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Corporate Legislation

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CURRENT LEGISLATION

CORPORATE LEGISLATION

As expected, the legislatures in the various states have been active in enacting corporate statutes during the period from July 1, 1959 through December 31, 1959. However, but a small percentage of the enactments can be deemed to be of any major significance. The legislatures of Delaware, New York, New Jersey, Pennsylvania, and Massachusetts, states generally regarded among the leaders in the corporate field, have been relatively inactive. Major statutory changes have occurred in Connecticut and North Carolina.

Connecticut enacted a comprehensive Stock Corporation Act¹ effective as of January 1, 1961, completely superseding the present General Corporations Law.² Some of the more noteworthy provisions of the new act are as follows: A corporation will now be able to acquire property by gift, bequest, or devise, to invest funds not currently needed in its business, to make contracts of guaranty, and to enter joint ventures with other corporations.³ Transactions of a corporation with one of its directors, or with another corporation in which a director has an interest, or with a corporation with which it has common directors, are no longer voidable if certain enumerated conditions are met.⁴ A board of directors is empowered to remove an officer with or without cause, without prejudice to his contract rights, the appointment of the officer for a particular term however, not being creative of any such contract rights.⁵ Shareholders may act without a formal meeting if all consent in writing to the action taken.⁶ A corporate charter may authorize cumulative voting, however any shareholder desiring to so vote being required to give notice thereof within forty-eight hours of the meeting.⁷ Voting agreements among shareholders are now specifically authorized.⁸ Throughout the statute there is a tendency to allow greater freedom to the directors to control the operations of the corporation with a minimum of need for shareholder consent.⁹

During the period under consideration the North Carolina legislature passed numerous amendments to its two-year-old Business Corporations Act¹⁰ the most significant of which provide for: Corporations paying pensions, and establishing plans for profit sharing, stock bonuses, and other

¹ Conn. 1959; P.A. 618. This legislation becomes effective January 1, 1961.

² Conn. Gen. Stat. §§ 33-1—33-66, and 33-95—33-144.

³ Note 1 supra § 10.

⁴ Id. § 42. The interest must be disclosed, the transaction must be approved by a disinterested majority of directors, and the transaction must not be manifestly unfair to the corporation.

⁵ Id. § 38.

⁶ Id. § 49.

⁷ Id. § 44.

⁸ Id. § 57.

⁹ Id. § 90, § 94.

¹⁰ N.C. Gen. Stat. § 55. This act went into effect on July 1, 1957.

incentives directed to officers, directors, and employees;¹¹ Directors acting informally if such is generally known to the shareholders;¹² Business corporations changing into non-profit or cooperative organizations by appropriate charter amendments.¹³

Apart from these two broad changes in the corporate laws of Connecticut and North Carolina, two of the more noticeable trends in recent corporate legislation involve the subjection of foreign corporations to litigation within the state, and indemnification for litigation expenses. Following the decision of the United States Supreme Court in *McGee v. International Life Insurance Co.*,¹⁴ which required only that a foreign corporation have "substantial connection" within a state to make it amenable to in personam jurisdiction therein, many states have enacted legislation specifying the factors constituting such substantial connection. Thus, in Pennsylvania the concept of doing business has been broadened to include the entry into the state of a corporation by the doing of a series of similar acts within the state for the purpose of a realizing pecuniary benefit or accomplishing a corporate objective. The doing of the first act of the series suffices to make it amenable to suit.¹⁵ A foreign corporation can be sued in Connecticut on any cause of action arising out of a contract made or to be performed in the state, business sought by continuous solicitation therein, production or distribution of goods intended to be and actually used in the state, or tortious conduct therein accomplished.¹⁶ These statutes are typical of others enacted as a result of the *McGee* decision.¹⁷

The second noticeable trend is in the direction of a liberalization of the laws dealing with the indemnification of corporate officials for their litigation expenses. Thus in Indiana a corporation may now indemnify its directors and officers for all litigation expenses actually incurred by them in those capacities.¹⁸ Under a new Nebraska statute such indemnification is limited only by excluding cases in which the officers and directors have been found to have been negligent or to have engaged in misconduct. In addition, in other circumstances indemnification may be authorized by appropriate provisions of the corporate charter, by-laws, or by shareholder resolutions.¹⁹ In Wisconsin, the mere threat of a civil suit, criminal prosecution, or administrative action enables officers, directors, or employees to seek indemnification from the corporation.²⁰ In Connecticut, indemnification for

¹¹ Id. § 55-17.

¹² Id. § 55-29(a)(3).

¹³ Id. § 55-99(b)(17).

¹⁴ 355 U.S. 220 (1957).

¹⁵ Pa. Business Corporation Law, § 1011c, effective November 10, 1959.

¹⁶ Note 1 *supra*, § 129.

¹⁷ See Md. Ann. Code § 92(d); Minn. Stat. Ann. § 303.13(3); N.C. Gen. Stat. § 55-145; 12 Vt. Stat. § 855.

¹⁸ Burns Anno. Ind. Stat. § 25-202(10), effective July 20, 1959.

¹⁹ Neb. Rev. Stat. § 21-103(9), as amended by Laws of 1959, No. 350, effective September 27, 1959.

²⁰ Ch. 319, Laws of 1959, effective August 23, 1959, Wis. Stat. § 180.407.

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litigation expenses may be had not only by officers and directors but also by a majority stockholder, an independent contractor performing services for the corporation, and one who, at the corporation's request, has served as a director, officer, or employee of another corporation.²¹

One further statute worthy of mention is that enacted in Missouri which allows the court to appoint an impartial stranger as a provisional director when a board of directors is equally divided so that corporate action stagmates and the business suffers.²² The appointee serves as a regularly elected director until the deadlock is broken or until his removal by court order or majority shareholder consent. California previously enacted a similar statute in 1947,²³ upon which the Missouri Act is patterned. This approach to the problem of directorate deadlocks is novel and, if successful, can reasonably be expected to be adopted in other states.

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TRADE REGULATION

LEGISLATION

The state legislatures and the Congress were both relatively inactive in the area of Trade Regulations during the past six months. In only two states was new legislation enacted. Congressional action was limited to a single amendment.

A new Ohio "Fair Trade" Act,¹ which became effective October 22, 1959, includes a section² intended to replace Section 1333.07 of the 1936 "Fair Trade" Act declared unconstitutional in *Union Carbide and Carbon Corp. v. Bargain Fair, Inc. et al.*³ The effect of this new legislation is to constitutionally effectuate the intent of Sec. 1333.07 of the 1936 law to bind non-signers of fair trade contracts to the minimum price set by the producer. The new law stipulates that actual notice of a minimum price to retailers and wholesalers, whether parties to a contract with the producer or not will bind therein. Non-compliance is made unlawful.

The only other noteworthy state legislation is found in California in the form of an amendment to the anti-trust laws.⁴ The most significant section provides that foreign corporations licensed to do business in California can be prohibited from continuing to conduct business within the state upon a determination of violation of the anti-trust laws.⁵

²¹ Note 1 supra, § 39.

²² Mo. Rev. Stat. § 351.323, Acts of 1959, effective August 29, 1959.

²³ Cal. Corp. Code § 819.

¹ Ohio Rev. Code § 1333.27-34.

² Ohio Rev. Code § 1333.29.

³ 167 Ohio St. 182, 147 N.E.2d 481 (1958).

⁴ 5 Cal. Bus. & Prof. Code, 1959 P.P. §§ 16750, 16752, 16753 (as amended Stat. 1959, c. 2078-9, §§ 1 and 2).

⁵ 5 Cal. Bus. & Prof. Code, 1959 P.P. § 16753 (as amended Stat. 1959, c. 2079, § 2).