all proceedings pending on that date except where not practical or when injustice would result.[4]

PAUL G. GARRITY

CORPORATE LEGISLATION

The past year, like its predecessor, was rich in the volume of published writings in the corporate field. There were interesting analyses of the new corporation laws in many states,[1] in addition to the traditional law review materials.[2]

Probably the most important statutory developments during the past year occurred in New York,[3] Utah,[4] Wyoming.[5] On January 1, 1962, a new Utah Business Corporation Act takes effect. The new act (S.B. No. 4, approved March 1, 1961) follows very closely the Model Business Corporation Act.[6] The following discussion indicates the few areas where Utah departed

[4] Krause, Developments in Bankruptcy Law 16, Bus. Law. 789, 790 (1961).

[1] Annual Survey of Georgia Law: June 1959-April 1960: Business Associations, J. R. Young, Jr., 12 Mercer L. Rev. 22 (Fall 1960); Annual Survey of Virginia Law: Business Associations, G. D. Gibson, G. C. Freeman, Jr., 46 Va. L. Rev. 1481 (N'60); Business Associations: 1960 Survey of New York Law, B. S. Prunty, Jr., 35 N.Y.U.L. Rev. 1467 (D'60); Massachusetts Appraisal Statute and Minority Stockholders, R. W. Bozenhard, Jr., 45 Mass. L.Q. 27 (O'60).

[2] Weiss, "California Franchise Tax as Applied to Commencing and Dissolving Corporations," 12 Hastings L.J. 93 (1960) (suggested changes in the California franchise tax law); Comment, A Consideration of the Nebraska Corporation Law in the Light of the A.B.A.'s Model Business Corporation Act, 39 Neb. L. Rev. 575 (1960); Comment, North Carolina 1959 Session Laws—Corporations, 38 N.C.L. Rev. 159 (1960); Note, A Comparison of Corporate Share Issuance and Repurchase Under Present and Proposed Utah Law, 7 Utah L. Rev. 71 (1960).

[3] The new "Business Corporation Law" passed by the New York legislature in the closing days of its session was approved by the Governor on April 24, 1961 (ch. 855, Laws of 1961). The new law takes effect on April 1, 1963. It will replace the General Corporation Law of 1929 and the Stock Corporation Law of 1923.

The new law will receive further analysis and comment in the next issue of this law review. For a preliminary analysis of this law see: Rohrlich, "New York's Proposed Business Corporation Law," 15 Record of N.Y.C.B.A. 309 (1960); see also N.Y. Leg. Doc. No. 15, at 7, 183d Sess. (1960).

[4] A new Utah Corporation Law, effective January 1, 1962, is based on the Model Business Corporation Act. Further comment on this law is to be found infra.

[5] On July 1, 1961, a new Wyoming Business Corporation Act takes effect. The new act, like the Utah act, will receive further analysis infra.

[6] The Model Business Corporation Act is a comprehensive analysis of the business corporations acts of all the states, the District of Columbia and Puerto Rico. The text takes the form of annotations in which their laws are compared with the provisions of the Model Act. Included are references to selected cases with appropriate commentary and bibliographical notes. The work was the result of a joint venture between the American Bar Foundation and the American Bar Association.

Already the Model Business Corporation Act has had considerable influence on American corporation law. It has been utilized as the basis for the new business corporation acts of Wisconsin (1951), Oregon (1953), District of Columbia (1954), Texas (1955), North Carolina (1955), Virginia (1956), North Dakota (1957), Alaska (1957), from the Model Act. Where the Model Act offers optional or alternative provisions, the course followed is also indicated.

To amend the articles of incorporation, the Model Act suggests that the board of directors be required to initiate a resolution setting forth the proposed amendment. The board is then to submit it to the stockholders at a meeting.[7] While following the Model Act provision, Utah also gives stockholders (holders of 10% of the shares of any class entitled to vote on amendments) the power to initiate amendments.[8]

Optional section 18A of the Model Act deals with the issuance of stock rights and options to directors, officers, and employees, and includes a mandatory stockholder-approval requirement for the issuance of options to officers, directors, and key employees. Utah declined to adopt this section.[9]

Alternative provisions concerning preemptive rights appear in Model Act section 24. One permits the denial or limitation of the right in the articles or an amendment thereof. The other denies the right unless expressly granted in the articles or an amendment thereof. Utah adopted the former.[10]

Optional section 36A of the Model Act provides for the removal of directors for or without cause. This section recognizes that shareholders, as owners of the corporation, have the right to judge the fitness of directors at any time. If cumulative voting is in effect, a director cannot be removed, if the votes cast in his favor are sufficient to elect him at an election of the entire board. Utah enacted this optional provision.[11]

The Model Act proposes that the general powers of a corporation include the power to lend money only to employees,[12] but section 42 contains a prohibition against loans to officers and directors. However, Utah authorized corporations to make loans to all three (employees, officers, and directors).[13]

In Model Act optional section 43A, various restrictions on suits by stockholders are enumerated. A shareholder would have to be such at the time a cause of action arose. A court could require a bond, and could impose costs of defending the suit on the suing stockholder. Utah did not adopt this optional section.

In general, optional section 59A of the Model Act coordinates local law with federal statutes pertaining to reorganization. It facilitates charter amendments to carry out a reorganization plan. Utah adopted this provision.[14]

Colorado (1958), and Iowa (1959). In addition Maryland (1950), Alabama (1959), and Connecticut (1959) have used it in part.

7 Utah Business Corp. Act § 54 (1961).

8 Id. § 55b.

9 Utah does permit the granting of options to officers and employees in its § 24. Unless otherwise provided in the articles of incorporation, the board of directors has power to issue and sell shares in performing an incentive option granted its officers or employees or those of a subsidiary.

10 Id. § 23.

11 Id. § 37.

12 Model Business Corp. Act, Ann., § 4(f).

13 Utah Business Corp. Act, § 4(f) (1961).

14 Id. § 62.

Under Model Act section 63, it is possible to reduce stated capital attributable to par value shares down to their par value or down to their preferential right on involuntary liquidation, whichever is greater. It is also possible to reduce stated capital attributable to shares without par value down to the consideration received therefor, except the part allocated to capital surplus, or the preferential right on involuntary liquidation, whichever is greater. Utah did not adopt this provision.

The Model Act, in section 64, allows capital surplus to be applied to the elimination of losses only after earned surplus has been exhausted. It also confers a wide discretion on the board of directors in establishing and abolishing reserves. Utah did not adopt a comparable provision.

Optional section 68A of the Model Act provides for the merger of a subsidiary into its parent corporation. A merger can occur without a vote of the shareholders if the parent owns at least 95% of the subsidiary's shares. Utah adopted this provision.[15]

Utah added a special provision on the dissolution of corporations. In section 101 the statute provides that not withstanding the dissolution of a corporation, its corporate existence shall continue. Existence shall continue for the purpose of winding-up the affairs in respect to any property and assets which have not been distributed or otherwise disposed of. To effect such purpose, the corporation may sell or otherwise dispose of the property and assets, sue and be sued, contract, and exercise all other incidental and necessary powers. The Model Act has no comparable provision to extend a corporation's existence for such purposes.

On July 1, 1961, a new Wyoming Business Corporation Act became effective. Like Utah, the Act (Ch. 85, Laws 1961, approved Feb. 14, 1961) is based largely on the Model Business Corporation Act. A comparison of Wyoming's enactment with the Model Act reveals that in the areas where the state legislature departed from the Model Act, corporations will have greater freedom of operation.

The state statute provides that a corporation shall have at least three directors, except in cases where all the shares are owned beneficially and of record by either one or two shareholders. When there are less than three shareholders, the number of directors may be either one or two, but not less than the number of shareholders.[16] This certainly is a departure from the Model Act section 34 which recommends a minimum number of three directors. Wyoming's decision to permit the sole stockholder of a corporation to be its lone legal director will appeal to many one-man corporations. It undoubtedly will add more weight to the occasional use of the phrase, by a sole stockholder, "I am the corporation." And, at the same time, it will also promote more informalized records for a small corporation.

The new Wyoming Business Corporation Act permits the formation of a corporation by a single incorporator.[17] The incorporator, however, must be

[15] Id. § 70.
[16] Wyoming Business Corp. Act ch. 85, § 34 (1961).
[17] Id. § 45.

a natural person of the age of 21 years or more. If Wyoming had followed section 47 of the Model Act, a minimum of three adult persons would have been required.

With respect to amending articles of incorporation, the Model Act provision suggests that the board be required to adopt a resolution setting forth any proposed amendment, and to submit it to the stockholders at a meeting (section 54). While incorporating the Model Act provision in its section 52, Wyoming also gave the right to propose amendments to the holders of 10% of the shares of any class entitled to vote on the proposed amendment.[18]

Wyoming did not adopt any provision comparable to that suggested in Model Act section 7, i.e., that the name of a corporation must contain the word "corporation," "company," "incorporated," or "limited," or shall contain an abbreviation of one of such words. Nor did it enact the Model Act's suggestion that a corporate name shall not contain any word or phrase indicating an unauthorized purpose, nor be the same as, or deceptively similar to, the name of any domestic corporation, foreign corporation authorized to do business, nor a name reserved under the act (section 7).

The Model Act proposes that the general powers of a corporation include the power to lend money to employees (section 4(f)), but that a corporation be specifically prohibited from making loans to its officers and directors (section 42). Wyoming has decided to authorize corporations to make loans to all three categories (employees, officers, and directors).[19]

In addition to the major changes in the corporate laws of the above states, twelve other states have added to or changed certain sections of their corporate laws. The following is a state-by-state reporting of these laws:

Arizona: Whenever stock is issued to two or more persons in joint tenancy, a presumption arises that the joint tenancy is with right of survivorship.[20]

Iowa: The making of a contract with an Iowa resident to be performed in whole or in part in Iowa, and the commission of a tort in whole or in part in Iowa against an Iowa resident, subjects foreign corporations to suits thereon by service on the Secretary of State.[21]

Maryland: In the case of a merger or a consolidation, the surviving corporation may receive any devise or bequest to which the individual corporations would have been entitled. The provision applies to any merger or consolidation after May 31, 1951, and up to the effective date of the act.[22]

Massachusetts: Before 1961[23] the intended incorporators were required

18 Id. § 52.

19 Id. § 4(f); see also Note 12, supra, for similarity to Utah.

20 Arizona General Corporation Law § 10-175.0, as added by S.B. 26; Ariz. Rev. Stat. Ann. § 10-175.01 (Supp. April, 1960).

21 House File No. 576 (effective July 4, 1961).

22 General Corporation Law ch. 810, Laws 1961, (effective June 1, 1961).

23 Acts of 1961, ch. 97, § 1, amending Mass. Gen. Laws (Ter. Ed.) ch. 156, § 10. For further simplification of filing see also: Acts of 1961, ch. 97, § 2, amending Mass. Gen. Laws (Ter. Ed.) ch. 156, § 10; Acts of 1961, ch. 97, § 3, amending Mass. Gen. Laws (Ter. Ed.) ch. 156, § 11.

to file the record of the calling and holding of the first corporate meeting, the election of a temporary clerk, the election of officers, and the adoption of the by-laws. With passage of c. 97, section 1, intended incorporators need only file a certification of the above corporate actions.

Michigan: The abreviation "Corp." will satisfy the required word provision for corporate names.[24] A foreign corporation has sixty days (formerly thirty) to file a certified copy of any amendment to its articles of incorporation.[25]

Minnesota: Active corporations, whose periods of existence have expired or will expire prior to July 1, have until March 21, 1963, to renew their corporate existence.[26]

Montana: Mutual savings banks and building and loan associations are not exempt from the annual license fee on corporations.[27]

Nebraska: The term foreign corporation is limited to corporations for profit. When qualifying in the state, a foreign corporation need not file a certificate in the office of the register of deeds in the county in which its principal place of business is located.[28]

Nevada: In addition to the lists of directors, officers, and designations of resident agents, new corporations must file certificates of acceptance signed by their resident agents.[29] In its application for reinstatement to the Secretary of State, a suspended corporation must submit a new name if its prior one has been legally acquired by another corporation.[30]

New York: The state defense council may order the effectiveness, for a period of attack, of emergency bylaws which have been previously adopted. The emergency bylaws may provide for the number of directors for a quorum, the number of votes necessary for action by the board, special elections for directors, filling vacancies by the board, and the interim management of the corporation's affairs.[31]

North Carolina: The provision concerning the power to make loans and guaranties has been rewritten. Deleted was the exemption relating to financial institutions.[32]

Oregon: In qualifying to do business, a foreign corporation files a certifi-

---

[24] General Corporation Act § 450.6 as amended by S.B. No. 1261 (effective 90 days after adjournment of legislature); Mich. Comp. Laws § 450.6 (1948, as amended).

[25] Id. § 450.94, as amended by S.B. No. 1261 (effective 90 days after adjournment of legislature).

[26] Minnesota Business Corporation Act ch. 139, Laws 1961 (effective March 22, 1961).

[27] Montana Corporation Act § 84-1501, as amended by H.B. No. 131 (effective for taxable periods ending after Dec. 31, 1960).

[28] Nebraska General Corporation Act §§ 21-101 and 21-1201, as amended by L.B. 13 (effective 3 months after adjournment of legislature).

[29] Nevada Business Corporation Act § 78.160(1)(a), as amended by S.B. No. 92 (effective March 14, 1961).

[30] Id. § 78.185, as amended by S.B. No. 27 (effective March 14, 1961).

[31] New York, General Corporation Law, ch. 653, Laws 1961 (effective April 17, 1961).

[32] North Carolina, Business Corp. Act § 55-22, as amended by H.B. No. 229; N.C. Gen. Stat. 55-22 (effective April 11, 1961).

cate that it is in good standing with its place of incorporation. Foreign corporations need not file copies of amendments of articles of incorporation or articles of merger.[33] A statement, in duplicate, must accompany restated articles of incorporation, and must set forth the corporate name, the date the restated articles were adopted, information concerning the vote on the restated articles, changes in shares, and changes in stated capital.[34]

Washington: Shareholders may take action without a meeting if they consent in writing and sign a statement setting forth the action so taken.[35] Domestic corporations may adopt restated articles of incorporation.[36] Foreign corporations may file restated articles of incorporation if such articles are authorized by their states of incorporation.[37]

DAVID H. KRAVETZ

TRADE REGULATION

LEGISLATION

The Senate formally approved Federal Trade Commission Plan No. 4 on June 29, 1961 when it voted 47 to 31 to reject a resolution (S.R. 147) which would have killed the measure. Since the House had previously rejected a similar resolution, the plan will now go into effect. It authorizes the Commission to delegate adjudicatory and regulatory authority to divisions of the Commission, individual commissioners, hearing examiners and other employees. Provision is made for review by the full Commission in appropriate cases.[1]

Congress also extended the termination date of the Defense Production Act of 1950 to June 30, 1962. Otherwise, Congress was inactive in the realm of trade regulation during the past six months. State legislative action, however, was more pronounced and significant. Noteworthy legislation was passed in Washington, New Mexico, and Hawaii.

Washington effected a comprehensive antitrust law[2] prohibiting restraints of trade, unfair competition, monopolies, conspiracies, exclusive dealing, and acquisitions in trade or commerce. Enforcement procedures and penalties were also included within its scope. The law, designated the Con-

33 Oregon General Corporation Laws § 57.680, as amended, and §§ 57.706 and 57.711, as repealed by ch. 180, Laws 1961 (effective 90 days after adjournment of legislature).

34 Id. § 57.385, as amended by ch. 166, Laws 1961 (effective 90 days after adjournment of legislature).

35 Washington General Corporation Act, ch. 160, Laws 1961 (effective June 8, 1961).

36 Id. ch. 208, Laws 1961 (effective June 8, 1961).

37 Id. RCW 23.52.040, as amended by ch. 208, Laws 1961 (effective June 8, 1961).

1 See U.S. Code Cong. & Ad. News, Pamphlet No. 8 p. 1636 (June 5, 1961) for the text of Federal Trade Commission Plan No. 4.

2 Washington Laws 1961, ch. 216 (effective June 8, 1961).