d), 180.775, 180.809, 180.811 and 180.87 (1) (h); to repeal and recreate 180.19, 180.21, 180.25, 180.27, 180.685, 180.71 and 180.72; and to create 180.05, 180.10 (5), 180.12 (3) (f), 180.14 (5), 180.155, 180.355, 180.53 (8), 180.823 (5) and 180.86 (6) of the statutes, relating to business corporation law.

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

SECTION 1. 180.04 (9), (14) and (17) of the statutes are amended to read:

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

(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 reasonably incurred by him in connection with any civil, criminal or administrative action, suit or proceeding in which he is made or threatened to be made a party by reason of being or having been such director or officer, except in relation to matters as to which he is adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that is authorized by the articles of incorporation or by any bylaw, agreement, vote of shareholders, or otherwise~~ To be a promotor, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

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

NOTE: Sub. (14) is amended so as to specifically grant power to a corporation to be a "promoter, partner, member, associate or manager of any partnership, enterprise or venture". This specific grant is primarily confirmatory of a power that has heretofore existed by virtue of the grant under sub. (17) to exercise "all powers necessary or convenient to effect its purposes". However, some early decisions questioning the power of a corporation to become a partner led to the conclusion that the widespread practice of corporate participation in joint ventures should be placed beyond judicial misinterpretation.

SECTION 2. 180.05 of the statutes is created to read:

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

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

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

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

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

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

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

(c) By the shareholders.

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

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

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

SECTION 3. 180.07 (3) of the statutes is amended to read:

180.07 (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, except that this provision shall not apply if the applicant files with the secretary of state either of the following:

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

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state. A corporation with which another corporation, domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all of the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in, this state.

SECTION 4. 180.10 (5) of the statutes is created to read:

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

SECTION 5. 180.12 (2) (e) of the statutes is amended to read:

180.12 (2) (e) Convertible into authorized shares of any other class or into authorized shares of any series of the same or any other class. 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 or the amount of any such deficiency is transferred from surplus to stated capital.

SECTION 6. 180.12 (3) (f) of the statutes is created to read:

180.12 (3) (f) Voting rights, if any.

NOTE: This paragraph enumerates the rights and preferences as to which there may be variations between different series. It does not specify voting rights. Variations in voting rights may be a useful tool in allocating interests in a close corporation and may be of significance in preferred series in the merger of publicly held corporations. Consequently, express provision for such variation is to be added.

SECTION 7. 180.14 (4) of the statutes is amended to read:

180.14 (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.~~

SECTION 8. 180.14 (5) of the statutes is created to read:

180.14 (5) In the event of issuance of shares upon the conversion or exchange of indebtedness or shares, consideration for the shares so issued shall be a) the principal sum of, and accrued interest on, the indebtedness so exchanged or converted, or the stated capital then represented by the shares so exchanged or converted, and b) that part of surplus, if any, transferred to stated capital upon 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 indebtedness or shares so exchanged or converted.

SECTION 9. 180.15 (2) of the statutes is amended to read:

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

NOTE: The words "the issuance of" immediately preceding "shares", is added to give express effect to the intent of the prohibition.

SECTION 10. 180.155 of the statutes is created to read:

180.155 STOCK RIGHTS AND OPTIONS. Subject to any provisions set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time within which and the price at which such shares may be purchased from the corporation upon the exercise of any such right or option. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

SECTION 11. 180.18 (1) of the statutes is amended to read:

180.18 (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~~ manually signed on behalf of a transfer agent or 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.

NOTE: This change recognizes the modern trend toward facsimile signature by one of the transfer agents or registrar, if the other signs manually.

SECTION 12. 180.19 of the statutes is repealed and recreated to read:

180.19 FRACTIONAL SHARES. A corporation may:

(1) Issue fractions of a share;

(2) Arrange for the disposition of fractional interests by those entitled thereto;

(3) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) Issue 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, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause 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 scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of scrip, or subject to any other conditions which the board of directors may deem advisable.

NOTE: This section provides expressly for issuance of a certificate for a fractional share for the issuance of scrip convertible, in proper multiples, into a full share.

Both alternatives involve cumbersome procedures and time consuming paper work. Their disadvantages have led to use of other alternatives. One is the outright payment in cash of the value of the fractions. The second and more frequently used procedure is the sale, by an agent designated by the corporation but acting for the shareholders, of all fractional interests at the market evaluation and distribution pro rata of the proceeds. This additional flexibility is allowed by this section.

SECTION 13. 180.21 of the statutes is repealed and recreated to read:

180.21 SHAREHOLDERS PREEMPTIVE RIGHTS. (1) Except to the extent limited or denied by this section or by the articles of incorporation, shareholders shall have a preemptive right to acquire unissued shares or securities convertible into such shares or carrying a right to subscribe to or acquire shares.

(2) Unless otherwise provided in the articles of incorporation:

(a) No preemptive right shall exist:

1. To acquire any shares issued to directors, officers or employes pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders,

2. To acquire any shares, convertible securities or rights issued for a consideration other than cash, or

3. To acquire treasury shares.

(b) Holders of shares of any class that is preferred or limited as to dividends or assets shall not be entitled to any preemptive right;

(c) Holders of shares of common stock shall not be entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock;

(d) Holders of common stock without voting power shall have no preemptive right to shares of common stock with voting power;

(e) The preemptive right shall be only an opportunity to acquire shares or other securities under such terms and conditions as the board of directors may fix for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

NOTE: As preemptive rights are a common law concept, not clearly or uniformly defined by all courts, the indicated exclusions afford certainty of interpretation in cases where the articles of incorporation are not express. The above is the alternate Model Act provision, edited to exclude treasury shares in accordance with existing Wisconsin law. The Wisconsin Committee deems it unwise to adopt the Model Act primary recommendation (1969 Addendum Item 51), that all preemptive rights be denied by statute except as expressly preserved in the articles of incorporation, since that would be unduly disruptive of existing relationships created in reliance on common law rights.

SECTION 14. 180.25 of the statutes is repealed and recreated to read:

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 enlarged, limited or denied by the articles of incorporation as permitted by this chapter. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this chapter to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

(2) The "requisite affirmative votes" referred to in ss. 180.51, 180.64 (2), 180.71, 180.753 (2) and 180.761, and the recitals of votes which are "requisite for adoption" or "requisite for approval" to be set forth pursuant to ss. 180.53 (4), 180.65 (1) (b), 180.753 (3) (d) and 180.761 (3) (d), shall, subject to subs. (1) and (3), be as follows:

(a) With respect to corporations organized before January 1, 1973 - the affirmative vote of the holders of two-thirds of the shares entitled to vote on the proposal, unless any class or series

of shares is entitled to vote thereon as a class, in which event the proposal shall be adopted upon receiving the affirmative votes of the holders of 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; provided, that any such corporation organized before January 1, 1973, may expressly elect the majority affirmative voting requirements, or any greater proportion than a majority, in respect to any or all of the subjects covered by said sections either by its original articles of incorporation or by amendment to its articles of incorporation adopted after the effective date of this paragraph (1971) by such requisite two-thirds affirmative vote.

(b) With respect to corporations organized on or after January 1, 1973 - the affirmative vote of the holders of a majority of the shares entitled to vote on the proposal, unless any class or series of shares is entitled to vote thereon as a class, in which event the proposal shall be adopted upon receiving the affirmative votes of holders of a majority 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.

(3) 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.

(4) Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares entitled to vote, but shares of its own issue held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares entitled to vote.

(5) 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.

(6) Shares standing in the name of another corporation, domestic or foreign, may be voted either in person or by proxy, by the president or any other officer appointed by the president. A proxy executed by any principal officer of such other corporation or assistant thereto shall be conclusive evidence of the signer's authority to act, in the absence of express notice of the designation of some other person by the board of directors or by the by-laws of such other corporation.

(7) 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.

(8) 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.

NOTE: Sub. (1). This change reconciles the numerous statutory references to voting requirements by number of shares, to the previously permitted Wisconsin practice that some classes may have multiple or fractional votes

per share on some or all matters where classes vote together.

Sub. (2). Because the two-thirds affirmative voting requirement on special matters has been statutory in Wisconsin for many years, it has in effect become an implied provision in the articles of incorporation of existing corporations and undoubtedly many corporate relationships have been created in reliance thereon. Therefore, the two-thirds requirement is preserved for preexisting corporations (and also until 1973 to avoid entrapment in use of old forms or old organization procedures or check lists), but all such corporations are permitted to amend their articles by a two-thirds vote so as to change for the future to the majority vote rule on any or all of these special subjects. Furthermore, any corporation formed in 1973 or thereafter is free to adopt the two-thirds rule (or any other proportion greater than a majority) by express election of such two-thirds or other proportion in its articles of incorporation.

SECTION 15. 180.27 of the statutes is repealed and recreated to read:

180.27 VOTING TRUSTS AND AGREEMENTS AMONG SHAREHOLDERS. (1) 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. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record 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.

(2) Agreements among shareholders regarding the voting of their shares shall not be subject to the provisions of this section regarding voting trusts.

NOTE: This section is to be implemented in two respects:

1. Where a voting trust exists, the trustee will be required to keep a record of the holders of voting trust certificates, as in the manner of shareholder records, and to deposit a copy with the corporation, where it is to be subject to examination by a holder of shares or voting trust certificates as are the records of the corporation.

2. Agreements among shareholders regarding the voting of their shares differ basically from voting trust agreements. The latter involves a transfer in legal title to which the corporation is a party, while a

voting agreement is primarily an instrument for allocating representation on the board of directors. Hence, in the latter case the safeguards developed for voting trusts are not essential. However, any doubts as to the enforceability of voting agreements should be removed. This is to be done by adding the additional provision [sub. (2)].

SECTION 16. 180.29 (1) of the statutes is amended to read:

180.29 (title) **VOTING RECORDS.** (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall, before each meeting of shareholders, make a complete ~~list~~ record of the shareholders entitled to vote at such meeting or any adjournment thereof, with the address of and the number of shares held by each ~~, which list~~ . Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes of the meeting. The original stock transfer books shall be prima facie evidence as to who are shareholders entitled to examine such ~~list~~ record or transfer books or to vote at any meeting of shareholders.

SECTION 17. 180.30 of the statutes is amended to read:

180.30 The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise provided in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation, and they shall have the same responsibility therefor and standing in relation thereto as provided in this chapter in respect to directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or ~~by-laws~~ bylaws so require. The articles of incorporation or ~~by-laws~~ bylaws may prescribe other qualifications for directors.

NOTE: Traditionally, the management of a corporation has in legal theory been vested in the board of directors. In publicly held and in most larger corporations the theory has been followed generally in practice, even though a dominating chief executive may have left little except affirmation to the acts of the board. In smaller and closely held corporations, whether of a family nature or a corporate joint venture, the actual management has in most cases been exercised directly by the shareholders, with varying degrees of lip service paid to the formalities of board meetings and minutes. In recognition of this fact, the first sentence of this section is amended.

SECTION 18. 180.32 of the statutes is amended to read:

180.32 (1) The ~~number of directors may be fixed by the articles of incorporation or, if the articles of incorporation so provide, by the bylaws but shall not be less than 3~~ board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws. The initial board of directors may be named in the articles of incorporation, but if not so named shall be elected by the subscribers at a meeting held after the filing and recording of the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect

of shortening the term of any incumbent director. In the absence of a bylaw providing for determination of the number of directors, the number shall be the same as that provided for in 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~~ in case of the classification of directors as permitted by this chapter. 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~~ Any director or the entire board of directors may be removed from office with or without cause, by affirmative vote of a majority of the outstanding shares entitled to vote for the election of such director or board of directors, taken at a meeting of shareholders called for that purpose, and any vacancy so created may be filled by the shareholders. Such power of removal or filling of a vacancy may be limited or denied by the articles of incorporation or bylaws.

NOTE: Sub. (1). Where family corporations have in fact followed the practice of having board meetings, a director other than the shareholder owner is frequently a dummy who performs no useful function. Under these circumstances maintenance of the fiction of a board of directors of not less than 3 is merely an illusion. Consequently, this requirement should be eliminated, thus permitting one-man boards. At the same time the requirement that the number of directors be fixed in the charter or bylaws is to be amended to provide that it shall be fixed by "or in the manner" provided in the charter or bylaws.

SECTION 19. 180.35 of the statutes is amended to read:

180.35 A majority of the number of directors fixed ~~pursuant to this chapter~~ by or in the manner provided in the bylaws or in the absence of a bylaw fixing or providing for the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the ~~by-laws~~ bylaws. 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~~ bylaws.

NOTE: Correlates with revision of s. 180.32 (1).

SECTION 20. 180.355 of the statutes is created to read:

180.355 DIRECTOR CONFLICTS OF INTEREST. No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if 1) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or 2) the fact of such relationship or interest is disclosed or known to the shareholders entitled

to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or 3) the contract or transaction is fair and reasonable to the corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

SECTION 20m. 180.38 (1) and (2) (c) 1 of the statutes are amended to read:

180.38 (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. Subject to the same exceptions, dividends declared and paid in its own shares may also be paid on its treasury shares, if so ordered by the board of directors.

(2) (c) 1. If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus at least equal to the aggregate par value of the shares to be issued as a dividend.

NOTE: Sub. (1) permits stock dividends to be paid by a corporation on its treasury shares as well as its outstanding shares.

SECTION 21. 180.385 (1) (c) 1 of the statutes is amended to read:

180.385 (1) (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~~ a majority 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

SECTION 22. 180.39 (2) of the statutes is amended to read:

180.39 (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~~ a majority 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;

SECTION 23. 180.40 (1) (e) of the statutes is repealed.

NOTE: Correlates with repeal of ss. 180.48 and 180.93. See NOTE to s. 180.48.

SECTION 24. 180.407 of the statutes is repealed.

NOTE: This section is superseded by new s. 180.05.

SECTION 25. 180.41 (1) of the statutes is amended to read:

180.41 (1) The principal officers of a corporation shall consist of a president, one or more vice presidents as may be ~~prescribed by~~ fixed by, or in the manner provided in, the articles of incorporation or ~~by-laws~~ bylaws, 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~~ bylaws. 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~~ bylaws. 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.

NOTE: See NOTE to s. 180.32 (1).

SECTION 26. 180.43 (1), (2), (3) and (5) of the statutes are amended to read:

180.43 (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~~ or holder of voting trust certificates for shares of the corporation upon his written request therefor. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time.

(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 relevant 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 relevant books and records of account, annual financial statements, 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.

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

NOTE: Three significant changes are made in this section:

First: An additional sentence is to be added to the first paragraph to permit flexibility as to the form of recordkeeping, subject to convertibility to written form for inspection.

Second: The right to examine books and records is to be limited to "relevant" books and records, thus narrowing the scope for fishing expeditions.

Third: Holders of voting trust certificates are to be given the same rights of examination as are accorded to shareholders.

SECTION 27. 180.48 of the statutes is repealed.

NOTE: This section prohibited the transaction of business by a corporation or the incurring of any indebtedness until at least $500 had been paid in for the issuance of shares. With the change over the years in the value of the dollar, the reliance upon credit reports rather than corporate form and the changed methods of doing business, the committee concluded that the protection sought to be achieved was illusory and that the provision served no useful purpose. Consequently, it is eliminated.

SECTION 28. 180.49 (2) and (4) of the statutes are amended to read:

180.49 (2) After articles of incorporation which name the initial directors are left for record, or after the election by subscribers of the directors constituting the initial 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 named or elected, for the purpose of electing officers and for the transaction of such other business as comes before the meeting. The directors calling the meeting shall give at least 3 days' notice thereof by mail to each director so named or elected, which notice shall state the time and place of the meeting.

(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~~ shares have been issued, 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~~ no shares have been issued, 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.

NOTE: Sub. (4) coordinates with repeal of s. 180.48. Under the unusual circumstances of the last sentence of sub. (4), requirement of two-thirds approval is retained, despite the majority rule permitted in other cases under revised s. 180.25 (2).

SECTION 29. 180.51 of the statutes is amended to read:

180.51 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 requisite affirmative ~~vote 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 of 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~~ votes as provided in s. 180.25. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

NOTE: This section is altered to make the adoption of an amendment to the articles effective upon the affirmative vote of the holders of a majority of the shares entitled to vote instead of the holders of two-thirds of such shares. This decision by the committee is part of its overall conclusion that in accord with contemporary practice, all such basic decisions should be in the control of a majority (unless a higher percentage is required by the articles of incorporation) rather than any arbitrarily selected higher percentage. This change in effect removes the possibility of a veto power being exercised by a minority.

New s. 180.25 (2) covers transitional rights and procedures.

SECTION 30. 180.53 (4) of the statutes is amended to read:

180.53 (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; and the total affirmative number of votes, and the affirmative number of votes of each such class and series, requisite for adoption of such amendment;

NOTE: Sub. (4) is responsive to s. 180.51 revision and to transitional procedures under revised s. 180.25.

SECTION 31. 180.53 (8) of the statutes is created to read:

180.53 (8) If the effective time of such amendment is not to be the time of recording of the articles of amendment, then a designation of the effective date and time, which shall be within 31 days after such recording.

NOTE: Sub. (8) provides the same flexibility on the effective time of amendments to articles, as under merger s. 180.66. This permits advance fixing of effective times of stock-splits and recapitalizations at "close of business" or selected other hours or dates not dependant on the exact recording time by the register of deeds, thereby simplifying record date determinations and minimizing securities trading and notification problems, as well as the hazards of failures or delays in transmission by mail or messenger.

SECTION 31m. 180.62 (2) (c) of the statutes is amended to read:

180.62 (2) (c) The manner and basis of converting the shares of each merging corporation into shares ~~or other securities or~~ ,

obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property;

NOTE: This section brings the general merger provisions into accord with the more recently adopted s. 180.685 and also with changes in the federal tax laws relating to reorganizations.

SECTION 32. 180.63 (2) (c) of the statutes is amended to read:

180.63 (2) (c) The manner and basis of converting the shares of each corporation into shares ~~or other securities or~~ , obligations or other securities of the new corporation or of any other corporation or, in whole or in part, into cash or other property;

NOTE: See NOTE for s. 180.62.

SECTION 33. 180.64 (1) and (2) of the statutes are amended to read:

180.64 (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 , if applicable, 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. The plan of merger or consolidation shall be approved upon receiving the ~~affirmative vote of the holders of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, 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 two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon~~ requisite affirmative votes as provided in s. 180.25, of each such corporation. 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.

NOTE: Under sub. (1) the statement concerning written objection need not be made if the shares are listed on a national stock exchange or for any other reason there can be no pay-out right under new s. 180.72.

New s. 180.25 (2) covers transitional voting rights and procedures.

SECTION 34. 180.65 (1) (b) of the statutes is amended to read:

180.65 (1) (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; and the total affirmative number of votes, and the affirmative number of votes of each such class and series, which in each case is requisite for the approval of such plan under the provisions of s. 180.25;

NOTE: Responsive to s. 180.64 revision and transitional procedures under revised s. 180.25.

SECTION 35. 180.685 of the statutes is repealed and recreated to read:

180.685 MERGER OF SUBSIDIARY CORPORATION. (1) Unless otherwise provided in the articles of incorporation, any corporation owning at least 90% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation and the name of the corporation owning at least 90% of its shares, hereinafter designated the surviving corporation;

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

(c) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property; and

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

(2) Not less than 30 days before the proposed effective time of such merger, a copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation, other than the surviving corporation, together with a notice which shall state that the shareholder has the right upon written demand on the subsidiary corporation, filed within 20 days thereafter, to be paid the fair value of his shares as provided in s. 180.72.

(3) Unless the merger shall be abandoned pursuant to provisions therefor set forth in the plan of merger and notice thereof mailed prior to the proposed effective time of merger to each shareholder to whom notice was sent pursuant to sub. (2), articles of merger shall be executed by the president or a vice president and the secretary or an assistant secretary of each corporation, and shall be sealed with the corporate seal of each corporation, and shall set forth:

(a) The plan of merger;

(b) The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation;

(c) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger, and notice required by sub. (2), or a statement that the same were waived; and

(d) If the effective time of such merger is not to be the time of completion of recording of the articles of merger, then a designation of the effective date and time, which shall be within 31 days after such recording.

(4) After the expiration or waiver of all rights of such shareholders to make written demands for payment under s. 180.72,

such articles of merger 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 merging have their registered offices.

NOTE: This section is a recreation of the old s. 180.685. The change in sub. (1) (c) is only for uniformity of language with revised ss. 180.62 and 180.63.

New sub. (2) provides for notice to the minority in advance of filing or effectiveness, so that the effect of objectors cash payout claims made within 20 days thereafter can be weighed, if the plan is conditioned on the number of shares objecting.

SECTION 36. 180.69 of the statutes is repealed.

NOTE: This section is repealed, since it is replaced by the new s. 180.72.

SECTION 37. 180.70 (1) of the statutes is amended to read:

180.70 (title) **SALE, LEASE OR EXCHANGE 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~~ , and the mortgage or pledge of any or all property and assets of a corporation or the sale, lease, exchange or other disposition of 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 , obligations or other securities 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 by law or in the articles of incorporation.

NOTE: These changes adopt the model act principles that, in modern commercial life, mortgages or pledges are an ordinary incident of borrowing and should not require shareholder approval unless so provided in the articles of incorporation or in other statutes.

SECTION 38. 180.71 of the statutes is repealed and recreated to read:

180.71 SALE, LEASE OR EXCHANGE OF ASSETS WITH SHAREHOLDER ACTION. A sale, lease, exchange 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, obligations or other securities 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) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) 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, in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange or other disposition. Such notice shall further state, if applicable, that any shareholder desiring to be paid the fair value of his shares must file a written objection to the proposed sale, lease, exchange or other disposition at least 48 hours prior to the meeting.

(3) At such meeting the shareholders may authorize such sale, lease, exchange or other disposition 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 requisite affirmative votes as provided in s. 180.25.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

NOTE: This section is the old s. 180.71 with changes.

Sub. (1). Since dispositions of substantially all assets not in the ordinary course of business, may be the practical equivalent of merger, they should be approved in advance by the board of directors as under s. 180.64.

Sub. (3). Incorporates the revised majority/two-thirds rules in s. 180.25. See NOTES to ss. 180.25 and 180.51.

SECTION 39. 180.72 of the statutes is repealed and recreated to read:

180.72 RIGHTS OF OBJECTING SHAREHOLDERS. (1) Any shareholder of a corporation shall have the right to file with the corporation a written objection, at least 48 hours prior to the meeting of shareholders at which any of the following corporate actions are proposed to be voted upon: a) Any plan of merger or consolidation to which the corporation is a party; or b) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash, with or without an assumption of liabilities of the seller, on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale. A shareholder may object as to less than all of the shares registered in his name; and in that event, his rights shall be determined as if the shares as to which he has objected and his other shares were registered in the names of different shareholders. This subsection shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger. Nor shall it apply to the holders of shares of any class or series if the shares of such class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets

is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide.

(2) If such written objection by a shareholder to such proposed corporate action has been filed, and if such proposed corporate action be approved by the required vote and such shareholder shall not have voted in favor thereof, such shareholder may, within 10 days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its shareholders into another corporation any of its shareholders may, within 20 days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the applicable 10-day or 20-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to any other rights of a shareholder.

(3) No such demand may be withdrawn unless the corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, at the effective time of the merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section, or if a court of competent jurisdiction shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

(4) Within 10 days after such corporate action is effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each objecting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the objecting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer, and a profit and loss statement of such corporation for the 12-month period ended on the date of such balance sheet.

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

(6) If within such period of 30 days an objecting shareholder and the corporation do not so agree, then the corporation, within 30

days after receipt of written demand from any objecting shareholder given within 60 days after the date on which such corporate action was effected, shall, or at its election at any time within such period of 60 days may, commence a special proceeding by serving and filing a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located requesting that the fair value of such shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any objecting shareholder may do so in the name of the corporation. All objecting shareholders, wherever residing, who have made demands as herein provided and whose rights to payment have not otherwise terminated, shall be made parties to the special proceeding. A copy of the petition and any process or notice shall be served on each such objecting shareholder, whether a resident or nonresident of this state, as provided in ch. 262. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a finding of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the objecting shareholder shall cease to have any interest in such shares.

(7) The judgment may include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(8) The costs and expenses of any such proceeding shall be determined by the court and may be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the objecting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

(9) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear similar notation together with the name of the original objecting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the

original objecting shareholder had after making demand for payment of the fair value thereof.

(10) Shares acquired by a corporation pursuant to payment of the agreed value therefor 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, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

NOTE: This new s. 180.72 integrates the former provisions of repealed s. 180.69 and former s. 180.72, and with minor editing adopts the model act provisions including the above 1969 addendum changes. The new Wisconsin provision retains the prior nonmodel requirement of objection at least 48 hours before the meeting in order to permit advance consideration of the possible effect of potential cash payments on the feasibility of the proposal.

SECTION 40. 180.753 (2) and (3) (d) of the statutes are amended to read:

180.753 (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 requisite 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~~ votes as provided in s. 180.25.

(3) (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 and the total affirmative number of votes, and the affirmative number of votes of each such class and series, which in each case is requisite for approval of the resolution of dissolution;

NOTE: This incorporates the revised majority/two-thirds rules in s. 180.25, with integrating recitals of the vote requirement in the statement of intent to dissolve.

SECTION 41. 180.761 (2) and (3) (d) of the statutes are amended to read:

180.761 (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 requisite 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~~ votes as provided in s. 180.25.

(3) (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 and the total affirmative number of votes, and the affirmative number of votes of each such class and

series, which in each case is requisite for approval of the resolution;

NOTE: See NOTE to changes in s. 180.753.

SECTION 42. 180.775 of the statutes is amended to read:

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

SECTION 43. 180.809 of the statutes is amended to read:

180.809 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, except that this section shall not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(1) A resolution of its board of directors adopting a fictitious name for use in transacting business in this state which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state or to any name reserved as provided in this chapter; or

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

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

SECTION 44. 180.811 of the statutes is amended to read:

180.811 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, and shall not adopt for use in this state a fictitious name as permitted by s. 180.809 (1), then in addition to becoming subject to revocation of its certificate of authority, it shall not transact business in this state under such ~~new~~ changed name.

SECTION 45. 180.823 (5) of the statutes is created to read:

180.823 (5) If a registered agent's business address is changed to another place within the county, such change of address and the address of the registered office may be indicated by executing and filing a statement as required in sub. (2), except it need be signed only by the registered agent and need not be responsive to sub. (2) (e) or (g) and shall state that a copy of the statement has been mailed to the foreign corporation.

NOTE: Parallels new s. 180.10 (5).

SECTION 45m. 180.86 (6) of the statutes is created to read:

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

SECTION 45s. 180.87 (1) (h) of the statutes is amended to read:

180.87 (1) (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. If simultaneous filings are made by one registered agent such fee shall be reduced to $1 each on such filings in excess of 200.

SECTION 46. 180.90 of the statutes is repealed.

NOTE: Section 180.90 as now written is placed in s. 180.25 (3) so that the entire scheme of extraordinary voting requirements is integrated.

SECTION 47. 180.93 of the statutes is repealed.

NOTE: Repeal of this section correlates with repeal of former ss. 180.48 and 180.40 (1) (e).