

responsible to the department for the cost of the restoration of such surface in accordance with the adopted standards of the department for the particular type of construction. Any person, firm, or corporation opening the improved surface of any street or highway without having first obtained a permit, as hereinbefore provided, shall upon summary conviction, be sentenced to pay a fine of not more than twenty-five dollars (\$25.00), and, in addition thereto, the costs of prosecution and surface restoration charges, and, in default of the payment thereof, shall undergo imprisonment for not more than five (5) days.

APPROVED—The 17th day of August, A. D. 1951.

JOHN S. FINE

No. 302

AN ACT

To amend the title and the act, approved the third day of May, one thousand nine hundred and nine (Pamphlet Laws 408), entitled "An act authorizing the merger and consolidation of certain corporations," by permitting the merger or consolidation of certain domestic corporations or the merger or consolidation of certain foreign and domestic corporations; prescribing the procedure for and the effect of a merger or consolidation; providing for payment of certain fees, taxes and bonus; and defining the rights, powers and privileges of dissenting stockholders and of the surviving corporation in the case of a merger and of the new corporation in the case of a consolidation.

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

Section 1. The title and sections one and two of the act, approved the third day of May, one thousand nine hundred and nine (Pamphlet Laws 408), entitled "An act authorizing the merger and consolidation of certain corporations," are hereby amended to read as follows:

AN ACT

Authorizing the merger [and] or consolidation of certain corporations.

Section 1. Be it enacted, &c., That it shall be lawful for any [corporation] *two or more corporations*, now or hereafter organized under the provisions of any general or special act of Assembly [authorizing the formation of any corporation or corporations] *of this Commonwealth (hereinafter referred to as domestic corporations), or any one or more domestic corporations and any one or more corporations organized under or by*

Corporations.

The title and sections 1 and 2, act of May 3, 1909, P. L. 408, amended.

Amended title.

Merger or consolidation of certain domestic corporations, or domestic and foreign corporations, permitted.

virtue of any laws other than those of this Commonwealth (hereinafter referred to as foreign corporations), to merge [its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made] into one of such domestic corporations (hereinafter designated as the surviving corporation) or to be consolidated into a new corporation to be formed under this act: Provided, That corporations may not be merged or consolidated under the provisions of this act unless by virtue of their respective charters they may transact the same or a similar line of business (irrespective of whether one or more of such corporations is actually transacting such business or is authorized under its charter to engage also in other lines of business), except that any corporation which is a holding company, as herein defined, with respect to any subsidiary corporation, may be a party to a merger or a consolidation to which such subsidiary corporation is a party, whether or not such subsidiary is the only other party and whether or not such holding company is authorized by its charter to transact the same or a similar line of business as such subsidiary corporation or any other corporation that may be a party to such merger or consolidation: Provided further, That any such charter authorization to transact a dissimilar line of business shall not survive such merger or consolidation, but shall be deemed to have been surrendered upon consummation of such merger or consolidation: Provided further, That a foreign corporation may not participate in a merger or consolidation under this act unless such corporation is authorized by the law or laws of the jurisdiction under which it was formed to effect such merger or consolidation: Provided further, That nothing in this act shall be construed so as to permit railroad, canal, or telegraph companies, which own, operate, or in any way control, parallel or competing roads, canals, or lines, to merge or [combine] consolidate: Provided further, That nothing in this act contained shall extend or enlarge beyond its former territorial limits the exclusive franchise of any gas or water company; and that the merger or consolidation of water companies shall be subject to the provisions of the act, entitled "An act to require all water and water-power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing property and fran-

Proviso: such corporations not permitted to merge or consolidate unless authorized to transact same or similar line of business.

Exception: holding companies.

Further proviso: charter authorization to transact dissimilar line of business deemed surrendered.

Further proviso: foreign corporation not permitted to merge or consolidate unless authorized by laws of home state.

Further proviso: certain railroad, canal or telegraph companies not permitted to merge or consolidate.

Further proviso: certain rights of gas or water companies not extended or enlarged.

chises of any other such company, to designate the exact source of their supply of water or water-power; and to require all existing water and water-power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as represents the appropriation of streams, rivers or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law'; and providing the manner in which water and water-power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water-power," approved the seventh day of June, Anno Domini one thousand nine hundred and seven. A "*holding company*," for the purposes of this act, means any domestic or foreign corporation which directly or indirectly owns, controls or holds, with power to vote, at least fifty per centum of the outstanding voting stock of any corporation, including a corporation which is a holding company by virtue of this definition.

Meaning of term "holding company."

'Section 2. [Said merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers, herein set forth; to wit,]

Procedure for merger or consolidation.

[First] A. The directors of each corporation shall enter into a joint agreement, under the corporate seal of each corporation, for the merger [and] or consolidation of said corporations; prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the *surviving or new corporation*, the number, [and] names and addresses of the first directors and other officers [thereof] of the *surviving or new corporation*, [and who shall be the first directors and officers, and their places of residence,] the number and classes of shares of the capital stock, the amount or par value of each share, and the manner and basis of converting the capital stock of each of said corporations into the stock or other securities or obligations of the *surviving or new corporation*, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said [consideration and] merger or consolidation [; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided]. *The agreement of merger or consolidation may provide that all the rights, privileges and franchises of the constituent corporations shall vest in the surviving or new corporation, as the case may be, or may provide that the rights, priv-*

Directors of each corporation to enter into a joint agreement.

ileges and franchises of only one or more of the constituent corporations shall vest in the surviving or new corporation, or may provide that only the rights, privileges and franchises of one of the constituent corporations shall vest in and shall constitute the rights, privileges and franchises of the surviving or new corporation: Provided, however, That in the case of any merger or consolidation involving constituent corporations which are authorized to transact dissimilar lines of business, the agreement of merger or consolidation shall expressly provide which of said dissimilar charter powers and all rights, privileges and franchises pertaining thereto are to be surrendered upon consummation of such merger or consolidation, in order that the surviving or new corporation shall not be authorized to transact dissimilar lines of business.

Agreement to be submitted to stockholders of each domestic corporation for approval or rejection.

[Second] B. Said agreement shall be submitted to the stockholders of each of said *domestic* corporations, at separate special meetings or at any annual meetings, of the time, place and object of which respective meetings [due notice shall be given by publication, once a week for two consecutive weeks before said respective meetings, in at least one newspaper in the county or in each of the counties in which the principal office of said respective corporations shall be situate,—excepting in the case of the merger or consolidation of corporations which, upon their original incorporation, are required by the Constitution to publish notice of intention to incorporate for a longer period than two weeks, in which case notice of publication shall be as required by the Constitution] *written notice shall, not less than ten days before any such annual or special meeting, be given to each stockholder of record of each corporation whether or not entitled to vote on such agreement, unless the agreement of merger or consolidation contemplates an increase in the aggregate amount of the capital stock of the constituent corporations, in which event sixty days notice of such meeting shall be given to each stockholder;* and at said meetings the said agreement of the directors shall be considered, and a vote of the stockholders in person or by proxy shall be taken, by ballot, for the adoption or rejection of the same, each share of stock entitling the holder thereof to one vote; and if a majority in amount of the entire capital stock of each of said corporations shall vote in favor of said agreement, merger [and] *or consolidation, then that fact shall be certified by the secretary of each corporation, under the corporate seal thereof [, and said certificates, together with the said agreement or a copy thereof, shall be filed in the office of the Secretary of the Commonwealth, who shall forthwith present the*

same to the Governor for his approval, and when approved by the Governor the said agreement shall be deemed and taken to be the act of consolidation of said corporation]. *In the case of any foreign corporation which is a party to a merger or consolidation under this act, the agreement of merger or consolidation shall be authorized, adopted and approved by such foreign corporation in accordance with the laws of the jurisdiction in which it was formed. The secretary of such foreign corporation shall certify, under the corporate seal thereof, the fact of such requisite approval.*

Approval of agreement where a foreign corporation is a party to the merger or consolidation.

C. *The agreement of merger or consolidation, as the case may be, or a copy thereof, together with the aforesaid certificates evidencing the approval thereof by the stockholders of the constituent corporations and a certificate or certificates from the proper department or departments evidencing payment by each constituent corporation of all bonus, taxes and other charges as required by law, shall be delivered to the Department of State, except that no such certificates pertaining to bonus, taxes and other charges shall be required of the surviving corporation in cases of merger. If the Department of State finds that such agreement of merger or consolidation, as the case may be, and the required certificates are in proper form, it shall, upon payment of the requisite filing fee, forthwith endorse its approval on such agreement 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 agreement of merger or consolidation and the aforesaid certificates evidencing the approval of the stockholders: Provided, however, That in the case of any merger or consolidation of any corporations under this act which, by virtue of any other act, requires the prior approval of the Pennsylvania Public Utility Commission or the Water and Power Resources Board of this Commonwealth, the Department of State shall not endorse its approval on any such agreement or issue any certificate of merger or certificate of consolidation unless and until the approval of such commission or board is first obtained in the manner required by law.*

Agreement and supporting documents to be delivered to Department of State.

Approval by Department of State.

Issuance of certificate of merger or certificate of consolidation.

Proviso: agreement not to be approved until and unless prior approval of certain commission or board obtained, in certain cases.

Section 2. Section three of said act, as amended by the act, approved the twenty-ninth day of April, one thousand nine hundred fifteen (Pamphlet Laws 205), is hereby further amended to read as follows:

Section 3, said act, as amended by act of April 29, 1915, P. L. 205, further amended.

Section 3. Upon the [filing of said certificates and agreement, or copy of the agreement, in the office of the Secretary of the Commonwealth, and upon the issuing of new letters patent thereon by the Governor] approval

Consummation of merger or consolidation.

of the agreement of merger or consolidation by the Department of State, the said merger or consolidation shall be deemed to have taken place, and the said constituent corporations to be one corporation [under] which, in the case of a merger, shall be that corporation designated in the agreement of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the agreement of consolidation. Such surviving or new corporation shall have the name adopted in and by said agreement, [possessing] shall possess all the rights, privileges, and franchises theretofore vested in each of [them] the constituent corporations, unless the agreement of merger or consolidation provides otherwise, in which event the surviving or new corporation shall possess only such rights, privileges and franchises of the constituent corporations as the agreement shall provide; except that any powers, rights, privileges and franchises pertaining to a dissimilar business authorized by the charter of any constituent corporation shall not vest in the surviving or new corporation but shall cease to exist; and all the estate and property, real and personal, and rights of action, of each of said corporations, shall be deemed and taken to be transferred to and vested in the said surviving or new corporation, without any further act or deed: Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said surviving or new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it. [But such merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind, until it shall have first obtained from the Governor of the Commonwealth new letters patent, and shall have paid to the State Treasurer a bonus, as prescribed by law, upon all its capital stock in excess of the amount of capital stock of the several corporations so consolidating, upon which the bonus required by law has been theretofore paid: And provided further, That new letters patent of such consolidated corporation shall not be issued by the Governor of the Commonwealth, until each corporation entering into and forming the consolidated corporation shall have filed with the Secretary of the Commonwealth a certificate

Rights, privileges and franchises of surviving or new corporation.

Exception.

Estate and property, and rights of action, of each corporation, deemed transferred and vested in surviving or new corporation.

Proviso: rights of creditors and liens preserved.

Debts not of record, duties and liabilities of each corporation to attach to surviving or new corporation.

from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed merger, and that all taxes due the Commonwealth of Pennsylvania have been paid, up to and including said date.] *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 capitalized by the agreement of merger or consolidation, shall continue to be available for the payment of dividends by such surviving or new corporation.*

Section 3. Sections four and five of said act are hereby amended to read as follows:

Section 4. *The certificate of merger or the certificate of consolidation issued by the Department of State, or [A] a certified copy thereof, [of said certificate and agreement, or copy of agreement, so to be filed in the office of the Secretary of the Commonwealth,] shall be conclusive evidence of the [lawful holding and action of such meetings,] performance of all conditions precedent to such merger or consolidation, and of the merger [and] or consolidation of [said] the constituent corporations into a surviving corporation or a new corporation, as the case may be, except as against the Commonwealth.*

Section 5. A. If any stockholder [or stockholders] of any domestic corporation, which shall become a party to an agreement of merger [and] or consolidation hereunder, shall [be dissatisfied with or object to such consolidation, and shall have voted against the same at the stockholder's meeting,] *file with such corporation, prior to or at the meeting of the stockholders at which the agreement of merger or consolidation is submitted to a vote, a written objection to such merger or consolidation and shall not vote in favor thereof, it shall and may be lawful for any such stockholder [or stockholders], within [thirty] ninety days after the [adoption of said agreement of merger and consolidation by the stockholders, as herein provided, and upon reasonable notice to said] merger or consolidation was effected and after thirty days written notice to the surviving or new corporation, to apply by petition to any court of common pleas of the county in which the chief office of such corporation may be situate, or to a judge of said court in vacation, if no such court sits during said period, to appoint three disinterested persons to [estimate and] appraise the [damages, if any, done to such stockholder or stockholders by said consolidation] full market value of the share or shares of said stockholder, without regard to*

Certain assets of each corporation to continue to be available for payment of dividends by surviving or new corporation.

Sections 4 and 5, said act, amended.

Certificate issued by Department of State conclusive evidence of proper merger or consolidation.

Powers and privileges of dissenting stockholders.

any appreciation or depreciation thereof in consequence of the merger or consolidation. Upon such petition, it shall be the duty of said court or judge to make such appointment; [and the award of the persons so appointed, or of a majority of them, when confirmed by the said court, shall be final and conclusive;] and the persons so appointed shall [also] appraise the share or shares of said [stockholders] stockholder, in the said constituent corporation, at the full market value thereof, without regard to any appreciation or depreciation in consequence of the said merger or consolidation; [which appraisement, when confirmed by the said court, shall be final and conclusive; and the said corporation may, at its election, either pay to the said stockholder or stockholders the amount of damages so found and awarded, if any, or the value of the stock so ascertained; and upon the payment of the value of the stock, as aforesaid, the said stockholder or stockholders shall transfer the stock so held by them to the said corporation, to be disposed of by the directors thereof or to be retained for the benefit of the other stockholders; and in case the value of said stock, as aforesaid, shall not be so paid within thirty days after the said award shall have been confirmed by said court, the damages so found and confirmed shall be a judgment against said corporation, and may be collected as other judgments in said court are by law recoverable]. 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 surviving or new corporation. The award shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the share certificate or certificates representing the shares of the dissenting stockholder. If the award shall not be paid by the surviving or new corporation within thirty days after the order of the court thereon, the amount of the award shall be a judgment against the surviving or new corporation, as the case may be, and may be collected as other judgments in such court are by law collectible. Upon the payment of the award or judgment, the dissenting stockholder shall cease to have any interest in such shares or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting stockholder shall file the written objection, the written notice and the petition herein required within the times herein limited and shall otherwise comply with this section, such stockholder and all persons claiming under him shall be conclusively pre-

sumed to have approved and ratified the merger or consolidation and shall be bound by the terms thereof.

B. The rights and remedies, at law or in equity, of any stockholder who desires to object to or to dissent from any merger or consolidation shall be limited to those prescribed under this section, and such rights and remedies under this section shall be exclusive. A copy of this section shall be enclosed with the written notice required by clause B of section 2 of this act, and such written notice shall state that this section sets forth the exclusive rights and remedies of stockholders who object to the agreement of merger or consolidation.

Section 4. This amendatory act shall be effective immediately upon its final enactment: Provided, however, That nothing herein contained shall be deemed to revive the act which is amended by this act, to the extent that such act has been expressly repealed by any other act of Assembly.

Rights and remedies of dissenting stockholders limited to those prescribed in this section.

Act effective immediately.

Proviso.

APPROVED—The 17th day of August, A. D. 1951.

JOHN S. FINE

No. 303

AN ACT

To further amend section 1 of the act, approved the thirteenth day of May, one thousand nine hundred twenty-seven (Pamphlet Laws 984), entitled "An act relating to transactions between a person acting on his own behalf and the same person acting jointly with others, and to make uniform the law relating thereto," by authorizing the conveyance of his or her interest by one tenant by the entireties alone to the other, and validating such *conveyances heretofore made.

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

Section 1. Section 1 of the act, approved the thirteenth day of May, one thousand nine hundred twenty-seven (Pamphlet Laws 984), entitled "An act relating to transactions between a person acting on his own behalf and the same person acting jointly with others, and to make uniform the law relating thereto," as last amended by the act, approved the thirty-first day of May, one thousand nine hundred forty-seven (Pamphlet Laws 353), is hereby further amended to read as follows:

Section 1. Be it enacted, &c., That a conveyance, release or sale may be made to, or by, two or more persons acting jointly, and one or more, but less than all of these persons, acting either by himself or themselves or with other persons, and a contract may be made between such parties.

Uniform Inter-party Agreement Act.

Section 1, act of May 13, 1927, P. L. 984, as last amended by act of May 31, 1947, P. L. 353, further amended.

Contract between person acting on his own behalf and same person acting jointly with others authorized.

* "conveyance" in original.