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[33] Oregon General Corporation Laws § 57.680, as amended, and §§ 57.706 and 57.711, as repealed by ch. 180, Laws 1961 (effective 90 days after adjournment of legislature).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

sumer Protection Act, complements the federal laws governing restraints of trade, unfair competition, and other unfair pacts or fraudulent practices.

New Mexico enacted a price discrimination law[3] prohibiting discriminations in price between different purchasers of commodities of like grade and quality, and between different sections, communities, or cities in the state where the effect may be to lessen competition. The law also prohibits the payment or acceptance of anything of value as a commission or brokerage, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise. Allowances for differences in the cost of manufacture, sale, or delivery resulting from differing quantities in which commodities are sold or delivered, and price changes in response to changing conditions affecting marketability are not prohibited under the law. The new law also prohibits customer discrimination and declares certain contracts illegal. Provisions for recovery of damages are included in its scope.

The state of Hawaii passed an antitrust law[4] prohibiting combinations in restraint of trade, price fixing, exclusive dealing, monopolies, acquisitions and mergers in trade or commerce. It includes detailed coverage of investigations by the attorney general, enforcement procedures, and penalities.

On the other side of the ledger, the Kansas Unfair Practices Act[5] (prohibiting sales below cost) has been repealed.[6] It had earlier been held unconstitutional by the Supreme Court of Kansas.[7] By exempting grain and feed dealing from its prohibitions, the act violated the equal protection clause of the Federal Constitution and the uniform operation provision of the Kansas constitution.[8]

Fair Trade Decisions Affecting Constitutionality of State Fair Trade Acts

There has been much judicial scrutiny of state fair trade legislation in recent months.

The nonsigner clause of the Oklahoma Fair Trade Act[9] has been held unconstitutional by the Oklahoma Supreme Court[10] as being both an improper delegation of legislative power and an improper exercise of the police power.

The Supreme Court of Iowa[11] likewise found the non-signer provisions of the Iowa Fair Trade Act[12] unconstitutional. This court adopted the view that this legislation was an unlawful delegation of legislative authority as it

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3 New Mexico Laws 1961, ch. 229 (effective June 9, 1961).

4 Hawaii Laws 1961, Act 190 (effective August 21, 1961).

5 Kansas Gen. Stat. Ann. ch. 50, Act 4, §§ 50-401 to 50-408 (1949).

6 Kansas Laws 1961, House Bill No. 452.

7 State ex. rel. Marshall v. Consumers Warehouse Market, Inc., 185 Kan. 363, 343 P.2d 234 (1959).

8 Kansas Const. Art. 2, § 17.

9 78 O.S. Sec. 41, et. seq., (1951).

10 American Home Products Corp. v. Homsey & Assoc., 361 P.2d 297 (Okla. 1961).

11 Bulova Watch Co., Inc. v. Robinson Wholesale Co., 108 N.W.2d 365 (Iowa 1961).

12 Iowa Code Ann. ch. 550 (Code 1958).

gave to private individuals the power to regulate prices without regard to the public interest and without adequate standards.

The New Mexico Cigarette Fair Trade Act[13] has been found constitutional by the New Mexico Supreme Court,[14] notwithstanding the fact that it permits a wholesaler to sell to other wholesalers below cost but not to a direct buying retailer qualified to buy direct from the manufacturer at wholesale cost. The court held that the act was a proper exercise of the power to legislate for the public welfare and to protect free competition in the sale of cigarettes.

The Ohio Fair Trade Act[15] of 1959, which makes the purchase of a trademarked or tradenamed commodity for re-sale, with knowledge of the existence of fair trade contract prices, an implied contract to comply with those prices and enforceable against nonsigners, has been held constitutional by the Court of Appeals[16] for Cuyahoga County, the highest court yet to rule on the new act.

Chapter 217, Kansas Laws of 1959,[17] authorizing the fixing of minimum prices on intoxicating liquor has been held unconstitutional by the Kansas Supreme Court.[18] The court held that a statute which permits individuals to suggest prices at which goods are to be re-sold and authorizes an administrative official to make those prices binding throughout the state without setting standards for his guidance, is an invalid delegation of legislative power.

Rules, Regulations, and Policy

The Federal Trade Commission has amended and revised its rules governing the disposition of proceedings by the entry of consent orders[19] and its rules of practice for adjudicative proceedings.[20]

Negotiations looking to settlement of a case by consent order will now be supervised by the Commission's new office of Consent Orders, instead of, as at present, by the Hearing Examiner. Also, if negotiations fail within 30 days to produce a proper agreement to cease and desist from the complained of practice, the Commission will then issue its formal complaint and the case will be fully litigated. Once a complaint is issued, the consent order procedure will not be available to any respondent.

With minor exceptions, any appeal from a Hearing Examiner's ruling during the trial of a case would require permission of the Commission, and

[13] New Mexico Stat. Ann. §§ 49-3-1 to 49-3-13 (1953 comp.).

[14] Ponca Wholesale Mercantile Co. v. Rocky Mountain Wholesale Co., Inc., No. 6781, 1961 Trade Cas. ¶ 69,606 (N.M.S. Ct. 1961).

[15] Ohio Rev. Code, §§ 1333.27-1333.34.

[16] Hudson Distributors Inc. v. The Upjohn Co., No. 25371, 1961 Trade Cas. ¶ 70,015 (Cuyahoga Cy. C.A. 1961).

[17] G.S. §§ 41-1108, 41-1109 (1959 Supp.).

[18] State ex. rel. Anderson v. Mermis, 187 Kan. 611, 358 P.2d 936 (1961).

[19] 26 Fed. Reg. 6015 (1961) amending 16 C.F.R. ch. 1, subch. A., part 3.

[20] 26 Fed. Reg. 6016 (1961) amending 16 C.F.R. ch. 1, subch. A., part 4. The amended and revised rules will be applicable to all proceedings in which the complaint is served subsequent to the effective date of the amended rules.

the need for an immediate decision must be demonstrated. Also, to obtain review of an initial decision, a respondent must satisfy the Commission that substantial matters are involved. However, no petition for review is to be denied if two members of the five man Commission believe it should be granted.

To speed the prosecution of new cases and to reduce an eighteen month backlog of pending investigations, the Federal Trade Commission staff was extensively reorganized as of July 1st. The new organizational structure centers responsibility for the investigation and trial of cases, with the expectation that delays in their prosecution will be eliminated or reduced. The principal change in the staffing pattern, which has been in operation since 1954, was to supplant the Bureaus of Investigation and Litigation by two new bureaus, one handling restraint of trade matters and the other deceptive practices, such as false advertising.

ALAN KAPLAN

UNIFORM COMMERCIAL CODE

LEGISLATIVE DEVELOPMENTS

The Uniform Commercial Code has now been adopted in thirteen jurisdictions. These are: Pennsylvania (1953), Massachusetts (1957), Kentucky (1958), Connecticut (1959), New Hampshire (1959), Arkansas (effective date, January 1, 1962), Wyoming (effective date, January 1, 1962), New Mexico (effective date, January 1, 1962), Rhode Island (effective date, January 2, 1962), Ohio (July 1, 1962), Illinois (effective date, July 1, 1962), Oklahoma (effective date, January 1, 1963), and Oregon (effective date, September 1, 1963).

In New Jersey, it has passed one house of the Legislature and two readings in the other house.

The Code has been endorsed by state bar associations in several other jurisdictions: District of Columbia, Georgia, Iowa, Maine, Montana, North Dakota, Tennessee, Vermont, and Washington. It has also received endorsements from state bankers' associations in California, Maine, Michigan and Montana.

Pennsylvania has brought its statute up to date by adopting the 1958 Official Text with only minimal amendments.

MASSACHUSETTS AMENDMENTS

The only amendment to the Code in Massachusetts was an exception in the fees required by Sections 9-403, 9-404, 9-405 and 9-406. Hereafter, for the registration of deeds in accordance with any of the above sections the fee is four dollars.[1]

In a previous issue of the Review,[2] it was mentioned that the Massachu-

[1] Massachusetts Acts 1961, ch. 131, §§ 1-6.

[2] Vol. II, No. 2, p. 357. See pp. 357-358 for the text of the proposed amendment.