

**Delaware  
Corporation  
Law  
Annotated**

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**1995**

# **DELAWARE CORPORATION LAW ANNOTATED**

CONTAINING

THE PROVISIONS OF THE DELAWARE CONSTITUTION RELATIVE TO CORPORATIONS, THE DELAWARE GENERAL CORPORATION LAW—ANNOTATED WITH PERTINENT DECISIONS OF THE DELAWARE COURTS, THE DELAWARE FRANCHISE TAX LAW, THE DELAWARE REVISED UNIFORM LIMITED PARTNERSHIP ACT AND THE DELAWARE LIMITED LIABILITY COMPANY ACT. ALL STATUTES INCLUDE AMENDMENTS ENACTED THROUGH MARCH, 1995.

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# PREFACE

This book is a revision of the 1991 edition of Delaware Corporation Law Annotated. It is the 21st edition of this publication. Like the previous 20 editions, it contains the text of the Delaware General Corporation Law along with annotations. The current corporation law is based on Senate Bill No. 123, Chapter 50, Laws of 1967. That bill, which became effective July 3, 1967, constituted the first overall revision of the General Corporation Law since it was enacted in 1899. The annotations consist mainly of decisions of the Delaware Supreme Court, Delaware Chancery Court, and United States District Court for the District of Delaware interpreting the current General Corporation Law and its predecessor statutes.

The previous edition of this book included for the first time the text of the Delaware Revised Uniform Limited Partnership Act. This edition contains for the first time the text of the Delaware Limited Liability Company Act. The statutes in this edition contain all amendments enacted through the adjournment in 1994 of the 137th Delaware General Assembly.

It should be noted that there may be minor discrepancies between the wording of some sections of the General Corporation Law herein and as printed in the official Delaware Code. This is unavoidable because the laws enacted by the Delaware General Assembly may be made to conform to the style and format of the Code by the Code Revisors. They may also correct typographical and grammatical errors, but may not make substantive changes.

The statutory text used for the General Corporation Law and its amendments is that of the enacted laws as certified by the Delaware Secretary of State. Since Delaware applies the "enrolled act" doctrine, in case of a discrepancy between the Code and the certified text of the law, the latter controls.

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**PART I**

**CONSTITUTIONAL PROVISIONS**

**RELATING TO CORPORATIONS**



ARTICLE IX OF THE DELAWARE CONSTITUTION

**Sec. 1.** No corporation shall hereafter be created, amended, renewed or revived by special act, but only by or under general law, nor shall any existing corporate charter be amended, renewed or revived by special act, but only by or under general law; but the foregoing provisions shall not apply to municipal corporations, banks or corporations for charitable, penal, reformatory, or educational purposes, sustained in whole or in part by the State. The General Assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse, misuse, or non-use of their corporate powers, privileges or franchises. Any proceeding for such revocation or forfeiture shall be taken by the Attorney-General, as may be provided by law. No general incorporation law, nor any special act of incorporation, shall be enacted without the concurrence of two-thirds of all the members elected to each House of the General Assembly.

DECISIONS

**I. Application of section.**

1. In general
2. Charitable, penal, reformatory, or educational corporations.
3. Corporations formed by special act subject to provisions of general corporation law.

**II. Legal status of corporations.**

4. In general.

**III. Reserved power of revocation.**

5. Constitution of 1831.

**1. APPLICATION OF SECTION.**

**1. In general.**— Provisions of the Corporation Law of 1883, relating to the review of corporate elections, have no application to a corporation incorporated under the General Corporation Law of 1899, as amended. *In re Powell's Petition*, 5 Penne. 7, 58 A. 831 (1904).

Merger of corporations chartered by special acts prior to adoption of Constitution of 1897 permitted. *State ex rel. Attorney Gen. v. Hancock et al.*, 2 Penne. 252, 45 A. 851 (1899).

Statute amending General Corporation Law by authorizing formation

of corporations for the construction of boulevards held valid and not a special act. *Clendaniel v. Conrad et al.*, 3 Boyce 549, 83 A. 1036 (1912).

**2. Charitable, penal, reformatory or educational corporations.**— A corporation for charitable, penal, reformatory, or educational purposes, supported in whole or in part by the State, is expressly exempt from the provisions of Article IX, Section 1 of the Constitution, and may have its charter amended by special act of the Legislature. *State ex rel. Ferris Industrial School v. Levy Court of New Castle County*, 1 Penne. 597, 43 A. 522 (1899).



See also, *In re School Code of 1919*, 7 Boyce 406, 108 A. 39 (1919), where it was held that local school districts and boards of education, created by special acts of Legislature, are not acts of incorporation within the meaning of Article IX, Section 1 of the Constitution.

State has common law right to forfeit charter of educational corporation for non-user which may be enforced in Chancery. *Morford V. Middletown Academy*, 25 Del. Ch. 58, 109, 13 A. 2d 168 (1940).

**3. Corporation formed by special act subject to provisions of general corporation law.**— The provisions of the General Corporation Law are applicable to corporations previously formed by special act of the Legislature. *Bay State Gas Co. v. State ex rel. Content et al.*, 4 Penne. 238, 56 A. 1114; 4 Penne. 497, 56 A. 1120 (1904). The same rule applies in a criminal case. *State v. Front & Union Street Ry. Co.*, 7 Boyce 125, 104 A. 154 (1918).

## II. LEGAL STATUS OF CORPORATIONS.

**4. In general.**— A corporation formed under the General Corporation Law has the same legal status as a corporation created by special act of the Legislature. *State ex rel. Cochran v. Penn-Beaver Oil Co.*, 4 W. W. Harr. 81, 143 A. 257 (1926).

“Corporations for private gain, whether created directly by act of the Legislature or indirectly under the general authority of a corporation law,

differ in no essential that affects the public character of the grant of the franchise, from corporations created for purely public purposes. Their corporate powers spring alike from the same source, their organization is directed by the same hand, their regulation and restraint are controlled by the same authority and they are answerable alike to the same sovereignty.” *Brooks v. State ex rel. Richards*, 3 Boyce, 79 A. 790 (1911).

## III. RESERVED POWER OF REVOCATION.

**5. Constitution of 1831.**— The provision in the Constitution of the reservation of the power to revoke corporate charters need not be expressly made in the charter. Such reservation was intended to give the Legislature power to revoke for cause, and not from mere whim or caprice. *Delaware R. R. Co. v. Tharp*, 5 Harr. 454 (1854). The Legislature may exercise that power at any time, by withdrawing one or all of the privileges or franchises granted; and such revocation may be exercised directly, or by implication, from the passage of a statute inconsistent with the franchise theretofore granted. *Wilmington City Ry. Co. v. Wilmington & Brandywine Springs Ry. Co.*, 8 Del. Ch. 468, 46 A. 12 (1900). But, see *Higgins v. Downward & Sons*, 8 Houst. 227, 14 A. 720, 32 A. 133 (concurring opinion) (1888), indicating that the reserved power of revocation means an express revocation and not otherwise. A later decision that

this constitutional provision permits the Legislature to revoke one or more of the privileges granted without revoking the entire charter is *Mayor, etc. of Wilmington v. Addicks et al.*, 8 Del. Ch. 310, 47 A. 366 (1900).

The Legislature reserved power of revocation does not include the power to amend or alter a municipal charter so as to relieve a municipal corporation from liability to persons injured by defects in the street. *Seward v. Mayor & Council of Wilmington*, 2 Marvel 189, 42 A. 451 (1896). See also, *Mayor & Council of Wilmington Ewing*, 2 Penne. 66, 43 A. 305 (1899).

A corporation formed by special act prior to 1897 was granted certain exclusive privileges. It was held that the provisions of the Constitution of 1897 do not prevent the enactment of general laws for the creation of corporations which in effect revoke the exclusive privileges theretofore granted, since said provisions merely enable the Legislature to provide for judicial proceedings for the revocation of corporate charters, and do not deprive the state of its vested right to revoke charters. *Wilmington City Railways Co. v. People's Railways Co.*, 38 Del. Ch. 1, 47 A. 245 (1900).

**Sec. 2.** No corporation in existence at the adoption of this Constitution shall have its charter amended or renewed without first filing, under the corporate seal of said corporation, and duly attested in the office of the Secretary of State, an acceptance of the provisions of this Constitution.

**Sec. 3.** No corporation shall issue stock, except for money paid, labor done or personal property, or real estate or leases thereof actually acquired by such corporation.

**Sec. 4.** The rights, privileges, immunities and estates of religious societies and corporate bodies, except as herein otherwise provided, shall remain as if the Constitution of this State had not been altered.

**Sec. 5.** No foreign corporation shall do any business in this State through or by branch offices, agents or representatives located in this State, without having an authorized agent or agents in the State upon whom legal process may be served.

**Sec. 6.** Shares of the capital stock of corporations created under the laws of this State, when owned by persons or corporations without this State, shall not be subject to taxation by any law now existing or hereafter to be made.



**PART II**

**GENERAL CORPORATION**

**LAW ANNOTATED**



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