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LAW/RWH

P.L.2013, CHAPTER 40, *approved April 1, 2013*  
Assembly, No. 3049

1 AN ACT concerning resident domestic corporations and amending  
2 P.L.1986, c.74.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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

9 3. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

37 (3) the issuance or transfer by that resident domestic corporation  
38 or any subsidiary of that resident domestic corporation (in one  
39 transaction or a series of transactions) of any stock of that resident  
40 domestic corporation or any subsidiary of that resident domestic  
41 corporation which has an aggregate market value equal to 5% or  
42 more of the aggregate market value of all the outstanding stock of  
43 that resident domestic corporation to that interested stockholder or  
44 any affiliate or associate of that interested stockholder, except  
45 pursuant to the exercise of warrants or rights to purchase stock  
46 offered, or a dividend or distribution paid or made, pro rata to all  
47 stockholders of that resident domestic corporation;

1 (4) the adoption of any plan or proposal for the liquidation or  
2 dissolution of that resident domestic corporation proposed by, on  
3 behalf of or pursuant to any agreement, arrangement or  
4 understanding (whether or not in writing) with that interested  
5 stockholder or any affiliate or associate of that interested  
6 stockholder;

7 (5) any reclassification of securities (including, without  
8 limitation, any stock split, stock dividend, or other distribution of  
9 stock in respect of stock, or any reverse stock split), or  
10 recapitalization of that resident domestic corporation, or any merger  
11 or consolidation of that resident domestic corporation with any  
12 subsidiary of that resident domestic corporation, or any other  
13 transaction (whether or not with, or into, or otherwise involving that  
14 interested stockholder), proposed by, on behalf of or pursuant to  
15 any agreement, arrangement or understanding (whether or not in  
16 writing) with that interested stockholder or any affiliate or associate  
17 of that interested stockholder, which has the effect, directly or  
18 indirectly, of increasing the proportionate share of the outstanding  
19 shares of any class or series of stock or securities convertible into  
20 voting stock of that resident domestic corporation or any subsidiary  
21 of that resident domestic corporation which is directly or indirectly  
22 owned by that interested stockholder or any affiliate or associate of  
23 that interested stockholder, except as a result of immaterial changes  
24 due to fractional share adjustments; or

25 (6) any receipt by that interested stockholder or any affiliate or  
26 associate of that interested stockholder of the benefit, directly or  
27 indirectly (except proportionately as a stockholder of that resident  
28 domestic corporation), of any loans, advances, guarantees, pledges  
29 or other financial assistance or any tax credits or other tax  
30 advantages provided by or through that corporation; provided,  
31 however, that the term "business combination" shall not be deemed  
32 to include the receipt of any of the foregoing benefits by that  
33 resident domestic corporation or any of that corporation's affiliates  
34 arising from transactions (such as intercompany loans or tax sharing  
35 arrangements) between that resident domestic corporation and its  
36 affiliates in the ordinary course of business.

37 f. "Common stock" means any stock other than preferred  
38 stock.

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

42 h. "Control," including the terms "controlling," "controlled by"  
43 and "under common control with," means the possession, directly or  
44 indirectly, of the power to direct or cause the direction of the  
45 management and policies of a person, whether through the  
46 ownership of voting stock, by contract, or otherwise. A person's  
47 beneficial ownership of 10% or more of the voting power of a  
48 corporation's outstanding voting stock shall create a presumption

1 that that person has control of that corporation. Notwithstanding  
2 the foregoing in this subsection, a person shall not be deemed to  
3 have control of a corporation if that person holds voting power, in  
4 good faith and not for the purpose of circumventing this section, as  
5 an agent, bank, broker, nominee, custodian or trustee for one or  
6 more beneficial owners who do not individually or as a group have  
7 control of that corporation.

8 i. "Exchange Act" means the "Securities Exchange Act of  
9 1934," 48 Stat. 881 (15 U.S.C. s. 78a et seq.) as the same has been  
10 or hereafter may be amended from time to time.

11 j. "Interested stockholder," when used in reference to any  
12 resident domestic corporation, means any person (other than that  
13 resident domestic corporation or any subsidiary of that resident  
14 domestic corporation) that:

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

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

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

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

1 (2) in the case of property other than cash or stock, the fair  
2 market value of that property on the date in question as determined  
3 by the board of directors of that resident domestic corporation in  
4 good faith.

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

14 m. "Resident domestic corporation" means an issuer of voting  
15 stock which is organized under the laws of this State [and, as of the  
16 stock acquisition date in question, has its principal executive offices  
17 located in this State or significant business operations located in  
18 this State] , provided, however, that an issuer which did not have its  
19 principal executive offices located in this State and did not have  
20 significant business operations in this State on the date of enactment  
21 of P.L. \_\_\_\_\_, c. (pending before the Legislature as this bill), may  
22 elect not to be a resident domestic corporation and not be governed  
23 by P.L.1986, c.74 (C.14A:10A-1 et seq.), by its board of directors  
24 adopting an amendment to its bylaws to that effect within 90 days  
25 of the date of enactment of P.L. \_\_\_\_\_, c. (pending before the  
26 Legislature as this bill), and which amendment shall not be further  
27 amended by the board of directors.

28 n. "Stock" means:

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

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

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

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

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

46 (cf: P.L.1989, c.106, s.2)

1       2. Section 4 of P.L.1986, c.74 (C.14A:10A-4) is amended to  
2 read as follows:

3       4. Notwithstanding anything to the contrary contained in this  
4 act (except section 6 of this act), no resident domestic corporation  
5 shall engage in any business combination with any interested  
6 stockholder of that resident domestic corporation for a period of  
7 five years following that interested stockholder's stock acquisition  
8 date unless:

9       a. that business combination is approved by the board of  
10 directors of that resident domestic corporation prior to that  
11 interested stockholder's stock acquisition date; or

12       b. the transaction or series of related transactions which caused  
13 the person to become an interested stockholder was approved by the  
14 board of directors of that resident domestic corporation prior to that  
15 interested stockholder's stock acquisition date and any subsequent  
16 business combinations with that interested stockholder are approved  
17 by the board of directors of that resident domestic corporation,  
18 provided that any such subsequent business combination is  
19 approved by (1) the board of directors, or a committee of that board,  
20 consisting solely of persons who are not employees, officers,  
21 directors, stockholders, affiliates or associates of that interested  
22 stockholder, and (2) the affirmative vote of the holders of a majority  
23 of the voting stock not beneficially owned by such interested  
24 stockholder at a meeting called for such purpose.

25 (cf: P.L.1986, c.74, s.4)

26

27       3. Section 5 of P.L.1986, c.74 (C.14A:10A-5) is amended to  
28 read as follows:

29       5. In addition to the restriction contained in section 4 of this  
30 act, and except as provided in section 6 of this act, no resident  
31 domestic corporation shall engage at any time in any business  
32 combination with any interested stockholder of that resident  
33 domestic corporation other than a business combination specified in  
34 any one of subsection a., b. **[or]**, c. or d. of this section (the  
35 satisfaction of any one subsection being sufficient):

36       a. a business combination approved by the board of directors of  
37 that resident domestic corporation prior to that interested  
38 stockholder's stock acquisition date.

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

42       c. a business combination that meets all of the following  
43 conditions:

44       (1) the aggregate amount of the cash and the market value, as of  
45 the consummation date, of consideration other than cash to be  
46 received per share by holders of outstanding shares of common  
47 stock of that resident domestic corporation in that business  
48 combination is at least equal to the higher of the following:



1 (a) the highest per share price (including any brokerage  
2 commissions, transfer taxes and soliciting dealers' fees) paid by that  
3 interested stockholder for any shares of common stock of the same  
4 class or series acquired by it (i) within the five-year period  
5 immediately prior to the announcement date with respect to that  
6 business combination, or (ii) within the five-year period  
7 immediately prior to, or in, the transaction in which that interested  
8 stockholder became an interested stockholder, whichever is higher;  
9 plus, in either case, interest compounded annually from the earliest  
10 date on which that highest per share acquisition price was paid  
11 through the consummation date at the rate for one-year United  
12 States Treasury obligations from time to time in effect; less the  
13 aggregate amount of any cash dividends paid, and the market value  
14 of any dividends paid other than in cash, per share of common stock  
15 since that earliest date, up to the amount of that interest; and

16 (b) the market value per share of common stock on the  
17 announcement date with respect to that business combination or on  
18 that interested stockholder's stock acquisition date, whichever is  
19 higher; plus interest compounded annually from that date through  
20 the consummation date at the rate for one-year United States  
21 Treasury obligations from time to time in effect; less the aggregate  
22 amount of any cash dividends paid, and the market value of any  
23 dividends paid other than in cash, per share of common stock since  
24 that date, up to the amount of that interest;

25 (2) the aggregate amount of the cash and the market value as of  
26 the consummation date of consideration other than cash to be  
27 received per share by holders of outstanding shares of any class or  
28 series of stock, other than common stock, of that resident domestic  
29 corporation is at least equal to the highest of the following (whether  
30 or not that interested stockholder has previously acquired any  
31 shares of that class or series of stock):

32 (a) the highest per share price (including any brokerage  
33 commissions, transfer taxes and soliciting dealers' fees) paid by that  
34 interested stockholder for any shares of that class or series of stock  
35 acquired by it (i) within the five-year period immediately prior to  
36 the announcement date with respect to that business combination, or  
37 (ii) within the five-year period immediately prior to, or in, the  
38 transaction in which that interested stockholder became an  
39 interested stockholder, whichever is higher; plus, in either case,  
40 interest compounded annually from the earliest date on which that  
41 highest per share acquisition price was paid through the  
42 consummation date at the rate for one-year United States Treasury  
43 obligations from time to time in effect; less the aggregate amount of  
44 any cash dividends paid, and the market value of any dividends paid  
45 other than in cash, per share of that class or series of stock since  
46 that earliest date, up to the amount of that interest;

47 (b) the highest preferential amount per share to which the  
48 holders of shares of that class or series of stock are entitled in the

1 event of any liquidation, dissolution or winding up of that resident  
2 domestic corporation, plus the aggregate amount of any dividends  
3 declared or due as to which those holders are entitled prior to  
4 payment of dividends on some other class or series of stock (unless  
5 the aggregate amount of those dividends is included in that  
6 preferential amount); and

7 (c) the market value per share of that class or series of stock on  
8 the announcement date with respect to that business combination or  
9 on that interested stockholder's stock acquisition date, whichever is  
10 higher; plus interest compounded annually from that date through  
11 the consummation date at the rate for one-year United States  
12 Treasury obligations from time to time in effect; less the aggregate  
13 amount of any cash dividends paid, and the market value of any  
14 dividends paid other than in cash, per share of that class or series of  
15 stock since that date, up to the amount of that interest;

16 (3) the consideration to be received by holders of a particular  
17 class or series of outstanding stock (including common stock) of  
18 that resident domestic corporation in that business combination is in  
19 cash or in the same form as the interested stockholder has used to  
20 acquire the largest number of shares of that class or series of stock  
21 previously acquired by it;

22 (4) the holders of all outstanding shares of stock of that resident  
23 domestic corporation not beneficially owned by that interested  
24 stockholder immediately prior to the consummation of that business  
25 combination are entitled to receive in that business combination  
26 cash or other consideration for those shares in compliance with  
27 paragraphs (1), (2) and (3) of this subsection; and

28 (5) after that interested stockholder's stock acquisition date and  
29 prior to the consummation date with respect to that business  
30 combination, that interested stockholder has not become the  
31 beneficial owner of any additional shares of stock of that resident  
32 domestic corporation, except:

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

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

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

41 (d) through purchase by that interested stockholder at any price  
42 which, if that price had been paid in an otherwise permissible  
43 business combination, the announcement date and consummation  
44 date of which were the date of that purchase, would have satisfied  
45 the requirements of paragraphs (1), (2) and (3) of this subsection.

46 d. a business combination approved by (1) the board of  
47 directors, or a committee of the board of directors, of that resident  
48 domestic corporation consisting solely of persons who are not

1 employees, officers, directors, stockholders, affiliates or associates  
2 of that interested stockholder prior to the consummation of the  
3 business combination; and (2) the affirmative vote of the holders of  
4 a majority of the voting stock not beneficially owned by such  
5 interested stockholder at a meeting called for such purpose if the  
6 transaction or series of related transactions with the interested  
7 stockholder which caused the person to become an interested  
8 stockholder was approved by the board of directors of the resident  
9 domestic corporation prior to the consummation of such transaction  
10 or series of related transactions.

11 (cf: P.L.1987, c.380, s.2)

12

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

15 6. a. Unless the certificate of incorporation provides otherwise,  
16 the provisions of this act shall not apply to any business  
17 combination of a resident domestic corporation with an interested  
18 stockholder if the resident domestic corporation did not have a class  
19 of voting stock registered or traded on a national securities  
20 exchange or registered with the Securities and Exchange  
21 Commission pursuant to section 12(g) of the Exchange Act, 48 Stat.  
22 892 (15 U.S.C. [s.781] s.781) on that interested stockholder's stock  
23 acquisition date.

24 b. Unless the certificate of incorporation provides otherwise,  
25 the provisions of this act shall not apply to any business  
26 combination with an interested stockholder who was an interested  
27 stockholder prior to the effective date of this act unless subsequent  
28 thereto that interested stockholder increased his or its interested  
29 stockholder's proportion of the voting power of the resident  
30 domestic corporation's outstanding voting stock to a proportion in  
31 excess of the proportion of voting power that interested stockholder  
32 held prior to the effective date of this act.

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

34 d. The provisions of this act shall not apply to any business  
35 combination of a resident domestic corporation with an interested  
36 stockholder of that corporation which became an interested  
37 stockholder inadvertently, if such interested stockholder (1) as soon  
38 as practicable divests itself or himself of a sufficient amount of the  
39 voting stock of that resident domestic corporation so that he or it no  
40 longer is the beneficial owner, directly or indirectly, of 10% or  
41 more of the voting power of the outstanding voting stock of that  
42 corporation, or a subsidiary of that resident domestic corporation,  
43 and (2) would not at any time within the five-year period preceding  
44 the announcement date with respect to that business combination  
45 have been an interested stockholder but for that inadvertent  
46 acquisition.

47 e. (Deleted by amendment, P.L.1989, c.106.)

1 f. The provisions of this act shall not apply to any business  
2 combination of a resident domestic corporation with an interested  
3 stockholder of that corporation which, prior to August 5, 1986,  
4 became the beneficial owner of more than 50% of the voting power  
5 of the outstanding voting stock of that resident domestic  
6 corporation by reason of a purchase of voting stock directly from  
7 that resident domestic corporation in a transaction approved by the  
8 board of directors of that resident domestic corporation, provided  
9 that, at the time of the approval, none of the directors of the resident  
10 domestic corporation was an employee, officer, director,  
11 shareholder, affiliate or associate of 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 interested  
14 stockholder of that corporation which became an interested  
15 stockholder on or after August 5, 1986 and before January 1, 1987.

16 h. The provisions of P.L.1989, c.74 (C.14A:10A-1 et seq.) shall  
17 not apply to any stockholder who was the beneficial owner of 5% or  
18 more of the voting power of the outstanding voting stock of that  
19 resident domestic corporation on the effective date of P.L. \_\_\_\_\_,  
20 c. (pending before the Legislature as this bill) if the resident  
21 domestic corporation did not, on the effective date of P.L. \_\_\_\_\_,  
22 c. (pending before the Legislature as this bill), have its principal  
23 executive offices located in this State or significant business  
24 operations located in this State.

25 (cf: P.L.1989, c.106, s.3)

26

27 5. This act shall take effect on the 90th day next following  
28 enactment.

29

30

31

#### STATEMENT

32

33 This bill amends the "New Jersey Shareholders' Protection Act"  
34 to allow certain business combinations between resident domestic  
35 corporations and interested stockholders.

36 Specifically, the bill amends the definition of "resident domestic  
37 corporation" to provide that a resident domestic corporation does  
38 not include an issuer of voting stock which is organized under the  
39 laws of this State but neither maintains its principal executive  
40 offices in this State nor has significant business operations located  
41 in this State if that corporation's board of director adopts an  
42 amendment to its bylaws electing not to be a resident domestic  
43 corporation within 90 days from the effective date of this bill.

44 The bill also allows a resident domestic corporation to engage in  
45 a business combination with an interested stockholder if the  
46 transaction which caused the person to become an interested  
47 stockholder was approved by the resident domestic corporation's  
48 board of directors prior to the stock acquisition date. (Generally, an

1 "interested stockholder" is an owner of 10% or more of the  
2 outstanding voting stock of the corporation.)

3 The bill further allows a subsequent business combination  
4 between a resident domestic corporation and an interested  
5 stockholder if the subsequent business combination is approved by:  
6 (1) the board of directors, or a committee of that board, consisting  
7 solely of persons who are not employees, officers, directors,  
8 stockholders, affiliates or associates of that interested stockholder;  
9 and (2) the affirmative vote of the holders of a majority of the  
10 voting stock not beneficially owned by such interested stockholder  
11 at a meeting called for such purpose.

12 The bill also exempts from the provisions of the "New Jersey  
13 Shareholders' Protection Act" any stockholder who was the  
14 beneficial owner of five percent or more of the voting power of the  
15 outstanding voting stock of that resident domestic corporation on  
16 the effective date of this bill if the resident domestic corporation did  
17 not, on the effective date of the bill, have its principal executive  
18 offices located in this State or significant business operations  
19 located in this State.

20

21

22

23

24 \_\_\_\_\_  
25 Allows certain business combinations between resident domestic  
corporations and interested stockholders.

# ASSEMBLY, No. 3049

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JUNE 7, 2012

**Sponsored by:**

Assemblyman **PATRICK J. DIEGNAN, JR.**

District 18 (Middlesex)

Assemblyman **JOHN J. BURZICHELLI**

District 3 (Cumberland, Gloucester and Salem)

**Co-Sponsored by:**

Assemblyman Chivukula and Senator Gill

**SYNOPSIS**

Allows certain business combinations between resident domestic corporations and interested stockholders.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 2/8/2013)

1 AN ACT concerning resident domestic corporations and amending  
2 P.L.1986, c.74.

3

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

6

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

9 3. As used in this act:

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

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

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

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

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

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

**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 given in response to a proxy or consent solicitation made in  
2 accordance with the applicable rules and regulations under the  
3 Exchange Act, and (ii) is not then reportable on a Schedule 13D  
4 under the Exchange Act (or any comparable or successor report); or

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

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

15 (1) any merger or consolidation of that resident domestic  
16 corporation or any subsidiary of that resident domestic corporation  
17 with (a) that interested stockholder or (b) any other corporation  
18 (whether or not it is an interested stockholder of that resident  
19 domestic corporation) which is, or after a merger or consolidation  
20 would be, an affiliate or associate of that interested stockholder;

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

34 (3) the issuance or transfer by that resident domestic corporation  
35 or any subsidiary of that resident domestic corporation (in one  
36 transaction or a series of transactions) of any stock of that resident  
37 domestic corporation or any subsidiary of that resident domestic  
38 corporation which has an aggregate market value equal to 5% or  
39 more of the aggregate market value of all the outstanding stock of  
40 that resident domestic corporation to that interested stockholder or  
41 any affiliate or associate of that interested stockholder, except  
42 pursuant to the exercise of warrants or rights to purchase stock  
43 offered, or a dividend or distribution paid or made, pro rata to all  
44 stockholders of that resident domestic corporation;

45 (4) the adoption of any plan or proposal for the liquidation or  
46 dissolution of that resident domestic corporation proposed by, on  
47 behalf of or pursuant to any agreement, arrangement or  
48 understanding (whether or not in writing) with that interested



1 stockholder or any affiliate or associate of that interested  
2 stockholder;

3 (5) any reclassification of securities (including, without  
4 limitation, any stock split, stock dividend, or other distribution of  
5 stock in respect of stock, or any reverse stock split), or  
6 recapitalization of that resident domestic corporation, or any merger  
7 or consolidation of that resident domestic corporation with any  
8 subsidiary of that resident domestic corporation, or any other  
9 transaction (whether or not with, or into, or otherwise involving that  
10 interested stockholder), proposed by, on behalf of or pursuant to  
11 any agreement, arrangement or understanding (whether or not in  
12 writing) with that interested stockholder or any affiliate or associate  
13 of that interested stockholder, which has the effect, directly or  
14 indirectly, of increasing the proportionate share of the outstanding  
15 shares of any class or series of stock or securities convertible into  
16 voting stock of that resident domestic corporation or any subsidiary  
17 of that resident domestic corporation which is directly or indirectly  
18 owned by that interested stockholder or any affiliate or associate of  
19 that interested stockholder, except as a result of immaterial changes  
20 due to fractional share adjustments; or

21 (6) any receipt by that interested stockholder or any affiliate or  
22 associate of that interested stockholder of the benefit, directly or  
23 indirectly (except proportionately as a stockholder of that resident  
24 domestic corporation), of any loans, advances, guarantees, pledges  
25 or other financial assistance or any tax credits or other tax  
26 advantages provided by or through that corporation; provided,  
27 however, that the term "business combination" shall not be deemed  
28 to include the receipt of any of the foregoing benefits by that  
29 resident domestic corporation or any of that corporation's affiliates  
30 arising from transactions (such as intercompany loans or tax sharing  
31 arrangements) between that resident domestic corporation and its  
32 affiliates in the ordinary course of business.

33 f. "Common stock" means any stock other than preferred  
34 stock.

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

38 h. "Control," including the terms "controlling," "controlled by"  
39 and "under common control with," means the possession, directly or  
40 indirectly, of the power to direct or cause the direction of the  
41 management and policies of a person, whether through the  
42 ownership of voting stock, by contract, or otherwise. A person's  
43 beneficial ownership of 10% or more of the voting power of a  
44 corporation's outstanding voting stock shall create a presumption  
45 that that person has control of that corporation. Notwithstanding  
46 the foregoing in this subsection, a person shall not be deemed to  
47 have control of a corporation if that person holds voting power, in  
48 good faith and not for the purpose of circumventing this section, as

1 an agent, bank, broker, nominee, custodian or trustee for one or  
2 more beneficial owners who do not individually or as a group have  
3 control of that corporation.

4 i. "Exchange Act" means the "Securities Exchange Act of  
5 1934," 48 Stat. 881 (15 U.S.C. s. 78a et seq.) as the same has been  
6 or hereafter may be amended from time to time.

7 j. "Interested stockholder," when used in reference to any  
8 resident domestic corporation, means any person (other than that  
9 resident domestic corporation or any subsidiary of that resident  
10 domestic corporation) that:

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

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

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

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

44 (2) in the case of property other than cash or stock, the fair  
45 market value of that property on the date in question as determined  
46 by the board of directors of that resident domestic corporation in  
47 good faith.

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

10 m. "Resident domestic corporation" means an issuer of voting  
11 stock which is organized under the laws of this State [and, as of the  
12 stock acquisition date in question, has its principal executive offices  
13 located in this State or significant business operations located in  
14 this State] , provided, however, that an issuer which did not have its  
15 principal executive offices located in this State and did not have  
16 significant business operations in this State on the date of enactment  
17 of P.L. \_\_\_\_\_, c. (pending before the Legislature as this bill), may  
18 elect not to be a resident domestic corporation and not be governed  
19 by P.L.1986, c.74 (C.14A:10A-1 et seq.), by its board of directors  
20 adopting an amendment to its bylaws to that effect within 90 days  
21 of the date of enactment of P.L. \_\_\_\_\_, c. (pending before the  
22 Legislature as this bill), and which amendment shall not be further  
23 amended by the board of directors.

24 n. "Stock" means:

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

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

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

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

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

42 (cf: P.L.1989, c.106, s.2)

43  
44 2. Section 4 of P.L.1986, c.74 (C.14A:10A-4) is amended to  
45 read as follows:

46 4. Notwithstanding anything to the contrary contained in this  
47 act (except section 6 of this act), no resident domestic corporation  
48 shall engage in any business combination with any interested

1 stockholder of that resident domestic corporation for a period of  
2 five years following that interested stockholder's stock acquisition  
3 date unless:

4 a. that business combination is approved by the board of  
5 directors of that resident domestic corporation prior to that  
6 interested stockholder's stock acquisition date; or

7 b. the transaction or series of related transactions which caused  
8 the person to become an interested stockholder was approved by the  
9 board of directors of that resident domestic corporation prior to that  
10 interested stockholder's stock acquisition date and any subsequent  
11 business combinations with that interested stockholder are approved  
12 by the board of directors of that resident domestic corporation,  
13 provided that any such subsequent business combination is  
14 approved by (1) the board of directors, or a committee of that board,  
15 consisting solely of persons who are not employees, officers,  
16 directors, stockholders, affiliates or associates of that interested  
17 stockholder, and (2) the affirmative vote of the holders of a majority  
18 of the voting stock not beneficially owned by such interested  
19 stockholder at a meeting called for such purpose.

20 (cf: P.L.1986, c.74, s.4)

21

22 3. Section 5 of P.L.1986, c.74 (C.14A:10A-5) is amended to  
23 read as follows:

24 5. In addition to the restriction contained in section 4 of this  
25 act, and except as provided in section 6 of this act, no resident  
26 domestic corporation shall engage at any time in any business  
27 combination with any interested stockholder of that resident  
28 domestic corporation other than a business combination specified in  
29 any one of subsection a., b. **[or]**, c. or d. of this section (the  
30 satisfaction of any one subsection being sufficient):

31 a. a business combination approved by the board of directors of  
32 that resident domestic corporation prior to that interested  
33 stockholder's stock acquisition date.

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

37 c. a business combination that meets all of the following  
38 conditions:

39 (1) the aggregate amount of the cash and the market value, as of  
40 the consummation date, of consideration other than cash to be  
41 received per share by holders of outstanding shares of common  
42 stock of that resident domestic corporation in that business  
43 combination is at least equal to the higher of the following:

44 (a) the highest per share price (including any brokerage  
45 commissions, transfer taxes and soliciting dealers' fees) paid by that  
46 interested stockholder for any shares of common stock of the same  
47 class or series acquired by it (i) within the five-year period  
48 immediately prior to the announcement date with respect to that

1 business combination, or (ii) within the five-year period  
2 immediately prior to, or in, the transaction in which that interested  
3 stockholder became an interested stockholder, whichever is higher;  
4 plus, in either case, interest compounded annually from the earliest  
5 date on which that highest per share acquisition price was paid  
6 through the consummation date at the rate for one-year United  
7 States Treasury obligations from time to time in effect; less the  
8 aggregate amount of any cash dividends paid, and the market value  
9 of any dividends paid other than in cash, per share of common stock  
10 since that earliest date, up to the amount of that interest; and

11 (b) the market value per share of common stock on the  
12 announcement date with respect to that business combination or on  
13 that interested stockholder's stock acquisition date, whichever is  
14 higher; plus interest compounded annually from that date through  
15 the consummation date at the rate for one-year United States  
16 Treasury obligations from time to time in effect; less the aggregate  
17 amount of any cash dividends paid, and the market value of any  
18 dividends paid other than in cash, per share of common stock since  
19 that date, up to the amount of that interest;

20 (2) the aggregate amount of the cash and the market value as of  
21 the consummation date of consideration other than cash to be  
22 received per share by holders of outstanding shares of any class or  
23 series of stock, other than common stock, of that resident domestic  
24 corporation is at least equal to the highest of the following (whether  
25 or not that interested stockholder has previously acquired any  
26 shares of that class or series of stock):

27 (a) the highest per share price (including any brokerage  
28 commissions, transfer taxes and soliciting dealers' fees) paid by that  
29 interested stockholder for any shares of that class or series of stock  
30 acquired by it (i) within the five-year period immediately prior to  
31 the announcement date with respect to that business combination, or  
32 (ii) within the five-year period immediately prior to, or in, the  
33 transaction in which that interested stockholder became an  
34 interested stockholder, whichever is higher; plus, in either case,  
35 interest compounded annually from the earliest date on which that  
36 highest per share acquisition price was paid through the  
37 consummation date at the rate for one-year United States Treasury  
38 obligations from time to time in effect; less the aggregate amount of  
39 any cash dividends paid, and the market value of any dividends paid  
40 other than in cash, per share of that class or series of stock since  
41 that earliest date, up to the amount of that interest;

42 (b) the highest preferential amount per share to which the  
43 holders of shares of that class or series of stock are entitled in the  
44 event of any liquidation, dissolution or winding up of that resident  
45 domestic corporation, plus the aggregate amount of any dividends  
46 declared or due as to which those holders are entitled prior to  
47 payment of dividends on some other class or series of stock (unless

1 the aggregate amount of those dividends is included in that  
2 preferential amount); and

3 (c) the market value per share of that class or series of stock on  
4 the announcement date with respect to that business combination or  
5 on that interested stockholder's stock acquisition date, whichever is  
6 higher; plus interest compounded annually from that date through  
7 the consummation date at the rate for one-year United States  
8 Treasury obligations from time to time in effect; less the aggregate  
9 amount of any cash dividends paid, and the market value of any  
10 dividends paid other than in cash, per share of that class or series of  
11 stock since that date, up to the amount of that interest;

12 (3) the consideration to be received by holders of a particular  
13 class or series of outstanding stock (including common stock) of  
14 that resident domestic corporation in that business combination is in  
15 cash or in the same form as the interested stockholder has used to  
16 acquire the largest number of shares of that class or series of stock  
17 previously acquired by it;

18 (4) the holders of all outstanding shares of stock of that resident  
19 domestic corporation not beneficially owned by that interested  
20 stockholder immediately prior to the consummation of that business  
21 combination are entitled to receive in that business combination  
22 cash or other consideration for those shares in compliance with  
23 paragraphs (1), (2) and (3) of this subsection; and

24 (5) after that interested stockholder's stock acquisition date and  
25 prior to the consummation date with respect to that business  
26 combination, that interested stockholder has not become the  
27 beneficial owner of any additional shares of stock of that resident  
28 domestic corporation, except:

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

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

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

37 (d) through purchase by that interested stockholder at any price  
38 which, if that price had been paid in an otherwise permissible  
39 business combination, the announcement date and consummation  
40 date of which were the date of that purchase, would have satisfied  
41 the requirements of paragraphs (1), (2) and (3) of this subsection.

42 d. a business combination approved by (1) the board of  
43 directors, or a committee of the board of directors, of that resident  
44 domestic corporation consisting solely of persons who are not  
45 employees, officers, directors, stockholders, affiliates or associates  
46 of that interested stockholder prior to the consummation of the  
47 business combination; and (2) the affirmative vote of the holders of  
48 a majority of the voting stock not beneficially owned by such

1 interested stockholder at a meeting called for such purpose if the  
2 transaction or series of related transactions with the interested  
3 stockholder which caused the person to become an interested  
4 stockholder was approved by the board of directors of the resident  
5 domestic corporation prior to the consummation of such transaction  
6 or series of related transactions.

7 (cf: P.L.1987, c.380, s.2)

8

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

11 6. a. Unless the certificate of incorporation provides otherwise,  
12 the provisions of this act shall not apply to any business  
13 combination of a resident domestic corporation with an interested  
14 stockholder if the resident domestic corporation did not have a class  
15 of voting stock registered or traded on a national securities  
16 exchange or registered with the Securities and Exchange  
17 Commission pursuant to section 12(g) of the Exchange Act, 48 Stat.  
18 892 (15 U.S.C. [s.781] s.781 ) on that interested stockholder's stock  
19 acquisition date.

20 b. Unless the certificate of incorporation provides otherwise,  
21 the provisions of this act shall not apply to any business  
22 combination with an interested stockholder who was an interested  
23 stockholder prior to the effective date of this act unless subsequent  
24 thereto that interested stockholder increased his or its interested  
25 stockholder's proportion of the voting power of the resident  
26 domestic corporation's outstanding voting stock to a proportion in  
27 excess of the proportion of voting power that interested stockholder  
28 held prior to the effective date of this act.

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

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

43 e. (Deleted by amendment, P.L.1989, c.106.)

44 f. The provisions of this act shall not apply to any business  
45 combination of a resident domestic corporation with an interested  
46 stockholder of that corporation which, prior to August 5, 1986,  
47 became the beneficial owner of more than 50% of the voting power  
48 of the outstanding voting stock of that resident domestic

1 corporation by reason of a purchase of voting stock directly from  
2 that resident domestic corporation in a transaction approved by the  
3 board of directors of that resident domestic corporation, provided  
4 that, at the time of the approval, none of the directors of the resident  
5 domestic corporation was an employee, officer, director,  
6 shareholder, affiliate or associate of the interested stockholder.

7 g. The provisions of this act shall not apply to any business  
8 combination of a resident domestic corporation with an interested  
9 stockholder of that corporation which became an interested  
10 stockholder on or after August 5, 1986 and before January 1, 1987.

11 h. The provisions of P.L.1989, c.74 (C.14A:10A-1 et seq.) shall  
12 not apply to any stockholder who was the beneficial owner of 5% or  
13 more of the voting power of the outstanding voting stock of that  
14 resident domestic corporation on the effective date of P.L. \_\_\_\_\_,  
15 c. (pending before the Legislature as this bill) if the resident  
16 domestic corporation did not, on the effective date of P.L. \_\_\_\_\_,  
17 c. (pending before the Legislature as this bill), have its principal  
18 executive offices located in this State or significant business  
19 operations located in this State.

20 (cf: P.L.1989, c.106, s.3)

21

22 5. This act shall take effect on the 90th day next following  
23 enactment.

24

25

26

#### STATEMENT

27

28 This bill amends the "New Jersey Shareholders' Protection Act"  
29 to allow certain business combinations between resident domestic  
30 corporations and interested stockholders.

31 Specifically, the bill amends the definition of "resident domestic  
32 corporation" to provide that a resident domestic corporation does  
33 not include an issuer of voting stock which is organized under the  
34 laws of this State but neither maintains its principal executive  
35 offices in this State nor has significant business operations located  
36 in this State if that corporation's board of director adopts an  
37 amendment to its bylaws electing not to be a resident domestic  
38 corporation within 90 days from the effective date of this bill.

39 The bill also allows a resident domestic corporation to engage in  
40 a business combination with an interested stockholder if the  
41 transaction which caused the person to become an interested  
42 stockholder was approved by the resident domestic corporation's  
43 board of directors prior to the stock acquisition date. (Generally, an  
44 "interested stockholder" is an owner of 10% or more of the  
45 outstanding voting stock of the corporation.)

46 The bill further allows a subsequent business combination  
47 between a resident domestic corporation and an interested  
48 stockholder if the subsequent business combination is approved by:



1 (1) the board of directors, or a committee of that board, consisting  
2 solely of persons who are not employees, officers, directors,  
3 stockholders, affiliates or associates of that interested stockholder;  
4 and (2) the affirmative vote of the holders of a majority of the  
5 voting stock not beneficially owned by such interested stockholder  
6 at a meeting called for such purpose.

7 The bill also exempts from the provisions of the “New Jersey  
8 Shareholders’ Protection Act” any stockholder who was the  
9 beneficial owner of five percent or more of the voting power of the  
10 outstanding voting stock of that resident domestic corporation on  
11 the effective date of this bill if the resident domestic corporation did  
12 not, on the effective date of the bill, have its principal executive  
13 offices located in this State or significant business operations  
14 located in this State.

ASSEMBLY COMMERCE AND ECONOMIC DEVELOPMENT  
COMMITTEE

STATEMENT TO  
ASSEMBLY, No. 3049

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 24, 2012

The Assembly Commerce and Economic Development Committee reports favorably Assembly Bill No. 3049.

This bill amends the “New Jersey Shareholders’ Protection Act” to allow certain business combinations between resident domestic corporations and "interested" stockholders.

Specifically, the bill amends the definition of “resident domestic corporation” to provide that a resident domestic corporation does not include an issuer of voting stock which is organized under the laws of this State but neither maintains its principal executive offices in this State nor has significant business operations located in this State if that corporation’s board of director adopts an amendment to its bylaws electing not to be a resident domestic corporation within 90 days from the effective date of this bill.

The bill also allows a resident domestic corporation to engage in a business combination with an interested stockholder if the transaction which caused the person to become an interested stockholder was approved by the resident domestic corporation’s board of directors prior to the stock acquisition date. (Generally, an "interested stockholder" is an owner of 10% or more of the outstanding voting stock of the corporation.)

The bill further allows a subsequent business combination between a resident domestic corporation and an interested stockholder if the subsequent business combination is approved by: (1) the board of directors, or a committee of that board, consisting solely of persons who are not employees, officers, directors, stockholders, affiliates, or associates of that interested stockholder; and (2) the affirmative vote of the holders of a majority of the voting stock not beneficially owned by such interested stockholder at a meeting called for such purpose.

The bill also exempts from the provisions of the “New Jersey Shareholders’ Protection Act” any stockholder who was the beneficial owner of five percent or more of the voting power of the outstanding voting stock of that resident domestic corporation on the effective date of this bill if the resident domestic corporation did not, on the effective date of the bill, have its principal executive offices located in this State or significant business operations located in this State.

SENATE COMMERCE COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3049**

**STATE OF NEW JERSEY**

DATED: JANUARY 14, 2013

The Senate Commerce Committee reports favorably Assembly Bill No. 3049.

This bill amends the “New Jersey Shareholders’ Protection Act” to allow certain business combinations between resident domestic corporations and interested stockholders.

Specifically, the bill amends the definition of “resident domestic corporation” to provide that a resident domestic corporation does not include an issuer of voting stock which is organized under the laws of this State but neither maintains its principal executive offices in this State nor has significant business operations located in this State if that corporation’s board of director adopts an amendment to its bylaws electing not to be a resident domestic corporation within 90 days from the effective date of this bill.

The bill also allows a resident domestic corporation to engage in a business combination with an interested stockholder if the transaction which caused the person to become an interested stockholder was approved by the resident domestic corporation’s board of directors prior to the stock acquisition date. Generally, an “interested stockholder” is an owner of 10% or more of the outstanding voting stock of the corporation.

The bill further allows a subsequent business combination between a resident domestic corporation and an interested stockholder if the subsequent business combination is approved by: (1) the board of directors, or a committee of that board, consisting solely of persons who are not employees, officers, directors, stockholders, affiliates or associates of that interested stockholder; and (2) the affirmative vote of the holders of a majority of the voting stock not beneficially owned by such interested stockholder at a meeting called for such purpose.

The bill also exempts from the provisions of the “New Jersey Shareholders’ Protection Act” any stockholder who was the beneficial owner of five percent or more of the voting power of the outstanding voting stock of that resident domestic corporation on the effective date of this bill if the resident domestic corporation did not, on the effective date of the bill, have its principal executive offices located in this State or significant business operations located in this State.

**SENATE, No. 2328**

**STATE OF NEW JERSEY**  
**215th LEGISLATURE**

INTRODUCED NOVEMBER 19, 2012

**Sponsored by:**  
**Senator NIA H. GILL**  
**District 34 (Essex and Passaic)**

**SYNOPSIS**

Allows certain business combinations between resident domestic corporations and interested stockholders.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning resident domestic corporations and amending  
2 P.L.1986, c.74.

3

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

6

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

9 3. As used in this act:

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

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

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

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

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

30 (2) that, individually or with or through any of its affiliates or  
31 associates, has (a) the right to acquire that stock (whether that right  
32 is exercisable immediately or only after the passage of time),  
33 pursuant to any agreement, arrangement or understanding (whether  
34 or not in writing), or upon the exercise of conversion rights,  
35 exchange rights, warrants or options, or otherwise; provided,  
36 however, that a person shall not be deemed the beneficial owner of  
37 stock tendered pursuant to a tender or exchange offer made by that  
38 person or any of that person's affiliates or associates until that  
39 tendered stock is accepted for purchase or exchange; or (b) the right  
40 to vote that stock pursuant to any agreement, arrangement or  
41 understanding (whether or not in writing); provided, however, that a  
42 person shall not be deemed the beneficial owner of any stock under  
43 this subparagraph if the agreement, arrangement or understanding to  
44 vote that stock (i) arises solely from a revocable proxy or consent  
45 given in response to a proxy or consent solicitation made in

**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 accordance with the applicable rules and regulations under the  
2 Exchange Act, and (ii) is not then reportable on a Schedule 13D  
3 under the Exchange Act (or any comparable or successor report); or

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

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

14 (1) any merger or consolidation of that resident domestic  
15 corporation or any subsidiary of that resident domestic corporation  
16 with (a) that interested stockholder or (b) any other corporation  
17 (whether or not it is an interested stockholder of that resident  
18 domestic corporation) which is, or after a merger or consolidation  
19 would be, an affiliate or associate of that interested stockholder;

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

33 (3) the issuance or transfer by that resident domestic corporation  
34 or any subsidiary of that resident domestic corporation (in one  
35 transaction or a series of transactions) of any stock of that resident  
36 domestic corporation or any subsidiary of that resident domestic  
37 corporation which has an aggregate market value equal to 5% or  
38 more of the aggregate market value of all the outstanding stock of  
39 that resident domestic corporation to that interested stockholder or  
40 any affiliate or associate of that interested stockholder, except  
41 pursuant to the exercise of warrants or rights to purchase stock  
42 offered, or a dividend or distribution paid or made, pro rata to all  
43 stockholders of that resident domestic corporation;

44 (4) the adoption of any plan or proposal for the liquidation or  
45 dissolution of that resident domestic corporation proposed by, on  
46 behalf of or pursuant to any agreement, arrangement or  
47 understanding (whether or not in writing) with that interested

1 stockholder or any affiliate or associate of that interested  
2 stockholder;

3 (5) any reclassification of securities (including, without  
4 limitation, any stock split, stock dividend, or other distribution of  
5 stock in respect of stock, or any reverse stock split), or  
6 recapitalization of that resident domestic corporation, or any merger  
7 or consolidation of that resident domestic corporation with any  
8 subsidiary of that resident domestic corporation, or any other  
9 transaction (whether or not with, or into, or otherwise involving that  
10 interested stockholder), proposed by, on behalf of or pursuant to  
11 any agreement, arrangement or understanding (whether or not in  
12 writing) with that interested stockholder or any affiliate or associate  
13 of that interested stockholder, which has the effect, directly or  
14 indirectly, of increasing the proportionate share of the outstanding  
15 shares of any class or series of stock or securities convertible into  
16 voting stock of that resident domestic corporation or any subsidiary  
17 of that resident domestic corporation which is directly or indirectly  
18 owned by that interested stockholder or any affiliate or associate of  
19 that interested stockholder, except as a result of immaterial changes  
20 due to fractional share adjustments; or

21 (6) any receipt by that interested stockholder or any affiliate or  
22 associate of that interested stockholder of the benefit, directly or  
23 indirectly (except proportionately as a stockholder of that resident  
24 domestic corporation), of any loans, advances, guarantees, pledges  
25 or other financial assistance or any tax credits or other tax  
26 advantages provided by or through that corporation; provided,  
27 however, that the term "business combination" shall not be deemed  
28 to include the receipt of any of the foregoing benefits by that  
29 resident domestic corporation or any of that corporation's affiliates  
30 arising from transactions (such as intercompany loans or tax sharing  
31 arrangements) between that resident domestic corporation and its  
32 affiliates in the ordinary course of business.

33 f. "Common stock" means any stock other than preferred  
34 stock.

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

38 h. "Control," including the terms "controlling," "controlled by"  
39 and "under common control with," means the possession, directly or  
40 indirectly, of the power to direct or cause the direction of the  
41 management and policies of a person, whether through the  
42 ownership of voting stock, by contract, or otherwise. A person's  
43 beneficial ownership of 10% or more of the voting power of a  
44 corporation's outstanding voting stock shall create a presumption  
45 that that person has control of that corporation. Notwithstanding  
46 the foregoing in this subsection, a person shall not be deemed to  
47 have control of a corporation if that person holds voting power, in  
48 good faith and not for the purpose of circumventing this section, as

1 an agent, bank, broker, nominee, custodian or trustee for one or  
2 more beneficial owners who do not individually or as a group have  
3 control of that corporation.

4 i. "Exchange Act" means the "Securities Exchange Act of  
5 1934," 48 Stat. 881 (15 U.S.C. s. 78a et seq.) as the same has been  
6 or hereafter may be amended from time to time.

7 j. "Interested stockholder," when used in reference to any  
8 resident domestic corporation, means any person (other than that  
9 resident domestic corporation or any subsidiary of that resident  
10 domestic corporation) that:

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

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

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

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

44 (2) in the case of property other than cash or stock, the fair  
45 market value of that property on the date in question as determined  
46 by the board of directors of that resident domestic corporation in  
47 good faith.



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

10 m. "Resident domestic corporation" means an issuer of voting  
11 stock which is organized under the laws of this State **and, as of the**  
12 **stock acquisition date in question, has its principal executive offices**  
13 **located in this State or significant business operations located in**  
14 **this State** **], provided, however, that an issuer which did not have its**  
15 **principal executive offices located in this State and did not have**  
16 **significant business operations in this State on the date of enactment**  
17 **of P.L. \_\_\_\_\_, c. (pending before the Legislature as this bill), may**  
18 **elect not to be a resident domestic corporation and not be governed**  
19 **by P.L.1986, c.74 (C.14A:10A-1 et seq.), by its board of directors**  
20 **adopting an amendment to its bylaws to that effect within 90 days**  
21 **of the date of enactment of P.L. \_\_\_\_\_, c. (pending before the**  
22 **Legislature as this bill), and which amendment shall not be further**  
23 **amended by the board of directors.**

24 n. "Stock" means:

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

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

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

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

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

42 (cf: P.L.1989, c.106, s.2)

43  
44 2. Section 4 of P.L.1986, c.74 (C.14A:10A-4) is amended to  
45 read as follows:

46 4. Notwithstanding anything to the contrary contained in this  
47 act (except section 6 of this act), no resident domestic corporation  
48 shall engage in any business combination with any interested

1 stockholder of that resident domestic corporation for a period of  
2 five years following that interested stockholder's stock acquisition  
3 date unless:

4 a. that business combination is approved by the board of  
5 directors of that resident domestic corporation prior to that  
6 interested stockholder's stock acquisition date; or

7 b. the transaction or series of related transactions which caused  
8 the person to become an interested stockholder was approved by the  
9 board of directors of that resident domestic corporation prior to that  
10 interested stockholder's stock acquisition date and any subsequent  
11 business combinations with that interested stockholder are approved  
12 by the board of directors of that resident domestic corporation,  
13 provided that any such subsequent business combination is  
14 approved by (1) the board of directors, or a committee of that board,  
15 consisting solely of persons who are not employees, officers,  
16 directors, stockholders, affiliates or associates of that interested  
17 stockholder, and (2) the affirmative vote of the holders of a majority  
18 of the voting stock not beneficially owned by such interested  
19 stockholder at a meeting called for such purpose.

20 (cf: P.L.1986, c.74, s.4)

21

22 3. Section 5 of P.L.1986, c.74 (C.14A:10A-5) is amended to  
23 read as follows:

24 5. In addition to the restriction contained in section 4 of this  
25 act, and except as provided in section 6 of this act, no resident  
26 domestic corporation shall engage at any time in any business  
27 combination with any interested stockholder of that resident  
28 domestic corporation other than a business combination specified in  
29 any one of subsection a., b. **【or】**, c. or d. of this section (the  
30 satisfaction of any one subsection being sufficient):

31 a. a business combination approved by the board of directors of  
32 that resident domestic corporation prior to that interested  
33 stockholder's stock acquisition date.

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

37 c. a business combination that meets all of the following  
38 conditions:

39 (1) the aggregate amount of the cash and the market value, as of  
40 the consummation date, of consideration other than cash to be  
41 received per share by holders of outstanding shares of common  
42 stock of that resident domestic corporation in that business  
43 combination is at least equal to the higher of the following:

44 (a) the highest per share price (including any brokerage  
45 commissions, transfer taxes and soliciting dealers' fees) paid by that  
46 interested stockholder for any shares of common stock of the same  
47 class or series acquired by it (i) within the five-year period  
48 immediately prior to the announcement date with respect to that

1 business combination, or (ii) within the five-year period  
2 immediately prior to, or in, the transaction in which that interested  
3 stockholder became an interested stockholder, whichever is higher;  
4 plus, in either case, interest compounded annually from the earliest  
5 date on which that highest per share acquisition price was paid  
6 through the consummation date at the rate for one-year United  
7 States Treasury obligations from time to time in effect; less the  
8 aggregate amount of any cash dividends paid, and the market value  
9 of any dividends paid other than in cash, per share of common stock  
10 since that earliest date, up to the amount of that interest; and

11 (b) the market value per share of common stock on the  
12 announcement date with respect to that business combination or on  
13 that interested stockholder's stock acquisition date, whichever is  
14 higher; plus interest compounded annually from that date through  
15 the consummation date at the rate for one-year United States  
16 Treasury obligations from time to time in effect; less the aggregate  
17 amount of any cash dividends paid, and the market value of any  
18 dividends paid other than in cash, per share of common stock since  
19 that date, up to the amount of that interest;

20 (2) the aggregate amount of the cash and the market value as of  
21 the consummation date of consideration other than cash to be  
22 received per share by holders of outstanding shares of any class or  
23 series of stock, other than common stock, of that resident domestic  
24 corporation is at least equal to the highest of the following (whether  
25 or not that interested stockholder has previously acquired any  
26 shares of that class or series of stock):

27 (a) the highest per share price (including any brokerage  
28 commissions, transfer taxes and soliciting dealers' fees) paid by that  
29 interested stockholder for any shares of that class or series of stock  
30 acquired by it (i) within the five-year period immediately prior to  
31 the announcement date with respect to that business combination, or  
32 (ii) within the five-year period immediately prior to, or in, the  
33 transaction in which that interested stockholder became an  
34 interested stockholder, whichever is higher; plus, in either case,  
35 interest compounded annually from the earliest date on which that  
36 highest per share acquisition price was paid through the  
37 consummation date at the rate for one-year United States Treasury  
38 obligations from time to time in effect; less the aggregate amount of  
39 any cash dividends paid, and the market value of any dividends paid  
40 other than in cash, per share of that class or series of stock since  
41 that earliest date, up to the amount of that interest;

42 (b) the highest preferential amount per share to which the  
43 holders of shares of that class or series of stock are entitled in the  
44 event of any liquidation, dissolution or winding up of that resident  
45 domestic corporation, plus the aggregate amount of any dividends  
46 declared or due as to which those holders are entitled prior to  
47 payment of dividends on some other class or series of stock (unless

1 the aggregate amount of those dividends is included in that  
2 preferential amount); and

3 (c) the market value per share of that class or series of stock on  
4 the announcement date with respect to that business combination or  
5 on that interested stockholder's stock acquisition date, whichever is  
6 higher; plus interest compounded annually from that date through  
7 the consummation date at the rate for one-year United States  
8 Treasury obligations from time to time in effect; less the aggregate  
9 amount of any cash dividends paid, and the market value of any  
10 dividends paid other than in cash, per share of that class or series of  
11 stock since that date, up to the amount of that interest;

12 (3) the consideration to be received by holders of a particular  
13 class or series of outstanding stock (including common stock) of  
14 that resident domestic corporation in that business combination is in  
15 cash or in the same form as the interested stockholder has used to  
16 acquire the largest number of shares of that class or series of stock  
17 previously acquired by it;

18 (4) the holders of all outstanding shares of stock of that resident  
19 domestic corporation not beneficially owned by that interested  
20 stockholder immediately prior to the consummation of that business  
21 combination are entitled to receive in that business combination  
22 cash or other consideration for those shares in compliance with  
23 paragraphs (1), (2) and (3) of this subsection; and

24 (5) after that interested stockholder's stock acquisition date and  
25 prior to the consummation date with respect to that business  
26 combination, that interested stockholder has not become the  
27 beneficial owner of any additional shares of stock of that resident  
28 domestic corporation, except:

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

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

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

37 (d) through purchase by that interested stockholder at any price  
38 which, if that price had been paid in an otherwise permissible  
39 business combination, the announcement date and consummation  
40 date of which were the date of that purchase, would have satisfied  
41 the requirements of paragraphs (1), (2) and (3) of this subsection.

42 d. a business combination approved by (1) the board of  
43 directors, or a committee of the board of directors, of that resident  
44 domestic corporation consisting solely of persons who are not  
45 employees, officers, directors, stockholders, affiliates or associates  
46 of that interested stockholder prior to the consummation of the  
47 business combination; and (2) the affirmative vote of the holders of  
48 a majority of the voting stock not beneficially owned by such

1 interested stockholder at a meeting called for such purpose if the  
2 transaction or series of related transactions with the interested  
3 stockholder which caused the person to become an interested  
4 stockholder was approved by the board of directors of the resident  
5 domestic corporation prior to the consummation of such transaction  
6 or series of related transactions.

7 (cf: P.L.1987, c.380, s.2)

8

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

11 6. a. Unless the certificate of incorporation provides otherwise,  
12 the provisions of this act shall not apply to any business  
13 combination of a resident domestic corporation with an interested  
14 stockholder if the resident domestic corporation did not have a class  
15 of voting stock registered or traded on a national securities  
16 exchange or registered with the Securities and Exchange  
17 Commission pursuant to section 12(g) of the Exchange Act, 48 Stat.  
18 892 (15 U.S.C. **[s.781]** s.781 ) on that interested stockholder's stock  
19 acquisition date.

20 b. Unless the certificate of incorporation provides otherwise,  
21 the provisions of this act shall not apply to any business  
22 combination with an interested stockholder who was an interested  
23 stockholder prior to the effective date of this act unless subsequent  
24 thereto that interested stockholder increased his or its interested  
25 stockholder's proportion of the voting power of the resident  
26 domestic corporation's outstanding voting stock to a proportion in  
27 excess of the proportion of voting power that interested stockholder  
28 held prior to the effective date of this act.

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

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

43 e. (Deleted by amendment, P.L.1989, c.106.)

44 f. The provisions of this act shall not apply to any business  
45 combination of a resident domestic corporation with an interested  
46 stockholder of that corporation which, prior to August 5, 1986,  
47 became the beneficial owner of more than 50% of the voting power  
48 of the outstanding voting stock of that resident domestic

1 corporation by reason of a purchase of voting stock directly from  
2 that resident domestic corporation in a transaction approved by the  
3 board of directors of that resident domestic corporation, provided  
4 that, at the time of the approval, none of the directors of the resident  
5 domestic corporation was an employee, officer, director,  
6 shareholder, affiliate or associate of the interested stockholder.

7 g. The provisions of this act shall not apply to any business  
8 combination of a resident domestic corporation with an interested  
9 stockholder of that corporation which became an interested  
10 stockholder on or after August 5, 1986 and before January 1, 1987.

11 h. The provisions of P.L.1989, c.74 (C.14A:10A-1 et seq.) shall  
12 not apply to any stockholder who was the beneficial owner of 5% or  
13 more of the voting power of the outstanding voting stock of that  
14 resident domestic corporation on the effective date of P.L. \_\_\_\_\_,  
15 c. (pending before the Legislature as this bill) if the resident  
16 domestic corporation did not, on the effective date of P.L. \_\_\_\_\_,  
17 c. (pending before the Legislature as this bill), have its principal  
18 executive offices located in this State or significant business  
19 operations located in this State.

20 (cf: P.L.1989, c.106, s.3)

21

22 5. This act shall take effect on the 90th day next following  
23 enactment.

24

25

26

STATEMENT

27

28 This bill amends the "New Jersey Shareholders' Protection Act"  
29 to allow certain business combinations between resident domestic  
30 corporations and interested stockholders.

31 Specifically, the bill amends the definition of "resident domestic  
32 corporation" to provide that a resident domestic corporation does  
33 not include an issuer of voting stock which is organized under the  
34 laws of this State but neither maintains its principal executive  
35 offices in this State nor has significant business operations located  
36 in this State if that corporation's board of director adopts an  
37 amendment to its bylaws electing not to be a resident domestic  
38 corporation within 90 days from the effective date of this bill.

39 The bill also allows a resident domestic corporation to engage in  
40 a business combination with an interested stockholder if the  
41 transaction which caused the person to become an interested  
42 stockholder was approved by the resident domestic corporation's  
43 board of directors prior to the stock acquisition date. (Generally, an  
44 "interested stockholder" is an owner of 10% or more of the  
45 outstanding voting stock of the corporation.)

46 The bill further allows a subsequent business combination  
47 between a resident domestic corporation and an interested  
48 stockholder if the subsequent business combination is approved by:

**S2328 GILL**

12

1 (1) the board of directors, or a committee of that board, consisting  
2 solely of persons who are not employees, officers, directors,  
3 stockholders, affiliates or associates of that interested stockholder;  
4 and (2) the affirmative vote of the holders of a majority of the  
5 voting stock not beneficially owned by such interested stockholder  
6 at a meeting called for such purpose.

7 The bill also exempts from the provisions of the “New Jersey  
8 Shareholders’ Protection Act” any stockholder who was the  
9 beneficial owner of five percent or more of the voting power of the  
10 outstanding voting stock of that resident domestic corporation on  
11 the effective date of this bill if the resident domestic corporation did  
12 not, on the effective date of the bill, have its principal executive  
13 offices located in this State or significant business operations  
14 located in this State.

# SENATE COMMERCE COMMITTEE

## STATEMENT TO

### SENATE, No. 2328

# STATE OF NEW JERSEY

DATED: JANUARY 14, 2013

The Senate Commerce Committee reports favorably Senate Bill No. 2328.

This bill amends the “New Jersey Shareholders’ Protection Act” to allow certain business combinations between resident domestic corporations and interested stockholders.

Specifically, the bill amends the definition of “resident domestic corporation” to provide that a resident domestic corporation does not include an issuer of voting stock which is organized under the laws of this State but neither maintains its principal executive offices in this State nor has significant business operations located in this State if that corporation’s board of director adopts an amendment to its bylaws electing not to be a resident domestic corporation within 90 days from the effective date of this bill.

The bill also allows a resident domestic corporation to engage in a business combination with an interested stockholder if the transaction which caused the person to become an interested stockholder was approved by the resident domestic corporation’s board of directors prior to the stock acquisition date. Generally, an “interested stockholder” is an owner of 10% or more of the outstanding voting stock of the corporation.

The bill further allows a subsequent business combination between a resident domestic corporation and an interested stockholder if the subsequent business combination is approved by: (1) the board of directors, or a committee of that board, consisting solely of persons who are not employees, officers, directors, stockholders, affiliates or associates of that interested stockholder; and (2) the affirmative vote of the holders of a majority of the voting stock not beneficially owned by such interested stockholder at a meeting called for such purpose.

The bill also exempts from the provisions of the “New Jersey Shareholders’ Protection Act” any stockholder who was the beneficial owner of five percent or more of the voting power of the outstanding voting stock of that resident domestic corporation on the effective date of this bill if the resident domestic corporation did not, on the effective date of the bill, have its principal executive offices located in this State or significant business operations located in this State.