

AN ACT

Amending the act of May 5, 1933 (P. L. 289), entitled "An act relating to nonprofit corporations; defining and providing for the organization, merger, consolidation, and dissolution of such corporations; conferring certain rights, powers, duties, and immunities upon them and their officers and members; prescribing the conditions on which such corporations may exercise their powers; providing for the inclusion of certain existing corporations of the first class within the provisions of this act; prescribing the terms and conditions upon which foreign nonprofit corporations may be admitted or may continue to do business within the Commonwealth; conferring powers and imposing duties on the courts of common pleas, prothonotaries of such courts, recorders of deeds, and certain State departments, commissions, and officers; authorizing certain local public officers and State departments 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," changing permissible corporate names and changing the law with respect to devises, bequests and gifts in trust for and the perpetual care and maintenance of cemeteries, burial ground or cemetery lots, trustees and substituted trustees thereof, sureties of such trustees, the investment of such trust funds and accounts of said trustees, and repealing certain acts and parts of acts relating to corporations.

Nonprofit Corporation Law.

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

Subsection A, section 202, act of May 5, 1933, P. L. 289, amended May 23, 1949, P. L. 1763, further amended.

Section 1. Subsection A of section 202, act of May 5, 1933 (P. L. 289), known as the "Nonprofit Corporation Law," amended May 23, 1949 (P. L. 1763), is amended to read:

Section 202. The Corporate Name.—A. The corporate name may be in any language, but must be expressed in English letters or characters. 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," "banker," "savings," "trust," "deposit," "insurance," "mutual," "assurance," "indemnity," "casualty," "fiduciary," "benefit," "beneficial," "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 the United States, or is subject to the supervision of the Department of Banking, the Public Utility Commission or the Insurance Department,*

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 [: Provided, however, That the word "State," "Commonwealth," "United States," or "Federal" may be used if such use does not imply that the corporation is a governmental agency of the Commonwealth or of the United States].

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Section 2. Subsections A, B and C of section 315 of the act, subsection C, amended June 12, 1951 (P. L. 520), are amended to read:

Subsection A, B and C, section 315, act of May 5, 1933, P. L. 289, subsection C, amended June 12, 1951, P. L. 520, amended.

Section 315. Burial and Cemetery Companies; Churches with Burial Grounds.—A. Every nonprofit corporation formed for the purpose of conducting or maintaining a public or private cemetery, and every religious corporation [authorized by its articles to maintain] *maintaining* a burial ground, shall set aside annually a sum equal to at least [one-tenth] *fifteen per centum (15%)* of the gross amount of the funds arising from the sale of lots in such burial ground or cemetery, *or a sum equal to at least forty cents (\$.40) per square foot of each burial lot sold, whichever is greater*, for the perpetual care and preservation of the grounds and the repair and renewal of the buildings and property connected with and forming a part of the burial ground or cemetery.

B. [Every such corporation may take, receive, hold and administer any grant, donation or bequest of property in trust for the embellishment of the burial ground or cemetery, or for the erection, repair, preservation or renewal of any tomb, monument, gravestone, fence, railing or other like structure, or for the planting and cultivation of trees, shrubs, flowers, or plants in or around any cemetery lot or for improving such premises in any manner or form consistent with the design and purpose of the corporation, according to the terms of such grant, donation or bequest.] *Every such corporation may be appointed the original trustee or, when for any reason a vacancy may occur in a trusteeship, substituted or successor trustee and, as such, may receive devises, bequests or gifts, the principal of which is to be held in trust, in perpetuity or for a lesser period of time, for the care, maintenance, preservation, ornamentation or benefit of its cemetery or burial ground or the cemetery lots therein, in which burial rights have been or may*

hereafter be granted, upon giving its own bond without surety.

C. The directors of any such corporation are hereby made trustees of any such funds so received or set aside, and neither such funds nor the income derived therefrom shall be used by such trustees for any purpose other than the purpose for which the same were set aside, donated, bequeathed, or otherwise acquired. It shall be the duty of the directors of such corporation to invest such funds in investments which are designated as legal investments for trustees under the laws of this Commonwealth, and to use the income derived from such investments for the purpose of caring for, preserving and maintaining such burial ground or cemetery, or any other purpose which may be specified by the grantor or donor. The directors of any such corporation shall cause accurate accounts to be kept of such trust funds separate and apart from the other funds of the corporation. [and shall make an annual report, signed by the treasurer, to the members of the corporation and other interested parties, concerning the investment of the trust funds and the use made of the income derived from such investments. The amount of such funds shown by such report to be in the hands of the directors shall be final and conclusive in favor of and against all parties in interest, unless appropriate action is brought in the proper courts of this Commonwealth against the trustees within fifteen days after the regular meeting of the corporation at which such report is submitted. The directors of any such corporation shall file annually, in the court of quarter sessions of the county where the charter of the corporation was granted, a bond, with surety or sureties to be approved by such court, in the full amount of any funds set aside or held in trust by such directors under authority of subsections A and B of this section, but the first bond filed by the directors covering funds set aside under subsection A of this section shall be filed one year after the date when the corporation came into existence. The court of quarter sessions of such county shall, upon petition of any person related by blood or marriage to any person who has donated or bequeathed funds to any such corporation for the care, preservation, or maintenance of the burial ground or cemetery, or to one who has purchased a lot therein for the burial of the dead or of the donors or purchasers themselves, shall have the right to compel the directors of the corporation to file any bond herein provided for, in the event of the failure of the directors to file the same on or before the first Monday of July of any year: Provided, however, That any] *Any such corporation may combine and merge the principal of two or more such trust funds and any funds so set aside in an*

omnibus fund for purposes of investment of the same. Any such cemetery or burial corporation may, by appropriate action of its members and board of directors or trustees and with the approval of the orphans' court of the county in which the cemetery or burial grounds are situated, transfer any of such funds to one or more bank and trust companies, trust companies or national banking associations having fiduciary powers, as trustee, and with like investment restrictions, said transfers to be either revocable, or absolute and irrevocable, and upon the transfer of any such funds, the cemetery or burial corporation shall be relieved of all liability for the investment and reinvestment thereof. The corporate trustee shall pay, semi-annually, the net income from the said funds to the cemetery or burial corporation for the purposes above expressed [, and shall file accounts in the orphans' court of the county in which the cemetery grounds are situated, which accounts shall be filed triennially and at such other times as the said court may direct, and which accounts shall be audited, adjudicated and confirmed by said court, upon such notice to the parties in interest as the said court may determine]. The orphans' court of the county in which the cemetery or burial ground or any part thereof is situated shall have jurisdiction in the discretion of said court to compel any such corporation or any such corporate trustee to file accounts of any funds so received or set aside.

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Section 3. The following acts and parts of acts are **Specific repeal.** repealed to the extent specified:

(1) The act of April 8, 1833 (P. L. 238), entitled "A supplement to an act entitled 'An act to confer on certain associations of the citizens of this Commonwealth, the powers and immunities of corporations, or bodies politic in law,' passed the sixth day of April, one thousand seven hundred and ninety-one," absolutely.

(2) Sections 1 and 2, act of June 13, 1840 (P. L. 672), entitled "An act to promote the culture and manufacture of Silk, and for other purposes," absolutely.

(3) Sections 13, 14, 15, 16 and 17, act of October 13, 1840 (1841, P. L. 1), entitled "An act relating to Orphans' Courts, and for other purposes," absolutely.

(4) Section 1, act of April 21, 1849 (P. L. 673), entitled "An act to restrain corporations from issuing obligations redeemable otherwise than in gold and silver, or in current bank notes," as to nonprofit corporations.

(5) The act of May 8, 1854 (P. L. 674), entitled "An act to authorize the Courts to alter Charters in certain cases," as to nonprofit corporations.

(6) The act of May 7, 1855 (P. L. 477), entitled "A supplement to an act to authorize the Courts to alter Charters in certain cases, passed May the eighth, one thousand eight hundred and fifty-four," as to nonprofit corporations.

(7) The act of February 24, 1859 (P. L. 78), entitled "An act relating to certain Charitable Corporations," absolutely.

(8) Section 1, act of April 8, 1861 (P. L. 259), entitled "An act concerning the Sale of Railroads, Canals, Turnpikes, Bridges and Plank Roads," as to nonprofit corporations.

(9) The act of November 27, 1865 (1866, P. L. 1228), entitled "An act relating to the organization and meetings of certain corporations, incorporated under the laws of this commonwealth," as to nonprofit corporations.

(10) The act of February 19, 1867 (P. L. 28), entitled "An act to extend the provisions of the act concerning the sale of railroads, canals, turnpikes, bridges and plank roads, to sales made, or to be made under, or by virtue of a power of sale, in mortgage or deed of trust, without judicial process or decree," as to nonprofit corporations.

(11) The act of March 14, 1867 (P. L. 36), entitled "A supplement to an act to entitle the stockholders of any railroad company, incorporated by the laws of this commonwealth, accepting this act, to one vote for each share of stock, approved the twentieth day of May, Anno Domini one thousand eight hundred and sixty five, extending the same to bridge companies and hall associations," as to nonprofit corporations, except as to corporations created or formed prior to January 1, 1874, by any special act or formed under any general act, which have never accepted in any manner whatsoever the Constitution of Pennsylvania.

(12) The act of March 26, 1867 (P. L. 44), entitled "An act to enlarge the jurisdiction of the courts of common pleas of this Commonwealth, relative to granting charters of incorporation, and confirming those heretofore granted," as to nonprofit corporations.

(13) The act of April 20, 1869 (P. L. 82), entitled "An act to enable Courts of Common Pleas of this Commonwealth to change the name, style and title of corporations," as to nonprofit corporations.

(14) The act of April 1, 1870 (P. L. 45), entitled "An act to authorize and direct the Attorney General, upon complaint made by parties whose interests are thereby affected, to institute proceedings, according to law, against corporations alleged to have violated duties imposed upon them by law," as to nonprofit corporations,

except as to corporations created or formed prior to January 1, 1874, by any special act or formed under any general act, which have never accepted in any manner whatsoever the Constitution of Pennsylvania.

(15) The act of February 17, 1871 (P. L. 56), entitled "An act to authorize corporations to subscribe for or purchase the capital stock and to purchase the bonds of the American Steamship Company of Philadelphia," as to nonprofit corporations.

(16) Section 1, act of April 4, 1872 (P. L. 46), entitled "An act for the appointment of a receiver in cases where corporations have been dissolved by judgment of ouster, upon proceedings of quo warranto," as to nonprofit corporations.

(17) The act of April 20, 1874 (P. L. 110), entitled "An act to enable the officers of dissolved corporations to convey real estate held by such corporations," as to nonprofit corporations.

(18) The act of May 14, 1874 (P. L. 146), entitled "An act relative to service of process upon the stockholders of corporations in actions brought to charge the stockholders for debts of the corporation, or for unpaid instalments upon their stock," as to nonprofit corporations.

(19) The act of May 15, 1874 (P. L. 186), entitled "An act to authorize the issuing of letters patent to certain corporations," as to nonprofit corporations.

(20) The act of May 15, 1874 (P. L. 186), entitled "An act to authorize corporations to increase the security of their bonded indebtedness," as to nonprofit corporations.

(21) The act of May 22, 1878 (P. L. 84), entitled "An act to require all private corporations applying to the state for aid, to file in the office of the auditor general their acceptance of the provisions of the constitution," absolutely.

(22) Sections 2 and 3, act of May 25, 1878 (P. L. 145), entitled "A supplement to an act, entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads,' approved the eighth day of April, Anno Domini one thousand eight hundred and sixty-one, extending the provisions of said act to coal, iron, steel, lumber, or oil or mining, manufacturing, transportation and telegraph companies, in this commonwealth," as to nonprofit corporations.

(23) Sections 1 and 3, act of May 25, 1878 (P. L. 148), entitled "A supplement to an act, entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads,' approved April *eighth, one thousand

* "eight" in original.

eight hundred and sixty-one, authorizing the purchaser or purchasers of any railroad, canal, turnpike, bridge, or plank road or telegraph, at any sale hereafter made, by virtue of any process or decree of any court of this state or the circuit court of the United States, to issue stock or bonds secured by mortgage, or both, for their respective interests in the property and franchises purchased, and ratifying and confirming the issue or issues of stock and bonds secured by mortgage, that may have heretofore been issued by corporations organized under the act to which this is a supplement," as to nonprofit corporations.

(24) The act of May 13, 1879 (P. L. 57), entitled "An act to authorize corporations to borrow money to redeem previous loans authorized by special laws, and limiting the rate of interest and terms thereof, and providing for the payment of mechanics' liens," as to nonprofit corporations.

(25) Section 1, act of May 31, 1887 (P. L. 281), entitled "An act permitting the stockholders of corporations to determine the number of directors, and the time for holding annual elections of officers," as to nonprofit corporations.

(26) Section 1, act of June 17, 1887 (P. L. 411), entitled "A further supplement to an act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' approved April twenty-ninth, one thousand eight hundred and seventy-four, providing for the further regulation of such corporations," as to nonprofit corporations.

(27) The act of May 7, 1889 (P. L. 102), entitled "An act defining evidence of stock ownership in corporations and for determining the right to vote thereon," as to nonprofit corporations.

(28) Section 1, act of May 16, 1891 (P. L. 88), entitled "An act to authorize burial or cemetery companies to accept trusts in certain cases," absolutely.

(29) The act of May 15, 1893 (P. L. 48), entitled "An act to authorize meadow companies controlling contiguous districts to be consolidated into one company," as to nonprofit corporations.

(30) Section 3, act of May 26, 1893 (P. L. 141), entitled "An act amending an act, entitled 'An act defining evidence of stock ownership in corporations, and for determining the right to vote thereon,' approved May seventh, one thousand eight hundred and eighty-nine, further defining evidence of stock ownership and the right to vote thereon," as to nonprofit corporations.

(31) The act of June 8, 1893 (P. L. 351), entitled "An act to provide for the manner of reducing the capital

stock of corporations," and its amendment, as to non-profit corporations.

(32) The act of June 10, 1893 (P. L. 417), entitled "An act to authorize corporations to increase their capital stock for corporate purposes," as to nonprofit corporations.

(33) Section 1, act of June 24, 1895 (P. L. 258), entitled "An act relating to and regulating the issue and transfer of certificates of stock by companies incorporated under the laws of this Commonwealth," as to nonprofit corporations.

(34) Section 1, act of July 2, 1901 (P. L. 603), entitled "An act authorizing corporations, organized for profit, to purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of capital stock of, or any bonds, securities or evidences of indebtedness created by, any other corporation," as to nonprofit corporations.

(35) The act of July 2, 1901 (P. L. 606), entitled "An act authorizing corporations organized under the laws of Pennsylvania to increase or diminish the par value of the shares of their capital stock," as to nonprofit corporations.

(36) The act of March 5, 1903 (P. L. 14), entitled "An act concerning proxies, authorizing representation and voting of shares of capital stock of corporations at meetings and elections thereof," as to nonprofit corporations.

(37) Section 1, act of March 24, 1903 (P. L. 50), entitled "An act relating to the taking of stock votes, upon subjects presented to stockholders of corporations of this Commonwealth for their action," as to nonprofit corporations.

(38) The act of March 16, 1905 (P. L. 42), entitled "An act providing for the voting of shares of stock in corporations in this Commonwealth, held by executors, administrators, guardians, and trustees, and the manner of voting the same," as to nonprofit corporations.

(39) Section 1, act of March 18, 1909 (P. L. 41), entitled "An act to better provide for perpetual care and preservation of burial grounds or cemeteries within this Commonwealth," absolutely.

(40) Section 3, act of April 23, 1909 (P. L. 167), entitled "An act to provide that when a receiver of a corporation is appointed in any court, on motion of the Attorney General, at the instance of either the Commissioner of Banking or the Insurance Commissioner, such receiver shall supersede any receiver previously appointed by decree of any court, and shall supersede any assignee or trustee previously appointed by such

corporation, and requiring such superseded receiver, assignee, or trustee to pay over and deliver to the receiver appointed on motion of the Attorney General the money, assets, and property of such corporation in his or their possession, and to file his or their account in the proper court; and providing for the appointment of auditors of the accounts of receivers appointed on the motion of the Attorney General, and defining their duties," as to nonprofit corporations.

(41) The act of May 3, 1909 (P. L. 408), entitled "An act authorizing the merger and consolidation of certain corporations," as to nonprofit corporations.

(42) Sections 1 and 2, act of May 11, 1911 (P. L. 261), entitled "An act relating to Receivers' Sales," as to nonprofit corporations.

(43) Section 1, act of July 5, 1917 (P. L. 681), entitled "An act permitting corporations to invest their surplus funds in bonds of the United States issued for war purposes," as to nonprofit corporations.

(44) Sections 1 and 2, act of July 12, 1923 (P. L. 1083), entitled "An act authorizing corporations to issue stock at a price in excess of the par value thereof," as to nonprofit corporations.

(45) Sections 1 and 2, act of May 13, 1925 (P. L. 679), entitled, as amended, "An act authorizing corporations to issue stock to their employes and to employes of their subsidiaries and authorizing such an issue without first offering such shares to the stockholders subject to certain limitations," as to nonprofit corporations.

(46) Sections 1 and 2, act of April 28, 1927 (P. L. 503), entitled "An act authorizing churches, cemetery companies, and burial associations to lease or convey coal and other minerals; providing for the use and expenditure of the funds derived therefrom and for the support of the overlying surface," as to nonprofit corporations.

(47) Sections 1, 2 and 3, act of April 30, 1929 (P. L. 903), entitled "An act relating to corporations; providing methods of determining what stockholders shall be entitled to vote at meetings, or to receive dividends, or allotments of rights, or to exercise rights; and the effect thereon of transfers of stock within sixty days of any election or meeting," as to nonprofit corporations.

(48) Act of May 17, 1929 (P. L. 1802), entitled "An act providing that when all or a majority of the outstanding shares of the capital stock of any corporation, now or hereafter created under the laws of this Commonwealth, are owned by a corporation, created under the laws of any other State, the owner or owners of not less than one-fifth of the total number of the outstanding shares of the capital stock of such foreign corporation

shall have the right to investigate and inquire into the affairs, management, and operations of such domestic corporation, and to institute, maintain and prosecute actions or proceedings against, or in behalf of, such domestic corporation, for any purpose, to the same extent, in the same manner, with the same force and effect, and with the same rights and remedies, as if he or they were the owner or owners of shares of the capital stock of such domestic corporation; and prescribing the conditions upon which a bond may be required in any such action or proceeding," as to nonprofit corporations.

(49) Sections 1, 2, 3 and 4, act of May 3, 1933 (P. L. 225), entitled "An act to authorize certain corporations organized under the laws of Pennsylvania, including railroad corporations organized under the laws of Pennsylvania and of any other state or states, to increase or decrease the par value of the shares of their capital stock; providing that such change of par value of shares may reduce the aggregate par value of outstanding capital stock, or alter or affect the division of authorized capital stock as between outstanding stock and authorized stock unissued; prescribing the manner in which such change shall be made; and repealing all acts and parts of acts inconsistent herewith," as to nonprofit corporations.

(50) The act of May 3, 1933 (P. L. 227), entitled "An act authorizing stock corporations, with certain exceptions, to make provision for, and to issue, shares of capital stock of any class or classes, or to change shares of authorized or outstanding capital stock of any class into one or more classes, with or without nominal or par value, and with such designations, terms, relative rights, powers, privileges, preferences, limitations, restrictions and qualifications as may be specified; regulating such corporations and the liabilities of their directors; making other provisions relating to the capital and capital stock of such corporations; and repealing all acts or parts of acts inconsistent herewith," as to nonprofit corporations.

(51) Sections 1, 2 and 3, act of August 10, 1951 (P. L. 1199), entitled "An act concerning devises, bequests or gifts in trust for the care and maintenance of cemeteries, burial grounds or cemetery lots, trustees and substituted trustees thereof, sureties of said trustees, the investment of such trust funds, accounts of said trustees; approving actions and proceedings prior to this act; and repealing conflicting laws," absolutely.

(52) Sections 1 and 2, act of August 19, 1953 (P. L. 1075), entitled "An act authorizing corporations to grant stock options, pensions and allowances, under certain

circumstances; and validating stock options, pensions and allowances heretofore granted," as to nonprofit corporations.

APPROVED—The 13th day of October, A. D. 1959.

DAVID L. LAWRENCE

No. 433

AN ACT

Amending *the act of April 18, 1945 (P. L. 253), entitled "An act relating to suits by shareholders against officers or directors in a corporation, domestic or foreign, to enforce a secondary right because the corporation refuses to enforce rights, which may be asserted by it, requiring that plaintiff be a shareholder at the time of the transaction of which he complains, or that his shares thereafter devolved upon him by operation of law; requiring security for defendant's expenses, including attorneys' fees; and providing for the assessment and recovery of such expenses, including attorneys' fees," extending the provisions thereof to corporations having no capital stock and authorizing corporations to indemnify directors, officers and other persons against certain expenses.

Corporations.

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

Sections 1 and 2,
act of April 18,
1945, P. L. 253
amended.

Section 1. Sections 1 and 2, act of April 18, 1945 (P. L. 253), entitled "An act relating to suits by shareholders against officers or directors in a corporation, domestic or foreign, to enforce a secondary right because the corporation refuses to enforce rights, which may be asserted by it, requiring that plaintiff be a shareholder at the time of the transaction of which he complains, or that his shares thereafter devolved upon him by operation of law; requiring security for defendant's expenses, including attorneys' fees; and providing for the assessment and recovery of such expenses, including attorneys' fees," are amended to read:

Suits by share-
holders to en-
force secondary
rights.

Section 1. In any suit brought to enforce a secondary right on the part of one or more shareholders *or members of a corporation organized on a mutual plan without capital stock* against any officer, or director, or former officer or director of a corporation, domestic **or foreign, because such corporation refuses to enforce rights which may properly be arrested by it, the plaintiff or plaintiffs must aver and it must be made to appear, that the plaintiff or each plaintiff was a stockholder *or was a member of such corporation* at the time of the transaction of which he complains, or that his stock *or membership*

* "te" in original.

** "of" in original.