

14A:6-1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 14A:6-1 et al

(Corporations--
directors--may
consider overall
effects of
takeover)

LAWS OF: 1989

CHAPTER: 106

Bill No: S3295

Sponsor(s): Lesniak

Date Introduced: February 6, 1989

Committee: Assembly: -----

Senate: Labor, Industry & Professions

Amended during passage: Yes Amendments during passage denoted by asterisks

Date of Passage: Assembly: May 15, 1989

Senate: April 24, 1989

Date of Approval: June 29, 1989

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: Yes

Following were printed:

Reports: No

Hearings: No

(Over)

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See newsclipping--attached:

"Kean signs take-over measure," 6-30-89 Asbury Park Press.

"N.J. firm given muscle to battle takeovers," 7-1-89 Home News.

See 124 N.J.L.J. 1185, Schenkman, Russell, "New Jersey shores up against hostile takeovers."

P.L.1989, CHAPTER 106, approved June 29, 1989
1989 Senate No. 3295 (Second Reprint)

1 AN ACT concerning the duties of directors of corporations ¹and
the protection of shareholder rights¹ and amending
3 N.J.S.14A:6-1 ¹and P.L.1986, c.74¹.

5 BE IT ENACTED by the Senate and General Assembly of the
State of New Jersey:

7 1. N.J.S.14A:6-1 is amended to read as follows:
14A:6-1. Board of directors.

9 (1) The business and affairs of a corporation shall be managed
by or under the direction of its board, except as in this act or in
11 its certificate of incorporation otherwise provided. Directors
shall be at least 18 years of age and need not be United States
13 citizens or residents of this State or shareholders of the
corporation unless the certificate of incorporation or by-laws so
15 require. The certificate of incorporation or by-laws may
prescribe other qualifications for directors.

17 (2) In discharging his duties to the corporation and in
determining what he reasonably believes to be in the best interest
19 of the corporation, a director may, in addition to considering the
effects of any action on shareholders, consider any of the
21 following: (a) the effects of the action on the corporation's
employees, suppliers, creditors and customers; (b) the effects of
23 the action on the community in which the corporation operates;
and (c) the long term as well as the short-term interests of the
25 corporation and its shareholders, including the possibility that
these interests may best be served by the continued independence
27 of the corporation.

(3) If on the basis of the factors described in subsection (2) of
29 this section, the board of directors determines that any proposal
or offer to acquire the corporation is not in the best interest of
31 the corporation, it may reject such proposal or offer. If the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLI committee amendments adopted February 23, 1989.

² Senate floor amendments adopted April 17, 1989.

1 board of directors determines to reject any such proposal or
2 offer, the board of directors shall have no obligation to facilitate.
3 remove any barriers to, or refrain from impeding the proposal or
4 offer.

5 (cf: P.L.1988, c.94, s.24)

6 12. Section 3 of P.L.1986, c.74 (C.14A:10A-3) is amended to
7 read as follows:

8 3. As used in this act:

9 a. "Affiliate" means a person that directly, or indirectly
10 through one or more intermediaries, controls, or is controlled by,
11 or is under common control with, a specified person.

12 b. "Announcement date," when used in reference to any
13 business combination, means the date of the first public
14 announcement of the final, definitive proposal for that business
15 combination.

16 c. "Associate," when used to indicate a relationship with any
17 person, means (1) any corporation or organization of which that
18 person is an officer or partner or is, directly or indirectly, the
19 beneficial owner of 10% or more of any class of voting stock, (2)
20 any trust or other estate in which that person has a substantial
21 beneficial interest or as to which that person serves as trustee or
22 in a similar fiduciary capacity, or (3) any relative or spouse of
23 that person, or any relative of that spouse, who has the same
24 home as that person.

25 d. "Beneficial owner," when used with respect to any stock,
26 means a person:

27 (1) that, individually or with or through any of its affiliates or
28 associates, beneficially owns that stock, directly or indirectly;

29 (2) that, individually or with or through any of its affiliates or
30 associates, has (a) the right to acquire that stock (whether that
31 right is exercisable immediately or only after the passage of
32 time), pursuant to any agreement, arrangement or understanding
33 (whether or not in writing), or upon the exercise of conversion
34 rights, exchange rights, warrants or options, or otherwise;
35 provided, however, that a person shall not be deemed the
36 beneficial owner of stock tendered pursuant to a tender or
37 exchange offer made by that person or any of that person's
38 affiliates or associates until that tendered stock is accepted for
39 purchase or exchange; or (b) the right to vote that stock pursuant

1 to any agreement, arrangement or understanding (whether or not
2 in writing); provided, however, that a person shall not be deemed
3 the beneficial owner of any stock under this subparagraph if the
4 agreement, arrangement or understanding to vote that stock (i)
5 arises solely from a revocable proxy or consent given in response
6 to a proxy or consent solicitation made in accordance with the
7 applicable rules and regulations under the Exchange Act, and (ii)
8 is not then reportable on a Schedule 13D under the Exchange Act
9 (or any comparable or successor report); or

10 (3) that has any agreement, arrangement or understanding
11 (whether or not in writing), for the purpose of acquiring, holding,
12 voting (except voting pursuant to a revocable proxy or consent as
13 described in subparagraph (b) of paragraph (2) of this subsection),
14 or disposing of that stock with any other person that beneficially
15 owns, or whose affiliates or associates beneficially own, directly
16 or indirectly, that stock.

17 e. "Business combination," when used in reference to any
18 resident domestic corporation and any interested stockholder of
19 that resident domestic corporation, means:

20 (1) any merger or consolidation of that resident domestic
21 corporation or any subsidiary of that resident domestic
22 corporation with (a) that interested stockholder or (b) any other
23 corporation (whether or not it is an interested stockholder of that
24 resident domestic corporation) which is, or after a merger or
25 consolidation would be, an affiliate or associate of that
26 interested stockholder;

27 (2) any sale, lease, exchange, mortgage, pledge, transfer or
28 other disposition (in one transaction or a series of transactions) to
29 or with that interested stockholder or any affiliate or associate
30 of that interested stockholder of assets of that resident domestic
31 corporation or any subsidiary of that resident domestic
32 corporation (a) having an aggregate market value equal to 10% or
33 more of the aggregate market value of all the assets, determined
34 on a consolidated basis, of that resident domestic corporation, (b)
35 having an aggregate market value equal to 10% or more of the
36 aggregate market value of all the outstanding stock of that
37 resident domestic corporation, or (c) representing 10% or more of
38 the earning power or income, determined on a consolidated basis,
39 of that resident domestic corporation;

1 (3) the issuance or transfer by that resident domestic
3 corporation or any subsidiary of that resident domestic
5 corporation (in one transaction or a series of transactions) of any
7 stock of that resident domestic corporation or any subsidiary of
9 that resident domestic corporation which has an aggregate
11 market value equal to 5% or more of the aggregate market value
13 of all the outstanding stock of that resident domestic corporation
15 to that interested stockholder or any affiliate or associate of that
17 interested stockholder, except pursuant to the exercise of
19 warrants or rights to purchase stock offered, or a dividend or
21 distribution paid or made, pro rata to all stockholders of that
23 resident domestic corporation;

25 (4) the adoption of any plan or proposal for the liquidation or
27 dissolution of that resident domestic corporation proposed by, on
29 behalf of or pursuant to any agreement, arrangement or
31 understanding (whether or not in writing) with[,] that interested
33 stockholder or any affiliate or associate of that interested
35 stockholder;

37 (5) any reclassification of securities (including, without
39 limitation, any stock split, stock dividend, or other distribution of
41 stock in respect of stock, or any reverse stock split), or
43 recapitalization of that resident domestic corporation, or any
45 merger or consolidation of that resident domestic corporation
47 with any subsidiary of that resident domestic corporation, or any
49 other transaction (whether or not with, or into, or otherwise
51 involving that interested stockholder), proposed by, on behalf of
53 or pursuant to any agreement, arrangement or understanding
55 (whether or not in writing) with[,] that interested stockholder or
57 any affiliate or associate of that interested stockholder, which
59 has the effect, directly or indirectly, of increasing the
61 proportionate share of the outstanding shares of any class or
63 series of stock or securities convertible into voting stock of that
65 resident domestic corporation or any subsidiary of that resident
67 domestic corporation which is directly or indirectly owned by
69 that interested stockholder or any affiliate or associate of that
71 interested stockholder, except as a result of immaterial changes
73 due to fractional share adjustments; or

75 (6) any receipt by that interested stockholder or any affiliate
77 or associate of that interested stockholder of the benefit,

1 directly or indirectly (except proportionately as a stockholder of
that resident domestic corporation), of any loans, advances,
3 guarantees, pledges or other financial assistance or any tax
credits or other tax advantages provided by or through that
5 corporation; provided, however, that the term "business
combination" shall not be deemed to include the receipt of any of
7 the foregoing benefits by that resident domestic corporation or
any of that corporation's ²[subsidiaries] affiliates² arising from
9 transactions (such as intercompany loans or tax sharing
arrangements) between that resident domestic corporation and its
11 ²[subsidiaries] affiliates² in the ordinary course of business.

f. "Common stock" means any stock other than preferred
13 stock.

g. "Consummation date," with respect to any business
15 combination, means the date of consummation of that business
combination.

17 h. "Control," including the terms "controlling" "controlled by"
and "under common control with," means the possession, directly
19 or indirectly, of the power to direct or cause the direction of the
management and policies of a person, whether through the
21 ownership of voting stock, by contract, or otherwise. A person's
beneficial ownership of 10% or more of the voting power of a
23 corporation's outstanding voting stock shall create a presumption
that that person has control of that corporation. Notwithstanding
25 the foregoing in this subsection, a person shall not be deemed to
have control of a corporation if that person holds voting power, in
27 good faith and not for the purpose of circumventing this section,
as an agent, bank, broker, nominee, custodian or trustee for one
29 or more beneficial owners who do not individually or as a group
have control of that corporation.

31 i. "Exchange Act" means the "Securities Exchange Act of
1934," 48 Stat. 881 (15 U.S.C. § 78a et seq.) as the same has been
33 or hereafter may be amended from time to time.

j. "Interested stockholder," when used in reference to any
35 resident domestic corporation, means any person (other than that
resident domestic corporation or any subsidiary of that resident
37 domestic corporation (or a bank holding company as defined in
the "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C.
39 § 1841 et seq.) as amended, or any subsidiary of a bank holding

1 company]) that:

3 (1) is the beneficial owner, directly or indirectly, of 10% or
more of the voting power of the outstanding voting stock of that
resident domestic corporation; or

5 (2) is an affiliate or associate of that resident domestic
corporation and at any time within the five-year period
7 immediately prior to the date in question was the beneficial
owner, directly or indirectly, of 10% or more of the voting power
9 of the then outstanding stock of that resident domestic
corporation. For the purpose of determining whether a person is
11 an interested stockholder pursuant to this subsection, the number
of shares of voting stock of that resident domestic corporation
13 deemed to be outstanding shall include shares deemed to be
beneficially owned by the person through application of
15 subsection d. of this section but shall not include any other
unissued shares of voting stock of that resident domestic
17 corporation which may be issuable pursuant to any agreement,
arrangement or understanding, or upon exercise of conversion
19 rights, warrants or options, or otherwise.

k. "Market value," when used in reference to property of any
21 resident domestic corporation, means:

(1) in the case of stock, the highest closing sale price during
23 the 30-day period immediately preceding the date in question of
a share of that stock on the composite tape for New York Stock
25 Exchange-listed stocks, or, if that stock is not quoted on that
composite tape or if that stock is not listed on that exchange, on
27 the principal United States securities exchange registered under
the Exchange Act on which that stock is listed, or, if that stock is
29 not listed on any such exchange, the highest closing bid quotation
with respect to a share of that stock during the 30-day period
31 preceding the date in question on the National Association of
Securities Dealers, Inc. Automated Quotations System, or any
33 system then in use, or if no such quotations are available, the fair
market value on the date in question of a share of that resident
35 domestic stock as determined by the board of directors of that
corporation in good faith; and

37 (2) in the case of property other than cash or stock, the fair
market value of that property on the date in question as
39 determined by the board of directors of that resident domestic

1 corporation in good faith.

3 l. "Preferred stock" means any class or series of stock of a
resident domestic corporation which under the bylaws or
5 certificate of incorporation of that resident domestic corporation
is entitled to receive payment of dividends prior to any payment
7 of dividends on some other class or series of stock, or is entitled
in the event of any voluntary liquidation, dissolution or winding
9 up of the resident domestic corporation to receive payment or
distribution of a preferential amount before any payments or
distributions are received by some other class or series of stock.

11 m. "Resident domestic corporation" means an issuer of voting
stock which is organized under the laws of this State and, as of
13 the stock acquisition date in question, has its principal executive
offices located in this State or significant business operations
15 located in this State.

n. "Stock" means:

17 (1) any stock or similar security, any certificate of interest,
any participation in any profit sharing agreement, any voting
19 trust certificate, or any certificate of deposit for stock; and

21 (2) any security convertible, with or without consideration,
into stock, or any warrant, call or other option or privilege of
buying stock without being bound to do so, or any other security
23 carrying any right to acquire, subscribe to or purchase stock.

o. "Stock acquisition date," with respect to any person and any
25 resident domestic corporation, means the date that person first
becomes an interested stockholder of that resident domestic
27 corporation.

p. "Subsidiary" of any resident domestic corporation means
29 any other corporation of which voting stock having a majority of
the votes entitled to be cast is owned, directly or indirectly, by
31 that resident domestic corporation.

q. "Voting stock" means shares of capital stock of a
33 corporation entitled to vote generally in the election of
directors.¹

35 (cf: P.L.1987, c.380, s.1)

37 ¹³. Section 6 of P.L.1986, c.74 (C.14A:10A-6) is amended to
read as follows:

39 6. a. Unless the certificate of incorporation provides
otherwise, the provisions of this act shall not apply to any

1 business combination of a resident domestic corporation with an
2 interested stockholder if the resident domestic corporation did
3 not have a class of voting stock registered or traded on a national
4 securities exchange or registered with the Securities and
5 Exchange Commission pursuant to section 12(g) of the Exchange
6 Act, 48 Stat. 892 (15 U.S.C. §781) on that interested
7 stockholder's stock acquisition date.

8 b. Unless the certificate of incorporation provides otherwise
9 the provisions of this act shall not apply to any business
10 combination with an interested stockholder who was an interested
11 stockholder prior to the effective date of this act unless
12 subsequent thereto that interested stockholder increased his or
13 its interested stockholder's proportion of the voting power of the
14 resident domestic corporation's outstanding voting stock to a
15 proportion in excess of the proportion of voting power that
16 interested stockholder held prior to the effective date of this act.

17 c. (Deleted by amendment, P.L.1987, c.380.)

18 d. The provisions of this act shall not apply to any business
19 combination of a resident domestic corporation with an
20 interested stockholder of that corporation which became an
21 interested stockholder inadvertently, if such interested
22 stockholder (1) as soon as practicable divests itself or himself of
23 a sufficient amount of the voting stock of that resident domestic
24 corporation so that he or it no longer is the beneficial owner,
25 directly or indirectly, of 10% or more of the voting power of the
26 outstanding voting stock of that corporation, or a subsidiary of
27 that resident domestic corporation, and (2) would not at any time
28 within the five-year period preceding the announcement date
29 with respect to that business combination have been an interested
30 stockholder but for that inadvertent acquisition.

31 e. [The provisions of this act shall not apply to any business
32 combination of a resident domestic corporation which is a "bank
33 holding company" as defined in the "Bank Holding Company Act
34 of 1956," 70 Stat. 133 (12 U.S.C. § 1841 et seq.) as amended, or a
35 subsidiary of the bank holding company with an interested
36 stockholder of that resident domestic corporation.] (Deleted by
37 amendment, P.L. , c.)(now pending before the Legislature
38 as this bill)

39 f. The provisions of this act shall not apply to any business

1 combination of a resident domestic corporation with an
2 interested stockholder of that corporation which, prior to August
3 5, 1986, became the beneficial owner of more than 50% of the
4 voting power of the outstanding voting stock of that resident
5 domestic corporation by reason of a purchase of voting stock
6 directly from that resident domestic corporation in a transaction
7 approved by the board of directors of that resident domestic
8 corporation, provided that, at the time of the approval, none of
9 the directors of the resident domestic corporation was an
10 employee, officer, director, shareholder, affiliate or associate of
11 the interested stockholder.

12 g. The provisions of this act shall not apply to any business
13 combination of a resident domestic corporation with an
14 interested stockholder of that corporation which became an
15 interested stockholder on or after August 5, 1986 and before
16 January 1, 1987.¹

17 (cf: P.L.1988, c.155, s.1)

18 ¹[2.] 4.¹ This act shall take effect immediately.

19

21

COMMERCE AND INDUSTRY

Corporations

23

24 Permits board of directors to consider effects of its decisions on
25 employees, suppliers, creditors, customers and the community in
26 which it operates, in addition to shareholders; applies the "New
27 Jersey Shareholders' Protection Act" to banks.

SENATE, No. 3295
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 6, 1989

By Senator LESNIAK

1 **AN ACT** concerning the duties of directors of corporations and
amending N.J.S.14A:6-1.

3

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

7 1. N.J.S.14A:6-1 is amended to read as follows:

14A:6-1. Board of directors.

9 **(1)** The business and affairs of a corporation shall be managed
by or under the direction of its board, except as in this act or in
its certificate of incorporation otherwise provided. Directors
11 shall be at least 18 years of age and need not be United States
citizens or residents of this State or shareholders of the
13 corporation unless the certificate of incorporation or by-laws so
require. The certificate of incorporation or by-laws may
15 prescribe other qualifications for directors.

17 **(2)** In discharging his duties to the corporation and in
determining what he reasonably believes to be in the best interest
of the corporation, a director may, in addition to considering the
19 effects of any action on shareholders, consider any of the
following: (a) the effects of the action on the corporation's
21 employees, suppliers, creditors and customers; (b) the effects of
the action on the community in which the corporation operates;
23 and (c) the long term as well as the short-term interests of the
corporation and its shareholders, including the possibility that
25 these interests may best be served by the continued independence
of the corporation.

27 **(3)** If on the basis of the factors described in subsection (2) of
this section, the board of directors determines that any proposal
29 or offer to acquire the corporation is not in the best interest of
the corporation, it may reject such proposal or offer. If the

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

Matter underlined thus is new matter.

1 board of directors determines to reject any such proposal or
2 offer, the board of directors shall have no obligation to facilitate,
3 remove any barriers to, or refrain from impeding the proposal or
4 offer.

5 (cf: P.L.1988, c.94, s.24)

6 2. This act shall take effect immediately.

7

8 *SPONSOR'S* STATEMENT

9
10
11 This bill permits the fiduciary duties of directors under the
12 "New Jersey Business Corporation Act" to take into
13 consideration factors beyond the short-term economic interests
14 of the corporation's shareholders, including the interests of the
15 corporation's employees, suppliers, creditors and customers, the
16 communities in which the corporation operates and the long-term
17 interests of the corporation's shareholders. The bill also allows a
18 board of directors, after considering any such factors, to reject
19 an acquisition proposal. In rejecting such acquisition proposal,
20 the bill provides that a board of directors has no duty to
21 facilitate, remove any barriers to or refrain from impeding the
22 acquisition proposal.

23

24
25 COMMERCE AND INDUSTRY

26 Corporations

27

28 Provides that board of directors may include consideration of
29 effects of its decisions on employees, suppliers, creditors and
30 customers, in addition to shareholders, of the corporation and on
31 the community in which it operates.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3295

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1989

The Senate Labor, Industry and Professions Committee reports favorably and with committee amendments Senate, No. 3295.

This bill permits a director of a corporation incorporated under the "New Jersey Business Corporation Act" (N.J.S.14A:1-1 et seq.) to take into consideration factors beyond the economic interests of the corporation's shareholders in discharging his duties to the corporation. These factors include: (1) the effects of an action on the corporation's employees, suppliers, creditors and customers; (2) the effects of an action on the community in which the corporation operates; and (3) the long-term as well as the short-term interests of the corporation and its shareholders.

If on the basis of these factors, the board of directors determines that a proposal or offer to acquire the corporation is not in the best interests of the corporation, the bill provides that the board may reject the proposal or offer and that, if the board does reject the offer or proposal, it has no obligation to facilitate, remove any barriers to or refrain from impeding the acquisition proposal or offer.

While consideration by a director of any of the factors enumerated in paragraphs (a) and (b) of subsection (2) of section 1 of this bill is expressly intended to be discretionary and not mandatory, this bill is designed to encourage consideration of these factors in determining the best interests of the corporation. At the same time, since circumstances facing a board will vary on a case by case basis, the Legislature would not deem it a breach of a director's duty to the corporation if a director, in determining the best interests of the corporation, did not consider such factors.

The committee amended the bill to provide that the provisions of the "New Jersey Shareholders' Protection Act," P.L.1986, c.74 (C.14A:10A-1 et seq.), apply to bank holding companies.

[FIRST REPRINT]

SENATE, No. 3295

STATE OF NEW JERSEY

L. 1989
C. 1986
1989-1

INTRODUCED FEBRUARY 6, 1989

By Senator LESNIAK

1 AN ACT concerning the duties of directors of corporations ¹and
the protection of shareholder rights¹ and amending N.J.S.
3 14A:6-1 ¹and P.L. 1986, c. 74¹.

5 BE IT ENACTED by the Senate and General Assembly of the
State of New Jersey:

7 1. N.J.S.14A:6-1 is amended to read as follows:
14A:6-1. Board of directors.

9 (1) The business and affairs of a corporation shall be managed
by or under the direction of its board, except as in this act or in
11 its certificate of incorporation otherwise provided. Directors
shall be at least 18 years of age and need not be United States
13 citizens or residents of this State or shareholders of the
corporation unless the certificate of incorporation or by-laws so
15 require. The certificate of incorporation or by-laws may
prescribe other qualifications for directors.

17 (2) In discharging his duties to the corporation and in
determining what he reasonably believes to be in the best interest
19 of the corporation, a director may, in addition to considering the
effects of any action on shareholders, consider any of the
21 following: (a) the effects of the action on the corporation's
employees, suppliers, creditors and customers; (b) the effects of
23 the action on the community in which the corporation operates;
and (c) the long term as well as the short-term interests of the
25 corporation and its shareholders, including the possibility that
these interests may best be served by the continued independence
27 of the corporation.

(3) If on the basis of the factors described in subsection (2) of
29 this section, the board of directors determines that any proposal
or offer to acquire the corporation is not in the best interest of
31 the corporation, it may reject such proposal or offer. If the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLI committee amendments adopted February 23, 1989.

1 board of directors determines to reject any such proposal or
2 offer, the board of directors shall have no obligation to facilitate,
3 remove any barriers to, or refrain from impeding the proposal or
4 offer.

5 (cf: P.L.1988, c.94, s.24)

6 12. Section 3 of P.L.1986, c.74 (C.14A:10A-3) is amended to
7 read as follows:

8 3. As used in this act:

9 a. "Affiliate" means a person that directly, or indirectly
10 through one or more intermediaries, controls, or is controlled by,
11 or is under common control with, a specified person.

12 b. "Announcement date," when used in reference to any
13 business combination, means the date of the first public
14 announcement of the final, definitive proposal for that business
15 combination.

16 c. "Associate," when used to indicate a relationship with any
17 person, means (1) any corporation or organization of which that
18 person is an officer or partner or is, directly or indirectly, the
19 beneficial owner of 10% or more of any class of voting stock, (2)
20 any trust or other estate in which that person has a substantial
21 beneficial interest or as to which that person serves as trustee or
22 in a similar fiduciary capacity, or (3) any relative or spouse of
23 that person, or any relative of that spouse, who has the same
24 home as that person.

25 d. "Beneficial owner," when used with respect to any stock,
26 means a person:

27 (1) that, individually or with or through any of its affiliates or
28 associates, beneficially owns that stock, directly or indirectly;

29 (2) that, individually or with or through any of its affiliates or
30 associates, has (a) the right to acquire that stock (whether that
31 right is exercisable immediately or only after the passage of
32 time), pursuant to any agreement, arrangement or understanding
33 (whether or not in writing), or upon the exercise of conversion
34 rights, exchange rights, warrants or options, or otherwise;
35 provided, however, that a person shall not be deemed the
36 beneficial owner of stock tendered pursuant to a tender or
37 exchange offer made by that person or any of that person's
38 affiliates or associates until that tendered stock is accepted for
39 purchase or exchange: or (b) the right to vote that stock pursuant

1 to any agreement, arrangement or understanding (whether or not
in writing); provided, however, that a person shall not be deemed
3 the beneficial owner of any stock under this subparagraph if the
agreement, arrangement or understanding to vote that stock (i)
5 arises solely from a revocable proxy or consent given in response
to a proxy or consent solicitation made in accordance with the
7 applicable rules and regulations under the Exchange Act, and (ii)
is not then reportable on a Schedule 13D under the Exchange Act
9 (or any comparable or successor report); or

(3) that has any agreement, arrangement or understanding
11 (whether or not in writing), for the purpose of acquiring, holding,
voting (except voting pursuant to a revocable proxy or consent as
13 described in subparagraph (b) of paragraph (2) of this subsection),
or disposing of that stock with any other person that beneficially
15 owns, or whose affiliates or associates beneficially own, directly
or indirectly, that stock.

17 e. "Business combination," when used in reference to any
resident domestic corporation and any interested stockholder of
19 that resident domestic corporation, means:

(1) any merger or consolidation of that resident domestic
21 corporation or any subsidiary of that resident domestic
corporation with (a) that interested stockholder or (b) any other
23 corporation (whether or not it is an interested stockholder of that
resident domestic corporation) which is, or after a merger or
25 consolidation would be, an affiliate or associate of that
interested stockholder;

27 (2) any sale, lease, exchange, mortgage, pledge, transfer or
other disposition (in one transaction or a series of transactions) to
29 or with that interested stockholder or any affiliate or associate
of that interested stockholder of assets of that resident domestic
31 corporation or any subsidiary of that resident domestic
corporation (a) having an aggregate market value equal to 10% or
33 more of the aggregate market value of all the assets, determined
on a consolidated basis, of that resident domestic corporation, (b)
35 having an aggregate market value equal to 10% or more of the
aggregate market value of all the outstanding stock of that
37 resident domestic corporation, or (c) representing 10% or more of
the earning power or income, determined on a consolidated basis,
39 of that resident domestic corporation;

1 (3) the issuance or transfer by that resident domestic
2 corporation or any subsidiary of that resident domestic
3 corporation (in one transaction or a series of transactions) of any
4 stock of that resident domestic corporation or any subsidiary of
5 that resident domestic corporation which has an aggregate
6 market value equal to 5% or more of the aggregate market value
7 of all the outstanding stock of that resident domestic corporation
8 to that interested stockholder or any affiliate or associate of that
9 interested stockholder, except pursuant to the exercise of
10 warrants or rights to purchase stock offered, or a dividend or
11 distribution paid or made, pro rata to all stockholders of that
12 resident domestic corporation;

13 (4) the adoption of any plan or proposal for the liquidation or
14 dissolution of that resident domestic corporation proposed by, on
15 behalf of or pursuant to any agreement, arrangement or
16 understanding (whether or not in writing) with[,] that interested
17 stockholder or any affiliate or associate of that interested
18 stockholder;

19 (5) any reclassification of securities (including, without
20 limitation, any stock split, stock dividend, or other distribution of
21 stock in respect of stock, or any reverse stock split), or
22 recapitalization of that resident domestic corporation, or any
23 merger or consolidation of that resident domestic corporation
24 with any subsidiary of that resident domestic corporation, or any
25 other transaction (whether or not with, or into, or otherwise
26 involving that interested stockholder), proposed by, on behalf of
27 or pursuant to any agreement, arrangement or understanding
28 (whether or not in writing) with[,] that interested stockholder or
29 any affiliate or associate of that interested stockholder, which
30 has the effect, directly or indirectly, of increasing the
31 proportionate share of the outstanding shares of any class or
32 series of stock or securities convertible into voting stock of that
33 resident domestic corporation or any subsidiary of that resident
34 domestic corporation which is directly or indirectly owned by
35 that interested stockholder or any affiliate or associate of that
36 interested stockholder, except as a result of immaterial changes
37 due to fractional share adjustments; or

38 (6) any receipt by that interested stockholder or any affiliate
39 or associate of that interested stockholder of the benefit,

1 directly or indirectly (except proportionately as a stockholder of
that resident domestic corporation), of any loans, advances,
3 guarantees, pledges or other financial assistance or any tax
credits or other tax advantages provided by or through that
5 corporation; provided, however, that the term "business
combination" shall not be deemed to include the receipt of any of
7 the foregoing benefits by that resident domestic corporation or
any of that corporation's subsidiaries arising from transactions
9 (such as intercompany loans or tax sharing arrangements)
between that resident domestic corporation and its subsidiaries in
11 the ordinary course of business.

f. "Common stock" means any stock other than preferred
13 stock.

g. "Consummation date," with respect to any business
15 combination, means the date of consummation of that business
combination.

17 h. "Control," including the terms "controlling" "controlled by"
and "under common control with," means the possession, directly
19 or indirectly, of the power to direct or cause the direction of the
management and policies of a person, whether through the
21 ownership of voting stock, by contract, or otherwise. A person's
beneficial ownership of 10% or more of the voting power of a
23 corporation's outstanding voting stock shall create a presumption
that that person has control of that corporation. Notwithstanding
25 the foregoing in this subsection, a person shall not be deemed to
have control of a corporation if that person holds voting power, in
27 good faith and not for the purpose of circumventing this section,
as an agent, bank, broker, nominee, custodian or trustee for one
29 or more beneficial owners who do not individually or as a group
have control of that corporation.

31 i. "Exchange Act" means the "Securities Exchange Act of
1934," 48 Stat. 881 (15 U.S.C. § 78a et seq.) as the same has been
33 or hereafter may be amended from time to time.

. j. "Interested stockholder," when used in reference to any
35 resident domestic corporation, means any person (other than that
resident domestic corporation or any subsidiary of that resident
37 domestic corporation [or a bank holding company as defined in
the "Bank Holding Company Act of 1956," 70 Stat. 133 (12 U.S.C.
39 § 1841 et seq.) as amended, or any subsidiary of a bank holding

1 company]) that:

3 (1) is the beneficial owner, directly or indirectly, of 10% or
more of the voting power of the outstanding voting stock of that
resident domestic corporation; or

5 (2) is an affiliate or associate of that resident domestic
corporation and at any time within the five-year period
7 immediately prior to the date in question was the beneficial
owner, directly or indirectly, of 10% or more of the voting power
9 of the then outstanding stock of that resident domestic
corporation. For the purpose of determining whether a person is
11 an interested stockholder pursuant to this subsection, the number
of shares of voting stock of that resident domestic corporation
13 deemed to be outstanding shall include shares deemed to be
beneficially owned by the person through application of
15 subsection d. of this section but shall not include any other
unissued shares of voting stock of that resident domestic
17 corporation which may be issuable pursuant to any agreement,
arrangement or understanding, or upon exercise of conversion
19 rights, warrants or options, or otherwise.

21 k. "Market value," when used in reference to property of any
resident domestic corporation, means:

23 (1) in the case of stock, the highest closing sale price during
the 30-day period immediately preceding the date in question of
a share of that stock on the composite tape for New York Stock
25 Exchange-listed stocks, or, if that stock is not quoted on that
composite tape or if that stock is not listed on that exchange, on
27 the principal United States securities exchange registered under
the Exchange Act on which that stock is listed, or, if that stock is
29 not listed on any such exchange, the highest closing bid quotation
with respect to a share of that stock during the 30-day period
31 preceding the date in question on the National Association of
Securities Dealers, Inc. Automated Quotations System, or any
33 system then in use, or if no such quotations are available, the fair
market value on the date in question of a share of that resident
35 domestic stock as determined by the board of directors of that
corporation in good faith; and

37 (2) in the case of property other than cash or stock, the fair
market value of that property on the date in question as
39 determined by the board of directors of that resident domestic

1 corporation in good faith.

2 l. "Preferred stock" means any class or series of stock of a
3 resident domestic corporation which under the bylaws or
4 certificate of incorporation of that resident domestic corporation
5 is entitled to receive payment of dividends prior to any payment
6 of dividends on some other class or series of stock, or is entitled
7 in the event of any voluntary liquidation, dissolution or winding
8 up of the resident domestic corporation to receive payment or
9 distribution of a preferential amount before any payments or
10 distributions are received by some other class or series of stock.

11 m. "Resident domestic corporation" means an issuer of voting
12 stock which is organized under the laws of this State and, as of
13 the stock acquisition date in question, has its principal executive
14 offices located in this State or significant business operations
15 located in this State.

n. "Stock" means:

17 (1) any stock or similar security, any certificate of interest,
18 any participation in any profit sharing agreement, any voting
19 trust certificate, or any certificate of deposit for stock; and

20 (2) any security convertible, with or without consideration,
21 into stock, or any warrant, call or other option or privilege of
22 buying stock without being bound to do so, or any other security
23 carrying any right to acquire, subscribe to or purchase stock.

24 o. "Stock acquisition date," with respect to any person and any
25 resident domestic corporation, means the date that person first
26 becomes an interested stockholder of that resident domestic
27 corporation.

28 p. "Subsidiary" of any resident domestic corporation means
29 any other corporation of which voting stock having a majority of
30 the votes entitled to be cast is owned, directly or indirectly, by
31 that resident domestic corporation.

32 q. "Voting stock" means shares of capital stock of a
33 corporation entitled to vote generally in the election of
34 directors.¹

35 (cf: P.L.1987, c.380, s.1)

36 ¹3. Section 6 of P.L.1986, c.74 (C.14A:10A-6) is amended to
37 read as follows:

38 6. a.- Unless the certificate of incorporation provides
39 otherwise, the provisions of this act shall not apply to any

1 business combination of a resident domestic corporation with an
2 interested stockholder if the resident domestic corporation did
3 not have a class of voting stock registered or traded on a national
4 securities exchange or registered with the Securities and
5 Exchange Commission pursuant to section 12(g) of the Exchange
6 Act, 48 Stat. 892 (15 U.S.C. §781) on that interested
7 stockholder's stock acquisition date.

8 b. Unless the certificate of incorporation provides otherwise
9 the provisions of this act shall not apply to any business
10 combination with an interested stockholder who was an interested
11 stockholder prior to the effective date of this act unless
12 subsequent thereto that interested stockholder increased his or
13 its interested stockholder's proportion of the voting power of the
14 resident domestic corporation's outstanding voting stock to a
15 proportion in excess of the proportion of voting power that
16 interested stockholder held prior to the effective date of this act.

17 c. (Deleted by amendment, P.L.1987, c.380.)

18 d. The provisions of this act shall not apply to any business
19 combination of a resident domestic corporation with an
20 interested stockholder of that corporation which became an
21 interested stockholder inadvertently, if such interested
22 stockholder (1) as soon as practicable divests itself or himself of
23 a sufficient amount of the voting stock of that resident domestic
24 corporation so that he or it no longer is the beneficial owner,
25 directly or indirectly, of 10% or more of the voting power of the
26 outstanding voting stock of that corporation, or a subsidiary of
27 that resident domestic corporation, and (2) would not at any time
28 within the five-year period preceding the announcement date
29 with respect to that business combination have been an interested
30 stockholder but for that inadvertent acquisition.

31 e. [The provisions of this act shall not apply to any business
32 combination of a resident domestic corporation which is a "bank
33 holding company" as defined in the "Bank Holding Company Act
34 of 1956," 70 Stat. 133 (12 U.S.C. § 1841 et seq.) as amended, or a
35 subsidiary of the bank holding company with an interested
36 stockholder of that resident domestic corporation.] (Deleted by
37 amendment, P.L. , c. .)(now pending before the Legislature
38 as this bill)

39 f. The provisions of this act shall not apply to any business

1 combination of a resident domestic corporation with an
interested stockholder of that corporation which, prior to August
3 5, 1986, became the beneficial owner of more than 50% of the
voting power of the outstanding voting stock of that resident
5 domestic corporation by reason of a purchase of voting stock
directly from that resident domestic corporation in a transaction
7 approved by the board of directors of that resident domestic
corporation, provided that, at the time of the approval, none of
9 the directors of the resident domestic corporation was an
employee, officer, director, shareholder, affiliate or associate of
11 the interested stockholder.

g. The provisions of this act shall not apply to any business
13 combination of a resident domestic corporation with an
interested stockholder of that corporation which became an
15 interested stockholder on or after August 5, 1986 and before
January 1, 1987.¹

17 (cf: P.L.1988, c.155, s.1)

¹[2.] 4.¹ This act shall take effect immediately.

19

21

COMMERCE AND INDUSTRY

Corporations

23

Permits board of directors to consider effects of its decisions on
25 employees, suppliers, creditors, customers and the community in
which it operates, in addition to shareholders; applies the "New
27 Jersey Shareholders' Protection Act" to banks.



OFFICE OF THE GOVERNOR

NEWS RELEASE

Governor Thomas H. Kean
TRENTON, N.J. 08625
Release: THUR., 6/29/89

CN-001

Contact: BOB McHUGH
609-292-8956 OR 609-292-6000 EXT. 207

Governor Thomas H. Kean today signed the following legislation:

A-2772, sponsored by Assemblyman Patrick Roma, R-Bergen, and Senator Thomas Paterniti, D-Middlesex. The bill requires the full Parole Board to review parole recommendations for inmates convicted of first-degree murder. The bill arose out of the case of Thomas Trantino, convicted of the murder of two Lodi policemen, whose parole recommendation was overturned after review by the full board.

The bill takes effect immediately.

S-3295/A-4230, sponsored by Senator Raymond Lesniak, D-Union, and Assemblymen Garabed Haytaian, R-Warren, and John Rocco, R-Camden. The bill allows the board of directors of a corporation, in reviewing an acquisition offer or proposal, to review factors including the impact on employees, customers, suppliers and the local economy. The bill is designed to defend against hostile corporate takeovers.

The bill takes effect immediately.

S-2755, sponsored by Senator Carmen Orechio, D-Essex. The bill creates a special disability retirement allowance for members of the Police and Firemen's Retirement System who have received a heart transplant. Transplant patients under 55, with five or more years of service, could retire at 50 percent of final compensation.

The bill takes effect immediately.

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