

LEGISLATIVE HISTORY CHECKLIST

NJSA: 14A:10A-1

("Shareholders Protection Act"-- discourage hostile takeovers)

CHAPTER 74

Laws Of: 1986

Bill No: S1539

Sponsor(s): Van Wagner

Date Introduced: January 27, 1986

Committee: Assembly: -----

Senate: Labor, Industry and Professions

Amended during passage: Yes Substituted for A1953 (not attached since identical to S1539)

Date of Passage: Assembly: June 26, 1986

Senate: June 12, 1986

Date of Approval: August 5, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate amendments, adopted 5-15-86 (with statement)

Committee statement: Assembly No Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: Yes

974.90 New Jersey. Legislature. Senate. C822 Labor, Industry and Professions Committee. 1986 Public hearing on S1539, held 3-24-86 and 5-12-86. Trenton, 1986.

(OVER)

DEPOSITORY COPY Do Not Remove From Library

See newspaper clippings-- attached:

"Senator backs bill to shield firms from hostile takeover." 3-25-86 Trenton Times

"Reining in the raiders," 4-22-86 Star Ledger

"Bill goes after corporate raiders," 3-9-86 Star Ledger

"Kean signs bill controlling N.J. corporate takeovers," 8-6-86 Trenton times

Report, mentioned in Senate Committee Statement:

974.90 New Jersey. Office of Economic Policy.

C822 New Jersey Shareholders Protection

1987 Act: an economic evaluation: a report to the New Jersey Legislature. August, 1987. Trenton, 1987.

CHAPTER 24 LAWS OF N. J. 1986
APPROVED 8-5-86

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1539

STATE OF NEW JERSEY

INTRODUCED JANUARY 27, 1986

By Senator VAN WAGNER

Referred to Committee on Labor, Industry and Professions

AN ACT concerning the protection of shareholder rights, and
supplementing Title 14A of the New Jersey Statutes.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Shareholders Protection Act." The requirements of this act shall
3 be in addition to the requirements of applicable law, including
4 ***[the "New Jersey Business Corporation Act," P. L. 1968, c. 350**
5 **(C. 14A:1-1 et seq.)]*** **Title 14A of the New Jersey Statutes**
6 and any additional requirements contained in the certificate of
7 incorporation or bylaws of a resident domestic corporation with
8 respect to business combinations as defined herein.

1 **2. The Legislature hereby finds and declares it to be the public*
2 *policy of this State, the following:*

3 *a. Resident domestic corporations, as defined in this act, encom-*
4 *pass, represent and affect, through their ongoing business opera-*
5 *tions, a variety of constituencies including New Jersey shareholders,*
6 *employees, customers, suppliers and local communities and their*
7 *economies whose welfare is vital to the State's interests.*

8 *b. In order to promote such welfare, the regulation of the inter-*
9 *nal affairs of resident domestic corporations as reflected in the*
10 *laws of this State governing business corporations should allow*
11 *for the stable, long-term growth of resident domestic corporations.*

12 *c. Takeovers of public corporations financed largely through*
13 *debt to be repaid in the short-term by the sale of substantial assets*
14 *of the target corporation, in other states, have impaired local*

**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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted May 12, 1986.**

****—Senate amendments adopted May 15, 1986.**

15 *employment conditions and disrupted local commercial activity.*
 16 *These takeovers prevent shareholders from realizing the full value*
 17 *of their holdings through forced mergers and other coercive*
 18 *devices. The threat of these takeovers also deprives shareholders*
 19 *of value by forcing the adoption of short-term business strategies*
 20 *as well as defensive tactics which may not be in the public interest.**

1 ***[2.]*** *3.* As used in this act:

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

5 b. "Announcement date," when used in reference to any busi-
 6 ness combination, means the date of the first public announce-
 7 ment of the final, definitive proposal for that business combi-
 8 nation.

9 c. "Associate," when used to indicate a relationship with any
 10 person, means (1) any corporation or organization of which that
 11 person is an officer or partner or is, directly or indirectly, the
 12 beneficial owner of 10% or more of any class of voting stock,
 13 (2) any trust or other estate in which that person has a substan-
 14 tial beneficial interest or as to which that person serves as trustee
 15 or in a similar fiduciary capacity, or (3) any relative or spouse
 16 of that person, or any relative of that spouse, who has the same
 17 home as that person.

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

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

22 (2) that, individually or with or through any of its affiliates
 23 or associates, has (a) the right to acquire that stock (whether
 24 that right is exercisable immediately or only after the passage
 25 of time), pursuant to any agreement, arrangement or understand-
 26 ing (whether or not in writing), or upon the exercise of con-
 27 version rights, exchange rights, warrants or options, or other-
 28 wise; provided, however, that a person shall not be deemed the
 29 beneficial owner of stock tendered pursuant to a tender or ex-
 30 change offer made by that person or any of that person's affiliates
 31 or associates until that tendered stock is accepted for purchase
 32 or exchange; or (b) the right to vote that stock pursuant to any
 33 agreement, arrangement or understanding (whether or not in
 34 writing); provided, however, that a person shall not be deemed
 35 the beneficial owner of any stock under this subparagraph if the
 36 agreement, arrangement or understanding to vote that stock (i)

37 arises solely from a revocable proxy or consent given in response
38 to a proxy or consent solicitation made in accordance with the
39 applicable rules and regulations under the Exchange Act, and
40 (ii) is not then reportable on a Schedule 13D under the Exchange
41 Act (or any comparable or successor report); or

42 (3) that has any agreement, arrangement or understanding
43 (whether or not in writing), for the purpose of acquiring, hold-
44 ing, voting (except voting pursuant to a revocable proxy or
45 consent as described in subparagraph (b) of paragraph (2) of
46 this subsection, or disposing of that stock with any other person
47 that beneficially owns, or whose affiliates or associates beneficially
48 own, directly or indirectly, that stock.

49 e. "Business combination," when used in reference to any resi-
50 dent domestic corporation and any interested stockholder of that
51 resident domestic corporation, means:

52 (1) any merger or consolidation of that resident domestic corpo-
53 ration or any subsidiary of that resident domestic corporation with
54 (a) that interested stockholder or (b) any other corporation
55 (whether or not it is an interested stockholder of that resident do-
56 mestic corporation) which is, or after a merger or consolidation
57 would be, an affiliate or associate of that interested stockholder;

58 (2) any sale, lease, exchange, mortgage, pledge, transfer or
59 other disposition (in one transaction or a series of transactions)
60 to or with that interested stockholder or any affiliate or associate
61 of that interested stockholder of assets of that resident domestic
62 corporation or any subsidiary of that resident domestic corpora-
63 tion (a) having an aggregate market value equal to 10% or more
64 of the aggregate market value of all the assets, determined on a
65 consolidated basis, of that resident domestic corporation, (b)
66 having an aggregate market value equal to 10% or more of the
67 aggregate market value of all the outstanding stock of that
68 resident domestic corporation, or (c) representing 10% or more
69 of the earning power or income, determined on a consolidated
70 basis, of that resident domestic corporation;

71 (3) the issuance or transfer by that resident domestic corpora-
72 tion or any subsidiary of that resident domestic corporation (in
73 one transaction or a series of transactions) of any stock of that
74 resident domestic corporation or any subsidiary of that resident
75 domestic corporation which has an aggregate market value equal
76 to 5% or more of the aggregate market value of all the outstanding
77 stock of that resident domestic corporation to that interested
78 stockholder or any affiliate or associate of that interested stock-

79 holder, except pursuant to the exercise of warrants or rights to
80 purchase stock offered, or a dividend or distribution paid or made,
81 pro rata to all stockholders of that resident domestic corporation;

82 (4) the adoption of any plan or proposal for the liquidation or
83 dissolution of that resident domestic corporation proposed by, on
84 behalf of or pursuant to any agreement, arrangement or under-
85 standing (whether or not in writing) with, that interested stock-
86 holder or any affiliate or associate of that interested stockholder;

87 (5) any reclassification of securities (including, without limita-
88 tion, any stock split, stock dividend, or other distribution of stock
89 in respect of stock, or any reverse stock split), or recapitalization
90 of that resident domestic corporation, or any merger or consolida-
91 tion of that resident domestic corporation with any subsidiary of
92 that resident domestic corporation, or any other transaction
93 (whether or not with, or into, or otherwise involving that in-
94 terested stockholder), proposed by, on behalf of or pursuant to
95 any agreement, arrangement or understanding (whether or not in
96 writing) with, that interested stockholder or any affiliate or
97 associate of that interested stockholder, which has the effect,
98 directly or indirectly, of increasing the proportionate share of the
99 outstanding shares of any class or series of stock or securities
100 convertible into voting stock of that resident domestic corporation
101 or any subsidiary of that resident domestic corporation which is
102 directly or indirectly owned by that interested stockholder or any
103 affiliate or associate of that interested stockholder, except as a
104 result of immaterial changes due to fractional share adjustments;
105 or

106 (6) any receipt by that interested stockholder or any affiliate or
107 associate of that interested stockholder of the benefit, directly or
108 indirectly (except proportionately as a stockholder of that resident
109 domestic corporation) of any loans, advances, guarantees, pledges
110 or other financial assistance or any tax credits or other tax
111 advantages provided by or through that corporation.

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

113 g. "Consummation date," with respect to any business combina-
114 tion, means the date of consummation of that business combination.

115 h. "Control," including the terms "controlling" "controlled
116 by" and "under common control with," means the possession,
117 directly or indirectly, of the power to direct or cause the direction
118 of the management and policies of a person, whether through the
119 ownership of voting stock, by contract, or otherwise. A person's
120 beneficial ownership of 10% or more of the voting power of a

121 corporation's outstanding voting stock shall create a presumption
 122 that that person has control of that corporation. Notwithstanding
 123 the foregoing in this subsection, a person shall not be deemed to
 124 have control of a corporation if that person holds voting power,
 125 in good faith and not for the purpose of circumventing this section,
 126 as an agent, bank, broker, nominee, custodian or trustee for one
 127 or more beneficial owners who do not individually or as a group
 128 have control of that corporation.

129 i. "Exchange Act" means the "Securities Exchange Act of
 130 1934", 48 stat 881, (15 U. S. C. 78a et seq.) as the same has been
 131 or hereafter may be amended from time to time.

132 j. "Interested stockholder," when used in reference to any
 133 resident domestic corporation, means any person (other than that
 134 resident domestic corporation or any subsidiary of that resident
 135 domestic corporation ***or a bank holding company as defined in the*
 135A *"Bank Holding Company Act of 1956," 70 Stat. 133, (12 U. S. C.*
 135B *§ 1841 et seq.) as amended, or any subsidiary of a bank holding*
 135C *company***) that:

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

139 (2) is an affiliate or associate of that resident domestic corpora-
 140 tion and at any time within the five-year period immediately prior
 141 to the date in question was the beneficial owner, directly or
 142 indirectly, of 10% or more of the voting power of the then
 143 outstanding stock of that resident domestic corporation. For the
 144 purpose of determining whether a person is an interested stock-
 145 holder pursuant to **this** subsection, the number of shares of
 146 voting stock of that resident domestic corporation deemed to be
 147 outstanding shall include shares deemed to be beneficially owned
 148 by the person through application of subsection d. of this section
 149 but shall not include any other unissued shares of voting stock of
 150 that resident domestic corporation which may be issuable pursuant
 151 to any agreement, arrangement or understanding, or upon exercise
 152 of conversion rights, warrants or options, or otherwise.

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

155 (1) in the case of stock, the highest closing sale price during the
 156 30-day period immediately preceding the date in question of a
 157 share of that stock on the composite tape for New York Stock
 158 Exchange-listed stocks, or, if that stock is not quoted on that
 159 composite tape or if that stock is not listed on that exchange, on

160 the principal United States securities exchange registered under
161 the Exchange Act on which that stock is listed, or, if that stock is
162 not listed on any such exchange, the highest closing bid quotation
163 with respect to a share of that stock during the 30-day period
164 preceding the date in question on the National Association of
165 Securities Dealers, Inc. Automated Quotations System, or any
166 system then in use, or if no such quotations are available, the fair
167 market value on the date in question of a share of that resident
168 domestic stock as determined by the board of directors of that
169 corporation in good faith; and

170 (2) in the case of property other than cash or stock, the fair
171 market value of that property on the date in question as deter-
172 mined by the board of directors of that resident domestic corpora-
173 tion in good faith.

174 l. "Preferred stock" means any class or series of stock of a
175 resident domestic corporation which under the bylaws or certifi-
176 cate of incorporation of that resident domestic corporation is
177 entitled to receive payment of dividends prior to any payment of
178 dividends on some other class or series of stock, or is entitled in
179 the event of any voluntary liquidation, dissolution or winding up
180 of the resident domestic corporation to receive payment or distri-
181 bution of a preferential amount before any payments or distribu-
182 tions are received by some other class or series of stock.

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

187 n. "Stock" means:

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

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

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

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

203 q. "Voting stock" means shares of capital stock of a corpora-
204 tion entitled to vote generally in the election of directors.

1 *~~3.~~* *4.* Notwithstanding anything to the contrary contained
2 in this act (except section *~~5.~~* *6* of this act), no resident
3 domestic corporation shall engage in any business combination
4 with any interested stockholder of that resident domestic corpora-
5 tion for a period of five years following that interested stock-
6 holder's stock acquisition date unless that business combination is
7 approved by the board of directors of that resident domestic corpo-
8 ration prior to that interested stockholder's stock acquisition date.

1 *~~4.~~* *5.* In addition to the restriction contained in section
2 *~~3.~~* *4* of this act, and except as provided in section *~~5.~~* *6*
3 of this act, no resident domestic corporation shall engage at any
4 time in any business combination with any interested stockholder
5 of that resident domestic corporation other than a business com-
6 bination specified in any one of subsections a., b. or c. of this
6A section;

7 a. a business combination approved by the board of directors
8 of that resident domestic corporation prior to that interested
9 stockholder's stock acquisition date.

10 b. a business combination approved by the affirmative vote of
11 the holders of two-thirds of the voting stock not beneficially owned
12 by that interested stockholder at a meeting called for such purpose.

13 c. a business combination that meets all of the following condi-
14 tions:

15 (1) the aggregate amount of the cash and the market value, as
16 of the consummation date, of consideration other than cash to be
17 received per share by holders of outstanding shares of common
18 stock of that resident domestic corporation in that business com-
19 bination is at least equal to the higher of the following:

20 (a) the highest per share price (including any brokerage com-
21 missions, transfer taxes and soliciting dealers' fees) paid by that
22 interested stockholder for any shares of common stock of the
23 same class or series acquired by it (i) within the five-year period
24 immediately prior to the announcement date with respect to that
25 business combination, or (ii) within the five-year period imme-
26 diately prior to, or in, the transaction in which that interested
27 stockholder became an interested stockholder, whichever is higher;
28 plus, in either case, interest compounded annually from the earliest
29 date on which that highest per share acquisition price was paid
30 through the consummation date at the rate for one-year United
31 States Treasury obligations from time to time in effect; less the

32 aggregate amount of any cash dividends paid, and the market
33 value of any dividends paid other than in cash, per share of
34 common stock since that earliest date, up to the amount of that
35 interest; and

36 (b) the market value per share of common stock on the an-
37 nouncement date with respect to that business combination or on
38 that interested stockholder's stock acquisition date, whichever is
39 higher; plus interest compounded annually from that date through
40 the consummation date at the rate for one-year United States
41 Treasury obligations from time to time in effect; less the aggre-
42 gate amount of any cash dividends paid, and the market value of
43 any dividends paid other than in cash, per share of common stock
44 since that date, up to the amount of that interest;

45 (2) the aggregate amount of the cash and the market value as
46 of the consummation date of consideration other than cash to be
47 received per share by holders of outstanding shares of any class
48 or series of stock, other than common stock, of that resident
49 domestic corporation is at least equal to the highest of the fol-
50 lowing (whether or not that interested stockholder has previously
51 acquired any shares of that class or series of stock):

52 (a) the highest per share price (including any brokerage com-
53 missions, transfer taxes and soliciting dealers' fees) paid by that
54 interested stockholder for any shares of that class or series of
55 stock acquired by it (i) within the five-year period immediately
56 prior to the announcement date with respect to that business
57 combination, or (ii) within the five-year period immediately prior
58 to, or in, the transaction in which that interested stockholder
59 became an interested stockholder, whichever is higher; plus, in
60 either case, interest compounded annually from the earliest date
61 on which that highest per share acquisition price was paid through
62 the consummation date at the rate for one-year United States
63 Treasury obligations from time to time in effect; less the aggre-
64 gate amount of any cash dividends paid, and the market value of
65 any dividends paid other than in cash, per share of that class or
66 series of stock since that earliest date, up to the amount of that
67 interest;

68 (b) the highest preferential amount per share to which the
69 holders of shares of that class or series of stock are entitled in
70 the event of any liquidation, dissolution or winding up of that
71 resident domestic corporation, plus the aggregate amount of any
72 dividends declared or due as to which those holders are entitled
73 prior to payment of dividends on some other class or series of

74 stock (unless the aggregate amount of those dividends is included
75 in that preferential amount); and

76 (c) the market value per share of that class or series of stock
77 on the announcement date with respect to that business combina-
78 tion or on that interested stockholder's stock acquisition date,
79 whichever is higher; plus interest compounded annually from that
80 date through the consummation date at the rate for one-year
81 United States Treasury obligations from time to time in effect;
82 less the aggregate amount of any cash dividends paid, and the
83 market value of any dividends paid other than in cash, per share
84 of that class or series of stock since that date, up to the amount of
85 that interest;

86 (3) the consideration to be received by holders of a particular
87 class or series of outstanding stock (including common stock) of
88 that resident domestic corporation in that business combination
89 is in cash or in the same form as the interested stockholder has
90 used to acquire the largest number of shares of that class or series
91 of stock previously acquired by it;

92 (4) the holders of all outstanding shares of stock of that resi-
93 dent domestic corporation not beneficially owned by that interested
94 stockholder immediately prior to the consummation of that busi-
95 ness combination are entitled to receive in that business combina-
96 tion cash or other consideration for those shares in compliance
97 with paragraphs (1), (2) and (3) of this subsection; and

98 (5) after that interested stockholder's stock acquisition date
99 and prior to the consummation date with respect to that business
100 combination, that interested stockholder has not become the bene-
101 ficial owner of any additional shares of stock of that resident
102 domestic corporation except:

103 (a) as part of the transaction which resulted in that interested
104 stockholder becoming an interested stockholder;

105 (b) by virtue of proportionate stock splits, stock dividends or
106 other distributions of stock in respect of stock not constituting a
107 business combination under paragraph (5) of subsection e. of
108 section 2 of this act;

109 (c) through a business combination meeting all of the conditions
110 of paragraph (3) and this paragraph; or

111 (d) through purchase by that interested stockholder at any
112 price which, if that price had been paid in an otherwise permis-
113 sible business combination, the announcement date and consumma-
114 tion date of which were the date of that purchase, would have
115 satisfied the requirements of paragraphs (1), (2) and (3) of this
116 subsection.

1 ***[5.]*** *6.* a. Unless the certificate of incorporation provides
 2 otherwise, the provisions of this act shall not apply to any business
 3 combination of a resident domestic corporation with an interested
 4 stockholder if the resident domestic corporation did not have a
 5 class of voting stock registered or traded on a national securities
 6 exchange or registered with the Securities and Exchange Commis-
 7 sion pursuant to section 12(g) of the Exchange Act, 48 stat. 892,
 8 (15 U. S. C. 78b.) on that interested stockholder's stock acquisition
 8A date.

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

18 ***[c.** The provisions of this act shall not apply to any business
 19 combination of a resident domestic corporation the original certifi-
 20 cate of incorporation of which contains a provision, or whose
 21 board of directors adopts an amendment to the resident domestic
 22 corporation's bylaws prior to 45 days after the enactment of this
 23 act, expressly electing not to be governed by this act.]*

23A *c. *The provisions of this act shall not apply to any business*
 23B *combination of a resident domestic corporation with an interested*
 23C *stockholder of that corporation which became an interested stock-*
 23D *holder on or after January 12, 1988.**

24 d. The provisions of this act shall not apply to any business
 25 combination of a resident domestic corporation with an interested
 26 stockholder of that corporation which became an interested stock-
 27 holder inadvertently, if such interested stockholder (1) as soon as
 28 practicable divests itself or himself of a sufficient amount of the
 29 voting stock of that resident domestic corporation so that he or it
 30 no longer is the beneficial owner, directly or indirectly, of 10%
 31 or more of the voting power of the outstanding voting stock of that
 32 corporation, ***or a subsidiary of that resident domestic corpora-*
 33 *tion*** and (2) would not at any time within the five-year period
 34 preceding the announcement date with respect to that business
 35 combination have been an interested stockholder but for that in-
 35A advertent acquisition.

36 *e. *The provisions of this act shall not apply to any business*

37 combination of a resident domestic corporation ****[**subject to regu-
 38 lation, in whole or in part, pursuant to**]**** **which is a “bank hold-
 39 ing company” as defined in** the “Bank Holding Company Act of
 40 1956,” 70 Stat. 133, (12 U. S. C. § 1841 et seq.) **as amended, or a
 41 subsidiary of the bank holding company** with an interested stock-
 42 holder of that resident domestic corporation.

1 7. The Office of Economic Policy, created pursuant to P. L. 1966,
 2 c. 129 (C. 52:18A-125 et seq.), shall evaluate the economic impact
 3 of this act on the economy of this State, on resident domestic
 4 corporations and other corporations located in this State, and on
 5 individual and institutional stockholders in this State and shall
 6 report its findings to the Legislature on or before September 8,
 7 1987.*

1 ***[6.]** *8.* a. If any clause, sentence, subparagraph, paragraph,
 2 subsection, section, or other portion of this act or the application
 3 thereof to any person or circumstances shall be held invalid, such
 4 holding shall not affect, impair or invalidate the remainder of this
 5 act or the application of that portion held invalid to any other
 6 person or circumstances, but shall be confined in its operation to
 7 the clause, sentence, subparagraph, paragraph, subsection, section,
 8 or other portion thereof directly involved in that holding or to the
 9 person or circumstances therein involved.

10 b. If any provision of this act is inconsistent with, in conflict
 11 with, or contrary to any other provision of law, that provision of
 12 this act shall prevail over that other provision and that other
 13 provision shall be deemed to be amended, superseded or repealed
 14 to the extent of that inconsistency or conflict.

1 ***[7.]** *9.* This act shall take effect immediately and shall be
 2 retroactive to January 23, 1986.

COMMERCE AND INDUSTRY

Enacts “Shareholders Protection Act” to discourage certain
 hostile takeovers.

1 b. If any provision of this act is inconsistent with, in conflict
2 section, section, or other portion of this act or the application
3 thereof to any person or circumstances shall be held invalid, such
4 holding shall not affect, impair or invalidate the remainder of this
5 act or the application of that portion held invalid to any other
6 person or circumstances, but shall be confined in its operation to
7 the clause, sentence, subparagraph, paragraph, subsection, section,
8 or other portion thereof directly involved in that holding or to the
9 person or circumstances therein involved.

10 b. If any provision of this act is inconsistent with, in conflict
11 with, or contrary to any other provision of law, that provision of
12 this act shall prevail over that other provision and that other
13 provision shall be deemed to be amended, superseded or repealed
14 to the extent of that inconsistency or conflict.

1 7. This act shall take effect immediately and shall be retroactive
2 to January 23, 1986.

STATEMENT

The "Shareholder Protection Act" would discourage hostile, bust-up takeovers financed by junk bonds in New Jersey.

The bill prohibits any New Jersey resident corporation (i.e., a company incorporated in New Jersey with its principal offices and significant operations in the State), after an acquisition of 10% or more of its voting stock, from combining with the acquirer for a period of five years unless the combination had been approved by the target company's board of directors prior to the 10% stock acquisition. After the expiration of the five year period, a merger could only be effected if approved by a two-thirds vote of the disinterested shareholders or if all shareholders receive a fair value (defined by a formula) for their stock.

The results of this act would be to encourage a potential

acquirer to negotiate the proposed merger with the target company's board of directors and to discourage hostile, asset stripping takeovers. This bill is similar to the legislation enacted in New York in December of 1985. This proposed legislation also eliminates the need for corporations to employ overly aggressive defensive tactics which could adversely affect shareholders' interests.

COMMERCE AND INDUSTRY

“Shareholders Protection Act”.

Enacts “Shareholders Protection Act” to discourage certain hostile takeovers.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1539

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 12, 1986

This bill would encourage any person, before acquiring voting stock of a resident domestic corporation (i. e., a corporation organized under the laws of New Jersey with its principal executive offices and significant business operations in the State) which would entitle that person to cast 10% or more of the votes entitled to be cast in the election of directors of the resident domestic corporation, to seek in advance the approval of the resident domestic corporation's board of directors for any contemplated future business combination between that person and the resident domestic corporation, or for the purchase of the stock. The bill would not prohibit any acquisition of stock, but without advance approval, no person who acquires 10% or more of the voting stock of the resident domestic corporation could thereafter engage in any business combination with the resident domestic corporation for a period of five years from the date the person first acquired 10% or more of the voting stock of the resident domestic corporation.

After the expiration of such five-year period, that person could engage in a business combination with the resident domestic corporation only if it is approved by the affirmative vote of the disinterested holders of two-thirds of the voting stock or if he pays at least a formula price designed to ensure that all holders (other than that person) of stock of the resident domestic corporation receive at least the highest price per share paid by that person.

The provisions of this bill would apply to a business combination of a resident domestic corporation (the target of a takeover) which has a class of voting stock registered or traded on a national securities exchange or registered with the Securities and Exchange Commission pursuant to section 12(g) of the Securities Exchange Act of 1934". Also, the provisions of this bill would not apply to any business combination in which the person acquired 10% or more of the voting stock prior to the effective date of this bill, unless subsequent thereto that

person increased his proportion of the voting power of the resident domestic corporation's outstanding voting stock to a proportion in excess of the proportion of voting power that person held prior to the effective date of the bill, or unless the certificate of incorporation of the resident domestic corporation provides otherwise. Corporations (mainly privately-held resident domestic corporations), other than those referred to at the beginning of this paragraph, may elect to be covered by the provisions of this bill by so providing in their certificates of incorporation. Finally, the provisions of this bill would not apply to the inadvertent acquisition of 10% or more of the resident domestic corporation's voting stock provided an amount of stock necessary to decrease such inadvertent ownership to less than 10% is promptly divested.

The committee amended the bill to require that the Office of Economic Policy study the economic impact of the bill and report to the Legislature approximately 120 days before the application of the bill to hostile takeovers no longer applies (on or after January 12, 1988). The committee amended the bill to eliminate the provision which allows a resident domestic corporation to opt out of the mandatory coverage of the bill by including in the original certificate of incorporation a provision expressly electing not to be governed by this bill, or by the board of directors adopting an amendment to the corporation's bylaws within 45 days after the enactment of the bill expressly electing not to be governed by this bill. The committee also exempted bank holding companies from the provisions of the bill. Lastly, the committee adopted a public policy statement of the need for the legislation.

ADOPTED

MAY 15 1986

Senate Amendments

(Proposed by Senator Van Wagner)

to

Senate Bill No. 1539 Sca (Typed Copy)
(Sponsored by Senator Van Wagner)

TR-0051
OK W/C

1:

Sec.	Line	
2	135	After "corporation" insert "or a bank holding company as defined in the "Bank Holding Company Act of 1956," <u>as amended</u> , 70 Stat. 133, ^{OK} (12 U.S.C. § 1841 et seq.) or any subsidiary of a bank holding company"
5	38-39	Omit "subject to regulation, in whole or in part, pursuant to" insert "which is a "bank holding company" as defined in"
5	40	After ^{"(12 U.S.C. § 1841 et seq.)"} 1956 , insert "as amended, after " insert "or a subsidiary of the bank holding company"
5	42	After "corporation" insert "or a subsidiary of that resident domestic corporation"

Statement

These amendments (1) exempt subsidiaries of bank holding companies from coverage under the bill and (2) eliminate bank holding companies and their subsidiaries from the definition of "interested shareholder" in the bill.

ADOPTED

MAY 15 1986

Printer's Error:

2	51	"corporations" should read "corporation"
---	----	--



PROPERTY OF
NEW JERSEY STATE LIBRARY

SEP 4 1986

OFFICE OF THE GOVERNOR

NEWS RELEASE

185 W. State Street
Trenton, N. J.

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: WED., AUG. 6, 1986

Governor Thomas H. Kean today signed legislation establishing the "New Jersey Shareholders Protection Act" which deters hostile takeovers of New Jersey corporations.

S-1539, sponsored by Senator Richard Van Wagner, D-Monmouth, and Assemblyman Anthony M. Villane, R-Monmouth, prohibits the consummation of certain merger or takeover activity of New Jersey corporations by stockholders that acquire at least 10 percent of the New Jersey corporation's stock. The interested stockholder is prevented from consummating a business combination with the New Jersey corporation for a five-year period following the date of its 10 percent acquisition, unless the board of directors approves the combination.

The five-year prohibition applies to controlling percentages acquired between January 23, 1986, and January 11, 1988.

Bank holding companies and their subsidiaries are excluded from coverage under the Act.

The New Jersey Shareholders Protection Act does not affect "friendly" takeovers or mergers or proxy fights by shareholders. It does prevent hostile, asset-stripping corporate takeovers and as such protects New Jersey shareholders, protect jobs, and helps to stabilize communities. By requiring prior approval of the board of directors for a business combination, an acquirer would be more likely to have a commitment to the long-term interests of New Jersey's corporations and its employees.

- more -

The Act should provide an incentive for foreign corporations to relocate in New Jersey and for domestic resident corporations to remain and expand in New Jersey. New Jersey currently ranks third in the number of corporate headquarters located in the State.

The legislation is effective immediately and its terms are retroactive to January 23, 1986.

#