

any, conferred by the charter of the vendor corporation, that are not enjoyed by corporations of its class under this act or general laws of this Commonwealth.

When rights vest
in vendee cor-
poration.

From the date of the recording of the letters patent, all of the rights, privileges, powers and immunities possessed and owned by the vendee corporation through the vendor corporation, shall vest in and be enjoyed by the vendee corporation as fully and with like effect as if such charter had not expired, save as herein expressly stated otherwise, and all suits, claims and demands by said vendee corporation, in existence at the date of such renewal of the charter of the vendor corporation, shall and may be sued, prosecuted and collected under the laws governing the said corporation prior to the renewal of charter, and all claims and demands of every nature and character, in existence at the time of the renewal of charter, may be collected from and off said vendee corporation as fully and with like effect as if said charter of the vendor corporation had not expired.

APPROVED—The 2d day of July, A. D. 1937.

GEORGE H. EARLE

No. 595

AN ACT

To further amend the act, approved the fifth day of May, one thousand nine hundred and thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties, and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue, to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," by further defining the scope of the act; eliminating certain approvals of articles of incorporation and certificates of authority; and further regulating the incorporation of business corporations; regulating and extending the rights, responsibilities, authority, powers, and immunities of such corporations and of the shareholders thereof, and the rights, powers, qualifications, and compensation of the officers thereof; further providing for and regulating the dissolution of such corporations; further providing for and regulating the issuance and revocation of certificates of authority of foreign business corporations; and providing penalties.

Section 1. Be it enacted, &c., That sections four, two hundred six, three hundred four, three hundred ten, four hundred one, four hundred six, five hundred nine, eight hundred three, section one thousand five as amended, section one thousand seven as amended, sections one thousand eleven, one thousand twelve, one thousand thirteen, one thousand fourteen, one thousand one hundred three of the act, approved the fifth day of May, one thousand nine hundred thirty-three (Pamphlet Laws, three hundred sixty-four), entitled "An act relating to business corporations; defining and providing for the organization, merger, consolidation, reorganization, winding up and dissolution of such corporations; conferring certain rights, powers, duties and immunities upon them and their officers and shareholders; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the second class within the provisions of this act; prescribing the terms and conditions upon which foreign business corporations may be admitted, or may continue to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, and certain State departments, commissions, and officers; authorizing certain State departments, boards, commissions, or officers to collect fees for services required to be rendered by this act; imposing penalties; and repealing certain acts and parts of acts relating to corporations," as amended by the act, approved the seventeenth day of July, one thousand nine hundred and thirty-five (Pamphlet Laws, one thousand one hundred twenty-three), are hereby further amended to read as follows:

Sections 4, 206, 304, 310, 401, 406, 509, 803, 1005 as amended, 1007 as amended, 1011, 1012, 1013, 1014, and 1103, act of May 5, 1933 (P. L. 364), amended or further amended, as the case may be.

Section 4. Scope of Act.—This act does not relate to, does not affect, and does not apply to:

(1) Cooperative associations, whether for profit or not for profit.

(2) Any corporation which may be organized under the Nonprofit Corporation Law, or which, if not existing, would be required to incorporate under that act.

(3) Any corporation which, by the laws of this Commonwealth, is subject to the supervision of the Department of Banking, the Insurance Department, [The Public Service Commission] *the Pennsylvania Public Utility Commission*, or the Water and Power Resources Board.

Section 206. Filing of Articles; Certificate of Incorporation.—A. The incorporators shall deliver, or cause to be delivered, to the Department of State the articles of incorporation and proof of the advertisement required by the preceding section. If the Department of State finds that the articles conform to law, it shall forthwith, but not prior to the day specified in the advertisement

required by the preceding section, endorse its approval thereon, and when all bonus, fees, and charges have been paid, as required by law, shall file the articles and issue to the incorporators, or their representative, a certificate of incorporation, to which shall be attached a copy of the approved articles. The articles, upon being approved and filed by the Department of State, shall constitute the charter of the corporation.

B. If the articles of incorporation delivered to the Department of State are for the incorporation of a business corporation for the transaction of any business in which a corporation may not engage without the approval of or a license from any department, board, or commission of the Commonwealth, the Department of State shall, [refer the articles to such department, board, or commission, and shall not file the articles or issue a certificate of incorporation until the approval or consent of such department, board, or commission shall have been endorsed on the articles] *upon the issuance of the certificate of incorporation, promptly certify the fact of such incorporation to each such department, board, or commission, setting forth the name of the corporation and post office address of the initial registered office in this Commonwealth, the date of issuance of the certificate of incorporation, the purpose or purposes for which the corporation is organized, and the names and post office addresses of the first directors of such corporation.*

Section 304. Adoption and Contents of By-Laws.— [Except as hereinafter provided, the] *The* shareholders shall have the power to make, alter, amend, and repeal the by-laws of a business corporation, [The] *but the* authority to make *alter, amend, and repeal* by-laws may be expressly vested by the articles *or the by-laws* in the board of directors, subject *always* to the power of the shareholders to change [or repeal such by-laws] *such action*. Unless the articles or by-laws otherwise provide, the [by-laws shall be adopted, altered, amended, and repealed] *powers hereby conferred shall be exercised* by a majority vote of the members of the board of directors, or of the shareholders entitled to vote thereon, as the case may be, at any regular or special meeting duly convened after notice to the shareholders or directors of that purpose. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles, and may provide penalties for the breach thereof, not exceeding twenty dollars.

Section 310. Authority to Acquire Property at Tax or Judicial Sale.—A business corporation may, at any *tax or* judicial sale of any property upon which the corporation holds a mortgage or has a lien of any nature

whatsoever, bid in such property if necessary for the protection of its interest. The corporation shall acquire a good and indefeasible title to any and all property so purchased, irrespective of any limitation as to the acquisition of property that may exist in its articles or in this act. All property so purchased may be held by the corporation until such time as it shall believe it advisable to dispose of the same. It shall be lawful for the corporation to sell the property upon such terms and for such consideration as it deems desirable. The corporation may sell such property, and convey a marketable title thereto, without the authorization or confirmation of any court.

Section 401. Board of Directors.—The business and affairs of every business corporation shall be managed by a board of at least three directors, *who shall be natural persons of full age, and* who need not be residents of this Commonwealth or shareholders in the corporation, unless the articles or by-laws so require. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified. The names and terms of office of the first directors shall be stated in the articles. Except as hereinafter provided in this article, in the case of vacancies, directors, other than those constituting the first board of directors, shall be elected by the shareholders. A business corporation may allow compensation to its directors for their services, and a director may also be a salaried officer of the corporation.

Section 406. Officers and Agents.—Every business corporation shall have a president, a secretary, and a treasurer, and may have such other officers and assistant officers and agents [as the needs of the corporation may require] *as it shall authorize from time to time. The articles or by-laws may prescribe special qualifications for such officers. The president and secretary shall be natural persons of full age, the treasurer, however, may be a corporation, but if a natural person shall be of full age.* The officers, assistant officers, and agents shall be elected or appointed either by the board of directors or by the shareholders, at such time, in such manner, and for such terms *and compensation* as the by-laws may prescribe. It shall not be necessary for the officers to be directors. If the by-laws so provide, any two or more offices may be held by the same person, except the offices of president and secretary. The board of directors may secure the fidelity of any or all of such officers by bond or otherwise. Unless otherwise provided in the by-laws, the board of directors shall have power to fill any vacancies in any office occurring from whatever reason. All officers and agents of the corporation, as between themselves and the corporation, shall, *respectively*, have

such authority and perform such duties in the management of the property and affairs of the corporation as may be provided in the by-laws, or, in the absence of controlling provisions in the by-laws, as may be determined by resolution of the board of directors.

Section 509. Determination of Shareholders of Record.—Unless the by-laws otherwise provide, the board of directors may fix a time, not less than ten or more than [forty] *seventy* days, prior to the date of any meeting of shareholders, or the date fixed for the payment of any dividend or distribution, or the date for the allotment of rights, or the date when any change or conversion or exchange of shares will be made or go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend or distribution, or to receive any such allotment of rights, or to exercise the rights in respect to any such change, conversion, or exchange of shares. In such case, only such shareholders as shall be shareholders of record on the date so fixed shall be entitled to notice of, and to vote at, such meeting, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after any record date fixed, as aforesaid. The board of directors may close the books of the corporation against transfers of shares during the whole or any part of such period, and in such case written or printed notice thereof shall be mailed at least ten days before the closing thereof to each shareholder of record at the address appearing on the records of the corporation or supplied by him to the corporation for the purpose of notice. While the stock transfer books of the corporation are closed, no transfer of shares shall be made thereon. Unless a record date is fixed by the by-laws or the board of directors for the determination of shareholders entitled to receive notice of, or vote at, a shareholders' meeting, transferees of shares which are transferred on the books of the corporation within ten days next preceding the date of such meeting shall not be entitled to notice of or to vote at such meeting.

Section 803. Notice of Shareholders' Meetings.—Written notice shall, not less than ten days before the shareholders' meetings called by the board of directors for the purpose of considering proposed amendments, be given to each shareholder of record, except the written notice of any proposed amendment for increasing the authorized capital stock of the corporation (*where such increase will involve an increase in the stated capital or paid-in surplus or both*), shall be given to each shareholder of record at least sixty days before such

meeting. Such notice shall set forth the proposed amendment or a summary of the changes to be effected thereby.

Section 1005. Issuance of Certificate of Authority.—

A. If the Department of State finds that the provisions of this article have been complied with and that the applicant corporation is entitled to a certificate of authority to do business in this Commonwealth, it shall forthwith, but not prior to the day specified in the advertisement heretofore required in this article, endorse its approval upon the application for a certificate of authority, and when all bonus, fees and charges have been paid, as required by law, shall file the application and the copy of the articles, and shall issue to the corporation a certificate of authority to do business in this Commonwealth. The certificate of authority shall set forth the name of the corporation, the address of its registered office in this Commonwealth, and the character and nature of the business it is authorized to transact in this Commonwealth. Upon the issuance of the certificate of authority by the Department of State, the corporation may do, in this Commonwealth, any *or all of the kinds* of the business referred to in the certificate of authority and no other, subject, however, to the right of the Commonwealth to cancel or revoke such right to transact business in this Commonwealth, as provided in this act. The certificate of authority shall be delivered to the corporation, or its representative.

B. If the applicant corporation desires to transact any business in which a corporation may not engage, without the approval of or license from any department, board, or commission of the Commonwealth, the Department of State shall, [refer the application and articles of the corporation to such department, board, or commission and shall not issue a certificate of authority until the approval or consent of such department, board, or commission shall have been endorsed upon the application.] *upon the issuance of the certificate of authority, promptly certify the fact of the issuance of such certificate of authority to each such department, board, or commission, setting forth the name of the corporation, the name of the state or country under the laws of which it is formed, the address of the proposed registered office in this Commonwealth, the general character of the business it proposes to transact within Pennsylvania, and the date of issuance of the certificate of authority.*

Section 1007. Amended Certificate of Authority.—

A. After receiving a certificate of authority, a foreign business corporation may, subject to the provisions of this act, change its name, or be authorized to do in this Commonwealth other or additional business than that authorized by its certificate of authority, by filing with

the Department of State an application for an amended certificate of authority and proof of the advertisement hereinafter required by this section. Such application shall be executed under the seal of the corporation, signed and verified by two duly authorized officers thereof, and shall set forth the changes desired by the corporation.

B. A foreign business corporation shall, before making application to the Department of State, advertise its intention to apply for an amended certificate of authority by publication in a manner similar to that prescribed in this act in the case of the formation of a domestic business corporation. Advertisements shall appear at least three days prior to the day on which application is made to the Department of State, and shall set forth briefly:

(1) The name of the corporation and of the state or country under the laws of which it is formed.

(2) If the application is for permission to do in this Commonwealth other or additional business, the character and nature of the business it proposes to do under the amended certificate of authority.

(3) If the application is for a change of name, the new name under which it proposes to do business.

[(4) If the application is for change of the registered office of the corporation, the address, including street and number, if any, of its then registered office and the address, including street and number, if any, to which the registered office is to be changed.]

C. If the Department of State finds that the provisions of this article have been complied with and that the applicant corporation is entitled to an amended certificate of authority, it shall forthwith, but not prior to the day specified in the advertisement heretofore required by this section, endorse its approval upon the application, and when all fees *bonus*, *taxes*, and charges have been paid, as required by law, shall file the application and issue to the application corporation an amended certificate of authority setting forth the desired changes.

Section 1011. Service of Process Upon the Secretary of the Commonwealth.—Service of process against a foreign business corporation, upon the Secretary of the Commonwealth, shall be made by the sheriff of Dauphin County by leaving the fee the plaintiff is required by law to pay to the *Secretary of the Commonwealth* for this service, and two copies of the process at the office of the Secretary of the Commonwealth. The sheriff shall make due return of his service of the process to the court, magistrate, or justice of the peace issuing the same. Such process may be issued by any court, magistrate, or justice of the peace having jurisdiction of the subject matter of the controversy in any county

of the Commonwealth in which the corporation shall have its registered office, or in the county in which the right of action arose. When legal process against any such corporation has been served upon the Secretary of the Commonwealth, he shall immediately send by mail, postage prepaid, one copy of such process directed to the corporation at its registered office. The fee paid by the plaintiff to the Secretary of the Commonwealth at the time of the service shall be taxed in the plaintiff's costs, if he prevails in the suit necessitating the service of the process. The Secretary of the Commonwealth shall keep a record of the day and hour of the service of such process on him, and a certified copy of such record shall be sufficient evidence thereof. The service of process on the Secretary of the Commonwealth, under this section, shall be of the same legal force and validity as if the process had been served on the corporation, and the authority for such service of process shall continue in force as long as any liability remains outstanding against the corporation in the Commonwealth. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a foreign corporation, in any other manner now or hereafter permitted by law.

Section 1012. Acquisition of Real Property.—Every foreign business corporation authorized to transact business within this Commonwealth may acquire, hold, mortgage, lease and transfer real property in this Commonwealth, in the same manner and subject to the same limitations as domestic business corporations. Every such corporation may purchase in its corporate name, at any [sheriff's] *tax* or [other] judicial sale, any real estate within this Commonwealth upon which such corporation may have or hold a judgment or lien, and may, at its pleasure, sell and convey such real estate. All the rights, privileges and duties now by law accorded to and imposed upon lien creditors purchasing at judicial sales are hereby extended to such corporations.

Section 1013. Revocation of Certificate of Authority.—Whenever the Department of State shall find that a foreign business corporation, authorized by a certificate of authority to do business in this Commonwealth, is engaged in this Commonwealth in any business which it is not authorized to transact by its certificate of authority or by any amended certificate of authority, or has changed its name [or the location of its registered office] without first securing an amended certificate of authority, as required by this act, *or has changed the location of its registered office without filing a statement with the Department of State as required by this act*, or is violating any of the laws of this Commonwealth, the Department of State shall give notice by registered

mail to such corporation that such default exists and that its certificate of authority, including any amendments thereto, will be revoked and cancelled unless such default shall be cured within thirty days after the mailing of such notice. If such default shall not be cured within such period of thirty days, the Department of State shall revoke and cancel the certificate of authority of such foreign corporation, including any amendments thereto. Upon revoking and cancelling any such certificate of authority, the Department of State shall mail to such corporation, at its registered office in this Commonwealth, a certificate of revocation. Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this Commonwealth shall cease, and such corporation shall not thereafter transact any business in this Commonwealth unless it applies for and receives a new certificate of authority.

Section 1014. Penalty for Doing Business Without Certificate of Authority.—Any person, agent, officer or employe who shall transact any business within this Commonwealth for any foreign business corporation which is required by the provisions of this act to procure a certificate of authority, but has not done so, *or any person, agent, officer or employe of such a foreign corporation who transacts any business within this Commonwealth after a certificate of authority issued by the Department of State has been revoked, cancelled, or withdrawn as provided by this act*, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not exceeding thirty days, or by a fine not exceeding one thousand dollars (\$1000), or both, in the discretion of the court trying the same; but the failure of any such corporation to apply for and secure a certificate of authority from the Department of State shall not impair or affect the validity of any contract with such corporation, and actions or proceedings at law or in equity may be instituted and maintained on any such contract. No such action, however, shall be instituted or recovery had by any such corporation on any such contract, either expressed or implied, in any of the courts of this Commonwealth, or before any justice of the peace or magistrate thereof, until such corporation shall obtain a certificate of authority, and shall pay to the Department of State a fine of two hundred fifty dollars (\$250.00).

Section 1103. Certificate of Election to Dissolve.—Upon the execution by all the shareholders of a written agreement for the voluntary dissolution of a corporation, or upon the adoption at a meeting of the shareholders of a resolution for the voluntary dissolution of a corporation, as the case may be, a certificate of election to dissolve shall be executed under the seal of the corpora-

tion, signed and verified by two duly authorized officers of the corporation, which shall set forth:

- (1) The name of the corporation.
- (2) The address, including street and number, if any, of the registered office of the corporation in this Commonwealth.
- (3) The names and respective addresses, including street and number, if any, of its officers.
- (4) The names and respective addresses, including street and number, if any, of its directors.
- (5) If the election to dissolve was by written agreement of all shareholders, a statement that the agreement was signed by all shareholders of record of the corporation, or signed in their names by their duly authorized attorneys.
- (6) If the election to dissolve was by resolution adopted at a meeting of the shareholders, the number of shares outstanding, the number of shares entitled to vote in respect of the dissolution of the corporation, and the number of shares voted for and against the voluntary dissolution of the corporation, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of such class and the number of shares of all other classes voted for and against the voluntary dissolution of the corporation.

The certificate of election to dissolve shall be delivered to the Department of State. If the Department of State finds that the certificate conforms to law, it shall endorse its approval thereon, and when all [bonus, taxes] fees [and charges] required by law, have been paid, shall file the certificate, and shall issue to the corporation, or its representative, a copy of the approved certificate. Upon the filing by the Department of State of a certificate of election to dissolve, the corporation shall cease to carry on its business, except in so far as may be necessary for the proper winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Department of State, or until a decree dissolving the corporation has been entered by a court of common pleas, as elsewhere provided in this act.

Section 2. This act shall become effective immediately upon its final enactment. When effective.

APPROVED—The 2d day of July, A. D. 1937.

GEORGE H. EARLE