

49:5-1 et seq

LEGISLATIVE HISTORY CHECKLIST

NJSA 49:5-1 et seq ("Corporation Takeover Bid Disclosure Law".)

LAWS OF 1977 CHAPTER 76

Bill No. S808 (Substituted for A2287)

Sponsor(s) Batemen

Date Introduced Pre-filed

Committee: Assembly Commerce, Banking and Insurance

Senate Labor, Industry and Professions

Amended during passage Yes ~~xxx~~ Amendments during passage denoted by asterisks

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Following statements are attached if available:

Sponsor statement	Yes	xxx
Committee Statement: Assembly	Yes	xxx
Senate	Yes	xxx
Fiscal Note	xxx	No
Veto Message	Yes	xxx
Message on signing	xxx	No

Following were printed:

Reports	xxx	No
Hearings	xxx	No

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SENATE, No. 808

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senator BATEMAN

AN ACT relating to offers for the purchase of security of certain corporations in certain cases and supplementing Title 49 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Short title

2 This act shall be known and may be cited as the "New Jersey
3 Corporation Takeover Bid Disclosure Law."

1 2. Definitions

2 As used in this act, the following terms shall have the respective
3 meanings hereinafter set forth, unless the context shall otherwise
4 require:

5 a. An **["associate of the offeror" is]** ****"associate" of a*
5A *person means****:

6 (1) Any corporation or other organization of which **[the**
7 **offeror]** ****such person**** is an officer, director or partner, or
8 is, directly or indirectly, the beneficial owner of 10% or more
9 of any class of equity securities;

10 (2) Any person who is, directly or indirectly, the beneficial
11 owner of 10% or more of any class of equity securities of **[the**
12 **offeror]** ****such person****;

13 (3) Any trust or estate in which **[the offeror]** ****such*
14 *person**** has a substantial beneficial interest or as to which
15 **[the offeror]** ****such person**** serves as trustee or in a
15A similar fiduciary capacity; or

16 (4) The spouse of **[the offeror]** ****such person****, or any
17 relative of **[the offeror]** ****such person**** or of such spouse
17A who has the same home as **[the offeror]** ****such person****.

17B **(5) Any person acting jointly or in concert with [that*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

17C *person*】** *the offeror*** for the purpose of acquiring, holding,
 17D or disposing of, or exercising any voting rights attached to the
 17E equity securities of a target company.*

18 b. “Bureau” means the Bureau of Securities in the Division of
 19 **【Law】** *Consumer Affairs*** in the Department of Law and
 19A Public Safety.

20 *【c. An “equity security” is:

21 (1) Any stock or similar security;

22 (2) Any security convertible, with or without consideration,
 23 into stock or a similar security;

24 (3) Any warrant or right to purchase stock or a similar se-
 25 curity; or

26 (4) Any security carrying any warrant or right to subscribe
 27 to or purchase stock or a similar security.】*

27A *c. “*Equity security*” means:

27B (1) *Any stock or similar security carrying, at the time of the*
 27C *takeover offer, the right to vote on any matter by virtue of the*
 27D *articles of incorporation, bylaws or governing instrument of the*
 27E *target company or the right to vote for directors or person,*
 27F *performing substantially similar functions by operation of law;*

27G (2) *Any security convertible with or without consideration into*
 27H *stock or a similar security***, as described in c.(1) above**;

27I (3) *Any warrant or right to purchase stock or a similar*
 27J *security***, as described in c.(1) above**;

27K (4) *Any security carrying any warrant or right to purchase*
 27L *stock or similar security***, as described in c.(1) above**; or

27M (5) *Any other security which for the protection of investors is*
 27N *deemed an equity security pursuant to regulation of the bureau*
 27O *chief.**

28 d. “Number of shares” means, with respect to any equity se-
 29 curity which is not stock or a similar security, the number of shares
 30 of stock or a similar security** , as described in c.(1) above** :

31 (1) Into which such security is convertible; or

32 (2) Which such equity security evidences or carries the right
 33 to purchase.

34 *【e. “Offeree” means a person, whether a stockholder of record
 35 or a beneficial owner, to whom a takeover bid is made.

36 f. “Offeror” means a person who makes a takeover bid.

37 g. An “offeror’s presently owned shares” is the aggregate num-
 38 ber of shares of a target company which are on the date of a
 39 takeover bid either beneficially owned or subject to a right of
 40 acquisition, directly or indirectly, by the offeror and each associate
 41 of the offeror.】*

41A *e. “Offeror” means a person who makes or in any way partici-
 41B pates in making a takeover offer, and includes all affiliates and
 41C associates of that person. The term does not include a financial
 41D institution or broker-dealer loaning funds or extending credit to
 41E any offeror in the ordinary course of its business, or any account-
 41F ant, attorney, financial institution, broker-dealer, newspaper or
 41G magazine of general circulation, consultant, or other person fur-
 41H nishing information, services or advice to or performing ministerial
 41I or administrative duties for an offeror and not otherwise partici-
 41J pating in the takeover offer.

41K f. “Offeree” means a record or beneficial owner of ****any****
 41L equity ****[securities]**** ****security**** which an offeror acquires or
 41M offers to acquire in connection with a takeover offer.*

42 ***[h.]*** *g.* “Person” includes an individual, a partnership, a
 43 corporation, an unincorporated association or a trust.

44 ***[i.]*** *h.* “Shares” means and includes any equity security,
 45 however its units are denominated.

46 ***[j.]*** *i.* A “securityholder” of a specified person is one who
 47 owns any security of such person, including common stock, preferred
 48 stock, debt obligations, and any other security convertible into or
 49 evidencing the right to acquire any of the foregoing.

50 ***[k.]*** *j.* A “subsidiary” of a company is any corporation
 51 ****[50% (exclusive of qualifying shares and shares subject to em-
 52 ployee stock options) of]**** whose outstanding stock of any class
 53 or classes having by the terms thereof ordinary voting power to
 54 elect a majority of the directors of such corporation, irrespective
 55 of whether or not at the time stock of any other class or classes of
 56 such corporation shall have or might have voting power by reason
 57 of the happening of any contingency, is at the time owned by such
 58 company directly or indirectly ****[through subsidiaries]****.

58A *k. An “offeror’s presently owned shares” is the aggregate
 58B number of shares of a target company which are on the date of a
 58C takeover bid either beneficially owned or subject to a right of acqui-
 58D sition directly or indirectly, by the offeror and each associate of the
 58E offeror.*

59 ***[m.]*** *l.* (1) A “takeover bid *or takeover offer*” is an offer
 60 made by an offeror directly or through an agent by advertisement
 61 or any other written or oral communication to offerees to purchase
 62 such number of shares of any class of equity securities of the target
 62A company that:

63 (a) Together with the offeror’s presently owned shares of
 64 that class, will in the aggregate exceed 10% of the outstanding
 65 shares of such class; or

66 (b) Together with an offeror's presently owned shares of all
 67 classes of equity securities of the target company, will in the
 68 aggregate, after giving effect to all conversion and purchase
 69 rights held and to be acquired by the offeror, exceed 10% of the
 70 number of shares of stock or a similar security of the target
 71 company which will be outstanding.

72 (2) A "takeover bid" does not include, with respect to any class
 73 of securities of the target company:

74 (a) An isolated offer to purchase shares from individual
 75 shareholders not made to shareholders generally;

76 (b) An offer made by an issuer to purchase its own shares or
 77 shares of a subsidiary;

78 (c) An offer to purchase shares of a class not registered pur-
 79 suant to § 12 of the Securities Exchange Act of 1934;

80 (d) An offer made to not more than 10 persons in this State
 81 during any period of 12 consecutive months; or

82 (e) An offer as to which the target company, acting through
 82A its board of directors, recommends acceptance to its sharehold-
 82B ers**, *provided that the terms thereof, including any inducements*
 82C *to officers or directors which are not made available to all share-*
 83 *holders, have been furnished to shareholders**.*

83A **(f) An offer effected by or through a broker-dealer in the*
 83B *ordinary course of his business without solicitation of orders to*
 83C *sell equity securities of the target company;*

83D *(g) An offer, if the acquisition by the offeror, in the instant*
 83E *transaction and in all acquisitions of equity securities of the same*
 83F *class during the preceding 12 months, does not exceed 2% of that*
 83G *class of outstanding equity securities of the target company;**

83H *** (h) An offer to purchase shares of a company whose capital*
 83I *assets do not exceed \$5,000,000.00; ***

84 ***[n.]* *m.*** A "target company" is any corporation ***[(other**
 85 **than a domestic insurer subject to the provisions of P. L. 1970, c. 22**
 86 **(C. 17:27A-1 et seq.), organized under the laws of New Jersey or**
 87 **having its principal place of business in New Jersey, whose shares**
 88 **of any class of equity securities are the subject of a takeover bid.]***
 89 **or other issuer of securities which is either organized under the*
 90 *laws of the state or has its principal place of business or substantial*
 91 *portion of its total assets in this State. A target company does not*
 92 *include:*

93 (1) *A domestic insurer subject to the provisions of P. L. 1970,*
 94 *c. 22 (C. 17:27A-1 et seq.); or*

95 (2) *A bank in the possession of the Commissioner of Banking*
 96 *pursuant to the provisions of C. 17:9A-266 et seq.; or*

97 (3) *A savings and loan association undergoing dissolution and*
 98 *liquidation pursuant to the provisions of C. 17:12B-288 et seq. and*
 99 *C. 17:12B-270.**

1 3. Disclosure

2 a. Filing requirements. No offeror shall make a takeover bid
 3 unless at least 20 days before such takeover bid is made such
 4 offeror has filed with the bureau and has ***[delivered]*** **sent by*
 5 *certified mail** to the target company **at its principal office** a
 6 statement containing the information required by this section and
 7 such takeover bid has ****[been approved]**** ***been permitted to*
 7A *proceed*** by the bureau chief in the manner hereinafter prescribed
 7B in ***[section 4 of]*** this act. **The material terms of the proposed*
 7C *offer shall be publicly disclosed by the offeror to the leading wire*
 7D *services for the financial press.**

8 ***[b. Content of statement.** The statement to be filed with the
 9 bureau hereunder shall be made under oath or affirmation and
 10 shall contain the following information:

11 (1) The name and address of the offeror and each associate
 12 of the offeror (hereinafter called "acquiring party"), and

13 (a) If such person is an individual, his principal occupation
 14 and all offices and positions held during the past 5 years, and
 15 any conviction of crimes other than minor traffic violations
 16 during the past 10 years;

17 (b) If such person is not an individual, a report of the nature
 18 of its business operations during the past 5 years or for such
 19 lesser period as such person and any predecessors thereof
 20 shall have been in existence; an informative description of the
 21 business intended to be done by such person and such person's
 22 subsidiaries; and a list of all individuals who are or who have
 23 been selected to become directors or executive officers of such
 24 person, or who perform or will perform functions appropriate
 25 to such positions. Such list shall include for each such in-
 26 dividual the information required by subparagraph (a) of this
 27 paragraph.

28 (2) The source, nature and amount of the consideration used
 29 or to be used in effecting the takeover, a description of any
 30 transaction wherein funds were or are to be obtained for any
 31 such purpose (including the nature of the participation of any
 32 broker-dealer in arranging for such financing), and the identity
 33 of persons furnishing such consideration, provided, however,
 34 that where a source of such consideration is a loan made by a
 35 United States bank in such lender's ordinary course of business,
 36 the identity of the lender shall remain confidential, if the person
 37 filing such statement so requests. **]***

38 ***b.** *The disclosure statement shall be filed on forms prescribed*
 39 *by the bureau chief, and shall be accompanied by a consent by the*
 40 *offeror to service of process and the filing fee specified in section*
 41 ***[7]** **11**, and shall contain the following information and*
 42 *such additional information as the bureau chief, by regulation pre-*
 42A *scribes:*

43 (1) *The identity of and material information concerning the*
 44 *offeror, including:*

45 (i) *If the offeror is a corporation, information concerning its*
 46 *organization, including the year and jurisdiction of its orga-*
 47 *nization, a description of each class of its capital stock and long-*
 48 *term debt, a description of the business done by the offeror and*
 49 *its affiliates and any material changes therein during the past*
 50 *3 years, a description of the location and character of the prin-*
 51 *cipal properties of the offeror and its affiliates, a description*
 52 *of any material pending legal or administrative proceedings*
 53 *in which the offeror or any of its affiliates is a party, the names*
 54 *of all directors and executive officers of the offeror and their*
 55 *material business activities and affiliations during the past*
 56 *3 years;*

57 (ii) *If the offeror is not a corporation, information concern-*
 58 *ing the background of the person, including his material busi-*
 59 *ness activities and affiliations during the past 3 years, and a*
 60 *description of any material pending legal or administrative*
 61 *proceeding in which **[he]** **that person** is a party, as*
 62 *well as any conviction of crimes other than minor traffic vio-*
 63 *lations during the past 10 years;*

64 (2) *The source and amount of funds or other consideration*
 64A *used or to be used in acquiring any equity security, including a*
 65 *statement describing any securities which are being offered in*
 66 *exchange for the equity securities of the target company, and*
 67 *if any part of the acquisition price is or will be represented by*
 68 *borrowed funds or other consideration, a description of the*
 69 *transaction and the names of all parties; provided, however, that*
 70 *where a source of such consideration is a loan made by a banking*
 71 *institution in such lender's ordinary course of business, the iden-*
 72 *tity of the lender shall remain confidential, if the person filing*
 73 *the statement so requests.**

74 (3) *Audited financial information as to the earnings and*
 75 *financial condition of such **[acquiring party]** **offeror***
 76 *for the preceding 5 fiscal years of such **[acquiring party]***
 77 ***offeror** or for such lesser period as such **[acquiring*

77A party¹ **offeror** and any predecessors thereof shall have
 78 been in existence), and similar unaudited information as of a
 79 date not earlier than 90 days prior to the filing of the statement.

80 (4) Any plans or proposals which such **acquiring party**
 81 **offeror** may have to liquidate such target company, to sell
 82 its assets or merge or consolidate it with any person, or to make
 83 any other material change in its business or corporate structure
 84 or management (with particular emphasis upon the changes that
 85 will occur within the State of New Jersey) and full details as to
 86 the manner in which the acquisition will be accounted for on
 87 the records of the **acquiring party** **offeror**.

88 **(5) The number of shares or units of any equity security of the*
 89 *target company of which each offeror is the record or beneficial*
 90 *owner or which the offeror has a right to acquire, directly or*
 91 *indirectly;*

92 *(6) Information as to any contracts, arrangements, under-*
 93 *standings or negotiations with any person with respect to any*
 94 *equity security of the target company, including transfers of any*
 95 *equity security, joint ventures, loan or option arrangements, puts*
 96 *and calls, guarantees of loan, guarantees against loss, guarantees*
 97 *of profits, division of losses or profits, or the giving or withhold-*
 98 *ing of proxies, naming the persons with whom those contracts,*
 99 *arrangements or understandings have been entered into;*

100 *(7) Information as to any contracts, arrangements, under-*
 101 *standings or negotiations with any person who is an officer,*
 102 *director, administrator, manager, executive employee or record*
 103 *or beneficial owner of equity securities of the target company*
 104 *with respect to the tender of any equity securities of the target*
 105 *company, the purchase by the offeror of any equity securities*
 106 *owned by that person otherwise than pursuant to the takeover*
 107 *offer, the retention of any person in his present position or in any*
 108 *other management position or with respect to that person giving*
 109 *or withholding a favorable recommendation to the takeover offer;*
 110 *and*

111 *(8) A description of the provisions made or to be made for*
 112 *providing all material information concerning the takeover offer*
 113 *to the offerees, including a description of the proposed takeover*
 114 *offer in the form proposed to be published or sent the offerees*
 115 *initially disclosing the takeover offer.**

116 **[(5)]** **(9)** The number of shares of any security subject
 117 to the takeover bid which such **acquiring party** **offeror**
 118 proposes to acquire, and the terms of the takeover bid referred

119 to in subsection a., and a statement as to the method by which
120 the fairness of the proposal to the offerees was arrived at.

121 *[(6)]* The amount of each class of any security subject to the
122 takeover bid which is beneficially owned or concerning which
123 there is a right to acquire beneficial ownership by such acquiring
124 party.

125 (7) A full description of any contracts, arrangements or under-
126 standings with respect to any security subject to the takeover
127 bid in which such acquiring party is involved, including but not
128 limited to transfer of any of the securities, joint ventures, loan
129 or option arrangements, puts or calls, guarantees of loans,
130 guarantees against loss or guarantees of profits, division of
131 losses or profits, or the giving or withholding of proxies. Such
132 description shall identify the persons with whom such contracts,
133 arrangements or understandings have been entered into.]*

134 *[(8)]* *(10)* A description of the purchase of any security
135 subject to the takeover bid during the 12 calendar months
136 preceding the filing of the statement, by such **[acquiring
137 party]** *offeror**, including the dates of purchase, names of
138 the purchasers, and consideration paid or agreed to be paid
138A therefor.

139 *[(9)]* *(11)* A description of any recommendations to
140 purchase any security subject to the takeover bid made during
141 the 12 calendar months preceding the filing of the statement, by
142 such **[acquiring party]** *offeror**, or by anyone based
143 upon interviews or at the suggestion of such **[acquiring
143A party]** *offeror**.

144 *[(10)]* *(12)* Copies of all tender offers for, requests or
145 invitations for tenders of, exchange offers for, and agreements to
146 acquire or exchange any securities subject to the takeover bid
147 and (if distributed) of additional soliciting material relating
148 thereto.

149 *[(11)]* *(13)* The terms of any agreement, contract or
150 understanding made with any broker-dealer as to solicitation of
151 securities subject to the takeover bid for tender, and the amount
152 of any fees, commissions or other compensation to be paid to
153 broker-dealers with regard thereto.

154 *[(12)]* *(14)* Such additional information as the bureau
155 chief may by rule or regulation or order prescribe as necessary
156 or appropriate for the achievement of the functions and objec-
157 tives described in section 4 of this act.

158 If the person required to file the statement referred to in
 159 subsection a. is a partnership, limited partnership, syndicate or
 160 other group, the bureau chief may require that the information
 161 called for by paragraphs (1) through **[(12)]** **(14)** shall be
 162 given with respect to each partner of such partnership or limited
 163 partnership, each member of such syndicate or group, and each
 164 person who controls such partner or member. If any such partner,
 165 member or person is a corporation or the person required to file
 166 the statement referred to in subsection a. is a corporation, the
 167 bureau chief may require that the information called for by
 168 paragraphs (1) through **[(12)]** **(14)** shall be given with
 169 respect to such corporation, each **[office]** ***officer*** and
 170 director of such corporation, and each person who is directly
 171 or indirectly the beneficial owner of more than 10% of the out-
 172 standing voting securities of such corporation.

173 If any material change occurs in the facts set forth in the
 174 statement filed with the bureau and sent to such target company
 175 pursuant to this section, an amendment setting forth such change,
 176 shall be filed with the bureau and sent to such target company
 177 within 2 business days after the person learns of such change.

178 **[c. Alternative filing methods.** If any takeover bid referred to
 179 in subsection a. is proposed to be made by means of a registration
 180 statement under the Securities Act of 1933 or in circumstances
 181 requiring the disclosure of similar information under the Securities
 182 Exchange Act of 1934 or under a State law requiring similar
 183 registration or disclosure, the person required to file the statement
 184 referred to in subsection a. may incorporate relevant portions of
 185 such documents in furnishing the information called for by that
 186 statement.]*

1 4. **[Approval by bureau chief]** ***Permission to proceed***;
 1A hearings

2 a. The bureau chief shall **[approve]** ***permit*** any take-
 3 over bid referred to in subsection **[3]**a of *section 3 of** this act
 4 ***to proceed*** unless after a public hearing thereon, referred to
 4A in subsection b. of this section, he finds that:

5 **[(1)** After the proposed takeover the target company would
 6 not be able to satisfy the requirements for the issuance of a
 7 license authorizing it to perform a function for which it is pres-
 8 ently licensed by this State;

9 (2) The effect of the takeover would be substantially to lessen
 10 competition in one of the target company's lines of business in
 11 this State or tend to create a monopoly therein;]**

12 **[(3)]** *(1)* The financial condition of the offeror is
 13 such as **[might]** *to* jeopardize the financial stability of
 14 the target company, or prejudice the interests of any employees,
 15 **[customers or creditors]** or **[any remaining]** security-
 16 holders who are unaffiliated with the offeror;

17 **[(4)]** *(2)* The terms of the takeover bid are unfair
 18 **[and unreasonable]** *or inequitable* to the securityholders
 18A of the target company;

19 **[(5)]** *(3)* The plans and proposals which the offeror
 20 has to make any material change in the target company's busi-
 21 ness or corporate structure or management, are not in the interest
 22 of the target company's *remaining* securityholders, *or*
 23 employees, **[customers or creditors, or of the public]**;

24 **[(6)]** *(4)* The competence, experience and integrity
 25 of those persons who would control the operation of the target
 26 company are such that it would not be in the interest of the
 27 target company's *remaining* securityholders, *or* em-
 28 ployees, **[customers or creditors or of the public]** to permit
 28A the takeover; or

29 **[(7)]** *(5)* The terms of the takeover bid do not com-
 30 ply with the provisions **[of section 6]** of this act.

31 b. A public hearing shall be held at a time and place fixed by
 32 the bureau chief if, within 20 days after the filing of the statement
 33 referred to in subsection **[3]**a of *section 3 of* this act, he shall
 34 determine that such a public hearing is necessary or shall receive
 35 from the target company, acting by resolution of its board of
 36 directors, a written request for such a public hearing^{**}, *unless*
 36A *the bureau chief finds that no cause for hearing exists*^{**}. Written
 37 notice of such determination or of the receipt of such request
 38 shall be promptly sent to the offeror and the target company
 39 by the bureau chief. At least 20 days' notice of the holding of
 40 any such public hearing shall be given by the bureau chief to
 41 the offeror filing the statement and to the target company. No
 42 less than 7 days' notice of such public hearing shall be given
 43 by the offeror filing the statement to such other persons as may
 44 be designated by the bureau chief. The target company shall give
 45 such notice to its securityholders. The bureau chief shall make
 45A a determination within **[30]** *60* days after the conclusion
 46 of such hearing. At such hearing, the offeror filing the state-
 47 ment, the target company, **[any person to whom notice of hear-**
 48 **ing was sent,]** and any other person *the bureau chief deter-*
 49 *termines has sufficient interest* **[whose interest may be affected**

49A thereby~~]~~** shall have the right to present evidence, examine and
 50 cross-examine witnesses, and offer oral and written arguments and
 51 in connection therewith shall be entitled to conduct discovery pro-
 52 ceedings in the same manner as is ~~**[presently]~~** allowed in the
 53 Superior Court of this State~~**~~, or pursuant to such other procedure
 54 as may be established by the bureau chief~~**~~. All discovery pro-
 55 ceedings shall be concluded not later than 3 days prior to the com-
 56 mencement of public hearings.

1 5. Mailing shareholders; payment of expenses

2 To the extent permitted by applicable Federal laws, rules and
 3 regulations, all notices of public hearings held pursuant to section 4
 4 of this act shall be mailed by the target company to its shareholders
 5 within 5 business days after the target company has received such
 6 ~~**[security for the payment of such expenses, such offeror shall
 7 file]~~** *notification from the bureau chief. The cost* of mailing
 8 shall be borne by the offeror making the filing. As security for the
 9 payment of such expenses, such offeror shall file with the bureau
 10 an acceptable bond or other deposit in an amount to be determined
 11 by the bureau.

1 ~~**[6. Provisions of takeover bids.~~

2 a. Where a takeover bid is sent by mail to offerees, it shall be
 3 accompanied by a copy of the statement filed with the bureau
 4 pursuant to section 3 of this act.

5 b. No offeror may make a takeover bid involving a target
 6 company which is not made to its shareholders in this State, or
 7 which is not made ratably to all shareholders (in this State and
 8 every other state with whose blue sky laws or similar law the
 9 offeror can comply after reasonable diligence) on substantially the
 10 same terms.]**

1 ~~**[7. Recommendations to accept, reject~~

2 a. Copies of all advertisements, circulars, letters or other written
 3 solicitation or recommendation to offerees to accept or reject a
 4 takeover bid published by the offeror or the target company shall
 5 be filed with the bureau and sent to the target company or the
 6 offeror, respectively, not later than the time copies of such solici-
 7 tation or recommendation are first published or sent or given to
 8 offerees.

9 b. Solicitation materials used in connection with a takeover offer
 10 shall not contain any false statement of a material fact or omit to
 11 state a material fact necessary to make the statements therein
 12 not misleading. The bureau chief may by order prohibit the use
 13 of any solicitation materials deemed false or misleading.]**

1 **6. Time for filing*

2 a. Copies of all advertisements, circulars, letters or other
 3 materials published by the offeror or the target company, soliciting
 4 or requesting the acceptance or rejection of the takeover offer, with
 5 the exception of the initial press release by the offeror to the wire
 6 services announcing the intention to make a takeover offer, shall be
 7 filed with the bureau chief and sent to the target company or offeror,
 8 respectively, not later than the time copies of such solicitation or
 9 recommendation are first published or sent or given to offerees.

10 b. The materials described in subsection a. of this section shall
 11 not contain any untrue statement of a material fact or omit to state
 12 a material fact necessary in order to make the statements made, in
 13 the light of the circumstances under which they were made,
 14 not misleading. The bureau chief may by order prohibit the use of
 15 any materials deemed false or misleading.*

1 ***[8.]*** *7.* Investigations

2 a. The bureau may make such investigations within or outside
 3 of this State as it deems necessary to determine whether any person
 4 has violated or is about to violate the provisions of this act or any
 5 order of the bureau chief, and may require any person subject to
 6 the investigation to pay the actual costs of the investigation
 7 including \$50.00 per day for the time of the investigator. The
 8 bureau chief shall have power to issue subpoenas and subpoenas
 9 duces tecum to require the attendance of any person and the
 10 production of any papers for the purposes of such investigation.

11 ****[No person shall be excused from testifying on the ground that
 12 his testimony would tend to incriminate him, but if, after asserting
 13 his claim of the privilege, he is required to testify, he shall not
 14 be prosecuted or penalized on account of any transactions concern-
 15 ing which he does testify.]****

16 **b. If, in the course of any investigation or hearing conducted
 17 by the bureau chief pursuant to this act, a person refuses to answer
 18 a question or questions or produce evidence of any kind on the
 19 ground that he will be exposed to criminal prosecution or penalty
 20 or to forfeiture of his estate thereby, the bureau chief may order
 21 the person to answer the question or questions or produce the re-
 22 quested evidence and confer immunity as in this section provided.
 23 If upon issuance of such an order, the person complies therewith,
 24 he shall be immune from having such responsive answer given by
 25 him or such responsive evidence produced by him, or evidence
 26 derived therefrom used to expose him to criminal prosecution or
 27 penalty or to a forfeiture of his estate, except that such person may
 28 nevertheless be prosecuted for any perjury committed in such

29 *answer or in producing such evidence, or for contempt for failing*
 30 *to give an answer or produce evidence in accordance with the order*
 31 *of the bureau chief and any such answer given or evidence pro-*
 32 *duced shall be admissible against him upon any criminal investi-*
 33 *gation, proceeding or trial against him for such perjury, or upon*
 34 *any investigation, proceeding or trial against him for such con-*
 35 *tempt.***

1 ***[9. Injunctions; prohibitions against voting securities; seques-**
 2 **tration of voting securities**

3 a. Injunctions. Whenever it appears to the bureau chief that
 4 any offeror or any director, officer, employee or agent thereof has
 5 committed or is about to commit a violation of this act or of any
 6 rule, regulation or order issued by the bureau chief hereunder, the
 7 bureau chief may apply to the Superior Court for an order enjoin-
 8 ing such offeror or such director, officer, employee or agent thereof
 9 from violating or continuing to violate this act or any such rule,
 10 regulation or order, and for such other equitable relief as the
 11 nature of the case and the interests of the target company's
 12 securityholders, employees, customers or creditors or of the public
 13 may require.]*

1 *8. *Prohibited acts. No person shall engage in any fraudulent,*
 2 *deceptive or manipulative acts or practices in connection with a*
 3 *takeover offer. Fraudulent, deceptive and manipulative acts or*
 4 *practices include, without limitation:*

5 a. *Solicitation of any offeree for acceptance or rejection of a*
 6 *takeover offer, or acquisition of any equity security of a target*
 7 *company pursuant to a takeover offer, that ****[is not effective]*****
 8 ***has not been permitted to proceed** or exempt under this act.*

9 b. *Publication or use in connection with the offer of any untrue*
 10 *statement of material fact or omitting to state a material fact*
 11 *necessary in order to make the statements made, in light of the*
 12 *circumstances under which they were made, not misleading, but not*
 13 *including the mailing by a target company to the record or beneficial*
 14 *owners of its equity securities of solicitation materials published*
 15 *by an offeror.*

16 c. *Sale by any officer, director, affiliate or associate of a target*
 17 *company of all or any part of their equity securities to the offeror*
 18 *at a price higher than that to be paid to the offerees pursuant to the*
 19 *offer, unless the sales are made at the then existing market price.*

20 d. *Acquisition by the offeror, after announcement of the takeover*
 21 *offer and prior to its termination, of equity securities of the target*
 22 *company otherwise than pursuant to the takeover offer.*

1 9. *Takeover offer*

2 a. *An offer shall provide that any equity securities of a target*
 3 *company deposited or tendered pursuant to a takeover offer may be*
 4 *withdrawn by or on behalf of any offeree at any time up to the*
 5 *third day prior to the announced termination date, except as the*
 6 *bureau chief may otherwise prescribe by rule or order for the pro-*
 7 *tection of the offerees.*

8 b. *If an offeror makes a takeover offer for less than all the out-*
 9 *standing equity securities of any class, and if the number of securi-*
 10 *ties deposited or tendered pursuant thereto is greater than the*
 11 *number the offeror has offered to accept and pay for, the securities*
 12 *shall be accepted pro rata, disregarding fractions, according to the*
 13 *number of securities deposited or tendered by each offeree.*

14 c. *If an offeror varies the term of a takeover offer before its'*
 15 *expiration date by increasing the consideration offered to the*
 16 *offerees, the offeror shall pay the increased consideration for all*
 17 *equity securities accepted, whether the securities have been*
 18 *accepted by the offeror before or after the variation in the terms of*
 19 *the offer.*

20 d. *No offeror shall make a takeover offer at any time when an*
 21 *administrative or injunctive proceeding has been brought by the*
 22 *bureau chief against the offeror for violation of this chapter that*
 23 *has not been finally determined.*

24 e. *An offeror may not make a takeover offer involving a target*
 25 *company which is not made to the owners of equity securities of the*
 26 *target company who are residents of this State.**

1-13 ***[b. Voting of securities; when prohibited.]*** *10.* ***Voting of*
 14 *securities; restrictions.*** No security of a target company ac-
 15 quired pursuant to a takeover bid in contravention of the provi-
 16 sions of this act or of any rule, regulation or order issued by the
 17 bureau chief hereunder may be voted at any shareholders' meeting,
 18 or may be counted for quorum purposes, and any action of share-
 19 holders requiring the affirmative vote of a percentage of shares
 20 may be taken as though such securities were not issued and out-
 21 standing; but no action taken at any such meeting shall be invali-
 22 dated by the voting of such securities, unless the action would
 23 materially affect control of the target company or unless a court
 24 of this State has so ordered. If a target company or the bureau
 25 chief has reason to believe that any equity security of the target
 26 company has been or is about to be acquired in contravention of
 27 the provisions of this act or of any rule, regulation, or order issued
 28 by the bureau chief hereunder, the target company or the bureau

29 chief may apply to the Superior Court to enjoin any such acquisi-
 30 tion, to enjoin the voting of any security so acquired, to void any
 31 vote of such security already cast at any meeting of shareholders,
 32 and for such other equitable relief as the nature of the case and
 33 the interests of the target company's securityholders, employees,
 34 customers or creditors or of the public may require.

35 ***[c. Sequestration of voting securities.]*** In any case where an
 36 offeror has acquired or is proposing to acquire any voting securities
 37 in violation of this act or any rule, regulation or order issued by
 38 the bureau chief hereunder, the Superior Court may, on such notice
 39 as the court deems appropriate, upon the application of the target
 40 company or the bureau chief seize or sequester any voting securities
 41 of the target company owned directly or indirectly by such offeror
 42 and issue such orders with respect thereto as may be appropriate
 43 to effectuate the provisions of this act. Notwithstanding any
 44 other provisions of law, for the purposes of this act the
 45 situs of the ownership of the securities of target companies shall
 46 be deemed to be in this State.

1 ***[10. Violations**

2 The following shall be violations of this act:

- 3 a. The failure to file any statement, amendment, or other material
 4 or to obey any order of the bureau chief pursuant to subsections
 5 3 a. or b., or 7 b. of this act; or
 6 b. The making of a takeover bid unless the bureau chief has
 7 given his approval thereto (each takeover bid so made by adver-
 8 tisement or to a particular offeree constituting a separate violation
 9 under this subsection).
 10 c. The making of any untrue statement of a material fact or the
 11 omission to state any material fact necessary in order to make
 12 the statement made, in the light of the circumstances under which
 13 it is made, not misleading, or to engage in any fraudulent, deceptive
 14 or manipulative acts or practices, in connection with any takeover
 15 bid, or any solicitation of offerees in opposition to or in favor of
 16 any such takeover bid.]*

1 ***[11. Criminal proceedings**

2 Whenever it appears to the bureau chief that any offeror or any
 3 director, officer, employee or agent thereof has committed a willful
 4 violation of this act, the bureau chief may cause criminal proceed-
 5 ings to be instituted in the Superior Court against such offeror or
 6 the responsible director, officer, employee or agent thereof. Any
 7 offeror willfully violating this act may be fined not more than
 8 \$1,000.00. Any individual who willfully violates this act may, if

9 such willful violation involves the deliberate perpetration of a
10 fraud upon the bureau, be imprisoned not more than 2 years.】*

11 *11. Promulgation of regulations

12 a. This act shall be administered by the Chief of the Bureau of
13 Securities in the Division of **【Law】** **Consumer Affairs** in
14 the Department of Law and Public Safety, who may promulgate
15 regulations necessary to carry out the purposes of this act, includ-
16 ing regulations defining fraudulent, deceptive and manipulative
17 acts and practices and other terms used herein.

18 b. The bureau chief shall set a filing fee for a disclosure statement
19 filed by an offeror and the same amount for a request for hearing
20 filed by a target company. Such fees **【shall】** **may** be set
21 so as to raise sufficient revenue for funding the purposes of this act.

1 12. Injunctions

2 a. Whenever it appears to the bureau chief that any person has
3 engaged or is about to engage in any act or practice constituting
4 a violation of any provision of this act or any regulation or order
5 adopted under this act, the bureau chief may investigate and issue
6 orders and notices including cease and desist orders and notices.
7 In addition to all other remedies, he may bring an action in any
8 Superior Court of this State in the name and on behalf of the State
9 against any person or persons participating in or about to partici-
10 pate in a violation, to enjoin those persons from continuing or doing
11 any act in violation of this act or to enforce compliance. In any court
12 proceedings, the bureau chief may apply for and on due showing
13 be entitled to have issued the court's subpoena requiring the appear-
14 ance of any defendant and **【his】** **the defendant's** employees
15 or agents and the production of documents, books and records as
16 may appear necessary for the hearing of the petition, to testify and
17 give evidence concerning the acts or conduct or things complained
18 of in the action. Upon a proper showing, the court may grant a
19 permanent or preliminary injunction or temporary restraining
20 order or may order rescission of any sales tenders for sale, pur-
21 chase or tenders for purchase of equity securities determined to be
22 unlawful under this act or any regulation or order of the bureau
22A chief.

23 b. Whenever any person has engaged or is about to engage in any
24 act or practice constituting a violation of this act or any regulation
25 or order adopted thereunder, the offeror, target company or any
26 record or beneficial owner of an equity security of the target com-
27 pany may bring an action **【in the county where the target com-
28 pany has its principal business office in the State】** to enjoin that
29 person from continuing or doing any act in violation of this act or to

30 enforce compliance. Upon a proper showing, the court may grant a
31 permanent or preliminary injunction or temporary restraining
32 order or may order rescission of any sales, tenders for sale, pur-
33 chases or tenders for purchase of equity securities determined to be
34 unlawful under this act or any regulation or order of the bureau
35 chief.

1 13. ****Criminal**** Penalties.

2 a. Any person who makes a takeover offer involving a target
3 company without a disclosure statement required under section 3,
4 may be imprisoned for a period not to exceed 1 year, or fined an
5 amount not to exceed \$10,000.00 or both.

6 b. Any person who, in connection with a takeover offer, knowingly
7 makes or causes to be made to the bureau chief any representation
8 of a material fact which he knows to be false, or knowingly withholds
9 or causes to be withheld from the bureau chief any information the
10 disclosure of which he knows is necessary, in light of the circum-
11 stances, to make not misleading other representations of material
12 facts made or caused to be made by him to the bureau chief, may be
13 imprisoned for a period of not less than 1 year nor more than
14 5 years, or fined an amount not to exceed \$50,000.00 or both.

15 c. Any person who in connection with a takeover offer knowingly
16 publishes or causes to be published any representation of a material
17 fact which he knows to be false, or knowingly omits to publish
18 information which he knows is necessary, in light of the circum-
19 stances, to make not misleading other representation of material
20 facts published or caused to be published by him, may be imprisoned
21 for a period not less than 1 nor more than 5 years, or fined an
22 amount not to exceed \$50,000.00, or both, provided, however, this
23 subsection shall not apply to the mailing by a target company to
24 the record or beneficial owners of its equity securities of solicitation
25 materials published by an offeror.

26 d. Any person who knowingly violates any provision of this act
27 for which a specific criminal penalty is not otherwise provided may
28 be imprisoned for a period not to exceed 1 year, or fined an amount
29 not to exceed \$10,000.00, or both.

30 ****[e. Nothing herein limits the power of the State to punish any**
31 **person for conduct which constitutes a crime under any other**
32 **statute.]****

1 ****14. Civil Penalties.**

2 In addition to any other sanctions herein or otherwise provided
3 by law, the bureau chief, upon notice and hearing, may impose a
4 penalty not exceeding \$10,000.00 for any violation of this act or

5 of any rule or regulation duly issued hereunder. Such penalty
 6 shall be recovered by and in the name of the bureau chief in a civil
 7 action by a summary proceeding under the Penalty Enforcement
 8 Law (C. 2A:58-1 et seq.) in the Superior Court, County Court,
 9 county district court or a municipal court, all of which shall have
 10 jurisdiction to enforce said Penalty Enforcement Law in connec-
 11 tion with this act. Where any violation of this act or of any rule
 12 or regulation duly issued hereunder is of a continuing nature, each
 13 day during which such violation continues after the date fixed by
 14 the bureau chief in any order or notice for the correction or termi-
 15 nation of such violation, shall constitute an additional separate and
 16 distinct offense, except during the time an appeal from said order
 17 or notice may be taken or is pending.**

1 **[14.]** *(15)** Rights and remedies.

2 a. Any offeror who purchases an equity security in connection
 3 with a takeover offer not in compliance with this act or by means
 4 of any untrue statement of a material fact or any omission to state
 5 a material fact necessary in order to make the statements made, in
 6 light of the circumstances under which they were made, not mis-
 7 leading, shall be liable to the person selling the security to him.
 8 That person may sue either at law or in equity.*

1 *[12. Civil liabilities]*

2 *[a.]* As used in this section, "damages" means an amount equal
 3 to the market value of the shares acquired by the offeror plus any
 4 dividends or interest paid thereon to the offeror or any person
 5 holding under him and minus the consideration received for the
 6 shares from the offeror. For the purpose of paragraph (2) of
 7 subsection *[c.]* *b.* of this section, market value **[is measured
 8 either]** **is the greater of the market value** on the date the
 9 action is commenced or on the date of tender. For the purpose of
 10 subsection *[f.]* *e.* of this section, market value is measured on
 10A the date when the offer to pay damages is made.

11 *[b. Any offeror who makes a takeover bid in violation of this act
 12 is liable to any offeree whose shares are taken up pursuant to the
 13 takeover bid.]*

14 *[c.]* *b.* An offeree who is entitled to recover pursuant to
 15 subsection *[b.]* *a.* may bring a civil action:

16 (1) To recover such shares, if the offeror still owns them,
 17 together with all dividends or interest received thereon, costs
 18 and reasonable attorneys' fees, upon the tender of the considera-
 19 tion received from the offeror; or

20 (2) For the substantial equivalent in damages.

21 ***[d.]*** *c.* Every person who directly or indirectly controls a
 22 person liable under subsection b., every partner, principal executive
 23 officer or director of such person, every person occupying a similar
 24 status or performing similar functions, every employee of such
 25 person who materially aids in the act or transaction constituting the
 26 violation, and every broker-dealer or agent who materially aids in
 27 the act or transaction constituting the violation, is also liable jointly
 28 ****[or]**** ****and**** severally with and to the same extent as such
 29 person, unless the person liable hereunder proves that he did not
 30 know, and in the exercise of reasonable care could not have known,
 31 of the existence of the facts by reason of which the liability is
 32 alleged to exist. There shall be contribution as in cases of contract
 33 among the several persons so liable.

34 ***[e.]*** *d.* Any tender specified in this ****[action]**** ****section****
 35 may be made at any time before entry of judgment.

36 ***[f.]*** *e.* If any person liable by reason of subsection ***[b. or**
 37 **d.]*** *a. or c.* makes a written offer, before suit is brought, to return
 38 the shares taken up pursuant to the takeover bid, together with all
 39 dividends or interest received thereon, upon the tender of the
 40 consideration received from the offeror, or to pay damages if the
 41 offeror no longer owns such shares, an offeree is not entitled to
 42 maintain a suit under this section if he has refused or failed to
 43 accept such offer within 30 days of its receipt.

1 ***[13. Rules and regulations**

2 The bureau chief may, in accordance with the Administrative
 3 Procedures Act, upon notice and opportunity for all interested
 4 persons to be heard, issue such rules, regulations, and orders as
 5 shall be necessary to carry out the provisions of this act.

1 14. Jurisdiction; consent to service of process

2 The courts of this State are hereby vested with jurisdiction over
 3 every offeror not resident, domiciled, or authorized to do business
 4 in this State who files a statement with the bureau under this act,
 5 and over all actions involving such offeror arising out of violations
 6 of this act, and each such offeror shall be deemed to have performed
 7 acts equivalent to and constituting an appointment by such an
 8 offeror of the bureau chief to be his true and lawful attorney upon
 9 whom may be served all lawful process in any action, suit or pro-
 10 ceeding arising out of violations of this act. Copies of all such
 11 lawful process shall be served on the bureau chief or any of his
 12 staff at his office, and transmitted by registered or certified mail
 13 by the bureau chief or any of his staff at his office to such offeror
 14 at his last known address.

1 15. Judicial review; order in lieu of prerogative writ.

2 a. Any person aggrieved by any act, determination, rules, regula-
3 tion, or order or any other action of the bureau chief pursuant to
4 this act may appeal to the Superior Court. The court shall conduct
5 its review without a jury and by trial de novo, except that if all
6 parties, including the bureau chief, so stipulate, the review shall
7 be confined to the record. Portions of the record may be introduced
8 by stipulation into evidence in a trial de novo as to those parties
9 so stipulating.

10 b. The filing of an appeal pursuant to this section shall stay
11 the application of any such rule, regulation, order or other action
12 of the bureau chief to the appealing party unless the court, after
13 giving such party notice and an opportunity to be heard, determines
14 that such a stay would be detrimental to the interests of the target
15 company's security holders, employees, customers or creditors or
16 of the public.

17 c. Any person aggrieved by any failure of the bureau chief to
18 act or to make determination required by this act may commence
19 an action in the Superior Court for an order in lieu of a prerogative
20 writ directing the bureau chief to act or make such determination
21 forthwith.

1 16. Conflict with other laws.

2 All laws and parts of laws of this State inconsistent with this
3 act are hereby superseded with respect to matters covered by this
4 act.

1 17. Separability of provisions.

2 If any provision of this act or the application thereof to any
3 person or circumstance is held invalid, the invalidity shall not
4 affect other provisions or applications of this act which can be
5 given effect without the invalid provision or application, and for
6 this purpose the provisions of this act are separable.

1 18. Void conditions, stipulations; additional rights, remedies.

2 a. Any condition, stipulation or provision binding any offeree
3 to waive compliance with any provision of this act or of any order
4 thereunder shall be void.

5 b. The rights and remedies provided by this act are in addition
6 to any and all other rights and remedies that may exist at law or
7 in equity.】*

1 ***16. Conflict with other laws.*

2 *All laws and parts of laws of this State inconsistent with this*
3 *act are hereby superseded with respect to matters covered by this*
4 *act; provided, however, that, nothing contained herein shall limit*

5 *the power of the State to proceed against any person for conduct*
 6 *which constitutes a crime under any other statute, and further*
 7 *provided that, nothing contained herein shall affect the applica-*
 8 *bility of the New Jersey Anti-trust Act, P. L. 1970, c. 73 (C. 56:9-1*
 9 *et seq.) or the rights conferred therein.***

1 ****[15.]** **17.**** *Appeals procedure. Judicial review; in lieu*
 2 *of prerogative writ*

3 *a. Any person aggrieved by any act, determination, rules, regula-*
 4 *tion, or order or any other action of the bureau chief pursuant to*
 5 *this act may appeal to the **Appellate Division of** Superior*
 6 *Court. **[The court shall conduct its review without a jury and*
 7 *by trial de novo, except that if all parties, including the bureau*
 8 *chief, so stipulate, the review shall be confined to the record. Por-*
 9 *tions of the record may be introduced by stipulation into evidence*
 10 *in a trial de novo as to those parties so stipulating.]***

11 *b. The filing of an appeal pursuant to this section shall stay the*
 12 *application of any such rule, regulation, order or other action of the*
 13 *bureau chief to the appealing party unless the court, after giving*
 14 *such party notice and an opportunity to be heard, determines that*
 15 *such a stay would be detrimental to the interests of the target*
 16 *company's security holders, employees, customers or creditors or*
 17 *of the public.*

18 *c. Any person aggrieved by any failure of the bureau chief to*
 19 *act or to make determination required by this act may commence*
 20 *an action in the Superior Court for an order in lieu of a prerogative*
 21 *writ directing the **[commissioner]** **bureau chief** to act or*
 22 *make such determination forthwith.*

1 ****[16.]** **18.**** *Severability clause*

2 *If any provision of this act, or any application of any provision,*
 3 *is held invalid, the invalidity shall not affect other applications of*
 4 *the provision, or other provisions of the act, which reasonably can*
 5 *be given effect despite the invalidity.**

1 ***[19. Application of Takeover Bid Disclosure Law.]***

2 ****[*17.*]** **19.** *Application of Takeover Bid Disclosure Law.***

2A *a. If the target company is a financial institution subject to*
 3 *regulation by the Commissioner of Banking, or a public utility*
 4 *corporation subject to regulation by the Board of Public Utility*
 5 *Commissioners, or a transportation company subject to regulation*
 6 *by the Commissioner of Transportation, the bureau chief shall*
 7 *promptly furnish a copy of the registration statement filed under*
 8 *this act to the regulatory agency having supervision of the target*
 9 *company. Any hearing under this act involving any such target*
 10 *company shall be held jointly with the regulatory agency having*

11 supervision, and any determination following the hearing shall be
 12 made jointly with that regulatory agency.

13 b. If the target company is a public utility, public utility holding
 14 company, national banking association, bank holding company**,**
 15 ***[or]*** savings and loan association **or saving and loan holding*
 16 *company** subject to regulation by a Federal agency and the take-
 17 over of such company is subject to approval by that agency this act
 17A shall not apply.

18 ***c. Where a takeover bid or takeover offer subject to the filing*
 19 *requirements of section 3 of this act is also subject to similar laws*
 20 *of another state, or to review by Federal agencies, or other State*
 21 *agencies; the bureau chief may, at his discretion, hold joint hearings*
 22 *and otherwise cooperate with such State and Federal agencies,*
 23 *provided such cooperation furthers the purposes of this act and*
 24 *does not impair the ability of the bureau chief to proceed and make*
 25 *all requisite findings under section 4 of this act.***

26 ****[c.]**** ***d.*** This act shall not apply to any offer involving
 27 a class vote by shareholders of the target company, pursuant to
 28 its articles of incorporation or the applicable corporation statute,
 29 on a merger, consolidation or sale of corporate assets in considera-
 30 tion of the issuance of securities of another corporation, or sale
 31 of its securities in exchange for cash or securities of another cor-
 32 poration.

1 ***20. There is hereby appropriated the sum of \$45,000.00 for*
 2 *the purposes of administering this act.***

1 ***[20.]*** ****[18.]**** ***21. Effective date.*** This act shall take
 2 effect immediately.

7 promptly furnish a copy of the registration statement filed under
8 this act to the regulatory agency having supervision of the target
9 company. Any hearing under this act involving any such target
10 company shall be held jointly with the regulatory agency having
11 supervision, and any determination following the hearing shall be
12 made jointly with that regulatory agency.

13 b. If the target company is a public utility, public utility holding
14 company, national banking association, bank holding company or
15 savings and loan association subject to regulation by a federal
16 agency and the takeover of such company is subject to approval
17 by that agency this act shall not apply.

18 c. This act shall not apply to any offer involving a class vote
19 by shareholders of the target company, pursuant to its articles of
20 incorporation or the applicable corporation statute, on a merger,
21 consolidation or sale of corporate assets in consideration of the
22 issuance of securities of another corporation, or sale of its securi-
23 ties in exchange for cash or securities of another corporation.

1 20. This act shall take effect immediately.

STATEMENT

This proposed statute supplementing Title 49 of the Revised Statutes, would regulate the takeover of corporations incorporated or having their principal place of business in New Jersey (the "target companies"). This proposed statute is based in large part upon the statute entitled "Insurance Holding Company Systems" (P. L. 1970, c. 22; C. 17:27A-1 et seq.), which New Jersey adopted in 1970 in order to regulate the takeover of insurance companies doing business in New Jersey. The attached proposed statute thus would extend to other companies in general some of the safeguards now afforded only in the case of the insurance industry.

Elements of the proposed statute were also drawn from similar takeover statutes already enacted by the legislatures of Hawaii, Kansas, Minnesota, Nevada, Ohio, Virginia and Wisconsin.

Under this proposed statute the terms of a takeover bid which would give the offeror greater than 10% of any class of equity securities of a substantial publicly held target company whose board of directors had not acquiesced in such takeover would have to be disclosed by the offeror 20 days in advance. Disclosure would be made to the Bureau of Securities in the Division of Law in the

Department of Law and Public Safety (the "Bureau") and to the target company. The disclosure statement would include, among other things, information regarding the identity and background of the offeror, its plans for the target company, the consideration to be offered, the financial backing for the takeover bid and any past dealings between the offeror and the target company or its security holders. Such disclosure materials would eventually be provided to the target company stockholders (including those stockholders resident in New Jersey) when the takeover bid is made. Within 20 days of the offeror's disclosure to the Bureau and the target company, either the Bureau or the target company could initiate public hearings to assist the Bureau and the target company and the target stockholder-offerees in deciding whether or not to approve or accept the takeover bid, as the case may be. Precise criteria for Bureau approval, which must be rendered or denied within 30 days after the conclusion of the hearing, are described in section 4a of the statute. Copies of all other materials used in connection with the takeover bid by the offeror, as well as by the target company, would also be filed with the Bureau. Enforcement of this proposed statute would be achieved by investigation, injunction, and prohibitions against and sequestration of voting securities, as well as by the imposition of criminal and civil liability.

The Bureau would work jointly with the Commissioner of Banking, the Board of Public Utility Commissioners or the Commissioner of Transportation where the target company is one normally subject to their regulation.

The statute would not apply where the target company is a public utility, public utility holding company, national banking association, bank holding company or savings and loan association the takeover of which is subject to approval by a federal agency (other than the SEC), or where the offer involves a vote of the target company's shareholders, pursuant to its charter or the applicable corporation statute, on a merger, or a consolidation or sale of corporate assets for securities of another corporation or on a sale of its securities for cash or securities of another corporation.

ASSEMBLY COMMERCE, BANKING AND INSURANCE
COMMITTEE

STATEMENT TO
SENATE, No. 808

STATE OF NEW JERSEY

DATED: NOVEMBER 1, 1976

This legislation would regulate the takeover of businesses in New Jersey. It provides that the terms of a takeover bid which would give the offeror greater than 10% of any class of equity securities of a target company would have to be required to be disclosed by the offeror 20 days in advance. Disclosure would be made to the Bureau of Securities in the Division of Law in the Department of Law and Public Safety and to the target company. The disclosure statement would include information regarding the identity and background of the offeror, its plans for the target company, the consideration to be offered, the financial backing for the takeover bid and any past dealings between the offeror and the target company and its security holders. This material would be presented to the target company's stockholders when the takeover bid is made. Within 20 days of filing of the disclosure statement with the bureau and the target company, hearings could be initiated by either to determine the efficacy of the takeover offer.

The legislation permits the bureau chief to make investigations into the proposed takeover if he deems it necessary; he would be charged with the enforcement of the act and in doing so would be permitted to seek injunctions and to initiate proceedings in Superior Court. Violation of the act would result in a fine of not more than \$1,000.00 and in the case of deliberate fraud, imprisonment for a period up to 2 years. The legislation requires the bureau chief to participate jointly with State regulators in the cases where regulated industries are subject to takeover bids. Certain companies, such as public utilities, and certain categories of depository institutions are exempted from the provisions of the act.

The Assembly Commerce, Banking and Insurance Committee has amended this legislation in a number of ways. The definition of "associate of the offeror" has been augmented to include persons acting jointly or in concert with a person for the purposes of acquiring, holding, or disposing of or exercising any voting rights attached to the equity securities of a target company. "Equity security," "offeror," and "offeree" have been redefined. Exceptions to the condition under which disclosure is required are expanded to include offers effected by or

through a broker-dealer in the ordinary course of business, and offers which would not exceed 2% of any class of outstanding equity security during the preceding 12 months. The committee has also amended the legislation to exclude from the scope of the act banks and savings and loan associations which are in possession of the Commissioner of Banking.

The committee has amended the legislation to require that a notice of takeover be sent to the target company by certified mail to the principal office of such company, and then notification of the material terms of the proposed offer be sent to the leading wire services of the financial press. The disclosure requirements have been augmented by the committee. The statement would be required to include such information about an offering corporation as its organization, a description of each class of its capital stock, long-term debt, the business done by the offeror and its affiliates and any changes therein during the past 3 years. Such statement would also include the names of all directors and executive offices of the offeror and their material business activities and affiliations during the past 3 years. If the offeror is not a corporation, the disclosure must include information concerning the background of the person (and at the discretion of the bureau chief, of partners or members of a syndicate), and a description of any material pending legal or administrative proceedings in which he is a party. The statement would also be required to include the source and amount of funds or other consideration used or to be used in acquiring any equity security, as well as information regarding any contracts or arrangements with any person regarding the equity security of the target company. The committee has further amended the legislation to require the bureau chief to make a determination on the takeover 60 days from the time of the hearing, rather than 30 days. Committee amendments include a series of prohibited acts, including those practices which are fraudulent, deceptive or manipulative; publication of any untrue statement or material fact; or sale by an officer or director of the target company any or all of their equity securities at a price higher than to be paid to the offerees pursuant to the offer, unless the sales are made at the then existing market price.

The committee amendments also permit the bureau chief to promulgate regulations, including those defining fraudulent or deceptive practices. The committee has amended the enforcement provision of the act to permit the bureau chief to investigate possible violations of the act and to issue orders and notices including cease and desist orders and notices. The committee has increased the penalties for violation of the act. Failure to file a disclosure statement would result in imprisonment

for 1 year or a \$10,000.00 fine, or both, and a knowing misrepresentation of fact would result in imprisonment from 1 to 5 years, and a fine of \$50,000.00, or both. A section dealing with appeals procedure has also been added.

The Assembly Commerce, Banking and Insurance Committee considers this legislation to be extremely important in view of the potential harm unwarranted takeover of New Jersey business could bring about in terms of its effect upon the economy of this State.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 808

STATE OF NEW JERSEY

DATED: SEPTEMBER 16, 1976

Senate Bill No. 808 would regulate the takeover of corporations incorporated or having their principal place of business in New Jersey (the "target companies"). It is based in large part upon the statute entitled "Insurance Holding Company Systems" (P. L. 1970, c. 22; C. 17:27A-1 et seq.), which New Jersey adopted in 1970 in order to regulate the takeover of insurance companies doing business in New Jersey. The bill, thus, would extend to other companies in general some of the safeguards now afforded only in the case of the insurance industry.

Elements of the proposed statute were also drawn from similar takeover statutes already enacted by the legislatures of Hawaii, Kansas, Minnesota, Nevada, Ohio, Virginia and Wisconsin.

Under this proposed statute the terms of a takeover bid which would give the offeror greater than 10% of any class of equity securities of a substantial publicly held target company whose board of directors had not acquiesced in such takeover would have to be disclosed by the offeror 20 days in advance. Disclosure would be made to the Bureau of Securities in the Division of Law in the Department of Law and Public Safety (the "Bureau") and to the target company. The disclosure statement would include, among other things, information regarding the identity and background of the offeror, its plans for the target company, the consideration to be offered, the financial backing for the takeover bid and any past dealings between the offeror and the target company or its security holders. Such disclosure materials would eventually be provided to the target company stockholders (including those stockholders resident in New Jersey) when the takeover bid is made. Within 20 days of the offeror's disclosure to the Bureau and the target company, either the Bureau or the target company could initiate public hearings to assist the Bureau and the

target company and the target stockholder-offerees in deciding whether or not to approve or accept the takeover bid, as the case may be. Precise criteria for Bureau approval, which must be rendered or denied within 30 days after the conclusion of the hearing, are described in section 4a of the bill. Copies of all other materials used in connection with the takeover bid by the offeror, as well as by the target company, would also be filed with the Bureau. Enforcement of this proposed statute would be achieved by investigation, injunction, and prohibitions against and sequestration of voting securities, as well as by the imposition of criminal and civil liability.

The Bureau would work jointly with the Commissioner of Banking, the Board of Public Utility Commissioners or the Commissioner of Transportation where the target company is one normally subject to their regulation.

The statute would not apply where the target company is a public utility, public utility holding company, national banking association, bank holding company or savings and loan association, the takeover of which is subject to approval by a federal agency (other than the SEC), or where the offer involves a vote of the target company's shareholders, pursuant to its charter or the applicable corporation statute, on a merger, or a consolidation or sale of corporate assets for securities of another corporation or on a sale of its securities for cash or securities of another corporation.

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 2287

STATE OF NEW JERSEY

INTRODUCED OCTOBER 7, 1976

By Assemblyman SHAPIRO

Referred to Committee on Commerce, Banking and Insurance

AN ACT **[**regulating the acquisition of equity security in corporations and certain other businesses, requiring the filing of disclosure statements prior to business takeovers, prohibiting certain fraudulent or deceptive acts in connection with takeover offers and providing penalties for the violation thereof**]** **relating to offers for the purchase of security of certain corporations in certain cases and supplementing Title 49 of the Revised Statutes*.*

1 BE IT ENACTED *by the Senate and the General Assembly of the*
2 *State of New Jersey:*

1 1. Short title. This act shall be known and may be cited as the
2 ***[**“Business Takeover Act”**]** **New Jersey Corporation Take-*
3 *over Bid Disclosure Law*.*

1 2. Definitions. As used in this act*, *the following terms shall*
1A *have the respective meanings hereinafter set forth, unless the*
1B *context shall otherwise require*:*

2 ***[**a. “Affiliate” of a person means any person controlling, con-
3 trolled by, or under common control with that person.

4 b. “Associate” of a person means any person acting jointly or
5 in concert with that person for the purpose of acquiring, holding
6 or disposing of, or exercising any voting rights attached to the
7 equity securities of a target company.

8 c. “Commissioner” means the Commissioner of Labor and
9 Industry.

10 d. “Control,” including the terms “controlling, controlled by”
11 and “under common control with,” means the possession of the
12 power to direct or cause the direction of the management and
13 policies of a person unless the power is the result of an official posi-
14 tion or office.**]***

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

14A *a. An “associate of the offeror” is:

14B (1) Any corporation or other organization of which the offeror
14C is an officer, director or partner, or is, directly or indirectly, the
14D beneficial owner of 10% or more of any class of equity securities;

14E (2) Any person who is directly or indirectly, the beneficial owner
14F of 10% or more of any class of equity securities of the offeror;

14G (3) Any trust or estate in which the offeror has a substantial
14H beneficial interest or as to which the offeror serves as trustee or in
14I a similar fiduciary capacity; or

14J (4) The spouse of the offeror, or any relative of the offeror or of
14K such spouse who has the same home as the offeror.

14L (5) Any person acting jointly or in concert with that person for
14M the purpose of acquiring, holding or disposing of, or exercising any
14N voting rights attached to the equity securities of a target company.

14O b. “Bureau” means the Bureau of Securities in the Division of
14P Law in the Department of Law and Public Safety.*

15 *[e.]* *c.* “Equity security” means:

16 (1) Any stock or similar security carrying, at the time of the take-
17 over offer, the right to vote on any matter by virtue of the articles
18 of incorporation, bylaws or governing instrument of the target
19 company or the right to vote for directors or person performing
20 substantially similar functions by operation of law;

21 (2) Any security convertible*, with or without consideration,*
21A into stock or a similar security;

22 (3) Any warrant or right to purchase stock or a similar security;

23 (4) Any security carrying any warrant or right to purchase stock
24 or similar security; or

25 (5) Any other security which for the protection of investors is
26 deemed an equity security pursuant to regulation of the *[com-
27 missioner]* *bureau chief*.

27A *d. “Number of shares” means, with respect to any equity
27B security which is not stock or a similar security, the number of
27C shares of stock or a similar security:

27D (1) Into which such security is convertible; or

27E (2) Which such equity security evidences or carries the right to
27F purchase.*

28 *[f.]* *e.* “Offeror” means a person who makes or in any way
29 participates in making a takeover offer, and includes all affiliates
30 and associates of that person. The term does not include a financial
31 institution or broker dealer loaning funds or extending credit to
32 any offeror in the ordinary course of its business, or any accountant,
33 attorney, financial institution, broker-dealer, newspaper or

34 magazine of general circulation, consultant, or other person furnish-
35 ing information, services or advice to or performing ministerial or
36 administrative duties for an offeror and not otherwise participating
37 in the takeover offer.

38 ***[g.]*** **f.** “Offeree” means a record or beneficial owner of
39 equity securities which an offeror acquires or offers to acquire in
40 connection with a takeover offer.

41 ***[h.]** “Person” means an individual, corporation, association,
42 partnership, trust or other entity.

43 i. “Takeover offer” means the offer to acquire or the acquisi-
44 tion of any equity security of a target company, pursuant to a
45 tender offer or request or invitation for tenders, if after acquisi-
46 tion the offeror would be directly or indirectly a record or beneficial
47 owner of more than 10% of any class of the outstanding equity
48 securities of the target company. The term does not include an
49 offer to acquire or acquisition of any equity security of a target
50 company pursuant to:

51 (1) An offer effected by or through a broker-dealer in the
52 ordinary course of his business without solicitation of orders to sell
53 equity securities of the target company;

54 (2) An offer made to the owners of equity securities of a target
55 company¹ with less than 100 owners of record at the time of the
56 offer;

57 (3) An offer, if the acquisition by the offeror, in the instant trans-
58 action and in all acquisitions of equity securities of the same class
59 during the preceding 12 months, does not exceed 2% of that class
60 of outstanding equity securities of the target company;

61 (4) An offer by the target company to purchase its own equity
62 securities;

63 (5) An offer initiated or approved by the board of directors of
64 the target company; or

65 (6) An offer determined by ruling of the commissioner to be a
66 takeover offer that is not made for the purpose of, and not having
67 the effect of, changing or influencing the control of a target
68 company.

69 j. “Target company” means a corporation or other issuer of
70 securities which is either organized under the laws of this State or
71 has its principal place of business or substantial portion of its total
72 assets in this State.**]***

73 **g.* “Person” includes an individual, a partnership, a corpora-
74 tion, an unincorporated association or a trust.

75 *h.* “Shares” means and includes any equity security, however
76 its units are denominated.

77 i. A "security holder" of a special person is one who owns any
78 security of such person, including common stock, preferred stock,
79 debt obligations, and any other security convertible into or evidenc-
80 ing the right to acquire any of the foregoing.

81 j. A "subsidiary" of a company is any corporation 50% (exclu-
82 sive of qualifying shares and shares subject to employee stock
83 options) of whose outstanding stock of any class or classes having
84 by the terms thereof ordinary voting power to elect a majority of
85 the directors of such corporation, irrespective of whether or not at
86 the time stock of any other class or classes of such corporation shall
87 have or might have voting power by reason of the happening of any
88 contingency, is at the time owned by such company directly or in-
89 directly through subsidiaries.

90 k. An "offeror's presently owned shares" is the aggregate
91 number of shares of a target company which are on the date of a
92 takeover bid either beneficially owned or subject to a right of
93 acquisition directly or indirectly, by the offeror and each associate
94 of the offeror.

95 l. (1) A "takeover bid" or "takeover offer" is an offer made by
96 an offeror directly or through an agent by advertisement or any
97 other written or oral communication to offerees to purchase such
98 number of shares of any class of equity securities of the target com-
99 pany that:

100 (a) Together with the offeror's presently owned shares of
101 that class, will in the aggregate exceed 10% of the outstanding
102 shares of such class; or

103 (b) Together with an offeror's presently owned shares of all
104 classes of equity securities of the target company, will in the
105 aggregate, after giving effect to all conversion and purchase
106 rights held and to be acquired by the offeror, exceed 10% of
107 the number of shares of stock or a similar security of the target
108 company which will be outstanding.

109 (2) A "takeover bid" does not include, with respect to any class
110 of securities of the target company:

111 (a) An isolated offer to purchase shares from individual
112 shareholders not made to shareholders generally;

113 (b) An offer made by an issuer to purchase its own shares or
114 shares of a subsidiary;

115 (c) An offer to purchase shares of a class not registered
116 pursuant to section 12 of the Securities Exchange Act of 1934:

117 (d) An offer made to not more than 10 persons in this
118 State during any period of 12 consecutive months; or

119 (e) *An offer as to which the target company, acting through*
 120 *its board of directors, recommends acceptance to its share-*
 121 *holders.*

122 (f) *An offer effected by or through a broker-dealer in the*
 123 *ordinary course of his business without solicitation of orders to*
 124 *sell equity securities of the target company;*

125 (g) *An offer, if the acquisition by the offeror, in the instant*
 126 *transaction and in all acquisitions of equity securities of the*
 127 *same class during the preceding 12 months, does not exceed*
 128 *2% of that class of outstanding equity securities of the target*
 129 *company.*

130 m. *A "target company" is any corporation or other issuer of*
 131 *securities which is either organized under the laws of this State*
 132 *or has its principal place of business or substantial portion of its*
 133 *total assets in this State. A target company does not include:*

134 (1) *A domestic insurer subject to the provisions of P. L. 1970,*
 135 *c. 22 (C. 17:27A-1 et seq.); or*

136 (2) *A bank in the possession of the commissioner of banking*
 137 *pursuant to the provisions of C. 17:9A-266 et seq.; or*

138 (3) *A savings and loan association undergoing dissolution and*
 139 *liquidation pursuant to the provisions of C. 17:12B-228 et seq. and*
 140 *C. 17:12B-270.**

1 ***[3. Filing requirements.**

2 a. *No person shall make a takeover offer involving a target com-*
 3 *pany unless the takeover offer is effective under this act, or is*
 4 *exempted by regulation or order of the commissioner.*

5 b. *Before a takeover offer becomes effective under this act,*
 6 *the offeror shall file, by counsel admitted to practice within this*
 7 *State, with the commissioner a disclosure statement containing the*
 8 *information prescribed in subsection c. of this section, and shall,*
 9 *not later than the date of filing of the disclosure statement, send a*
 10 *copy of the disclosure statement by certified mail to the target com-*
 11 *pany at its principal office and publicly disclose by press release*
 12 *delivered to the leading wire services for the financial press the*
 13 *material terms of the proposed offer.]**

13A *3. *Disclosure.*

13B a. *Filing requirements. No offeror shall make a takeover bid*
 13C *unless at least 20 days before such takeover bid is made such offeror*
 13D *has filed with the bureau and has sent by certified mail to the target*
 13E *company at its principal office a statement containing the informa-*
 13F *tion required by this section and such takeover bid has been*
 13G *approved by the bureau chief in the manner hereinafter prescribed*

13H *in this act. The material terms of the proposed offer shall be*
 13I *publicly disclosed by the offeror to the leading wire services for the*
 13J *financial press.**

14 ***[c.]*** *b.** The disclosure statement shall be filed on forms pre-
 15 scribed by the commissioner, and shall be accompanied by a consent
 16 by the offeror to service of process and the filing fee specified in
 17 section 7, and shall contain the following information and such
 18 additional information as the commissioner by regulation
 18A prescribes:

19 (1) The identity of and material information concerning the
 20 offeror, including:

21 (i) If the offeror is a corporation, information concerning its
 22 organization, including the year and jurisdiction of its organi-
 23 zation, a description of each class of its capital stock and
 24 long-term debt, a description of the business done by the
 25 offeror and its affiliates and any material changes therein dur-
 26 ing the past 3 years, a description of the location and character
 27 of the principal properties of the offeror and its affiliates, a
 28 description of any material pending legal or administrative
 29 proceedings in which the offeror or any of its affiliates is a
 30 party, the names of all directors and executive officers of the
 31 offeror and their material business activities and affiliations
 32 during the past 3 years***[**, and audited financial statements of
 33 the offeror and its affiliates for its three most recent annual
 34 accounting periods and interim financial statements for any
 35 current period**]**.*

36 (ii) If the offeror is not a corporation, information concern-
 37 ing the background of the person, including his material
 38 business activities and affiliations during the past ***[3]*** **5**
 39 years, and a description of any material pending legal or
 40 administrative proceeding in which he is a party*, *as well as*
 40A *any conviction of crimes other than minor traffic violations*
 40B *during the past 10 years**;

41 (2) The source and amount of funds or other consideration used
 42 or to be used in acquiring any equity security, including a statement
 43 describing any securities which are being offered in exchange for
 44 the equity securities of the target company, and if any part of the
 45 acquisition price is or will be represented by borrowed funds or
 46 other consideration, a description of the transaction and the names
 47 of all the parties **provided, however, that where a source of such*
 47A *consideration is a loan made by a banking institution in such*
 47B *lender's ordinary course of business, the identity of the lender shall*

47C *remain confidential if the person filing such statement so requests**;
 47D **(3) Audited financial information as to the earnings and finan-*
 47E *cial condition of such acquiring party for the preceding 5 fiscal*
 47F *years of such acquiring party (or for such lesser period as such*
 47G *acquiring party and any predecessors thereof shall have been in*
 47H *existence), and similar unaudited information as of a date not*
 47I *earlier than 90 days prior to the filing of the statement.**

48 **[(3) If the purpose of the acquisition is to gain control of the*
 49 *target company, a statement of any plans or proposals or negotia-*
 50 *tions with respect thereto, which the offeror has upon gaining*
 51 *control, to liquidate the target company, sell its assets, effect its*
 52 *merger or consolidation, or make any other major change in its*
 53 *business, corporate structure, management or personnel;]**

53A **(4) Any plans or proposals which such acquiring party may*
 53B *have to liquidate such target company, to sell its assets or merger*
 53C *or consolidate it with any person, or to make any other material*
 53D *change in its business or corporate structure or management (with*
 53E *particular emphasis upon the changes that will occur within the*
 53F *State of New Jersey) and full details as to the manner in which the*
 53G *acquisition will be accounted for on the records of the acquiring*
 53H *party.**

54 **[(4)]* *(5)* The number of shares or units of any equity*
 55 *security of the target company of which each offeror is the record*
 56 *or beneficial owner or which the offeror has a right to acquire,*
 57 *directly or indirectly;*

58 **[(5)]* *(6)* Information as to any contracts, arrangements,*
 59 *understandings or negotiations with any person with respect to any*
 60 *equity security of the target company, including transfers of any*
 61 *equity security, joint ventures, loan or option arrangements, puts*
 62 *and calls, guarantees of loan, guarantees against loss, guarantees of*
 63 *profits, division of losses or profits, or the giving or withholding of*
 64 *proxies, naming the persons with whom those contracts, arrange-*
 65 *ments or understandings have been entered into;*

66 **[(6)]* *(7)* Information as to any contracts, arrangements,*
 67 *understandings or negotiations with any person who is an officer,*
 68 *director, administrator, manager, executive employee or record or*
 69 *beneficial owner of equity securities of the target company with*
 70 *respect to the tender of any equity securities of the target company,*
 71 *the purchase by the offeror of any equity securities owned by that*
 72 *person otherwise than pursuant to the takeover offer, the retention*
 73 *of any person in his present position or in any other management*
 74 *position or with respect to that person giving or withholding a*
 75 *favorable recommendation to the takeover offer; and*

76 *[(7)]* *(8)* A description of the provisions made or to be
77 made for providing all material information concerning the take-
78 over offer to the offerees, including a description of the proposed
79 takeover offer in the form proposed to be published or sent the
80 offerees initially disclosing the takeover offer.

81 *(9) *The number of shares of any security subject to the take-*
82 *over bid which such acquiring party proposes to acquire, the terms*
83 *of the takeover bid, and a statement as to the method by which the*
84 *fairness of the proposal to the offerees was arrived at.*

85 (10) *A description of the purchase of any security subject to the*
86 *takeover bid during the 12 calendar months preceding the filing of*
87 *the statement, by such acquiring party, including the dates of pur-*
88 *chase, names of the purchasers, and consideration paid or agreed*
89 *to be paid therefor.*

90 (11) *A description of any recommendations to purchase any*
91 *security subject to the takeover bid made during the 12 calendar*
92 *months preceding the filing of the statement, by such acquiring*
93 *party, or by anyone based upon interviews or at the suggestion of*
94 *such acquiring party.*

95 (12) *Copies of all tender offers for, requests or invitations for*
96 *tenders of, exchange offers for, and agreements to acquire or ex-*
97 *change any securities subject to the takeover bid and (if distrib-*
98 *uted) of additional soliciting material relating thereto.*

99 (13) *The terms of any agreement, contract or understanding*
100 *made with any broker-dealer as to solicitation of securities subject*
101 *to the takeover bid for tender, and the amount of any fees, com-*
102 *missions or other compensation to be paid to broker-dealers with*
103 *regard thereto.*

104 (14) *Such additional information as the bureau chief may by*
105 *rule or regulation or order prescribe as necessary or appropriate*
106 *for the achievement of the functions and objectives described in*
107 *section 3 of this act.*

108 *If the person required to file the statement referred to in subsec-*
109 *tion a. is a partnership, limited partnership, syndicate or other*
110 *group, the bureau chief may require that the information called for*
111 *by paragraphs (1) through (14) shall be given with respect to each*
112 *partner or such partnership or limited partnership, each member*
113 *of such syndicate or group, and each person who controls such*
114 *partner or member. If any such partner, member or person is a*
115 *corporation or the person required to file the statement referred to*
116 *in subsection a. is a corporation, the bureau chief may require that*
117 *the information called for by paragraphs (1) through (14) shall*
118 *be given with respect to such corporation, each office and director*

119 of such corporation, and each person who is directly or indirectly
120 the beneficial owner of more than 10% of the outstanding voting
121 securities of such corporation.

122 If any material change occurs in the facts set forth in the state-
123 ment filed with the bureau and sent to such target company pur-
124 suant to this section, an amendment setting forth such change, shall
125 be filed with the bureau and sent to such target company within 2
126 business days after the person learns of such change.*

127 ***[d.** The commissioner may require the offeror to file any other
128 documents, exhibits and information that is material to the take-
129 over offer, and he may permit the omission of any of the informa-
130 tion specified in subsection c. of this section if he determines that
131 the information is not required for the protection of the offerees.

132 e. A takeover offer becomes effective 20 days after the date
133 of filing the disclosure statement, or an amendment thereto,
134 with the commissioner unless accelerated or delayed by order. The
135 commissioner may accelerate effectiveness if the target company
136 agrees, all requirements of this chapter are met, and it is in the
137 interest of the offerees. The commissioner may, on his own motion
138 delay effectiveness by ordering a hearing if it is necessary for the
139 protection of the offerees, and he shall delay effectiveness by order-
140 ing a hearing if requested by the target company. If a hearing is
141 ordered, the takeover offer shall not become effective until declared
142 effective by order of the commissioner.

143 f. Any hearing called by the commissioner under this section
144 shall be held within 20 days of the date of the hearing order with
145 notice to the offeror and target company. Any determination made
146 following the hearing shall be made within 60 days after the con-
147 clusion of the hearing, unless extended by order of the commis-
148 sioner for the convenience of the parties or as being in the interest
149 of the offerees. If, following the hearing, the commissioner finds
150 that the takeover offer fails to provide full and fair disclosure to
151 the offerees of all material information concerning the offer, or
152 that the takeover offer is unfair or inequitable to the offerees, or
153 the takeover offer will not be made to all offerees on substantially
154 equal terms, he shall by order deny effectiveness to the takeover
155 offer, or condition its effectiveness upon certain changes or
156 modification.

157 If he finds that the takeover offer provides full and fair dis-
158 closure to the offerees of all material information concerning the
159 offer, and he does not find that the offer is unfair or inequitable to
160 the offerees, and the takeover offer is made on substantially equal

161 terms to all the offerees, he shall by order make the takeover offer
162 effective. However, the order making the takeover offer effective
163 does not constitute approval of the takeover offer by the
164 commissioner.】*

165 *4. *Approval by bureau chief; hearings*

166 a. *The bureau chief shall approve any takeover bid referred to*
167 *in subsection a. of section 3 of this act unless after a public hearing*
168 *thereon, referred to in subsection b. of this section, he finds that:*

169 (1) *After the proposed takeover the target company would not*
170 *be able to satisfy the requirements for the issuance of a license*
171 *authorizing it to perform a function for which it is presently*
172 *licensed by this State;*

173 (2) *The effect of the takeover would be substantially to lessen*
174 *competition in one of the target company's lines of business in this*
175 *State or tend to create a monopoly therein;*

176 (3) *The financial condition of the offeror is such as might*
177 *jeopardize the financial stability of the target company, or pre-*
178 *judice the interests of any employees, customers or creditors or any*
179 *remaining securityholders who are unaffiliated with the offeror;*

180 (4) *The terms of the takeover bid are unfair and unreasonable*
181 *to the securityholders of the target company;*

182 (5) *The plans and proposals which the offeror has to make any*
183 *material change in the target company's business or corporate*
184 *structure or management, are not in the interest of the target com-*
185 *pany's securityholders, employees, customers, or creditors, or of*
186 *the public;*

187 (6) *The competence, experience and integrity of those persons*
188 *who would control the operation of the target company are such*
189 *that it would not be in the interest of the target company's security-*
190 *holders, employees, customers, or of the public to permit the take-*
191 *over; or*

192 (7) *The terms of the takeover bid do not comply with the pro-*
193 *visions of section 6 of this act.*

194 b. *A public hearing shall be held at a time and place fixed by the*
195 *bureau chief, if, within 20 days after the filing of the statement*
196 *referred to in subsection a. of section 3 of this act, he, shall deter-*
197 *mine that such a public hearing is necessary or shall receive from*
198 *the target company, acting by resolution of its board of directors,*
199 *a written request for such a public hearing. Written notice of such*
200 *determination or of the receipt of such request shall be promptly*
201 *sent to the offeror and the target company by the bureau chief. At*
202 *least 20 days' notice of the holding of any such public hearing shall*

203 *be given by the bureau chief to the offeror filing the statement and*
 204 *to the target company. No less than 7 days' notice of such public*
 205 *hearing shall be given by the offeror filing the statement to such*
 206 *other persons as may be designated by the bureau chief. The target*
 207 *company shall give such notice to its securityholders. The bureau*
 208 *chief shall make a determination within 60 days after the con-*
 209 *clusion of such hearing. At such hearing, the offeror filing the*
 210 *statement, the target company, any person to whom notice of hear-*
 211 *ing was sent, and any other person whose interests may be effected*
 212 *thereby shall have the right to present evidence, examine and cross-*
 213 *examine witnesses, and offer oral and written arguments and in*
 214 *connection therewith shall be entitled to conduct discovery pro-*
 215 *ceedings in the same manner as is presently allowed in the Superior*
 216 *Court of this State. All discovery proceedings shall be concluded*
 217 *not later than 3 days prior to the commencement of public*
 218 *hearings.*

1 5. *Mailing shareholders; payment of expenses*

2 *To the extent permitted by applicable Federal laws, rules and*
 3 *regulations, all notices of public hearings held pursuant to section*
 4 *4 of this act shall be mailed by the target company to its share-*
 5 *holders within 5 business days after the target company has re-*
 6 *ceived such notification from the bureau chief. The cost of mailing*
 7 *shall be borne by the offeror making the filing. As security for the*
 8 *payment of such expenses, such offeror shall file with the bureau*
 9 *an acceptable bond or other deposit in an amount to be determined*
 10 *by the bureau.**

1 ***[4.]*** *6.* *Time for Filing.*

2 a. *Copies of all advertisements, circulars, letters or other*
 3 *materials published by the offeror or the target company, soliciting*
 4 *or requesting the acceptance or rejection of the takeover offer,*
 5 *with the exception of the initial press release by the offeror to the*
 6 *wire services announcing the intention to make a takeover offer*
 7 **[as contemplated in section 2 of this act,]* shall be filed with the*
 8 **[commissioner]* *bureau chief* and sent to the target company*
 9 *or offeror, respectively, *[at least 3 full business days before the*
 10 *time copies of the materials are first published or used or sent to*
 10A *the offerees]* *not later than the time copies of such solicitation or*
 10B *recommendation are first published or sent or given to the*
 10C *offerees*.*

11 b. *The materials described in subsection a of this section shall*
 12 *not contain any untrue statement of a material fact or omit to*
 13 *state a material fact necessary in order to make the statements*
 14 *made, in the light of the circumstances under which they were made,*

15 not misleading. The ***[commissioner]*** **bureau chief** may by
 16 order prohibit the use of any materials deemed false or misleading.

1 **7. The bureau may make such investigations within or outside*
 2 *of this State as it deems necessary to determine whether any per-*
 3 *son has violated or is about to violate the provisions of this act or*
 4 *any order of the bureau chief, and may require any person subject*
 5 *to the investigation to pay the actual costs of the investigation in-*
 6 *cluding \$50.00 per day for the time of the investigator. The bureau*
 7 *chief shall have power to issue subpoenas and subpoenas duces tecum*
 8 *to require the attendance of any person and the production of any*
 9 *papers for the purposes of such investigation. No person shall be*
 10 *excused from testifying on the ground that his testimony would*
 11 *tend to incriminate him, but if, after asserting his claim of the*
 12 *privilege, he is required to testify, he shall not be prosecuted or*
 13 *penalized on account of any transactions concerning which he does*
 14 *testify.**

1 ***[5.]*** **8.** Prohibited Acts. No person shall engage in any
 2 fraudulent, deceptive or manipulative acts or practices in connec-
 3 tion with a takeover offer. Fraudulent, deceptive and manipulative
 4 acts or practices include, without limitation:

5 a. Solicitation of any offeree for acceptance or rejection of a
 6 takeover offer, or acquisition of any equity security of a target
 7 company pursuant to a takeover offer, that is not effective or
 8 exempt under this act.

9 b. Publication or use in connection with the offer of any untrue
 10 statement of material fact or omitting to state a material fact
 11 necessary in order to make the statements made, in light of the
 12 circumstances under which they were made, not misleading, but not
 13 including the mailing by a target company to the record or beneficial
 14 owners of its equity securities of solicitation materials published
 15 by an offeror.

16 c. Sale by any officer, director, affiliate or associate of a target
 17 company of all or any part of their equity securities to the offeror
 18 at a price higher than that to be paid to the offerees pursuant to
 19 the offer, unless the sales are made at the then existing market price.

20 d. Acquisition by the offeror, after announcement of the take-
 21 over offer and prior to its termination, of equity securities of the
 22 target company otherwise than pursuant to the takeover offer.

1 ***[6.]*** **9.** Takeover Offer.

2 a. An offeror shall provide that any equity securities of a target
 3 company deposited or tendered pursuant to a takeover offer may
 4 be withdrawn by or on behalf of any offeree at any time up to the
 5 third day prior to the announced termination date, except as the

6 ***[commissioner]*** **bureau chief** may otherwise prescribe by rule
7 or order for the protection of the offerees.

8 b. If an offeror makes a takeover offer for less than all the
9 outstanding equity securities of any class, and if the number of
10 securities deposited or tendered pursuant thereto is greater than
11 the number the offeror has offered to accept and pay for, the
12 securities shall be accepted pro rata, disregarding fractions,
13 according to the number of securities deposited or tendered by
14 each offeree.

15 c. If an offeror varies the term of a takeover offer before its
16 expiration date by increasing the consideration offered to the
17 offerees, the offeror shall pay the increased consideration for all
18 equity securities accepted, whether the securities have been accepted
19 by the offeror before or after the variation in the terms of the offer.

20 d. No offeror shall make a takeover offer at any time when an
21 administrative or injunctive proceeding has been brought by the
22 ***[commisioner]*** **bureau chief** against the offeror for violation of
23 this chapter that has not been finally determined.

24 e. An offeror may not make a takeover offer involving a target
25 company which is not made to the owners of equity securities of the
26 target company who are residents of this State.

1 **10. No security of a target company acquired pursuant to a
2 takeover bid in contravention of the provisions of this act or of any
3 rule, regulation or order issued by the bureau chief hereunder may
4 be voted at any shareholders' meeting, or may be counted for
5 quorum purposes, and any action of shareholders requiring the
6 affirmative vote of a percentage of shares may be taken as though
7 such securities were not issued and outstanding; but no action taken
8 at any such meeting shall be invalidated by the voting of such
9 securities, unless the action would materially affect control of the
10 target company or unless a court of this State has so ordered. If a
11 target company or the bureau chief has reason to believe that any
12 equity security of the target company has been or is about to be
13 acquired in contravention of the provisions of this act or of any
14 rule, regulation, or order issued by the bureau chief hereunder, the
15 target company or the bureau chief may apply to the Superior
16 Court to enjoin any such acquisition, to enjoin the voting of any
17 security so acquired, to void any vote of such security already cast
18 at any meeting of shareholders, and for such other equitable relief
19 as the nature of the case and the interests of the target company's
20 securityholders, employees, customers or creditors or of the public
21 may require.*

22 *In any case where an offeror has acquired or is proposing to*
 23 *acquire any voting securities in violation of this act or any rule,*
 24 *regulation or order issued by the bureau chief hereunder, the*
 25 *Superior Court may, on such notice as the court deems appropriate,*
 26 *upon the application of the target company or the bureau chief*
 27 *seize or sequester any voting securities of the target company*
 28 *owned directly or indirectly by such offeror and issue such orders*
 29 *with respect thereto as may be appropriate to effectuate the pro-*
 30 *visions of this act. Notwithstanding any other provisions of law,*
 31 *for the purposes of this act the situs of the ownership of the secu-*
 32 *rities of target companies shall be deemed to be in this State.**

1 ***[7.]*** *11.* Promulgation of Regulations.

2 a. This act shall be administered by the ***[Commissioner of**
 3 **Labor and Industry]*** *Chief of the Bureau of Securities in the*
 4 *Division of Law in the Department of Law and Public Safety**,
 5 who may promulgate regulations necessary to carry out the pur-
 6 poses of this act, including regulations defining fraudulent, decep-
 6A tive and manipulative acts and practices and other terms used
 6B herein.

7 b. The ***[comuissioner]*** *bureau chief** shall set a filing fee
 8 for a disclosure statement filed by an offeror and the same amount
 9 for a request for hearing filed by a target company. Such fees shall
 10 be set so as to raise sufficient revenue for funding the purposes of
 11 this act.

1 ***[8.]*** *12.* Injunctions.

2 a. Whenever it appears to the ***[commissioner]*** *bureau chief**
 3 that any person has engaged or is about to engage in any act or
 4 practice constituting a violation of any provision of this act or any
 5 regulation or order adopted under this act, the ***[commissioner]***
 6 *bureau chief** may investigate and issue orders and notices in-
 7 cluding cease and desist orders and notices. In addition to all other
 8 remedies, he may bring an action in any Superior Court of this
 9 State in the name and on behalf of the State against any person or
 10 persons participating in or about to participate in a violation, to
 11 enjoin those persons from continuing or doing any act in violation
 12 of this act or to enforce compliance. In any court proceedings, the
 13 ***[commissioner]*** *bureau chief** may apply for and on due show-
 14 ing be entitled to have issued the court's subpoena requiring the
 15 appearance of any defendant and his employees or agents and the
 16 production of documents, books and records as may appear
 17 necessary for the hearing of the petition, to testify and give evi-
 18 dence concerning the acts or conduct or things complained of in the

19 action. Upon a proper showing, the court may grant a permanent
 20 or preliminary injunction or temporary restraining order or may
 21 order recession of any sales tenders for sale, purchase or tenders
 22 for purchase of equity securities determined to be unlawful under
 22A this act or any regulation or order of the ***[commissioner]*** *bureau
 22B *chief*.*

23 b. Whenever any person has engaged or is about to engage in
 24 any act or practice constituting a violation of this act or any regu-
 25 lation or order adopted thereunder, the offeror, target company
 26 or any record or beneficial owner of an equity security of the target
 27 company may bring an action in the county where the target
 28 company has its principal business office in the State to enjoin that
 29 person from continuing or doing any act in violation of this act
 30 or to enforce compliance. Upon a proper showing, the court may
 31 grant a permanent or preliminary injunction or temporary restrain-
 32 ing order or may order rescission of any sales, tenders for sale,
 33 purchases or tenders for purchase of equity securities determined
 34 to be unlawful under this act or any regulation or order of the
 35 commissioner.

1 ***[9.]*** *13.* Penalties. a. Any person who makes a takeover
 2 offer involving a target company without a disclosure statement re-
 3 quired under section 3, may be imprisoned for a period not to exceed
 4 1 year, or fined an amount not to exceed \$10,000.00, or both.

5 b. Any person who, in connection with a takeover offer, know-
 6 ingly makes or causes to be made to the commissioner any repre-
 7 sentation of a material fact which he knows to be false, or knowingly
 8 withholds or causes to be withheld from the commissioner any
 9 information the disclosure of which he knows is necessary, in light
 10 of the circumstances, to make not misleading other representations
 11 of material facts made or caused to be made by him to the com-
 12 missioner, may be imprisoned for a period of not less than 1 year
 13 nor more than 5 years, or fined an amount not to exceed \$50,000.00
 14 or both.

15 c. Any person who in connection with a takeover offer know-
 16 ingly publishes or causes to be published any representation of a
 17 material fact which he knows to be false, or knowingly omits to
 18 publish information which he knows is necessary, in light of the
 19 circumstances, to make not misleading other representation of
 20 material facts published or caused to be published by him, may be
 21 imprisoned for a period not less than 1 nor more than 5 years, or
 22 fined an amount not to exceed \$50,000.00, or both, provided, how-
 23 ever, this subsection shall not apply to the mailing by a target

24 company to the record or beneficial owners of its equity securities
25 of solicitation materials published by an offeror.

26 d. Any person who knowingly violates any provision of this act
27 for which a specific criminal penalty is not otherwise provided
28 may be imprisoned for a period not to exceed 1 year, or fined an
29 amount not to exceed \$10,000.00, or both.

30 e. Nothing herein limits the power of the State to punish any
31 person for conduct which constitutes a crime under any other
32 statute.

1 ***[10.]*** *14.* Rights and remedies. a. Any offeror who pur-
2 chases an equity security in connection with a takeover offer not in
3 compliance with this act or by means of any untrue statement of a
4 material fact or any omission to state a material fact necessary in
5 order to make the statements made, in light of the circumstances
6 under which they were made, not misleading, shall be liable to the
7 person selling the security to him. That person may sue either at
8 law or in equity***[:]*** *.*

9 ***[(1)** To recover the security, plus any income received by the
10 purchase; or

11 (2) For damages;

12 together with interest at current market rates, costs and reasonable
13 attorneys' fees, upon tender of the consideration received. For
14 the purpose of this subsection, damages are the excess of either
15 the value of the security on the date of purchase or its present
16 value, whichever is greater, over the present value of the considera-
17 tion received for the security. Tender requires only notice of will-
18 ingness to pay the amount specified in exchange for the security.]*

19 b. Any offeror who purchases an equity security in connection
20 with a takeover offer not in compliance with this act or by means
21 of any untrue statement of a material fact or any omission to state
22 a material fact necessary in order to make the statements made,
23 in light of the circumstances under which they were made, not
24 misleading, shall be liable to any person who did not sell to him.
25 That person may sue either at law or in equity to recover damages
26 together with interest at current market rates, costs and reason-
27 able attorneys' fees.

28 c. Every person who directly or indirectly controls a person
29 liable under subsection a. or b. of this section or any agent of the
30 person liable under subsection a. or b. of this section who materially
31 aids in the act or transaction constituting the violation, and every
32 broker-dealer or agent who materially aids in the act or transac-
33 tion constituting the violation, is also liable jointly or severally

34 with and to the same extent as that person, unless he proves that
35 he did not know of the existence of the facts by reason of which
36 the liability is alleged to exist.

37 d. No action may be maintained under this section unless com-
38 menced before the expiration of 3 years after the discovery of the
39 facts constituting the violation.】*

40 *As used in this section, "damages" means an amount equal to
41 the market value of the shares acquired by the offeror plus any
42 dividends or interest paid thereon to the offeror or any person
43 holding under him and minus the consideration received for the
44 shares from the offeror. For the purpose of paragraph (2) of sub-
45 section b. of this section, market value is measured either on the
46 date the action is commenced or on the date of tender. For the
47 purpose of subsection e. of this section, market value is measured
48 on the date when the offer to pay damages is made.

49 b. An offeree who is entitled to recover pursuant to subsection
50 a. may bring a civil action:

51 (1) To recover such shares, if the offeror still owns them, to-
52 gether with all dividends or interest received thereon, costs and
53 reasonable attorneys' fees, upon the tender of the consideration
54 received from the offeror; or

55 (2) For the substantial equivalent in damages.

56 c. Every person who directly or indirectly controls a person
57 liable under subsection b., every partner, principal executive officer
58 or director of such person, every person occupying a similar status
59 or performing similar functions, every employee of such person
60 who materially aids in the act or transaction constituting the viola-
61 tion, and every broker-dealer or agent who materially aids in the
62 act or transaction constituting the violation, is also liable jointly or
63 severally with and to the same extent as such person, unless the
64 person liable hereunder proves that he did not know, and in the
65 exercise of reasonable care could not have known, of the existence
66 of the facts by reason of which the liability is alleged to exist.
67 There shall be contribution as in cases of contract among the
68 several persons so liable.

69 d. Any tender specified in this action may be made at any time
70 before entry of judgment.

71 e. If any person liable by reason of subsection a. or b. makes a
72 written offer, before suit is brought, to return the shares taken up
73 pursuant to the takeover bid, together with all dividends or interest
74 received thereon, upon the tender of the consideration received
75 from the offeror, or to pay damages if the offeror no longer owns

76 *such shares, an offeree is not entitled to maintain a suit under this*
 77 *section if he has refused or failed to accept such offer within 30*
 78 *days of its receipt.**

79 ***[e.]*** *f.* The rights and remedies under this act are in addi-
 80 tion to any other rights or remedies that may exist at law or in
 81 equity.

1 ***[11.]*** *15.* Appeals procedure. Judicial review; in lieu of
 2 prerogative writ. a. Any person aggrieved by any act, determina-
 3 tion, rules, regulation, or order or any other action of the ***[com-**
 4 **missioner]*** *bureau chief* pursuant to this act may appeal to the
 5 Superior Court. The court shall conduct its review without a jury
 6 and by trial de novo, except that if all parties, including the ***[com-**
 7 **missioner]*** *bureau chief*, so stipulate, the review shall be con-
 8 fined to the record. Portions of the record may be introduced by
 9 stipulation into evidence in a trial de novo as to those parties so
 9A stipulating.

10 b. The filing of an appeal pursuant to this section shall stay the
 11 application of any such rule, regulation, order or other action of
 12 the ***[commissioner]*** *bureau chief* to the appealing party unless
 13 the court, after giving such party notice and an opportunity to be
 14 heard, determines that such a stay would be detrimental to the
 15 interests of the target company's securityholders, employees,
 16 customers or creditors or of the public.

17 c. Any person aggrieved by any failure of the ***[commissioner]***
 18 *bureau chief* to act or to make determination required by this act
 19 may commence an action in the Superior Court for an order in lieu
 20 of a prerogative writ directing the ***[commissioner]*** *bureau
 21 chief* to act or make such determination forthwith.

1 ***[12.]*** *16.* Severability clause. If any provision of this act,
 2 or any application of any provision, is held invalid, the invalidity
 3 shall not affect other applications of the provision, or other pro-
 4 visions of the act, which reasonably can be given effect despite the
 5 invalidity.

1 ***[13.]** Repeal clause. All acts, and parts of acts inconsistent with
 2 the provisions set forth herein are hereby repealed.*

1 *17. a. If the target company is a financial institution subject to
 2 regulation by the Commissioner of Banking, or a public utility
 3 corporation subject to regulation by the Board of Public Utility
 4 Commissioners, or a transportation company subject to regulation
 5 by the Commisisoner of Transportation, the bureau chief shall
 6 promptly furnish a copy of the registration statement filed under
 7 this act to the regulatory agency having supervision of the target

8 company. Any hearing under this act involving any such target
9 company shall be held jointly with the regulatory agency having
10 supervision, and any determination following the hearing shall be
11 made jointly with that regulatory agency.

12 b. If the target company is a public utility, public utility holding
13 company, national banking association, bank holding company, sav-
14 ings and loan association or savings and loan holding company
15 subject to regulation by a federal agency and the takeover of such
16 company is subject to approval by that agency this act shall not
17 apply.

18 c. This act shall not apply to any offer involving a class vote by
19 shareholders of the target company, pursuant to its articles of
20 incorporation or the applicable corporation statute, on a merger,
21 consolidation or sale of corporate assets in consideration of the
22 issuance of securities of another corporation, or sale of its secu-
23 rities in exchange for cash or securities of another corporation.*

1 *~~14.~~* *18.* Effective date. This act shall take effect *~~90~~ days
2 after enactment* *immediately*.

A2287 (1977)

11

STATEMENT

This bill provides a State procedure for regulating sudden business takeovers, which have threatened New Jersey businesses and New Jersey jobs. It calls for an open disclosure by any individual, group or other entity seeking to acquire more than 2% of the equity of a corporation organized under New Jersey laws or having its principal place of business or a substantial portion of its total assets in New Jersey.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 18, 1977

SENATE BILL No. 803 (OCR)

To the Senate:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 803 with my objections, for reconsideration.

The purpose of Senate Bill No. 803 is to protect New Jersey stockholders and New Jersey corporations from precipitate and economically unwise takeovers through the use of tender offers.

The bill is designed to give investors sufficient time and information to fully assess the reasonableness and ramifications of a tender offer, and to give target companies adequate time to defend their management policies to their stockholders and to clarify questions as to their financial status. Insofar as this bill accomplishes that intent by requiring an offeror to file a full disclosure statement with the Bureau of Securities and the target company twenty days before an effective offer is made, I am persuaded that it is worthwhile. Twenty-three other states have enacted similar legislation and New Jersey must also respond to the threat of unfair takeovers.

The corporate community of this State is legitimately concerned that the recognized evils of unregulated takeovers will result in the indiscriminate raiding of its assets, will force business to seek sanctuary in other states and cause substantial loss of jobs, adding to our already severe problems of unemployment and urban blight.

However, the State's concern to protect its corporate citizens should not be so zealously exercised that it frustrates legitimate takeover efforts. Tender offer takeovers are often a desirable and efficient way for stockholders to rid themselves of ineffective or incompetent management. It is my opinion that this bill is too cumbersome in its attempt to restrict takeover and that a more limited and balanced approach would still provide the necessary protection.

Because I do not wish to delay this needed legislation, I have decided to return it to you with the recommendation that certain amendments be adopted.

STATE OF NEW JERSEY
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Accordingly, I herewith return Assembly Bill No. 808 (OCR) for reconsideration and recommend that it be amended as follows:

Page 1, Section 2.a., Line 5: Delete "associate of the offeror" is:" and insert "'associate' of a person means:"

Page 1, Section 2.a., Line 6-7: Delete "the offeror" and insert "such person"

Page 1, Section 2.a., Line 11-12: Delete "the offeror" and insert "such person"

Page 1, Section 2.a., Line 13: Delete "the offeror" and insert "such person"

Page 1, Section 2.a., Line 14: Delete "the offeror" and insert "such person"

Page 1, Section 2.a., Line 16: Delete "the offeror" and insert "such person" (both places)

Page 1, Section 2.a., Line 17: Delete "the offeror" and insert "such person"

Page 1, Section 2.a.(5), Line 17A: After the word "with" delete "that person" and insert "the offeror"

Page 2, Section 2.b., Line 19: Delete "Law" and insert "Consumer Affairs"

Page 2, Section 2.c.(2), Line 27H: Delete ";" and insert ", as described in c.(1) above;"

Page 2, Section 2.c.(3), Line 27J: Delete ";" and insert ", as described in c.(1) above;"

Page 2, Section 2.c.(4), Line 27L: Delete ";" and insert ", as described in c.(1) above;"

Page 2, Section 2.d., Line 30: Delete ";" after the word "security" and insert ", as described in c.(1) above;"

Page 3, Section 2.f., Line 41K: After the words "owner of" insert "any"

Page 3, Section 2.f., Lines 41K-41L: Delete "securities" and insert "security"

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Page 3, Section 2.j., Line 50-52: After the word "corporation" delete "50% (exclusive of qualifying shares and shares subject to employee stock options) of"

Page 3, Section 2.j., Line 58: After the word "indirectly" delete "through subsidiaries"

Page 4, Section 2.1.(2)(e), Line 83: Delete "." and insert ", provided that the terms thereof, including any inducements to officers or directors which are not made available to all shareholders, have been furnished to shareholders."

Page 4, 2.1.(2)(h), Line 83A: After line 83A add new section (h) "(h) An offer to purchase shares of a company whose capital assets do not exceed \$5,000,000.00"

Page 5, Section 3.a., Line 7: Delete "been approved" and insert "been permitted to proceed"

Page 6, Section 3.b., Line 40: Delete the numeral "7" and insert the numeral "11"

Page 6, Section 3.b.(1)(ii), Line 61: Delete "he" and insert "that person"

Page 6, Section 3.b., Line 75-77: Delete "acquiring party" and insert "offeror"

Page 7, Section 3.b.(4), Line 80: Delete "acquiring party" and insert "offeror"

Page 7, Section 3.b.(4), Line 87: Delete "acquiring party" and insert "offeror"

Page 7, Section 3.b.(9), Line 117: Delete "acquiring party" and insert "offeror"

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Page 8, Section 3.b., Line 136: Delete "acquiring party" and insert "offeror".

Page 8, Section 3.b.(11), Lines 142-143: Delete "acquiring party" and insert "offeror".

Page 9, Section 3.b.(12), Line 169: Delete "office" and insert "officer".

Page 9, Section 4.a., Line 1: Delete "Approval by bureau chief" and insert "Permission to proceed".

Page 9, Section 4.a., Line 2: Delete "approve" and insert "permit".

Page 9, Section 4.a., Line 3: After the words "this act" insert "to proceed,".

Page 9, Section 4.a., Lines 5-11: Delete entirely.

Page 9, Section 4.a., Line 12: Delete numeral "(3)" and insert numeral "(1)".

Page 9, Section 4.a., Line 12: Delete "might" and insert "to".

Page 9, Section 4.a., Lines 14-15: Delete "customers or creditors" and delete "any remaining".

Page 10, Section 4.a., Line 17: Delete numeral "(4)" and insert numeral "(2)".

Page 10, Section 4.a., Line 17: Delete "and unreasonable" and insert "or inequitable".

Page 10, Section 4.a., Line 19: Delete numeral "(5)" and insert "(3)".

Page 10, Section 4.a., Lines 22-23: Delete "customers or creditors, or of the public;" and after the word "securityholders" insert "or" and before the word "securityholders" insert "remaining," and after "employees" insert ";".

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Page 10, Section 4.a., Line 24: Delete numeral "(6)" and insert numeral "(4)"

Page 10, Section 4.a., Line 26: After the word "company's" insert "remaining"

Page 10, Section 4.a., Lines 27-28: Delete "customers or creditors or of the public"

Page 10, Section 4.a., Line 27: After the word "securityholders," insert "or" and after "employees" insert ";

Page 10, Section 4.a., Line 29: Delete numeral "(7)" and insert numeral "(5)"

Page 10, Section 4.a., Line 30: Delete "of section 6"

Page 10, Section 4.b., Line 36: After the word "hearing" delete "." and insert ", unless the bureau chief finds that no cause for hearing exists."

Page 10, Section 4.b., Lines 47-48: Delete "any person to whom notice of hearing was sent," and after "any other person" insert "the bureau chief determines has sufficient interest"

Page 10, Section 4.b., Lines 48-49: Delete "whose interests may be affected thereby"

Page 10, Section 4.b., Line 52: Delete the word "presently"

Page 10, Section 4.b., Line 53: After the word "State" delete "." and insert ", or pursuant to such other procedure as may be established by the bureau chief."

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Page 12, Section 7.a., Line 11-15: Omit in their entirety. Insert new subsection 7.b. as follows:

"b. If, in the course of any investigation or hearing conducted by the bureau chief pursuant to this act, a person refuses to answer a question or questions or produce evidence of any kind on the ground that he will be exposed to criminal prosecution or penalty or to a forfeiture of his estate thereby, the bureau chief may order the person to answer the question or questions or produce the requested evidence and confer immunity as in this section provided. If upon issuance of such an order, the person complies therewith, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or to a forfeiture of his estate, except that such person may nevertheless be prosecuted for any perjury committed in such answer or in producing such evidence, or for contempt for failing to give an answer or produce evidence in accordance with the order of the bureau chief and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt."

Page 12, Section 8.a., Line 7-8: Delete "is not effective" and insert "has not been permitted to proceed"

Page 13, Section 10., Line 1: After numeral "10." insert a title.
"Voting of Securities; restrictions"

Page 15, Section 11.a., Line 13: After the words "Division of" delete "Law" and insert "Consumer Affairs"

Page 15, Section 11.b., Line 20: Delete "shall" and insert "may"

Page 15, Section 12.a., Line 14: Delete "his" and insert "the defendant's"

Page 16, Section 12.b., Line 27-28: Delete "in the county where the target company has its principal business office in the State"

Page 16, Section 13., Line 1: Before the word "Penalties" insert "Criminal"

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Page 16, New Section 14:

"14. Civil Penalties.

In addition to any other sanctions herein or otherwise provided by law, the bureau chief, upon notice and hearing, may impose a penalty not exceeding \$10,000 for any violation of this act or of any rule or regulation duly issued hereunder. Such penalty shall be recovered by and in the name of the bureau chief in a civil action by a summary proceeding under the Penalty Enforcement Law (C. 2A:58-1 et seq.) in the Superior Court, County Court, county district court or a municipal court, all of which shall have jurisdiction to enforce said Penalty Enforcement Law in connection with this act. Where any violation of this act or of any rule or regulation duly issued hereunder is of a continuing nature, each day during which such violation continues after the date fixed by the bureau chief in any order or notice for the correction or termination of such violation, shall constitute an additional separate and distinct offense, except during the time an appeal from said order or notice may be taken or is pending."

Page 17, Section 13.e., Lines 30-32: Delete entirely.

Page 17, Section 14, Line 1: Delete numeral "17" and insert numeral "15".

Page 17, Section 15.a., Lines 7-8: Delete "is measured either" and insert after the words "market value" "is the greater of the market value".

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Page 18, Section 15.c., Line 28: Delete "or" insert "and".

Page 18, Section 15.d., Line 34: Delete "action" and insert "section".

Page 18, New Section 16:

"16. Conflict with Other Laws.

All laws and parts of laws of this State inconsistent with this act are hereby superseded with respect to matters covered by this act; provided, however, that, nothing contained herein shall limit the power of the State to proceed against any person for conduct which constitutes a crime under any other statute, and further provided that, nothing contained herein shall affect the applicability of the New Jersey Anti-trust Act (N.J.S.A. 56:9-1 et seq.) or the rights conferred therein."

Page 19, Line 1: Delete "15." and insert numeral "17."

Page 19, Section 17.a., Lines 5-10: Delete everything after "Superior Court" through "stipulation".

Page 19, Section 17.a., Line 5: After the words "appeal to the" insert "Appellate Division of".

Page 20, Section 17.c., Line 21: Delete "commissioner" and insert "bureau chief".

Page 20, Section 16, Line 1: Delete numeral "16" and insert numeral "18".

Page 20, Section 16, Line 14: After the words "bank holding company" insert ",,".

Page 20, Line 2: Delete numeral "17" and insert "19. Application of Takeover Bid Disclosure Law".

Page 20, Section 19.c, Line 17A: Insert "c. Where a takeover bid or takeover offer subject to the filing requirements of Section 3 of this act is also subject to similar laws of another state, or to review by Federal agencies, or other State agencies; the bureau chief may, at his discretion, hold joint hearings and otherwise cooperate with such State and Federal agencies, provided such cooperation furthers the purposes of this act and does not impair the ability of the bureau chief to proceed and make all requisite findings under section 4 of this act."

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Page 20, New Section 19, Line 18: Delete letter "c." and insert "d."

Page 20, Section 18, Line 1: Insert new section 20. as follows:

"20. There is hereby appropriated the sum of \$45,000 for the purposes of administering this act."

Page 20, Section 18, Line 1: Delete numeral "18" and insert numeral "21" and add title "Effective Date."

Respectfully,

GOVERNOR

ATTEST:

Executive Secretary to the Governor