

## No. 366

## AN ACT

To further amend the act, approved the fifth day of May, one thousand nine hundred thirty-three (Pamphlet Laws 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," by permitting the Department of State to copy and destroy or return certain documents; permitting directors to fill vacancies in the board of directors resulting from an increase in the number of directors; deleting certain requirements as to the appointment, compensation and duties of agents; providing that meetings of shareholders at which directors are to be elected may be adjourned for periods of fifteen days each; fixing the method of cumulative voting in cases where directors are elected separately by the holders of different classes of shares; providing that courts having jurisdiction over trustees who are evenly divided as to how shares shall be voted may direct the voting of such shares; deleting requirements as to the voting of shares of foreign corporations owned by other corporations; providing that articles of incorporation may be amended to eliminate the preemptive rights \*for shareholders and providing for the purchase of and payment of shares of certain shareholders who dissent therefrom; specifying cases of merger or consolidation of which sixty days' notice to shareholders must be given; providing that shareholders of a parent corporation shall have no right to dissent from a merger or consolidation of such parent and one or more wholly-owned subsidiaries thereof, provided the state of incorporation and relative rights and preferences of the shareholders of the parent corporation are not changed thereby; further providing for advertising of merger or consolidation by domestic corporations, for merger and consolidation of foreign business corporations; defining "doing business" by foreign corporations, and further providing for service of process on the Secretary of the Commonwealth with respect to such corporations; and prescribing procedure for rescinding a certificate of election to dissolve.

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

Section 1. Section ten of the act, approved the fifth day of May, one thousand nine hundred thirty-three (Pamphlet Laws 364), entitled "An act relating to business corporations; defining and providing for the

"Business Corporation Law."

Section 10, act of May 5, 1933, P. L. 364, amended.

\* "of" in original.

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," is hereby amended as follows:

Section 10. Powers of Department of State.—The Department of State shall have the power and authority reasonably necessary to enable it to administer this act efficiently and to perform the duties imposed upon it by this act. All articles, papers, and other documents required by this act to be filed with the Department of State shall be made in such form as shall be prescribed by that department. *The Department of State may make a copy, on microfilm or otherwise, of any document filed with or by it pursuant to this act or any act hereby repealed, and thereafter destroy such document or return it to the person who filed the same.*

Paragraph A of section 206, said act, as amended by act of July 2, 1937, P. L. 2828, further amended.

Section 2. Paragraph A of section two hundred six of said act, as amended by the act, approved the second day of July, one thousand nine hundred thirty-seven (Pamphlet Laws 2828), is hereby further amended to read as follows:

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 *and shall make and retain a copy thereof.* The articles, upon being approved [and filed] by the Department of State, shall constitute the charter of the corporation.

\* "representatives" in original.

Section 3. Paragraph (3) of section three hundred twenty of said act, as last amended by the act, approved the thirty-first day of July, one thousand nine hundred forty-one (Pamphlet Laws 636), is hereby further amended to read as follows:

Paragraph (3) of section 320, said act, as last amended by act of July 31, 1941, P. L. 636, further amended.

(3) A certificate of any amendment to articles of incorporation, a certificate of change of registered office, a certificate of dissolution, a certificate of reduction of stated capital or a certificate of merger or consolidation, executed as hereinafter provided, and made by such corporation pursuant to the foregoing provisions, together with a certificate or certificates from the proper department or departments evidencing payment by the corporation of all bonus, taxes and charges as required by law, shall be delivered to the Department of State. If the Department of State finds that the certificate of amendment, change of registered office, dissolution, reduction of stated capital, or of merger or consolidation, conforms to law, that notice of intention to file such certificate has been duly advertised in accordance with the provisions of this act, and that the certificate evidencing payment of bonus or taxes or charges is in proper form, it shall, upon payment of the filing fee, forthwith endorse its approval thereon, and shall [file the certificate and] issue to the corporation a certificate of amendment, dissolution, reduction of stated capital, merger, or consolidation, to which shall be attached [a copy of] the certificate [of incorporation] *so delivered to it*. Upon the [filing] *approval* of such certificate by the Department of State, the amendment, dissolution, reduction of stated capital, merger, or consolidation shall be effective. Such certificate shall be made, executed, and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees, or receiver or receivers, appointed in the bankruptcy proceedings (or a majority thereof), or, if none be appointed and acting, by officers of the corporation, or by a master or other representative appointed by the court, or judge, or referee, and shall certify that (a) provision for the making of such certificate, agreement, or instrument is contained in the plan of reorganization or arrangement, or in a decree or order of the court, or judge, or referee relative thereto; and (b) that the plan or arrangement has been confirmed, as provided in the National Bankruptcy Act, but no final decree has been entered in the bankruptcy proceedings closing the case and discharging the trustee or trustees, or receiver or receivers, if any.

Section 4. Subsection (3) of section four hundred two of said act, as amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Subsection (3) of section 402, said act, as amended by act of May 23, 1949, P. L. 1773, further amended.

Section 402. Number, Qualifications, and Election of Directors.—Subject to the provisions of this act, the number, qualifications, terms of office, manner of election, time and place of meeting, compensation, and powers and duties of the directors may be prescribed from time to time by the by-laws. Except as otherwise provided in the by-laws:

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(3) Vacancies in the board of directors, *including vacancies resulting from an increase in the number of directors*, shall be filled by a majority of the remaining members of the board though less than a quorum, and each person so elected shall be a director until his successor is elected by the shareholders, who may make such election at the next annual meeting of the shareholders or at any special meeting duly called for that purpose and held prior thereto.

Section 406, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

Section 5. Section four hundred six of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

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 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. Unless the articles or by-laws provide otherwise, the board of directors shall elect [or appoint] and fix the compensation of such officers *and* assistant officers [and agents]. Such officers *and* assistant officers [and agents] shall be elected [or appointed] at such time, in such manner, and for such terms, as the by-laws shall 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 6. Paragraph D of section five hundred one of said act is hereby amended to read as follows:

D. Adjournment or adjournments of any annual or special meeting may be taken, but any meeting at which directors are to be elected shall be adjourned only from day to day, *or for such longer periods not exceeding fifteen days each, as the holders of a majority of the shares present in person or by proxy shall direct*, until such directors have been elected.

Paragraph D of section 501, said act, amended.

Section 7. Section five hundred five of said act is hereby amended to read as follows:

Section 505. Elections of Directors, Cumulative Voting.—Unless otherwise provided in the by-laws, elections for directors need not be by ballot, except upon demand made by a shareholder at the election and before the voting begins. In all elections for directors, every shareholder entitled to vote shall have the right, in person or by proxy, to multiply the number of votes to which he may be entitled by the *total* number of directors of *all classes* to be elected *by either the holders of the class or classes of shares of which his shares are a part or by the holders of any other class or classes of shares*, and he may cast the whole number of such votes for one candidate or he may distribute them among any two or more candidates. The candidates receiving the highest number of votes *from each class or group of classes entitled to elect directors separately* up to the number of directors to be elected *by such class or group of classes* shall be elected.

Section 505, said act, amended.

Section 8. Section five hundred seven of said act is hereby amended to read as follows:

Section 507. Voting by Joint Holders of Shares.—Where shares are held jointly or as tenants in common by two or more persons, such shares shall be voted and any proxy shall be given by the person or persons designated for that purpose in the agreement under which such shares are held jointly or by tenancy in common. If the agreement does not determine the question which person or persons shall vote such shares or give any proxy in regard thereto, the will of the majority of such persons shall control the manner of voting or the giving of a proxy. If only one or more of such persons is present in person or by proxy, he or they shall have the right to vote all such shares, and all of the shares standing in the names of such persons shall be deemed to be represented for the purpose of determining a quorum. Where in any case such persons are equally divided upon the manner of voting the shares held by them, the vote of such shares shall be divided equally among such persons. Except as hereinafter provided, the same shall be true in the case of trustees *however* appointed [by

Section 507, said act, amended.

the court of common pleas], unless *the instrument by which the trust was created* or the decree of court appointing them otherwise directs. Where in any case such trustees are equally divided upon the manner of voting the shares jointly held by them, it shall be lawful for the court [of common pleas] *having jurisdiction over the trustees*, upon petition filed by any of the trustees, or by any beneficiary, to direct the voting of such shares in the manner which, in the opinion of the court, will be for the best interests of the parties beneficially interested in the shares.

Section 508, said act, as amended by act of May 23, 1949, P. L. 1773, further amended.

Section 9. Section five hundred eight of said act, as amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Section 508. Voting Shares Held By Corporation.— Any corporation owning shares in [another] *a domestic business* corporation may vote the same by any of its officers, or by proxy appointed by any such officer, unless some other person, by resolution of its board of directors, shall be appointed its general or special proxy, in which case such person shall be entitled to vote the shares. Shares of its own capital stock belonging to a *domestic business* corporation shall not be voted, directly or indirectly, at any meeting, and shall not be counted in determining the total number of outstanding shares for voting purposes at any given time, but shares of its own capital stock held by it in a fiduciary capacity may be voted and shall be counted in determining the total number of outstanding shares at any given time.

Paragraph C of section 602, said act, amended.

Section 10. Paragraph C of section six hundred two of said act is hereby amended to read as follows:

C. Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall present to the Department of State a statement, executed under the seal of the corporation, signed and verified by two duly authorized officers thereof, and setting forth:

- (1) The name of the corporation.
- (2) The resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof.
- (3) The date and the manner of the adoption of such resolution.

If the Department of State finds that such statement conforms to law and the articles of the corporation, and when all fees have been paid as required by law, it shall endorse its approval thereon, [shall file the statement,] and shall issue to the corporation, or its representative, [a copy of] the approved statement, *and shall make and*

*retain a copy thereof.* Upon the [filing] *approval* of such statement by the Department of State, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective.

Section 11. Paragraph C of section seven hundred five of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Paragraph C of section 705, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

C. The statement shall be delivered to the Department of State, either prior to or within thirty days after the date of such redemption and cancellation. If the Department of State finds that the statement conforms to law, it shall, upon payment of the filing fee, endorse its approval thereon, [shall file the statement, and] shall issue to the corporation, or its representative, [a copy of] the approved statement, *and shall make and retain a copy thereof.* The [filing] *approval* of such statement shall operate as an amendment to the articles of the corporation and shall reduce the number of shares of the class so redeemed which the corporation is authorized to issue by the number of the shares so redeemed and cancelled. Nothing contained in this section shall be construed to prohibit a reduction of authorized capital stock or a reduction of stated capital in any other manner permitted by this act.

Section 12. Paragraph C of section seven hundred six of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Paragraph C of section 706, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

C. The statement shall be delivered to the Department of State. If the Department of State finds that such statement conforms to law, it shall, upon payment of the filing fee, endorse its approval thereon, [shall file the statement, and] shall issue to the corporation, or its representative, [a copy of] the approved statement, *and shall make and retain a copy thereof.* Upon the [filing] *approval* of such statement, the reduction shall be effective.

Section 13. Paragraph C of section seven hundred eight of said act, as added by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Paragraph C of section 708, said act, as added by act of May 23, 1949, P. L. 1773, further amended.

C. The statement shall be delivered to the Department of State within thirty days after the adoption of the resolution aforesaid. If the Department of State finds that the statement conforms to law, it shall endorse its approval thereon, [shall file the statement, and] shall

issue to the corporation or its representative [a copy of] the approved statement, *and shall make and retain a copy thereof.* If the resolution aforesaid provided for a reduction in the number of shares which the corporation is authorized to issue, the [filing] *approval* of such statement shall operate as an amendment to the articles of the corporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled; otherwise, the shares so cancelled shall, upon such [filing] *approval*, have the status of authorized but unissued shares. Nothing contained in this section shall be construed to prohibit a reduction of authorized capital stock or a reduction of stated capital in any other manner permitted by this act.

Section 808, said act, as last amended by act of May 2, 1947, P. L. 139, further amended.

Section 14. Section eight hundred eight of said act, as last amended by the act, approved the second day of May, one thousand nine hundred forty-seven (Pamphlet Laws 139), is hereby further amended to read as follows:

Section 808. Filing of Articles of Amendment.—The articles of amendment, proof of the advertisement heretofore required in this article, shall be delivered by the corporation, or its representative, to the Department of State. If the Department of State finds that such articles conform to law, it shall, upon payment of the filing fee, forthwith, but not prior to the day specified in the advertisement required by the preceding section, endorse its approval thereon, [and] shall [file the articles and] issue to the corporation, or its representative, a certificate of amendment, to which shall be attached [a copy of] the approved articles, *and shall make and retain a copy thereof.*

Article VIII, said act, amended by adding at end thereof, a new section 810.

Section 15. Article eight of said act is hereby amended by adding, at the end thereof, a new section to read as follows:

Section 810. *Rights of Dissenting Shareholders.—*  
*A. If any amendment to the articles of a corporation shall limit or deny any preemptive right of any outstanding shares, the holder of any outstanding shares affected adversely by such amendment who shall have filed with the corporation, prior to or at the meeting of shareholders at which the proposed amendment was submitted to a vote, written objection to such proposed amendment and shall not have voted in favor thereof, and who, within twenty days after the effective date of the amendment, shall also make written demand on the corporation for the payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the amendment, without regard to any depreciation or appreciation thereof in consequence of the amendment, shall be paid by the corporation the*



fair value of his shares, upon surrender of the share certificate or certificates representing his shares. The demand of the shareholder shall state the number and class of the shares owned by him. Unless a shareholder files such written objection and also makes such demand within the twenty-day period, he shall be conclusively presumed to have consented to the amendment and shall be bound by the terms thereof. If, within thirty days after the date on which such amendment became effective, the value of such shares shall be agreed upon between the dissenting shareholder and the corporation, payment thereof shall be made, in cash, within ninety days after the date on which such amendment became effective, upon the surrender of the share certificate or certificates representing his shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

B. If, within such period of thirty days, the shareholder and the corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, apply by petition to the court of common pleas, in equity, within the county in which the registered office of the corporation is situated, for the appointment by the court of three disinterested persons to appraise the fair value of his shares, without regard to any depreciation or appreciation thereof in consequence of the amendment. The award of the appraisers or of a majority of them shall be submitted to the court for determination, and the judgment of the court thereon shall be final and conclusive. The costs of such appraisal, including a reasonable fee to the appraisers, shall be fixed by the court, and shall be borne by the corporation unless, in the opinion of the court, the action of any shareholder in refusing the offer of the corporation has been arbitrary, vexatious, or in bad faith, in which case the costs shall be assessed in the discretion of the court. The award shall be payable only upon and simultaneously with the surrender to the corporation of the share certificate or certificates representing the shares of the dissenting shareholder. If the award shall not be paid by the corporation within thirty days after the order of the court thereon, the amount of the award shall be a judgment against the corporation, and may be collected as other judgments in such court are by law collectible. Upon the payment of the award or judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Such shares may be held and disposed of by the corporation as it may see fit. Unless the dissenting shareholder shall file a petition within the time herein limited, such shareholder and all persons claiming under

*him shall be conclusively presumed to have approved and ratified the amendment and shall be bound by the terms thereof.*

*C. The rights and remedies, at law or in equity, of any shareholder who desires to object to or to dissent from any such amendment shall be limited to those prescribed under this section, and such rights and remedies under this section shall be exclusive.*

*D. Whenever any such amendment is proposed, a copy of this section 810 shall be enclosed with the written notice mentioned in section 803 of this act, and said written notice shall state that section 810 sets forth the exclusive rights and remedies of shareholders who would be affected adversely by the proposed amendment and who object thereto.*

*E. The provisions of this section shall apply only to those business corporations which are or may become subject to the provisions of this act but which were not incorporated hereunder.*

Paragraph B of section 902, said act, as amended by act of May 23, 1949, P. L. 1773, further amended.

Section 16. Paragraph B of section nine hundred two of said act, as amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

*B. The board of directors of each domestic corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote of the shareholders of such corporation entitled to vote thereon at an annual or special meeting of the shareholders. Written notice shall, not less than ten days before such annual or special meeting, be given to each shareholder of record of such corporation, whether or not entitled to vote on such plan, unless the plan of merger or plan of consolidation contemplates [an increase in the aggregate of the authorized capital stock of the constituent corporations,] that the aggregate par value or aggregate authorized number of shares of the surviving or new corporation shall be so increased over the aggregate par value or aggregate authorized number of shares of a domestic corporation party to such plan that the increase if effectuated by amendment to the articles of incorporation of such corporation would necessitate a meeting of shareholders called on sixty days' notice under section 8 E of this act in which event, sixty days' notice of such meeting shall be given to each shareholder of each such domestic corporation. The notice shall state the place, day, hour, and purpose of the meeting, and a copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.*

Section 17. Sections nine hundred four and nine hundred five of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), are hereby further amended to read as follows:

Sections 904 and 905, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

Section 904. Advertisement.—The constituent domestic corporations shall advertise, *before or after the approval of plan of merger by the shareholders*, their intentions to file articles of merger or articles of consolidation, as the case may be, with the Department of State, in newspapers published in the counties in which the registered offices of the corporations are located, in a manner similar to that heretofore prescribed in this act in the case of the formation of a business corporation. Advertisements shall appear at least three days prior to the day on which the articles of merger or articles of consolidation are presented to the Department of State, and shall set forth briefly:

(1) The name and the location of the registered office of each of the corporations intending to merge or consolidate.

(2) The name and the location of the proposed registered office of the domestic surviving or new corporation or, in the case of a foreign surviving or new corporation, the name of such corporation and its domiciliary state, together with the location of its office registered with the state.

(3) A statement that the articles of merger or consolidation are to be filed under the provisions of this act.

(4) The purpose or purposes of the surviving or new corporation.

(5) The time when the articles of merger or consolidation will be delivered to the Department of State.

Section 905. Filing of Articles of Merger or Consolidation.—The articles of merger or articles of consolidation, as the case may be, and proof of the advertisement required by the preceding section, and a certificate or certificates from the proper department or departments evidencing payment by the corporation of all bonus, taxes and charges as required by law, shall be delivered to the Department of State, except that no such certificates shall be required of the surviving corporation in cases of merger. If the Department of State finds that such articles conform to law, and that the certificate or certificates evidencing payment of bonus or taxes or charges delivered therewith is in proper form, it shall, upon payment of the filing fee, forthwith, but not prior to the day specified in the advertisement required by the preceding section, endorse its approval thereon, and [file the articles and] issue to the surviving or new corporation, or its representative, a certificate

of merger or a \*certificate of consolidation, as the case may be, to which shall be attached [a copy of] the approved articles, *and shall make and retain a copy thereof.*

Section 908, said act, amended by adding, at end thereof, a new paragraph E.

Section 18. Section nine hundred eight of said act is hereby amended by adding, at the end thereof, a new paragraph to read as follows:

*E. The provisions of subsections A and B of this section 908 shall not apply to the merger or consolidation of two or more corporations, one of which owns all of the outstanding shares of all the others immediately prior to the approval of the plan of merger or consolidation and at all times thereafter: Provided, That neither the state of incorporation nor the preferences, qualifications, limitations, restrictions, or special or relative rights, granted to or imposed upon the shares of any class of the parent corporation, are altered by such plan. The shareholders of such parent corporation shall have no right to dissent from any such merger or consolidation.*

Paragraph A of section 909, said act, as added by act of May 23, 1949, P. L. 1773, amended.

Section 19. Paragraph A of section nine hundred nine of said act, as added by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby amended to read as follows:

Section 909. Domestication of Foreign Corporations.—A. Any foreign business corporation holding a certificate of authority to do business in this Commonwealth may become a domestic corporation of this Commonwealth by delivering or causing to be delivered to the Department of State articles of domestication. If the Department of State finds that the articles conform to law, it shall forthwith 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 foreign corporation a certificate of domestication to which shall be attached [a copy of] the articles, *and shall make and retain a copy thereof.* The articles, upon being approved [and filed] by the Department of State, shall constitute the charter of the domesticated foreign corporation and it shall thereafter have all the powers and privileges and be subjected to all the duties and limitations granted and imposed upon domestic corporations under the provisions of this act.

Paragraph A of section 1005, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

Section 20. Paragraph A of section one thousand five of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

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 appli-

\* "certificate" in original.

cant 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, *to which the application may be attached, and shall make and retain a copy thereof.* 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, or a summary thereof. Upon the approval of the application for a 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.

Section 21. Paragraph C of section one thousand seven and paragraph A of section one thousand nine of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), are hereby further amended to read as follows:

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, upon payment of the filing fee, forthwith, but not prior to the day specified in the advertisement heretofore required by this section, endorse its approval upon the application, [and file the application and] issue to the applicant corporation an amended certificate of authority setting forth the desired changes, *to which the application shall be attached, and shall make and retain a copy thereof.*

Section 1009. Merger or Consolidation of Foreign Business Corporations.—A. Whenever a foreign business corporation authorized by a certificate of authority to transact business in this Commonwealth shall be a party to a statutory merger or consolidation permitted by the laws of the state or country under which it is organized, and such corporation shall be the surviving corporation, it shall forthwith file with the Department of State a copy of the Articles of Merger, duly authenticated by the proper officer of the state or country under the laws

Paragraph C of section 1007 and paragraph A of section 1009, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended

of which such statutory merger was effected, and pay to the Department of State the prescribed fee for such filing. *Such copy shall be accompanied with certificates from the proper department, board or commission evidencing payment by the merging corporation or corporations of all bonus, fees, or taxes owing the Commonwealth, except that no such certificates shall be required of the surviving corporation in cases of merger.* It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this Commonwealth, unless the name of such corporation be changed thereby, or unless the corporation desires to transact in this Commonwealth other or additional business than that which it is then authorized to transact in this Commonwealth.

Section 1011,  
said act, as  
amended by act  
of July 2, 1937,  
P. L. 2828,  
further amended.

Section 22. Section one thousand eleven of said act, as amended by the act, approved the second day of July, one thousand nine hundred thirty-seven (Pamphlet Laws 2828), is hereby further amended to read as follows:

Section 1011. Service of Process Upon the Secretary of the Commonwealth.—A. Service of process against a *qualified* 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.

*B. Any foreign business corporation which shall have done any business in this Commonwealth, without procuring a certificate of authority to do so from the Department of State, shall be conclusively presumed to have designated the Secretary of the Commonwealth as its true and lawful attorney authorized to accept, on its behalf, service of process in any action arising out of acts or omissions of such corporation within this Commonwealth. On petition, alleging conduct of business within the Commonwealth by any corporation not qualified by the Secretary of the Commonwealth or having otherwise designated him as agent for the service of process, the court of the county in which the action is instituted shall authorize service to be made upon the Secretary of the Commonwealth. Service shall be made by the sheriff of such county, by transmitting to the Secretary of the Commonwealth, and to the defendant at his last known residence or place of business, by registered mail, return receipt requested, a copy of such process, together with a copy of the petition and order of the court, properly certified as such by the prothonotary. The return receipt by the post office department shall be evidence of service under this act. 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.*

*C. For the purposes of this act, the entry of any corporation into this Commonwealth for the doing of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object, or doing a single act in this Commonwealth for such purpose with the intention of thereby initiating a series of such acts, shall constitute "doing business."*

Section 23. Section one thousand one hundred one of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Section 1101. Voluntary Dissolution by Incorporators.—The incorporators of a business corporation which has not commenced business, or which has not issued any shares, may effect the dissolution of the corporation by

Section 1101,  
said act, as last  
amended by act  
of May 23, 1949,  
P. L. 1773,  
further amended.

filing articles of dissolution with the Department of State. The articles of dissolution shall be executed under the seal of the corporation, signed and verified by a majority of the incorporators, and shall set forth:

- (1) The name of the corporation.
- (2) The address, including street and number, if any, of its registered office.
- (3) The date of its incorporation.
- (4) That the corporation has not commenced business and that none of its shares has been issued.
- (5) That the amount, if any, actually paid in on subscriptions to its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
- (6) That no debts of the corporation remain unpaid.
- (7) That all the incorporators elect that the corporation be dissolved.

The articles of dissolution shall be delivered to the Department of State. If the Department of State finds that the articles conform to law, it shall, upon payment of the filing fee, endorse its approval thereon, [and shall file the articles] and issue a certificate of dissolution to the incorporators, or their representative, to which shall be attached [a copy of] the approved articles, *and shall make and retain a copy thereof*. Upon the approval of the articles of dissolution, the existence of the corporation shall cease.

Section 1103,  
said act, as  
amended by act  
of July 2, 1937,  
P. L. 2828,  
further amended.

Section 24. Section one thousand one hundred three of said act, as amended by the act, approved the second day of July, one thousand nine hundred thirty-seven (Pamphlet Laws 2828), is hereby further amended to read as follows:

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 corporation, 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 fees 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, *and shall make and retain a copy thereof*. Upon the [filing] *approval* 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 25. Article XI of said act is hereby amended by adding, after section one thousand one hundred three thereof, a new section to read as follows:

Article XI, said act, amended by adding, after section 1103 thereof, a new section 1103.1.

*Section 1103.1. Statement Rescinding Certificate of Election to Dissolve.—Any business corporation which has heretofore elected to dissolve, as provided in section 1102 of this act, and has filed a certificate in evidence thereof in the Department of State, as provided in section 1103 of this act, may rescind such action in the same manner and by the same procedure as that provided in section 1102 of this act for the election of a corporation to dissolve voluntarily, and shall execute a statement rescinding certificate of election to dissolve, under the seal of the corporation, 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) *The date of filing of certificate of election to dissolve in Department of State.*

(6) *If the election to rescind 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 rescission of the election to dissolve the corporation, and the number of shares voted for and against the rescission or 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 rescission of the election to dissolve the corporation.*

*The statement rescinding certificate of election to dissolve shall be delivered to the Department of State. If the Department of State finds that the statement conforms to law, it shall endorse its approval thereon, and when all fees required by law have been paid, shall issue to the corporation, \*\*or its representative, the approved statement, and shall make and retain a copy thereof. Upon the approval by the Department of State of a statement rescinding certificate of election to dissolve, the election to dissolve shall be void.*

Paragraph B of section 1104, said act, amended.

Section 26. Paragraph B of section one thousand one hundred four of said act is hereby amended to read as follows:

B. After the [filing] *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 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.

Section 1105, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

Section 27. Section one thousand one hundred five of said act, as last amended by the act, approved the twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

\* "of" in original.  
\*\* "of" in original.

Section 1105. Articles of Dissolution.—When all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been distributed to its shareholders, articles of dissolution shall be executed under the seal of the corporation and 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.
- (3) A statement that the corporation has theretofore delivered to the Department of State a certificate of election to dissolve, and the date on which the certificate was filed by the Department of State.
- (4) A statement that all debts, obligations and liabilities of the corporation have been paid and discharged, or that adequate provision has been made therefor.
- (5) A statement that all the remaining property and assets of the corporation have been distributed among its shareholders, in accordance with their respective rights and interests.
- (6) A statement that there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment or decree which may be obtained against the corporation in each such pending suit.

The articles of dissolution, proof of the advertisement required by the preceding section, and a certificate or certificates from the proper department or departments evidencing payment by the corporation of all bonus, taxes and charges as required by law, shall be delivered to the Department of State. If the Department of State finds that such articles conform to law, and that the certificate delivered therewith evidencing payment of bonus or taxes or charges is in proper form, it shall, upon payment of the filing fee, endorse its approval thereon, and [shall file the articles and] issue to the corporation, or its representative, a certificate of dissolution, to which shall be attached [a copy of] the approved articles, *and shall make and retain a copy thereof*. Upon the approval of the articles of dissolution, the existence of the corporation shall cease.

APPROVED—The 26th day of September, A. D. 1951.

JOHN S. FINE