

CHAPTER 286.

ACTIONS AGAINST CORPORATIONS.

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286.01 [Repealed by 1935 c. 483 s. 7]

286.02 [Renumbered section 262.02 (4) by 1935 c. 483 s. 8; later renumbered 263.03 (4) by 43.08 (2)]

286.03 **Waiver of mistake as to name.** In actions or proceedings by or against any corporation a mistake in the corporation name shall be corrected in the answer, otherwise such mistake is waived. [1935 c. 483 s. 9]

286.04 to 286.09 [Repealed by 1935 c. 483]

286.10 [Renumbered section 268.16 (7) by 1935 c. 483 s. 16]

286.11 [Repealed by 1937 c. 431]

286.12 **Banking and insurance, injunction.** Whenever any corporation, having banking or insurance powers, shall become insolvent or neglect or refuse to pay its due debts on demand or shall have violated any of the provisions of its act of incorporation or of any other law binding on it, such corporation and its officers may be enjoined from exercising any of its corporate rights and from receiving any debts or demands, and from paying out or transferring or delivering any of its property until the court shall otherwise order. [1935 c. 483 s. 17]

286.13 **Actions to annul charters; venue; injunction, receiver.** Such injunction may be issued by the supreme court, upon application by the attorney-general, or a private party in the name of the state for leave to commence an action to dissolve such corporation or upon the commencement of such an action or at any time thereafter upon proof of the essential facts. The court may in any stage of such action appoint a receiver. [1935 c. 483 s. 19]

286.14 [Renumbered section 268.05 (2) by 1935 c. 483 s. 20]

286.15 **Suit against banks.** When an injunction shall issue against a bank for any violation of its charter on the application of any creditor any other creditor or the attorney-general under the direction of the governor may prosecute the action to final judgment if the plaintiff fails to prosecute; and such action shall not be discontinued if either of them so appear and prosecute. [1935 c. 483 s. 21]

286.16 [Repealed by 1935 c. 483 s. 22]

286.17 **Defendants after judgment.** If any creditor of such corporation desires to make such directors, trustees or other officers or stockholders parties to the action after a judgment therein against the corporation he may do so by filing a supplemental complaint against them founded upon such judgment; and if such judgment was rendered in an action instituted by the attorney-general such creditor may, on his own application, be made plaintiff therein and may in like manner make the directors, trustees or other officers or stockholders sought to be charged defendants in such action.

286.18 **Action to charge officers and stockholders; remedies not exclusive.** When a creditor of a corporation seeks to charge directors, trustees or other officers or stockholders thereof on account of any liability created by law he may commence and maintain an action for that purpose and may join the corporation. No remedy given in this chapter shall preclude the enforcement of any liability herein mentioned in an additional action if there are parties or property that cannot be reached by the first action or judgment. [1935 c. 483 s. 23]

286.19 **Proceedings.** If, upon the filing of the answer or upon the taking of an account, it shall appear that the corporation has no property to satisfy such creditor, the

court may, without appointing a receiver, ascertain the respective liabilities of such directors, trustees or other officers and stockholders, and enforce the same by its judgment. [1935 c. 483 s. 24]

286.20 Distribution of property. Upon a final judgment being rendered in any action to restrain a corporation or against the directors, trustees, officers or stockholders the court shall cause just and fair distribution of the property of such corporation and of the proceeds thereof to be made among its creditors in the order prescribed in section 286.40.

286.21 Payments by stockholders. When officers of a corporation or the stockholders are parties to an action, if the property of such corporation shall be insufficient to discharge its debt the court shall compel each stockholder to pay in the amount remaining unpaid on the shares of stock held by him or so much thereof as shall be necessary to satisfy the debts of the corporation. If part of the debts of the corporation still remain unsatisfied the court shall ascertain the respective liabilities of the directors or other officers and of the stockholders, and adjudge the amount payable by each. [1935 c. 483 s. 25]

286.22 Creditors' suits restrained; parties. Whenever any action shall be commenced against any corporation, its directors, trustees or other officers or its stockholders, according to the provisions of this chapter, the court may enjoin proceedings by any other creditor against the defendant; and whenever it shall appear necessary or proper may order notice to be published in such manner as the court shall direct requiring all the creditors of such corporation to exhibit their claims and become parties to the action within a reasonable time, not less than six months from the first publication of such order, and in default thereof to be precluded from all benefit of the judgment in such action and from any distribution which shall be made under such judgment. [1935 c. 483 s. 26]

286.23 Discovery. The court may compel such corporation to discover any property, alleged to belong or to have belonged to it, the disposition thereof and the consideration and all the circumstances of such disposition. Every officer, agent or stockholder of such corporation and every person to whom it shall be alleged that any transfer of property of such corporation has been made, or in whose possession or control the same is alleged to be, may be compelled to testify in relation thereto and to the transfer or possession of such property, although such testimony may expose the corporation to a forfeiture of corporate rights; but such witness shall not be liable to criminal prosecution or proceeding for any act regarding which he is so compelled to testify. [1935 c. 483 s. 27]

286.24 to 286.30 [Repealed by 1935 c. 483 s. 28]

286.31 [Renumbered section 268.02 (3) by 1935 c. 483 s. 29]

286.32 Jurisdiction of circuit court. The circuit court shall have jurisdiction over directors, managers, trustees and other officers of corporations:

(1) To compel them to account for their official conduct in the management and disposition of the funds and property committed to their charge.

(2) To order and compel payment by them to the corporation whom they represent and to its creditors of all sums of money and of the value of all property which they may have acquired to themselves or transferred to others, or may have lost or wasted by any violation of their duties as such directors, managers, trustees or other officers.

(3) To suspend any such director, trustee or other officer from exercising his office whenever it shall appear that he has abused his trust.

(4) To remove any such director, trustee or officer from his office upon proof or conviction of gross misconduct.

(5) To direct if necessary new elections to be held by the body or board duly authorized for that purpose to supply any vacancy created by such removal.

(6) In case there be no such body or board or all the members of such board be removed, then to report the same to the governor, who shall be authorized to fill such vacancies.

(7) To set aside all alienations of property made by the directors, trustees or other officers of any corporation contrary to the provisions of law or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purposes for which it was made; and

(8) To restrain and prevent any such alienation in cases where it may be threatened or there may be good reason to apprehend that it is intended to be made.

(9) To compel the distribution of net earnings and surplus derived from the sale or other disposition of capital assets of corporations among the stockholders or members when the directors unreasonably refuse or neglect so to do.

(10) When visitatorial powers over a corporation are vested by statute in any corporate body or public officer the provisions of this section shall not divest or impair such powers; nor shall such powers of such body or officer be exclusive unless expressly so declared.

(11) The jurisdiction conferred by this section shall be exercised in an action prosecuted by the attorney-general in the name of the state, or by any creditor or stockholder of

the corporation, or by any director, trustee or officer thereof having a general superintendence of its concerns. [1935 c. 483 s. 30, 31]

Note: In an action under (9) to compel a declaration of dividends, the directors are necessary defendants. *Gesell v. Tomahawk Land Co.*, 184 W 537, 552, 200 NW 550.

The complaint in a stockholder's action alleging that directors and officers converted surplus corporate earnings by paying themselves pretended salaries, thereby damaging stockholders, and that an officer without authority loaned himself corporate funds without a proper record or approval or ratification of stockholders or directors, etc., stated, although not separately as required, various

causes of action in the corporation for mismanagement. However, the allegation of an unauthorized loan by a single officer rendered the complaint demurrable as uniting several causes of action not affecting the same parties. To maintain a stockholder's action for the benefit of the corporation for mismanagement of officers or directors it must appear that it is brought in behalf of the corporation, that proper demand on the officers to bring it was refused, or that such a demand would be useless. *Wells v. Frank L. Wells Co.*, 206 W 507, 240 NW 415.

286.33, 286.34 [Renumbered section 286.32 (10), (11) by 1935 c. 483]

286.35 Action to annul corporation. An action may be brought by the attorney-general in the name of the state, whenever the legislature shall direct, against a corporation created by or under the laws of this state for the purpose of vacating or annulling the act of incorporation or an act renewing its corporate existence, on the ground that such act or renewal was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated or by some of them, or with their knowledge and consent.

286.36 Action to annul charter, by whom and for what cause. An action may be brought in the name of the state, on leave granted by the supreme court upon cause shown, for the purpose of vacating the charter of any corporation of this state, except a municipal corporation, and except as provided in section 286.46, whenever such corporation offends against any law by or under which it was created, altered or renewed; or violates any law by which it shall forfeit its charter by abuse of its powers; or forfeits its privileges or franchises by failure to exercise its powers; or does or omits any act which amounts to a surrender of its corporate rights, privileges or franchises; or exercises franchises or privileges not conferred upon it by law. [1935 c. 483 s. 32]

286.37 Attorney-general's duty; who may act if he refuses. Whenever the attorney-general shall have reason to believe that any of the acts or omissions specified in section 286.36 can be established by proof he shall apply for leave, and upon leave granted bring such action in every case of public interest and in every other case in which satisfactory security shall be given to indemnify the state against the costs and expenses to be incurred thereby. In case the attorney-general on application shall refuse to bring such action leave to bring the same by a private party shall be granted only on notice to the attorney-general and the proposed defendant; and the court on granting leave in such case may require the prosecutor to give adequate security to the state to indemnify it and the defendant against all taxable costs therein.

286.38 Notice to parties. Upon an application by the attorney-general to bring any such action the court may in its discretion direct notice of such application to be given to the officers of the corporation previous to the hearing, and may hear the corporation in opposition thereto.

286.39 [Repealed by 1935 c. 483 s. 33]

286.40 Judgment. (1) If it shall be determined that a corporation has forfeited its corporate rights, privileges and franchises the judgment shall dissolve such corporation; and thereupon its affairs shall be wound up under the direction of a receiver, appointed by the court, and its property converted into money; and the proceeds, after paying the costs and expenses, shall be distributed in the following order:

(a) For the payment of taxes and debts due the United States, the state of Wisconsin and any county, city, town, school district or village therein.

(b) For the payment of liens upon its property in the order of their priority.

(c) For the payment of its other debts.

(d) The residue shall be distributed among its stockholders or members.

(2) When any corporation usurps a franchise or privilege the court may, instead of dissolving the corporation, render judgment that such corporation be prohibited from exercising such franchise or privilege and that the plaintiff recover costs, and may also in either case fine such corporation in a sum not exceeding two thousand dollars. [1935 c. 483 s. 34]

286.41 Receiver, appointment. If such dissolution action be pending in the circuit court the receiver shall be appointed by the judgment or by an order founded thereon. If it be pending in the supreme court then, upon the entry of a judgment of dissolution, the attorney-general shall commence an action in the circuit court for the appointment of a receiver and the winding up of the affairs of the corporation; and it shall be deemed to exist until a receiver shall be invested with its property but shall not be able to do any act or thing other than to transfer its assets to such receiver. [1935 c. 483 s. 35]

286.42 Judgment when charter is annulled. The provisions of sections 286.40 and 286.41, so far as they relate to the distribution of the property of the corporation and actions to appoint receivers therefor, shall apply to any corporation whose charter shall be repealed by act of the legislature or otherwise annulled thereby.

286.43 Costs, how paid. The necessary costs and disbursements incurred in bringing and prosecuting such action by the attorney-general, in the name of the state, shall, when certified to by him, be audited by the secretary of state and paid out of the state treasury. The receiver in any such action, or the attorney-general in case such moneys shall be delivered to him by such receiver, shall repay to the state treasurer any money advanced by the state on account of such costs and disbursements.

286.44 Judgment roll, where filed. Upon the rendition of a judgment dissolving a corporation or vacating or annulling of letters patent the attorney-general shall file a copy of the judgment roll in the office of the secretary of state. [1935 c. 483 s. 36]

286.45 Effect of provisions. No special directions in these statutes to the attorney-general or any other public officer, concerning corporations, not contained in this chapter, shall be deemed exclusive nor shall anything in this chapter be deemed to repeal any other remedies given by these statutes to or against corporations, their officers, stockholders or creditors.

286.46 What corporations not affected. The provisions of this chapter shall not extend to any incorporated library or lyceum society, to any religious corporation or any incorporated academy or select school, nor to the proprietors of any burying ground incorporated under the laws of this state.

Note: In an original action in the supreme court brought for the annulment of a corporate franchise, 286.46, exempting "the proprietors of any burying ground incorporated under the laws of this state" from the visitorial jurisdiction and powers vested by this chapter, is construed as relating to

the proprietors of lots in cemeteries of associations incorporated under chapter 157, Stats., and as not exempting therefrom corporations organized under chapter 180, Stats., owning and operating cemeteries. *Hillier v. Lake View Memorial Park*, 208 W 614, 243 NW 406.