

Regulation of Businesses, Corporations, Professions, and Trades

Generally.—States may impose significant regulations on businesses without violating due process. “The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business, or to pursue a calling, may be conditioned. . . . Statutes prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the State’s competency.”²²¹ Still, the fact that the state reserves the power to amend or repeal corporate charters does not support the taking of corporate property without due process of law, as termination of the corporate structure merely results in turning over corporate property to the stockholders after liquidation.²²²

Foreign (out-of-state) corporations also enjoy protection under the Due Process Clauses, but this does not grant them an unconditional right to enter another state or to continue to do business in it. Language in some early cases suggested that states had plenary power to exclude or to expel a foreign corporation.²²³ This power is clearly limited by the modern doctrine of the “negative” commerce clause, which constrains states’ authority to discriminate against foreign corporations in favor of local commerce. Still, it has always been acknowledged that states may subject corporate entry or continued operation to reasonable, non-discriminatory conditions. Thus, for instance, a state law that requires the filing of articles with a local official as a prerequisite to the validity of conveyances of local realty to such corporations does not violate due process.²²⁴ In addition, statutes that require a foreign insurance company to maintain reserves computed by a specific percentage of premiums (includ-

fee was upheld. *St. Louis, I. Mt. & So. Ry. v. Williams*, 251 U.S. 63, 67 (1919). *See also* *Missouri Pacific Ry. v. Humes*, 115 U.S. 512 (1885) (statute requiring railroads to erect and maintain fences and cattle guards subject to award of double damages for failure to so maintain them upheld); *Minneapolis & St. L. Ry. v. Beckwith*, 129 U.S. 26 (1889) (same); *Chicago, B. & Q. R.R. v. Cram*, 228 U.S. 70 (1913) (required payment of \$10 per car per hour to owner of livestock for failure to meet minimum rate of speed for delivery upheld). *But see* *Southwestern Tel. Co. v. Danaher*, 238 U.S. 482 (1915) (fine of \$3,600 imposed on a telephone company for suspending service of patron in arrears in accordance with established and uncontested regulations struck down as arbitrary and oppressive).

²²¹ *Nebbia v. New York*, 291 U.S. 502, 527–28 (1934). *See also* *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 439 U.S. 96, 106–08 (1978) (upholding regulation of franchise relationship).

²²² *New Orleans Debenture Redemption Co. v. Louisiana*, 180 U.S. 320 (1901).

²²³ *National Council U.A.M. v. State Council*, 203 U.S. 151, 162–63 (1906).

²²⁴ *Munday v. Wisconsin Trust Co.*, 252 U.S. 499 (1920).