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Trade Regulation

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CURRENT LEGISLATION

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.

DAVID MELINCOFF

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).

Turning to the area of federal legislation, an amendment to Section 11 of the Clayton Act⁶ was enacted by Congress. Prior to this amendment, the Federal Trade Commission could not enforce a cease and desist order unless it was finalized by a judgment issuing from a circuit court, either upon a respondent's appeal from the Commission's order or upon proof by the Commission of a violation or impending violation of its order. The amendment finalizes such a Commission order after sixty days from its issuance, unless appeal has been taken within that time by the respondent. It also provides penalties up to \$5,000 per day for continuing violations after finalization of the order, each day representing a separate offense.

RULES AND REGULATIONS

There has been considerable activity on the part of the Federal Trade Commission in amending and issuing rules during this period, the most important additions in rule making being in the form of amendments to the General Procedures and Rules of Practice for Adjudicative Proceedings.⁷ In general, the amendments cover the area involving service of complaints, orders, and other Commission processes by registered mail or by manual delivery to business or residential address. Service at a residence is now generally authorized, whereas previously, it could be effected by delivery only if the proceeding was under the Federal Trade Commission Act.

Of relatively minor importance is the amendment of the trade practice rules for the jewelry industry.⁸ Under these amendments certain minor and functional parts of jewelry items are specified as exempt from certain requirements as to quality markings and representations in the description of jewelry products.

New rules have also been issued for the manifold business forms industry⁹ and the tire and tube repair material industry.¹⁰

EDWARD V. LEJA

SECURITY FINANCING LEGISLATION

During the year 1959 several states enacted retail installment sales laws,¹ and legislative revisions and additions occurred in four states where such acts already existed.² Factors acts³ and trusts receipts acts⁴ were enacted

⁶ 73 Stat. 243, 15 U.S.C. 21 (as amended Aug. 28, 1958, 72 Stat. 943; July 23, 1959, 73 Stat. 243).

⁷ 16 C.F.R. 1.2-3.27, 24 Fed. Reg. 7606.

⁸ 16 C.F.R. 23, 22 Fed. Reg. 4567.

⁹ 16 C.F.R. 47.0-47.18, 24 Fed. Reg. 5293.

¹⁰ 16 C.F.R. 48.0-48.18, 24 Fed. Reg. 10195.

¹ Cal. Civ. Code § 1801; Fla. Stat. §§ 520.41-520.42; Mont. Rev. Code §§ 74-601—74-612; N.M. Laws 1959, H.B. 87; Tenn. Code Ann. §§ 47-1901—47-1910.

² Conn. Rev. Stat. §§ 42-83b, 42-83h; N.Y. Pers. Prop. §§ 401, 405; N.D. Rev. Code § 51-1301; Ohio Rev. Code § 1317.11.

³ N.D. Laws 1959, H.B. 572.

⁴ Ark. Laws 1959, S.B. 105; Kan. Laws 1959, ch. 241; Tex. Laws 1959, S.B. 237.