

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 <sup>1</sup>and  
the protection of shareholder rights<sup>1</sup> and amending  
3 N.J.S.14A:6-1 <sup>1</sup>and P.L.1986, c.74<sup>1</sup>.

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:

<sup>1</sup> Senate SLI committee amendments adopted February 23, 1989.

<sup>2</sup> 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 <sup>2</sup>[subsidiaries] affiliates<sup>2</sup> arising from  
9 transactions (such as intercompany loans or tax sharing  
arrangements) between that resident domestic corporation and its  
11 <sup>2</sup>[subsidiaries] affiliates<sup>2</sup> 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.<sup>1</sup>

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

37 <sup>13</sup>. 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.<sup>1</sup>

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

18 <sup>1</sup>[2.] 4.<sup>1</sup> 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 <sup>1</sup>and  
the protection of shareholder rights<sup>1</sup> and amending N.J.S.  
3 14A:6-1 <sup>1</sup>and P.L. 1986, c. 74<sup>1</sup>.

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:

<sup>1</sup> 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  
not listed on any such exchange, the highest closing bid quotation  
29 with respect to a share of that stock during the 30-day period  
preceding the date in question on the National Association of  
31 Securities Dealers, Inc. Automated Quotations System, or any  
system then in use, or if no such quotations are available, the fair  
33 market value on the date in question of a share of that resident  
domestic stock as determined by the board of directors of that  
35 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.<sup>1</sup>

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

36 <sup>1</sup>3. 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.<sup>1</sup>

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

<sup>1</sup>[2.] 4.<sup>1</sup> 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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