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American Bar Foundation: Model Business Corporation Act Annotated

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RECENT BOOKS

MODEL BUSINESS CORPORATION ACT ANNOTATED. *American Bar Foundation*. St. Paul: West Publishing Company, 1960. Vol. 1, pp. xxxii, 724; vol. 2, pp. xix, 804; vol. 3, pp. xix, 390. \$32.50.

"The Model Business Corporation Act represents ten years of work by the Committee on Corporate Laws of the American Bar Association. The purpose of this work is to present the provisions of the Model Act as compared with similar statutory provisions in the general business corporation acts of the fifty-two American jurisdictions." (Introduction, vol. 1, p. ix.) It is thus, in a sense, a work on the comparative law of general business corporations confined to the local scene. However, only provisions from these various statutes comparable to those in the Model Act are considered and, in this respect, the comparative feature is limited. If a liberal interpretation is given to "comparable" one can believe that this objective has been met. On the other hand, the considerable variation between statutes not fashioned upon the Model Act and the Model Act provisions make such an approach inadequate as a study of comparative methods of solving the manifold problems of the modern corporation. An approach confined to a study of comparable statutory provisions is likely to have the effect of encouraging states which have inadequate corporate statutes to accept the Model Act without the thorough study of provisions say in California, North Carolina, Ohio, and other states having corporation statutes of unusual merit. A uniformity, if thus created in this area, would be highly questionable, whatever the merits of the Model Act, and these merits are considerable.

Although the effect of these volumes may be to encourage the adoption of the Model Act without the minute scrutiny desirable for a complete overhauling of an outmoded corporation statute, nowhere is uniformity in corporate legislation stated to be an objective of these volumes. And I assume that the real objective was to be helpful to lawyers working in the corporate area by giving them a starting point from which to proceed and to find answers to corporate problems through the use of the materials outlined in the annotation of the act.

The first two volumes of this set contain the individual sections of the Model Business Corporation Act with an annotation to each individual section or, at times, to a portion of the section. A uniform plan is followed in each section: first is printed in heavy type the section under discussion; then follows a discussion of comparable and other statutory provisions; leading cases are then briefed with a statement of what the case purported to hold and whether it was decided under a statute or without the aid of one. A "Comment" containing (usually) no citation of supporting authorities aims to give some indication of the problems arising under the Model Act section (or similar statutes) and their solution with discus-

sion (when necessary) of the reason for the provision. Following the "Comment" references are made to the leading textbooks and casebooks on Corporations with page or section numbers to the subject matter deemed pertinent to the Model Act section and statutes under discussion, with further citations to legislative reports, the American Digest System, annotations in the American Law Reports and to numerous articles and notes in law reviews and journals. These are followed by citations to pertinent sections of the corporation statutes of all the jurisdictions of the United States. The third volume contains the complete text of the Model Business Corporation Act, seventy pages of simplified forms, a dozen pages devoted to a bibliography of corporation law, a table of cases with section and paragraph references to the text, and an index which is thorough and helpful.

While the "Foreword" states that this is "a comprehensive analysis of the business corporations acts of all the states, the District of Columbia and Puerto Rico," this is true only in the sense that a thorough bird's-eye view is given. In the space devoted to this work, it would be impossible to have a comprehensive analysis covering this much ground. But the bird's-eye view is, for the most part, good and full enough for the purposes intended. However, if one desires a critical view of the various provisions which have some social significance, he will find little of it in this work. It will be necessary to go to the texts, law review articles and notes for such materials. And from the earlier classics such as Angell & Ames, Machen & Morawetz to the latest word in large or small treatises, including one that is not yet off the press, the citations given will lead the reader eventually to critical analyses (I assume also in the unpublished one) if he searches long enough. Perhaps this is all that could be expected in an "annotation" which, after all, does not purport to be exhaustive.

Here are some of the things which lawyers, particularly those who do not have the leading works on corporation law in their offices, will find useful in this three-volume set. On almost any important problem in corporations, a starting point for further research will be found. The germ of an idea is expressed with (chiefly) leading cases briefly discussed, many of which will be found in the casebooks cited and many of which find discussion in the leading texts cited. When interpretive problems present themselves, the local statute, if it contains phrasing comparable to that of the Model Act, will find support from case discussion and general comment following the pertinent section in the Model Act. Since much law is "made" by the draftsman of corporate instruments and documents, the Model Act will be found to contain simple and direct provisions which can be inserted in corporate articles, by-laws, resolutions and documents, or taken as models for such drafting. The comments which follow at the end of a discussion on other statutory provisions (see, for example, the long comment at pages 159-161 of volume 1, concerning the indemnification and

reimbursement of officers when they are sued for their activities in corporate matters; likewise, see page 521 et seq. concerning cumulative voting provisions, comments which show some interesting facts and trends) will be found particularly useful. The forms contained in volume 3 are simply and succinctly stated and, with whatever variation is necessary to make them valid under the particular local statute, offer a refreshing substitute for the usual prolix, unnecessarily complicated forms frequently offered in other form books.

A warning contained in the "Introduction" (vol. 1, p. ix) should be noted, namely that, since the work is not exhaustive, and furthermore, since both statutory and decision law are continually in a process of change, the specific statutes and decisions of the state of interest should be consulted. I was surprised to find a statement (vol. 1, p. 355) to the effect that under my state's statute (that of Ohio), there was no provision for the allocation to capital surplus of any consideration received in excess of par on the issuance of par value shares. Actually, Ohio Rev. Code section 1701.32 makes surplus other than earned surplus capital surplus. Section 1701.30 (A) requires par value stock upon issue to be capitalized at not less than par, and section 1701.30 (B) (1) permits those who fix the consideration for such shares to determine whether an excess shall be thrown into capital surplus, a determination which must be made prior to the execution and delivery of the share certificates. I was surprised, too, in a statement at page 566 on voting trusts "that the court will not concern itself with the purpose of a voting trust so long as no fraud or unfairness to a minority is involved." The saving grace of the statement is an immediately preceding statement that "there is no indication in the decided cases" that "under a broad statute" the court would so concern itself. I should hope that there is no inference to be drawn from this statement that should a voting trust be set up to accomplish a criminal purpose, say to violate the Sherman Anti-trust Act, or without a criminal purpose, say to compete unfairly with other companies, the court would not look into such purposes. In either case it may be that the minority shareholder will actually be benefited from profits made under such arrangements, but surely the purpose may be questioned.

This reviewer believes that lawyers will find this work a useful tool well worth including in their libraries alongside whatever materials on corporations they may now possess. The four years spent by a score of lawyers skilled in this field to produce this work have been well spent. The able administrator of the American Bar Foundation, Mr. E. Blythe Stason, Dean Emeritus of the University of Michigan Law School, has expressed the hope that "the Foundation will continue to serve as a catalyst, sponsor and leader in similar productive enterprises, which could prove to be a fruitful source for the improvement of American jurisprudence." Mr. James F. Spoerri, Project Director, and his researchers have done an

especially meritorious job for the Foundation. I should also add that the publisher has done its usual fine job of editing, printing and binding this work.

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