

No. 394

AN ACT

Amending the act of May 5, 1933 (P. L. 364), 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," providing for the corporate name, the contents of the articles of incorporation and articles of merger, prescribing the method of cancelling treasury shares, and the manner of giving notice of the winding up proceedings.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Business Corporation Law.

Section 1. Section 202, act of May 5, 1933 (P. L. 364), known as the "Business Corporation Law," amended July 17, 1935 (P. L. 1123), June 24, 1939 (P. L. 696), May 23, 1949 (P. L. 1773) and July 11, 1957 (P. L. 711), is amended to read:

Section 202, act of May 5, 1933, P. L. 364, amended July 17, 1935, P. L. 1123, June 24, 1939, P. L. 696, May 23, 1949, P. L. 1773, and July 11, 1957, P. L. 711 further amended.

Section 202. The Corporate Name.—A. The corporate name may be in any language, but must be expressed in English letters or characters, and shall contain the word "corporation," "company," or "incorporated," or an abbreviation thereof, except that the word "company" or the abbreviation "Co." may not be used where that word or abbreviation is immediately preceded by the word "and" or any symbol or substitute therefor, unless the word "incorporated," or any abbreviation thereof, immediately follows the word "company" or the abbreviation "Co." The corporate name shall not imply that the corporation is a governmental agency of the Commonwealth or of the United States or [is subject to the supervision of the Department of Banking, the Public Utility Commission or of the Insurance Department, and shall not contain the word "bank," "banking," "bankers," "savings," "trust," "deposit," "insurance," "mutual," "assurance," "indemnity," "casualty," "fiduciary," "benefit," "beneficial," "benevolent," "public service," "public utility," "building and loan," "surety," "security," "guaranty," "guarantee," "cooperative," "State," "Commonwealth," "United States," or "Federal," except where

the use of such words, by ordinary and common interpretation, could not imply that the corporation is a governmental agency of the Commonwealth or of the United States, or is subject to the supervision of the Department of Banking, the Public Utility Commission, or of the Insurance Department,] *a bank, bank and trust company, or a trust company, as defined in the act of May 15, 1933 (P. L. 624), known as the "Banking Code," or an insurance company of any of the classes governed by the act of May 17, 1921 (P. L. 682), known as "The Insurance Company Law of 1921," or a public utility as defined in the act of May 28, 1937 (P. L. 1053), known as the "Public Utility Law,"* nor shall the corporate name contain the word "college" or "university" when used in such a way as to give the impression that it is an educational institution conforming to the standards and qualifications prescribed by the State Council of Education, unless there be submitted a certificate from the State Council of Education certifying that the corporation or proposed corporation is entitled to use such designation.

B. The corporate name shall not be the same as, or deceptively similar to:

(1) The name of any other domestic corporation, or of any foreign corporation authorized to do business in this Commonwealth, or the name of any unincorporated body whatsoever, voluntarily registered with the Department of State under any act of Assembly, unless such other domestic or foreign corporation or unincorporated body is about to change its name, or to cease to do business, or is being wound up, or such foreign corporation is about to withdraw from doing business in this Commonwealth, and the written consent of such other domestic or foreign corporation or unincorporated body to the adoption of its name, or a deceptively similar name, has been given and is filed with the articles, or unless such domestic or foreign corporation has filed with the Department of Revenue a certificate of out of existence, or unless such domestic or foreign corporation has failed for a period of three successive years to file with the Department of Revenue or with the Department of State a report or return required by law, and such failure to file with the Department of Revenue has been certified by the Department of Revenue to the Department of State, *or unless the name of a proposed corporation is identical to the name of another corporation registered with the Department of State and such proposed corporation is to be affiliated with the registered corporation, then such name may be made available for use by the proposed corporation upon the addition at the end of the name of a geographical or numerical designation or the word or*

words "sales" or "service" or "sales and service." In every such case, the application for charter shall be accompanied by a letter from the registered corporation signed by two duly authorized officers thereof and under the corporate seal, stating that the corporations will be affiliated and the corporation consents to the use of the name by the proposed corporation. Affiliation shall be deemed to exist where (i) a parent-subsidiary relationship exists, or (ii) at least a majority of the outstanding stock of each corporation is to be owned by the same interests, or (iii) one corporation grants franchises in regards to a service or product including the right to the use of a particular name, which is to be in the name of the corporation receiving such franchise. The corporations receiving such franchises shall be deemed to be affiliated with each other and with the corporation granting the franchises: Provided, That nothing herein contained shall be construed to refer or apply to any assumed or fictitious name required by law to be filed with the Department of State.

(2) The name of any administrative department, board, or commission, or other agency of the Commonwealth.

(3) A name the exclusive right to which is at the time reserved by any other corporation whatsoever in the manner provided in this act or any other act of Assembly.

C. Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practices, nor derogate from the common law, the principles of equity, or the statutes of this Commonwealth with respect to the right to acquire and protect trade names.

D. The use of a name in violation of this section shall not vitiate or otherwise affect the corporate existence, but the court of common pleas of Dauphin County may, upon the application of the Attorney General, acting on his own motion or at the instance of any administrative department, board, or commission of the Commonwealth, and the court of common pleas of any county having jurisdiction over the corporation may, upon the application of any person, unincorporated body or corporation adversely affected, enjoin the corporation from using or continuing to use a name in violation of this section.

D (1). Where a corporate name is made available on the basis that the corporation which formerly registered such name has failed for a period of three successive years to file with the Department of Revenue or the Department of State a report or a return required by law or where the corporation has filed with the Department of Revenue a certificate of out of existence, the

said corporation shall cease to have by virtue of its prior registration any right to the use of such name, and said corporation, upon withdrawal of the certificate of out of existence or upon the removal of its delinquency in the filing of the required reports and returns, must make inquiry with the Department of State with regard to the availability of its name, and if such name has been made available to another corporation by virtue of the above conditions, must adopt a new name in accordance with the provisions of this act for changing corporate names before resuming its activities.

E. If a business corporation has used a name the same as, or deceptively similar to, the name of another corporation as permitted by subsection B (1) hereof with the consent of such other corporation *or as a result of the operation of subsection D(1) hereof*, and the other corporation continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up, or withdraw as it proposed to do in its consent *or as required by subsection D(1) hereof*, the court of common pleas of Dauphin County may, upon the application of the Attorney General, acting on his own motion or at the instance of the Commonwealth, and the court of common pleas of any county having jurisdiction over the other corporation may, upon the application of any person, unincorporated body or corporation adversely affected, enjoin the other corporation from continuing to use its name or a name deceptively similar thereto.

Clause (6), section 204, and subsection A, section 708, act of May 5, 1933, P. L. 364, amended July 11, 1957, P. L. 711, further amended.

Section 2. Clause (6) of section 204 and subsection A of section 708 of the act, amended July 11, 1957 (P. L. 711), are amended to read:

Section 204. Articles of Incorporation.—Articles of incorporation shall be signed by each of the incorporators, and acknowledged by at least two of them before any officer within or without this Commonwealth authorized to take acknowledgments, and shall set forth, in the English language:

* * * * *

(6) [If the shares are to be divided into classes, a] A description of each class and a statement of the preferences, qualifications, limitations, *restrictions and the special or relative rights granted to or imposed upon the shares of each class.

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Section 708. Cancellation of Treasury Shares.—A. Whenever any business corporation shall have acquired

* "restrictions" omitted in original.

any treasury shares, it may, by resolution of its board of directors, with the [prior] affirmative vote *approving such resolution* obtained within one year [of] *prior to* such cancellation of the holders of a majority of the outstanding shares of each class, whether or not entitled to vote thereon by the provisions of the articles of the corporation, cancel any or all of such shares. If the resolution so provides, such corporation may thereby reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled. If the articles prohibit the reissue of such shares, such resolution shall so provide. Such corporation may apply to such cancellation an amount out of its stated capital and capital surplus which shall not be greater than that portion of the stated capital and capital surplus represented by or restricted by the purchase of such shares at the time of such cancellation, and the stated capital and capital surplus of the corporation shall be reduced to this extent.

Section 3. Clause (3) of section 903 of the act amended May 23, 1949 (P. L. 1773), is amended to read:

Clause (3), section 903 of the act, amended May 23, 1949, P. L. 1773, further amended.

Section 903. Articles of Merger or Consolidation.— Upon the approval of the plan of merger or the plan of consolidation by the corporations desiring to merge or consolidate, as provided in the preceding section, articles of merger or articles of consolidation, as the case may be, shall be executed under the seal of each corporation, signed and verified by two duly authorized officers of each corporation, and shall set forth:

* * * * *

(3) [Any] *In the case of a merger, any* changes desired to be made in the articles of the surviving corporation [in the case of a merger] *including a restatement of the articles*, or, in the case of a consolidation, if the new corporation be a domestic corporation, all of the statements required by this act to be set forth in original articles in the case of the formation of a corporation.

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Section 4. Subsection B, section 1104 of the act, amended September 26, 1951 (P. L. 1475), is amended to read:

Subsection B, section 1104 of the act, amended September 26, 1951, P. L. 1475, further amended.

Section 1104. Winding Up in Voluntary Dissolution Proceedings.—

* * * * *

B. After the approval by the Department of State of a certificate of election to dissolve, the board of directors shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and

claimant, and to be published *in the county in which the registered office of the corporation is located* once a week for two successive weeks in two newspapers published in the English language, one of which shall be a newspaper of general circulation and the other the legal newspaper, if any, designated by the rules of court for the publication of legal notices; otherwise, in two newspapers of general circulation published in the county in which the registered office of the corporation is located. Where there is but one newspaper of general circulation published in any county, advertisement in such newspaper shall be sufficient.

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APPROVED—The 23rd day of September, A. D. 1959.

DAVID L. LAWRENCE

No. 395

AN ACT

Amending the act of February 28, 1956 (P. L. 1154), entitled, as amended, "An act relating to the administration and distribution of incompetents' *estates, both as to real and personal property, and the procedure relating thereto; including the disposition of such estates or portions thereof and the determination of title thereto without the appointment of a guardian in certain cases; the appointment, bond, removal and discharge of guardians of such estates, their powers, duties and liabilities, the rights of persons dealing with such guardians, and the rights of persons claiming an interest in such estates or in property distributed therefrom whether as claimants or distributees, and containing provisions concerning the determination of incompetency and the powers, duties and liabilities of foreign guardians; and also generally dealing with the jurisdiction, powers and procedure of the orphans' court and the common pleas court relating to incompetents' estates," providing for evidence of mental condition to be submitted by deposition or affidavit of a physician or psychiatrist of any city-owned hospital or institution.

Incompetents'
Estates Act of
1955.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 331, act
of February 28,
1956, P. L. 1154,
reenacted and
amended July
11, 1957, P. L.
794, further
amended.

Section 1. Section 331, act of February 28, 1956 (P. L. 1154), known as the "Incompetents' Estates Act of 1955," reenacted and amended July 11, 1957 (P. L. 794), is amended to read:

Section 331. Evidence of Mental Condition.—In any hearing relating to the mental condition of a person whose competency is in question, the deposition of, or sworn statement by, a superintendent, manager, physician or psychiatrist of any State-owned mental hospital or veterans administration hospital *or a physician or*

* "estate" in original.