



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2005 Wisconsin Act 476
[2005 Senate Bill 619]

Revisions to Laws on Mergers, Conversions, and Business Combinations

2005 Wisconsin Act 476 contains the following provisions:

- Requires submittal of a merger and conversion real estate report, no later than 60 days after the effective date of the merger or conversion, by the surviving business entity of an acquired or converted business entity.
- Permits a parent corporation to merge with an indirect wholly owned subsidiary, including a corporation or limited liability company, without shareholder approval, if the following conditions are satisfied:
 - Every share in the parent corporation is converted into a share in the holding company, subject to the same rights and limitations that applied to the share prior to conversion.
 - The entity surviving the merger becomes a wholly owned subsidiary of the holding company.
 - The directors of the parent corporation become the directors of the holding company.
 - The provisions of the holding company's articles of incorporation and bylaws (or, if the holding company is a limited liability company, its operating agreement) are generally identical to those of the parent corporation's.
 - The provisions of the surviving entity's articles of incorporation and bylaws or operating agreement are generally identical to those of the parent corporation's.
 - If the surviving entity is a limited liability company, its operating agreement contains provisions that grant members certain rights enjoyed by shareholders of the parent

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

corporation under current law or under the parent company's articles of incorporation or bylaws.

- The parent corporation's board determines that the merger will not result in any gain or loss for federal income tax purposes.
- Requires the articles of merger filed with the Department of Financial Institutions (DFI) to state that a plan of merger or share exchange has been approved and adopted as required by law, that the plan is on file at the principal place of business of the surviving corporation, and that the surviving corporation will provide a copy of the plan, upon request and without cost, to any shareholder or, upon payment of the cost of producing the copy, to any other interested person. The Act also specifies other information that must be included in the articles of merger or share exchange.
- Provides that a form developed by the DFI for certification of conversion must indicate that if the business entity that is to be converted has a fee simple ownership interest in Wisconsin real estate, the entity is required to file a report with the Department of Revenue (DOR).
- Redefines the valuation date (a component of the formula for computing the minimum price for shares that shareholders will receive as the result of a business combination) as the day before the first public announcement of a proposed business combination.
- With certain exceptions, the voting power of a person owning greater than 20% of a corporation's stock is currently limited to 10% of the full voting power of those shares, unless the corporation's articles of incorporation provide otherwise or unless regular voting power is restored by vote of the shareholders. This Act also permits the board of directors to specify that regular voting power will apply.
- Adds an additional criterion under which a dissenting shareholder may also obtain fair value of his or her shares when certain business combinations occur.
- Provides, with limited exceptions, an exemption from dissenter's rights (when a shareholder may dissent from certain corporate actions and obtain the fair value of shares in the event of those actions) if the applicable shares are registered on a national securities exchange or quoted in the National Association of Securities Dealers, Inc. This exemption is identical to the exemption that applies generally to other dissenter's rights provisions.
- Allows the board, at any time after filing articles of amendment creating a class or series of shares, to: (1) decrease the number shares of a class or series, but not below the number of outstanding shares of the class or series; (2) eliminate a class or series, if no shares of the class or series are outstanding; or (3) increase the number of shares of a class or series, but not beyond the number of shares authorized by the articles of incorporation.
- Exempts a corporation from certain notice requirements to an individual shareholder, if a specified number of notices or dividend payments sent to the shareholder are returned to the corporation as undeliverable. A shareholder may reinstate the notice requirements by delivering to the corporation the shareholder's current address.

- Permits a board to transfer the corporation's assets to other entities that are wholly owned by the corporation, except in connection with a plan that involves a transfer of all or substantially all of the corporation's assets and that requires shareholder approval.
- Permits a corporation to specify in its articles of incorporation or bylaws the rules for conducting shareholder meetings and sets default rules for corporations that do not adopt their own rules.
- Revises laws regarding the formation and membership of a committee created by a board and deletes certain restrictions on the power of such committees.
- Deletes the requirement that a deed be executed and recorded for transfers of property of a business entity, in situations where a merger or conversion takes place. Under the Act, if a limited partnership, business corporation, nonstock corporation, or limited liability company merges with or converts to another entity, the articles of merger or certificate of conversion filed with DFI must indicate whether a business entity that does not survive the merger or conversion has a fee simple ownership interest in real estate in this state.
- Allows the name of a limited partnership to include abbreviated versions of the words "limited partnership."
- Requires that the surviving entity of a merger or conversion file a report, that is confidential, with the DOR that specifies the following:
 - The effective date of the merger or conversion.
 - The name and address of each business entity that is a party to the merger or conversion.
 - The name of any person at the surviving entity that DOR may contact with regard to submitting the report and the information contained in the report.
 - The parcel identification number and location of all real property interests owned by the surviving entity.
 - A certified copy of the document providing evidence of the merger or conversion and the federal employer identification number of each business entity that is a party to the merger or conversion.
 - The address of the surviving business entity and, in the case of a conversion, a sworn statement that the ownership interests in the surviving entity are identical with the ownership interests in the original entity immediately preceding the conversion.

Effective Date: Act 476 takes effect on June 14, 2006.

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