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Corporate Legislation

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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).

CURRENT LEGISLATION

poration law, which while on the books of that state for the past two years, was not in substance mandatory. Under the new corporation law, existing foreign corporations may elect within two years—July 4, 1959 to July 3, 1961—to come under the new law. Corporations qualifying after July 4, 1959 must qualify under the new law. On July 4, 1961, all foreign corporations are automatically subject to the new law.

Some of the more noteworthy provisions of the Iowa foreign corporation law are as follows: A corporation to qualify to do business in Iowa must file a comprehensive application reporting not only the financial structure of the firm, but also information regarding the directors' names, addresses, interests, and the corporation by-laws and purposes.¹⁰ The corporation doing business in Iowa shall appoint a registered agent upon whom service of process can be maintained, and in the absence of such an appointment the corporation is deemed to have appointed the state as its agent for such service of process.¹¹ A corporation will not be deemed to be doing business in this state when its activities are limited to: 1. Maintaining or defending any action or suit, 2. holding directors or stockholders meetings concerning its internal affairs, 3. maintaining bank accounts, 4. creating evidences of debt, mortgages or liens on real or personal property, 5. securing or collecting debts due it or enforcing any rights in property securing the same, 6. transacting any business in interstate commerce, and 7. conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.¹² The limitation-on-powers provision of the old corporation law,¹³ affecting a corporation who failed to comply in good faith with the provisions of this law, has been eliminated. In its place is a monetary penalties provision which the Attorney General of the state can collect after acquiring jurisdiction under the "deemed to be doing business" provision of the above statute.¹⁴ While the initial fees and taxes have remained nominal,¹⁵ the annual fees and taxes have been increased to range from a minimum of \$5.00 to a maximum of \$3,000.00 depending upon the capital structure of the corporation.¹⁶

Also in effect this year is a new overtime pay law passed in Massachusetts which will apply to corporations as well as to other forms of business organizations.¹⁷ The law provides for exemption of certain categories of workers, but is generally applicable to those covered by previous minimum wage orders.

In 1958, Congress adopted the Small Business Investment Act (SBIA)¹⁸

¹⁰ Iowa Code § 469A.107 (Supp. 1960).

¹¹ Iowa Code § 496A.112 (Supp. 1960).

¹² Iowa Code § 496A.103 (Supp. 1960).

¹³ Iowa Code § 491.11 (1958).

¹⁴ Iowa Code § 496A.120 (Supp. 1960).

¹⁵ Iowa Code § 496A.124 (Supp. 1960).

¹⁶ Iowa Code § 496A.127 (Supp. 1960).

¹⁷ Mass. Gen. Laws Ann. ch. 151 § 1A, approved November 30, 1960, effective February 28, 1961.

¹⁸ "Small Bus. Inv. Act of 1958," 72 Stat. 689 (1958), 15 U.S.C. §§ 661-96 (1958).

to make additional equity capital and long term credit available to small business concerns. The program is administered by the Small Business Administration (SBA). In 1960, Congress passed an amendment to the SBIA relating to the purchases of Small Business Investment Company (SBIC) shares by banks that are subsidiaries of a bank holding company.¹⁹ According to the Board of Governors of the Federal Reserve System, the amendment did not affect the limitation on the amount that may be invested in an SBIC by a bank holding company and its subsidiaries. The Board interpreted the amendment as indicating no intention of changing the maximum of one per cent of capital and surplus which a bank holding company may invest directly or indirectly in an SBIC. Shares owned or controlled by a subsidiary are considered to be indirectly owned by the holding company.²⁰

Recently the SBA proposed a change for criteria-qualification as a small business concern under the SBIA of 1958. The proposed change is the categorization of any concern as a "small business" if it, together with its affiliates, does not have assets exceeding \$5,000,000, does not have net worth in excess of \$2,500,000, and does not have an average net income, after federal income taxes, for the preceding two years in excess of \$250,000 (computed without benefit of any carry-over loss), or if it qualifies as a small business concern under existing Reg. § 121.3-10.

Finally, the business loan policy of the SBA has been reshaped according to the latest publications of the SBA office. The key features of the business and disaster loans available are as follows: There are 8 basic types of loan plans—regular business loans, limited loan participation, pool, small business investment company, state development company, general disaster (storms, floods, etc.), and drought and excessive rainfall disaster. With respect to each type of loan, SBA publications show in concise form who is eligible, authorized loan purposes, maximum amount of SBA funds available, interest rates, maximum period of loans, and type of collateral which is accepted.

DAVID H. KRAVETZ

LABOR

On the national scene, Congress has occupied itself initially with the social side of labor legislation. The administration's program includes a minimum wage boost, a temporary increase in unemployment compensation duration, aid to depressed areas, and social security improvements.

The question seems to be one of quantity rather than of principle. Proposed aid to depressed areas involves \$390 million while opposition bills would halve that amount. The Douglas bill¹ asks a loan bank of \$200

¹⁹ "Small Business Investment Act Amendments of 1960," 74 Stat. 196 (1960), 15 U.S.C. §§ 631-47 (1960).

²⁰ See, H.R. Rep. No. 1608, 86th Cong., 2d Sess. (1960), U.S. Code Cong. & Ad. News, Pamphlet No. 10 (July 5, 1960).

¹ S. 1, 87th Cong., 1st Sess. (1961).