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Bankruptcy

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CURRENT LEGISLATION

BANKRUPTCY

In the last few months of its second session the 86th Congress adopted two rather important changes relevant to the Bankruptcy Act; one, however, failed to secure executive approval.

Section 152 of the Criminal Code¹ has been successfully amended to provide that individuals who knowingly and fraudulently transfer or conceal their property in contemplation of their own bankruptcy shall be held to the same degree of accountability as agents and officers of potential bankrupts.² While paragraph one of section 152 subjects bankrupts to harsh penalties for concealment of assets, the law is well-established that in a prosecution under paragraph one, the government must prove that the assets were concealed after the appointment of a trustee or receiver.³ However, paragraph six prohibits officers and agents of potential bankrupts from concealing the assets of such persons or corporations in contemplation of bankruptcy, i.e., before the appointment of a trustee or receiver. It would seem that individuals who dispose of their property in contemplation of their own bankruptcy should be held liable to the same extent as officers and agents of others who are potential bankrupts. The new amendment so provides and thus strengthens the statute and removes inequities.

The other proposed amendment which is perhaps of more significance than that just described was, among other things,⁴ a bill to modify and clarify the priority of liens, including tax liens, in bankruptcy. President Eisenhower, however, allowed the bill to lapse by withholding his signature. In an explanation of his pocket veto the president urged that certain features of the proposed act, such as, for example, a provision that in some cases mortgages would be given an unwarranted priority over Federal tax liens although the mortgage is recorded after the filing of the tax lien, would "unduly and unnecessarily prejudice the sound administration of Federal tax laws."⁵ Although the proposed amendment was objectionable, the president in his comments recognized the need for legislation to resolve certain problems in this area.⁶

¹ 18 U.S.C. § 152 (1958).

² 74 Stat. 753 (1960), Pub. L. No. 701, 86th Cong., 2d Sess. (Sept. 2, 1960). See U.S. Code Cong. & Ad. News, Pamphlet No. 15 pp. 3832, 4031-4034 (Sept. 20, 1960) for further coverage of this amendment.

³ *In re Agnew*, 225 Fed. 650 (N.D.N.Y. 1915).

⁴ The vetoed bill contemplated amendments to §§ 1, 57j, 64a(5), 67b, 67c, and 70c of the Bankruptcy Act. The necessity of amending § 70c has been obviated by the recent Supreme Court holding in *Lewis v. Manufacturers National Bank of Detroit*, 364 U.S. 603 (1961) which repudiates the decision of *Constance v. Harvey*, 215 F.2d 571 (2d Cir. 1954). See also H. R. Rep. No. 745, 86th Cong., 1st Sess. 8-9 (1960) for congressional criticism of the Harvey case. For a discussion of *Constance v. Harvey* and the effect of the Lewis case on its holding, see Comment, *infra* p. 372, this number of B.C. Ind. & Com. L. Rev.

⁵ 106 Cong. Rec. A7013 (daily ed. Sept. 8, 1960).

⁶ *Ibid.*

The 87th Congress, 1st Session, has yet to enact any modifications of, or additions to, the Bankruptcy Act.

PAUL G. GARRITY

CORPORATE LEGISLATION

The period from June through December of 1960 produced little by way of Corporate legislation, though there is pending in the New York legislature a bill for an entirely new Business Corporation Law.¹ The major highlights in the development of corporation law during this period have been the changes effected in Texas² and Connecticut.³

On September 6, 1960 all domestic and foreign corporations operating in Texas automatically came under the provisions of the Texas Business Corporation Act of 1955. Domestic Corporations incorporated prior to September 6, 1955, or foreign corporations qualified to do business there before that date, had the option of coming under the new law or continuing under the old. The principal effect will be on foreign corporations as to the method of qualification,⁴ the penalties for failure to qualify,⁵ and the fees and taxes which must be paid.⁶ This new Code, as already explained, contained a unique provision which provided that with respect to existing corporations the Code would not take effect for 5 years, although the corporations themselves had the option of electing to come under it before the 5-year period elapsed. The purpose of the 5-year period was to give existing corporations time to familiarize themselves with the new act and operations under it before they were required to be governed by its terms. The 5-year period was selected so that there would be two regular sessions of the Legislature before compliance with the Act became mandatory for all corporations.⁷

Connecticut is the next state to have a major change in her corporation laws. A new "Stock Corporation Act" took effect there on January 1, 1961.⁸

There has also been a recent major change effected in the corporate law of Iowa.⁹ Taking "total" effect this year in Iowa is a new foreign cor-

¹ Two public hearings on S.B. 3124 of the 1960 session, the proposed rewrite of New York's Corporations Laws were held during September of 1960 before the Joint Legislative Committee.

² Tex. Bus. Corp. Act (1956). The Act took effect as of Sept. 6, 1955, and automatically became applicable to all Corporations on Sept. 6, 1960.

³ The Connecticut Stock Corporation Act is Public Act 618, Laws 1959 (effective as of January 1, 1961).

⁴ Tex. Bus. Corp. Act art. 8.01 (1956).

⁵ Tex. Bus. Corp. Act art. 8.18 (1956).

⁶ Tex. Bus. Corp. Act art. 10.01 (1956). See also Tex. Rev. Civ. Stat. arts. 7084, 7086, 7089 (1956).

⁷ See, e.g., Comment, 31 Texas L. Rev. 740, 749 (1955); Bailey, "Need for Revision of the Texas Corporation Statutes," 3 Baylor L. Rev. 1 (1950); Belsheim, "The Need for Revising the Texas Corporation Statutes," 27 Texas L. Rev. 649 (1949).

⁸ See, Current Legislation, 1 B.C. Ind. & Com. L. Rev. 231 (1959).

⁹ Iowa Code §§ 496A.1-496A.145 (Supp. 1960) (The "old" Corporation Law of Iowa is in Title 19 of the Code of Iowa, 1958, as amended).