

No. 80

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.

Section 1. Be it enacted, &c., That upon the formation or reorganization, under the laws of this Commonwealth now or hereafter in force, of any stock corporation, other than building and loan associations and corporations authorized by law to transact a banking, a trust company or an insurance business, or upon the merger or consolidation thereunder of two or more such corporations, other than as aforesaid, or upon the formation of a railroad corporation by consolidation under the laws of this Commonwealth and any other state or states, provision may be made for the issuance of shares of preferred stock of any or all classes, or common stock of any class, or both preferred and common stock, without any nominal or par value, with such designations, terms, relative rights, privileges, limitations, preferences and voting powers, or prohibitions, restrictions or qualifications of the voting and other rights and powers, of the shares of each class as may be specified, by stating in the certificate of incorporation or reorganization or in the joint agreement of merger or consolidation, in lieu of the statements now prescribed by law as to the amount of the corporation's capital stock and the number and par value of shares into which it is divided:

Corporations.

Stock
without
nominal or
par value.Specified
preferences,
restrictions,
etc.Statements
in certificate
or agreement.

(a) The number of shares with nominal or par value, and the number of shares without nominal or par value, that may be issued by the corporation, and the classes, if any, into which such shares are divided.

(b) The nominal or par value of shares of stock other than shares which it is stated are to have no nominal or par value.

(c) The amount of capital with which the corporation will begin business.

(d) If there are to be shares of more than one class, the designations, terms, relative rights, privileges, limitations, preferences and voting powers, or prohibitions, restrictions or qualifications of the voting and other rights and powers, of the shares of each class.

Any such certificate or joint agreement or proceedings referred to in the second section of this act may also, if desired, prescribe the consideration for which the

corporation may issue and sell its shares without nominal or par value, or may authorize the board of directors to prescribe such consideration from time to time.

Manner of
issuing or
changing
capital stock.

Section 2. Any such corporation, heretofore or hereafter created by incorporation, reorganization or consolidation, having a capital stock consisting of shares either with or without nominal or par value, or both, may, at any time, authorize and issue capital stock of any class or kind with or without nominal or par value, or change or convert any or all of the shares of its authorized or outstanding capital stock into one or more classes and kinds, either with or without nominal or par value, with such designations, terms, relative rights, privileges, limitations, preferences and voting powers, or prohibitions, restrictions or qualifications of the voting and other rights and powers as may be specified, as to the shares of any given class or kind, in the same manner and by the same stock vote as may now or may hereafter be prescribed by law for increasing the capital stock of such corporation: Provided, however, That in any case where shares without nominal or par value shall be provided for, a stated capital shall be fixed—the amount of which shall be set forth in such proceedings—which stated capital shall be governed by, and be subject to, the provisions of this act. Such proceedings may, as an incident to such change or conversion, increase or decrease the capital stock which such corporation is authorized to issue or the aggregate par value of or stated capital applicable to its outstanding shares of stock, may alter or adjust the division of its authorized capital stock as between outstanding stock and authorized stock unissued, or make any similar adjustment of the capital structure or share structure of such corporation: Provided, That no such change or alteration in the value of the aggregate par value of the outstanding stock shall be valid in law unless notices to all persons interested shall be given as now required by law where it is proposed to increase or reduce the capital stock of any corporation.

Proviso.

Stated
capital.

Alterations and
adjustments of
capital stock.

Proviso.

Capital
must be
fully paid in.

Section 3. No corporation authorized to issue shares of stock without nominal or par value in pursuance of the provisions of the first section of this act shall begin to carry on business, or shall incur any indebtedness, until the amount of its capital, stated in pursuance of said section, shall have been fully paid in cash or in property taken at its actual value.

“Stated
capital,”
defined.

Section 4. For the purposes of this act, the “stated capital” of a corporation issuing shares without nominal or par value shall be the capital with which the corporation will begin business, as stated in the certificate of incorporation or reorganization or the joint agreement of merger or consolidation, or the amount fixed and set forth as “stated capital” in the proceedings referred

to in the second section of this act, plus any net additions thereto, or minus any net deductions therefrom: Provided, That "stated capital" shall not include any net profits or surplus earnings so long and during such period as the same may be paid out in the form of dividends under the provisions of section nine of this act: And provided further, That "stated capital" shall not be larger in amount than the excess, as shown by the books of the corporation, of its assets over and above its liabilities, other than liabilities on account of shares of stock issued or to be issued by such corporation. In the case of a corporation having outstanding shares with a nominal or par value, as well as shares without a nominal or par value, for the purpose of this act, the portion of "stated capital" applicable to the shares without a nominal or par value shall be the excess of "stated capital" over and above the total par value of outstanding shares having a nominal or par value.

Proviso.

Proviso.

Section 5. Preferences, rights, limitations, privileges, and restrictions authorized by the Constitution and laws of this Commonwealth may be stated in dollars or cents per share in respect to shares of stock without nominal or par value issued in pursuance of the provisions of this act.

Statement of preferences, restrictions, etc.

Section 6. Any such corporation may issue and may dispose of its authorized shares having no nominal or par value, from time to time, for such consideration as may be prescribed in the certificate of incorporation or reorganization or the joint agreement of merger or consolidation or the proceedings referred to in the second section of this act, or determined by the stockholders at any annual or special meeting duly called and held for that purpose, or determined by the board of directors acting under authority conferred by the stockholders or by the certificate of incorporation or reorganization, by the joint agreement of merger or consolidation, or by the proceedings referred to in the second section of this act.

Consideration.

Section 7. Any and all shares without nominal or par value, issued for the consideration prescribed or fixed in accordance with the provisions of section six hereof, shall be deemed fully paid and nonassessable, and the holder of such shares shall not be liable thereon to the corporation or to its creditors, except for the liability of stockholders in their individual capacity now imposed by law for work or labor done to carry on the operations of the corporation or for debts due laborers, mechanics, and clerks.

Shares fully paid and nonassessable.

Section 8. Every certificate for shares of stock without any nominal or par value shall have plainly stated upon its face the number of shares which it represents, and no certificate shall express any par value for such shares or any rate of dividend to which it shall be entitled in terms of percentage of any par or other value.

Statements on stock certificates.

Dividends.

Section 9. No corporation having shares without nominal or par value, issued under the provisions of this act, shall declare or pay any dividend out of capital or out of anything except net profits or surplus earnings. In case any such dividend shall be declared or paid other than from net profits or surplus earnings, the directors in whose administration the same shall have been declared or paid, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors' meetings at the time, or who, being absent therefrom when such action was taken, shall have filed their objections with the secretary of the corporation upon learning of such action, shall be liable, jointly and severally, to such corporation, and to the creditors thereof, to the full amount of any loss sustained by such corporation, or by its creditors, by reason of such dividend.

Liability of directors when dividends are improperly declared.

Changing share or capital structure.

Section 10. Any corporation authorized to have shares without any nominal or par value, under the provisions of this act or of any prior act or acts, may increase or reduce the number of shares which it may issue or the "stated capital" applicable thereto, may alter or adjust the division of its authorized capital stock as between outstanding stock and authorized stock unissued, and may make any similar adjustment of its capital structure or share structure, in the manner and by the same stock vote as may now or may hereafter be prescribed by law for increasing the capital stock of such corporation.

Equality of shares of same class.

Section 11. Except as to any preferences, rights, limitations, privileges, and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same, and equal to every other share of stock of the same class.

When shares to be equivalent to shares having par value.

Section 12. For the purpose of computing any tax or taxes, the determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof, and for the purpose of determining the amount of the liability of stockholders in their individual capacity for work or labor done to carry on the operations of a corporation or for debts due laborers, mechanics, and clerks, each share of stock without any nominal or par value, issued under the provisions of this act, shall be considered the equivalent of a share having a nominal or par value of an amount equal to the "stated capital" applicable to such share.

Bonus.

Nothing in this act contained shall be construed as exempting or relieving any such corporation from any requirement of law as to the payment of bonus, but bonus shall be imposed, computed, collected, and paid at the rate and in the manner now or hereafter provided by law.

For the purpose of any certificate of notification, report, return, or similar instrument, wherein the amount or par value of stock or capital or capital stock, paid in, outstanding, or retired, is required to be stated, in the case of shares without nominal or par value, and with respect to such shares, the amount or par value thereof, outstanding or paid in prior to the date of such certificate, report, return, or similar instrument, shall be considered as the amount of "stated capital" in excess of the total par value of outstanding shares having a par value, if any, and the amount or par value thereof retired shall be considered as the amount of decrease, if any, of "stated capital" due to such retirement. In the case of shares without nominal or par value presently to be issued, in lieu of stating the amount or par value thereof in any such certificate, report, return, or similar instrument, an accurate and detailed description of the consideration received or to be received therefor, or of the assets received or to be received for which the proceeds from the disposition of the said shares are to be used to pay or reimburse the treasury of the company, and the net changes, if any, in the corporation's "stated capital" due to the receipt of such consideration, shall be stated. In the case of shares without nominal or par value authorized but unissued and not presently to be issued, it shall not be necessary in such certificate, report, return, or similar instrument to show the amount or par value thereof, and only the number thereof need be stated.

What is to be considered amount or par value of such stock.

For the purpose of any statutory provisions limiting the amount of capital stock which a corporation may have, or the relation between indebtedness and capital stock, or prescribing the portion or amount or par value of stock or capital which must be paid in cash or otherwise, whether at the time of formation, before commencing to do business, or from time to time subsequent thereto, the "stated capital" of a corporation having shares without nominal or par value shall be deemed to be its capital stock or the amount thereof.

Nothing in this act contained shall be construed as excepting or relieving a corporation from any requirement of law as to the amount in dollars of paid in capital, in cash or otherwise, which it must have at any time.

In any investigation or proceeding by the Commonwealth of Pennsylvania, or any agency thereof, to determine the value of the property, assets, or capital stock of a corporation having shares without nominal or par value under the provisions of this act, neither the stated capital of such corporation, nor the number of shares of its outstanding stock without nominal or par value, shall be controlling, but the same may be disregarded, or considered only to such extent as the Commonwealth, or its agency, shall deem necessary or proper for the purpose of such investigation or proceeding.

Corporations
to be subject
to State laws.

Section 13. Except as otherwise provided by this act, corporations issuing shares without any nominal or par value, under the provisions hereof, shall be and remain subject to the laws of this Commonwealth, now or hereafter in force, relating to the formation, regulation, reorganization, consolidation, or merger, rights, powers, and privileges of such corporations, and all other laws applicable thereto.

Repeals.

Act of
July 12, 1919
(P. L. 914).

Section 14. The act approved the twelfth day of July, one thousand nine hundred and nineteen (Pamphlet Laws, nine hundred fourteen), entitled "An act authorizing stock corporations, other than building and loan associations and corporations authorized by law to transact a banking or insurance business, to make provision, upon formation, reorganization, merger, or consolidation, for the issue of either or both preferred or common shares without nominal or par value; regulating the same and such corporations; and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner," and sections one and two of the act, approved the twenty-first day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, two hundred eighty-eight), entitled "An act authorizing certain corporations to authorize, create, and issue capital stock of any class or kind without nominal or par value, and to change or convert their authorized or outstanding capital stock of any class or kind into shares of any class or kind, either with or without nominal or par value; and validating the creations and issues of stock heretofore made by corporations in accordance with the provisions hereof," and all other acts or parts of acts inconsistent with this act, are hereby repealed.

Sections
1 and 2,
act of May
21, 1923
(P. L. 288).

Constitution-
ality.

Section 15. The provisions of this act are severable, and if any of the provisions hereof are held to be unconstitutional, the decision shall not be construed to impair any other provision of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provision not been included therein.

When
effective.

Section 16. This act shall become effective immediately upon its passage by the General Assembly and approval by the Governor.

APPROVED—The 3d day of May, A. D. 1933.

GIFFORD PINCHOT