

No. 308

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 incorporators or the corporation to advertise filing of articles of incorporation before or after the date of filing, eliminating requirement of filing proofs of such advertisement, and prohibiting transaction of business before such advertisement, subject to penalties; changing procedure for increasing indebtedness and validating increases heretofore so authorized; providing separate elections for vacancies in offices of different classes of directors; authorizing directors to fix place of meeting of shareholders pursuant to authority of by-laws; changing provisions relative to cumulative voting in elections of directors; further providing for notice to shareholders of meetings to consider proposed amendments; permitting the corporation to advertise filing of articles of amendment before or after the date of filing; eliminating requirement of filing certificates evidencing certain payments in certain cases of merger or consolidation and making Commonwealth claims in such cases a lien on the franchises and all property of the surviving or new corporation; and authorizing the Secretary of the Commonwealth to receive process issued by a federal court against any foreign business corporation doing business in this Commonwealth.

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

Section 1. Section 205 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 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

"Business Corporation Law."

Section 205, act of May 5, 1933, P. L. 364, as amended by act of May 23, 1949, P. L. 1773, further amended.

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 twenty-third day of May, one thousand nine hundred forty-nine (Pamphlet Laws 1773), is hereby further amended to read as follows:

Section 205. Advertisement.—The incorporators shall advertise their intention to file *or the corporation shall advertise the filing of* articles of incorporation with the Department of State one time 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 the court for the publication of legal notices; otherwise, in two newspapers of general circulation published in the county in which the initial registered office of the corporation is to be located. Where there is but one newspaper of general circulation published in any county, advertisement in such newspaper shall be sufficient. Advertisements [shall] *may* appear [at least three days] prior to *or after* the day the articles of incorporation are filed with the Department of State, and shall set forth briefly:

- (1) The name of the proposed corporation,
- (2) A statement that the proposed corporation is to be organized under the provisions of this act,
- (3) The purpose or purposes of the proposed corporation,
- (4) The time when the articles will be filed with the Department of State.

Subsection A of section 206, said act, as last amended by act of September 26, 1951, P. L. 1475, further amended.

Section 2. Subsection A of section 206 of said act, as last amended by the act, approved the twenty-sixth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1475), 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 issue to the

incorporators, or their representative, a certificate of incorporation, to which shall be attached the approved articles and shall make and retain a copy thereof. The articles, upon being approved by the Department of State, shall constitute the charter of the corporation.

Section 3. Subsection B of section 208 and section 309 of said act are hereby amended to read as follows:

Subsection B of section 208 and section 309, said act, amended.

Section 208. Conditions Precedent to Beginning Business; Penalty for Violation of Section.—

* * * * *

B. If a corporation shall transact any business in violation of this section *or prior to the publication of the advertisement required by section 205 hereof*, the officers who participated therein and the directors, except those who dissented therefrom and caused their dissent to be filed at the time in the registered office of the corporation, or who, being absent, filed their dissent upon learning of the action, shall be severally liable for the debts and liabilities of the corporation arising therefrom.

Section 309. Procedure to Increase Indebtedness of Corporation.—No business corporation shall increase its indebtedness, except in the manner provided in this section. The board of directors of the corporation shall adopt a resolution setting forth the desired increase, and directing that the question of the proposed increase be submitted to a vote *of the shareholders entitled under the articles to vote thereon* at an annual meeting of the shareholders or at a special meeting of the shareholders *entitled to vote thereon*. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the question of increasing the indebtedness of the corporation, shall be given to each shareholder of record *entitled to vote thereon* at least sixty days before the date of the meeting. If such meeting be an annual meeting, such purpose may be included in a notice of such annual *meeting, provided the notice is given at least sixty days before the date of the annual meeting. The resolution shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the outstanding shares *entitled to vote thereon*, unless any class of shares is entitled to vote thereon as a class, in which event the proposed resolution shall require for its adoption the affirmative vote of the holders of at least a majority of the outstanding shares of each class entitled to vote as a class thereon, and at least the affirmative vote of the holders of a majority of all outstanding shares *entitled to vote thereon*. Nothing herein contained shall be construed to apply to indebtedness contracted in the usual course of corporate business.

Increases heretofore so authorized are hereby validated.

* "meeting" in original.

Section 403, said act, as amended by act of May 23, 1949, P. L. 1773, further amended.

Section 4. Section 403 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 403. Classification of Directors.—If the articles or by-laws of a business corporation so provide, the directors of the corporation may be classified in respect to the time for which they shall severally hold office, except that the first directors shall serve only until the first annual meeting. In such case, each class shall be as nearly *equal in number as possible, the term of office of at least one class shall expire in each year, and the members of a class shall not be elected for a shorter period than one year, or for a longer period than four years. *If, at any meeting of shareholders, due to a vacancy or vacancies, or otherwise, directors of more than one such class are to be elected, each class of directors to be elected at the meeting shall be elected in a separate election.*

Subsection A of section 501, said act, amended.

Section 5. Subsection A of section 501 of said act is hereby amended to read as follows:

Section 501. Meetings of Shareholders.—A. Meetings of shareholders may be held at such place within or without this Commonwealth as may be provided in the by-laws or as may be fixed by the board of directors pursuant to authority granted by the by-laws. Unless the by-laws provide otherwise, all meetings of the shareholders shall be held in this Commonwealth at the registered office of the corporation.

Section 505, said act, as last amended by act of September 26, 1951, P. L. 1475, further amended.

Section 6. Section 505 of said act, **as last amended by the act, approved the twenty-sixth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1475), is hereby further 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 *in the same election* 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 *in the same election* by such class or group of classes shall be elected.

* "equal" omitted in original.

** "at" in original.

Section 7. Sections 803 and 807 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 803 and 807, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

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 *entitled under the articles to vote thereon*, except that such notice shall be given sixty days before meetings called to consider proposals, sixty days' notice of which is required by section eight E of this act. Such notice shall set forth the proposed amendment or a summary of the changes to be effected thereby.

Section 807. Advertisement.—Before or after an amendment has been adopted by the shareholders the corporation shall advertise its intention to file *or the filing of* articles of amendment with the Department of State in a manner similar to that heretofore prescribed in this act in the case of the formation of a business corporation. Advertisements [shall] *may* appear [at least three days] prior to *or after* the day upon which the articles of amendment are presented to the Department of State, and shall set forth briefly:

(1) The name and location of the registered office of the corporation.

(2) A statement that the articles of amendment are to be filed under the provisions of this act.

(3) The nature and character of the proposed amendment.

(4) The time when the articles of amendment will be filed with the Department of State.

Section 8. Section 905 of said act, as last amended by the act, approved the twenty-sixth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1475), is hereby further amended to read as follows:

Section 905, said act, as last amended by act of September 26, 1951, P. L. 1475, further amended.

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] *if* the surviving [corporation in cases of merger] *or new corporation is to be a domestic corporation, or shall, on the effective day of the merger or consolidation, be a foreign business corporation authorized, under Article X of this act, to do business in*

this Commonwealth. 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 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 the approved articles, and shall make and retain a copy thereof.

Section 907, said act, as last amended by act of May 23, 1949, P. L. 1773, further amended.

Section 9. Section 907 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 907. Effect of Merger or Consolidation.— Upon the merger or consolidation becoming effective, the several corporations parties to the plan of merger or consolidation shall be a single corporation which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation. The separate existence of all corporations parties to the plan of merger or consolidation shall cease, except that of the surviving corporation, in the case of a merger. The surviving or new corporation, as the case may be, if it be a domestic corporation, shall not thereby acquire authority to engage in any business or exercise any right which a corporation may not be formed under this act to engage in or exercise. All the property, real, personal, and mixed, of each of the corporations parties to the plan of merger or consolidation, and all debts due on whatever account to any of them, including subscriptions to shares and other choses in action belonging to any of them, shall be taken and deemed to be transferred to and vested in the surviving or new corporation, as the case may be, without further act or deed. The surviving or new corporation shall thenceforth be responsible for all the liabilities and obligations of each of the corporations so merged or consolidated, but the liabilities of the merging or consolidating corporations, or of their shareholders, directors, or officers, shall not be affected, nor shall the rights of the creditors thereof or of any persons dealing with such corporations, or any liens upon the property of such corporations, be impaired by such merger or consolidation, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or the surviving or

new corporation may be proceeded against or substituted in its place. *Any taxes, bonus, penalties and public accounts of the Commonwealth, claimed against any of the merging or consolidating corporations, but not settled, assessed or determined prior to such merger or consolidation, shall be settled, assessed or determined against the surviving or new corporation, and, together with interest thereon, shall be a lien against the franchises and property, both real and personal, of the surviving or new corporation.* In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles are stated in the articles of merger; and in the case of a consolidation, the statements which are set forth in the articles of consolidation, and, if the new corporation * be a domestic corporation, which are required or permitted to be set forth in the articles of incorporation of corporations formed under this act, shall be deemed to be the articles of incorporation of the new corporation. The aggregate amount of the net assets of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that the value thereof is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

Section 10. Section 1011 of said act, as last amended by the act, approved the twenty-sixth day of September, one thousand nine hundred fifty-one (Pamphlet Laws 1475), is hereby further amended to read as follows:

Section 1011, said act, as last amended by act of September 26, 1951, P. L. 1475, further amended.

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

* "to" deleted from original.

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. *Where process is issued against any such foreign business corporation by any court of the United States empowered to issue such process under the laws of the United States, the Secretary of the Commonwealth is authorized to receive such process in the same manner as herein provided for process issued by courts of this 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. *Where process is issued against any such foreign business corporation by any court of the United States empowered to issue such process under the laws of the United States, the Secretary of the Commonwealth is authorized to receive such process in the same manner as herein pro-*

vided for process issued by courts of this 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.

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."

APPROVED—The 19th day of August, A. D. 1953.

JOHN S. FINE

No. 309

AN ACT

To further amend the act, approved the twenty-third day of June, one thousand nine hundred thirty-one (Pamphlet Laws 932), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," by changing the provisions relating to zoning ordinances.

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

Section 1. Section 4114 of the act, approved the twenty-third day of June, one thousand nine hundred thirty-one (Pamphlet Laws 932), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," as reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), is hereby repealed.

Section 2. Said act, reenacted and amended by the act, approved the twenty-eighth day of June, one thousand nine hundred fifty-one (Pamphlet Laws 662), is hereby further amended by adding, after section 4113 thereof, a new section to read as follows:

Section 4114. Amendments to Zoning Ordinances.—The regulations, restrictions, and the classifications of buildings, structures and land, and the manner of establishing the boundaries of zones, contained in the zoning ordinance, may, from time to time, and after public notice and hearing, be amended, supplemented or changed by city council.

After the introduction of any bill proposing amendment, supplement or change in the zoning ordinance, city council shall refer such bill to the City Planning Commission for review. A report on said review, together

"The Third Class City Code."

Section 4114, act of June 23, 1931, P. L. 932, as reenacted and amended by act of June 28, 1951, P. L. 662, repealed.

Said act, reenacted and amended by act of June 28, 1951, P. L. 662, further amended by adding, after section 4113 thereof, a new section numbered 4114.