
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1106

Session of
1975

INTRODUCED BY ZEMPRELLI, HILL, COPPERSMITH, MYERS, NOSZKA,
SCANLON, LEWIS, STAPLETON, HAGER, REIBMAN, JUBELIRER, LYNCH,
MURRAY, DWYER, FLEMING, EWING, EARLY, NOLAN, LENTZ, ANDREWS
AND ROSS, OCTOBER 2, 1975

AS REPORTED FROM COMMITTEE ON BUSINESS AND COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JANUARY 27, 1976

AN ACT

1 Providing for the protection of Pennsylvania corporations,
2 shareholders, employees and the public, and to prevent fraud
3 and deception by requiring certain persons purchasing equity
4 securities of any corporation incorporated in Pennsylvania or
5 having its principal office and substantial assets located in
6 this Commonwealth to make a full and fair disclosure to
7 offerees of all material information in regard to takeover
8 offers.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short Title.--This act should be known as the
12 "Takeover Disclosure Law."

13 Section 2. Findings and Declaration of Policy.--It is hereby
14 determined and declared as a matter of legislative finding that
15 legislation is necessary to provide adequate protection for
16 Pennsylvania corporations, shareholders, and employees and the
17 public from the use of takeover offers without full and fair
18 disclosure of information concerning them.

19 Section 3. Definitions.--As used in this act:

1 "Affiliate" with respect to a person means any person
2 controlling, controlled by, or under common control with such
3 person.

4 "Associate" with respect to a person means any person acting
5 jointly or in concert with such person for the purpose of
6 acquiring, holding, or disposing of, or exercising any voting
7 rights attached to the equity securities of an issuer.

8 "Commission" means the Pennsylvania Securities Commission.

9 "Equity security" means any share or similar security, or any
10 security convertible, with or without consideration, into such a
11 security; or carrying any warrant or right to subscribe to or
12 purchase such a security; or any such warrant or right or any
13 other security which, the commission, for the protection of
14 security holders, treats as an equity security pursuant to the
15 Pennsylvania Securities Act of 1972 or pursuant to any
16 regulation of the ~~Pennsylvania Securities Commission~~ COMMISSION. <—

17 "Offeree" means a record or beneficial owner of equity
18 securities to whom a takeover offer is made or proposed to be
19 made.

20 "Offeror" means a person who makes or participates in any way
21 in making a takeover offer. Offeror does not include any bank or
22 broker-dealer loaning funds to an offeror in the ordinary course
23 of its business, or any bank, broker-dealer, attorney,
24 accountant, consultant, employee, or other person furnishing
25 information or advice to or performing ministerial duties for an
26 offeror, and not otherwise participating in the takeover offer.

27 "Takeover offer" means the acquisition of or offer, OTHER <—
28 THAN AN OFFER INCIDENT TO A VOTE BY SECURITY HOLDERS PURSUANT TO
29 THE ARTICLES OF INCORPORATION OR THE APPLICABLE CORPORATION
30 STATUTE OR OTHER STATUTE GOVERNING SUCH PERSON, OR PURSUANT TO A

1 PARTNERSHIP AGREEMENT, A DECLARATION OF TRUST, TRUST INDENTURE
2 OR ANY AGREEMENT AMONG SECURITY HOLDERS ON A MERGER,
3 CONSOLIDATION, SALE OF ASSETS IN CONSIDERATION, IN WHOLE OR IN
4 PART, OF THE ISSUANCE OF SECURITIES OF ANOTHER PERSON,
5 RECLASSIFICATION OF SECURITIES, OR REORGANIZATION INVOLVING THE
6 EXCHANGE OF SECURITIES, IN WHOLE OR IN PART, FOR THE SECURITIES
7 OF ANY OTHER PERSON, to acquire any equity security of a target
8 company, pursuant to a tender offer, if after the acquisition
9 thereof, the offeror would, directly or indirectly, be a
10 beneficial owner of more than 5% of any class of the outstanding
11 equity securities of the target company. "Takeover offer" does
12 not include THE FOLLOWING OFFERS OR THE ACQUISITION OF EQUITY <—
13 SECURITIES PURSUANT TO SUCH OFFERS: (i) an offer to acquire
14 equity securities to be effected by a registered broker-dealer
15 REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION on a <—
16 stock exchange or in the over-the-counter market if the broker
17 performs only the customary broker's function and receives no
18 more than the customary broker's commission and if neither the
19 principal nor the broker solicits or arranges for the
20 solicitation of orders to sell such equity securities, (ii)
21 offers made by a dealer for his own account in the ordinary
22 course of his business of buying and selling such security,
23 ~~(iii) an offer to acquire such equity security solely in~~ <—
24 ~~exchange for other securities, or the acquisition of such equity~~
25 ~~security pursuant to such offer, for the sole account of the~~
26 ~~offeror, in good faith and not for the purpose of avoiding this~~
27 ~~section, and not involving any public offering of such other~~
28 ~~securities within the meaning of section 4 of Title I of the~~
29 ~~"Securities Act of 1933," 48 Stat. 77, 15 U.S.C. 77D (2), as~~
30 ~~amended or sections 201 and 202 of the act of December 5, 1972~~

1 ~~(P.L.1280, No.284), known as the "Pennsylvania Securities Act of~~
2 ~~1972," (iv) an offer as to which the target company, acting~~
3 ~~through its board of directors, recommends acceptance to its~~
4 ~~shareholders, if the offer is made to all shareholders on~~
5 ~~substantially equal terms, (v) AN OFFER TO ACQUIRE EQUITY~~ <—
6 SECURITIES OF A TARGET COMPANY WHICH HAS NO MORE THAN 100 EQUITY
7 SECURITY HOLDERS OF RECORD OR NO MORE THAN \$1,000,000 OF ASSETS,
8 (IV) an offer which, if accepted by all the offerees, will not
9 result in the offeror having acquired more than 2% of the same
10 class of equity securities of the ~~issuer~~ TARGET COMPANY within <—
11 the preceding 12-month period, ~~(vi~~ (V) an offer by the issuer to <—
12 acquire its own equity securities, ~~(vii) an isolated offer to~~ <—
13 ~~purchase shares from individual shareholders not made to~~
14 ~~shareholders generally, in good faith and not for the purpose of~~
15 ~~avoiding this act,~~ AN OFFER WHICH, IF ACCEPTED BY ALL OF THE <—
16 OFFEREES, WILL NOT RESULT IN THE OFFEROR HAVING ACQUIRED EQUITY
17 SECURITIES OF THE ISSUER FROM MORE THAN 25 PERSONS WITHIN THE
18 PRECEDING 12-MONTH PERIOD, FOR PURPOSES OF COMPUTING THE 25
19 PERSONS FOR THE PURPOSE OF THIS DEFINITION ANY SECURITIES
20 PURCHASED PURSUANT TO CLAUSE (I) OF THIS SECTION NOT BEING
21 INCLUDED, and ~~(viii)~~ (VII) any offer which the commission, by <—
22 regulation or order, shall exempt from the definition of
23 "takeover offer" as not being ~~entered into~~ OR MADE for the <—
24 purpose of and not having the effect of, changing or influencing
25 the control of the issuer or otherwise as not comprehended
26 within the purposes of this act.

27 "Target company" means an issuer of securities whose equity
28 securities are or are to be the subject of a takeover offer (i)
29 which is organized under the laws of this Commonwealth, or (ii)
30 has its principal ~~office~~ PLACE OF BUSINESS and substantial <—

1 assets located in this Commonwealth.

2 Section 4. Registration of Takeover Offers.--(a) It is
3 unlawful UNLESS THE SECURITIES OR THE OFFER ARE EXEMPT PURSUANT <—
4 TO SECTION 8, for any offeror to make a takeover offer involving
5 a target company ~~in this Commonwealth~~, or to acquire any equity <—
6 securities of the target company pursuant to the offer, unless
7 at least 20 days prior thereto such offeror (i) files with the
8 commission a registration statement containing the information
9 prescribed by section 5, (ii) sends a copy of the registration
10 statement by certified mail to the target company at its
11 principal office AND TO THE COLLECTIVE BARGAINING <—
12 REPRESENTATIVE, IF ANY, OF THE EMPLOYEES EMPLOYED AT THE
13 PRINCIPAL PLACE OF BUSINESS OF THE TARGET COMPANY and (iii)
14 publicly discloses the ~~material terms~~ OFFERING PRICE of the <—
15 proposed offer AND THE FACT THAT A REGISTRATION STATEMENT HAS <—
16 BEEN FILED WITH THE COMMISSION WHICH CONTAINS SUBSTANTIAL
17 ADDITIONAL INFORMATION ABOUT THE PROPOSED OFFER, WHICH
18 REGISTRATION STATEMENT IS AVAILABLE FOR INSPECTION AT THE
19 COMMISSION'S PRINCIPAL OFFICE DURING BUSINESS HOURS.

20 (b) The registration statement shall be filed on forms
21 prescribed by the commission, and shall be accompanied by a
22 consent by the offeror to service of process and the filing fee
23 specified in section 9 10. <—

24 (c) The commission may BY ORDER OR REGULATION require the <—
25 offeror to file any other documents, exhibits and information
26 that it deems material to the takeover offer, and may permit the
27 omission of any of the information specified in section 5 if it
28 determines that such information is not required for the
29 protection of offerees. The commission may by order summarily
30 delay the effective date of the offer if it determines that the

1 registration statement does not contain all of the information
2 specified in section 5 or that the solicitation materials do not
3 provide full disclosure to offerees of all material information
4 concerning the offer.

5 (d) A takeover offer automatically becomes effective 20 days
6 after the date of filing the registration statement with the
7 commission unless delayed by order of the commission or unless
8 prior thereto, the commission schedules a hearing with respect
9 to the offer. The commission may schedule a hearing, on its own
10 initiative or at the request of the target company, if the
11 commission has reason to believe that the takeover offer fails
12 to provide full and fair disclosure to offerees of all material
13 information concerning the offer, ~~will not be made to all~~ <—
14 ~~shareholders on substantially equal terms~~ or is in violation of
15 this act or the act of December 5, 1972 (P.L.1280, No.284),
16 referred to as the "Pennsylvania Securities Act of 1972." If a
17 hearing is ~~called~~ SCHEDULED, the offer shall not become <—
18 effective until registered by order of the commission.

19 Registration is not deemed to be approval of the offer by the
20 commission and any representation to the contrary is unlawful.

21 (e) Any hearing scheduled by the commission under this
22 section shall be held within 30 days of the date of the filing
23 of the registration statement under section 5 and any
24 determination made following the hearing shall be made within 30
25 days after such hearing has been closed, unless extended by
26 order of the commission for the convenience of the parties or
27 for the protection of offerees in this Commonwealth. If, upon
28 the hearing, the commission finds that the takeover offer fails
29 to provide full and fair disclosure to offerees of all material
30 information concerning the offer, ~~or will not be made to all~~ <—

1 ~~shareholders on substantially equal terms~~ or is in violation of
2 this act or the act of December 5, 1972 (P.L.1280, No.284),
3 known as the "Pennsylvania Securities Act of 1972," the
4 commission shall by order deny registration of the offer. Any
5 hearing held pursuant to this section shall be held according to
6 the provisions of the act of June 4, 1945 (P.L.1388, No.442),
7 known as the "Administrative Agency Law."

8 Section 5. Information Filed With the Commission.--The
9 information to be filed ~~with the commission and the target~~ <—
10 ~~company~~ pursuant to section 4 shall include:

11 (1) Copies of all prospectuses, brochures, advertisements,
12 circulars, letters, or other matter by means of which the
13 offeror proposes to disclose to offerees all information
14 material to a decision to accept or reject the offer.

15 (2) The identity and background of all persons on whose
16 behalf the acquisition of any equity security of the target
17 company has been or is to be effected.

18 (3) The source and amount of funds or other consideration
19 used or to be used in acquiring any equity security, including,
20 if applicable, a statement describing any securities which are
21 being offered in exchange for the equity securities of the
22 target company, and if any part of the acquisition price is or
23 will be represented by borrowed funds or other consideration, a
24 description of the material terms of any financing arrangements
25 and the names of the parties from whom the funds were borrowed.

26 (4) A statement of any plans or proposals which the offeror,
27 upon gaining control, may have to liquidate the target company,
28 sell its assets, effect a merger or consolidation of it, or make
29 any other major change in its business, corporate structure,
30 management, personnel, or policies of employment. THE OFFEROR <—

1 SHALL DISCLOSE ANY CHANGES OFFEROR INTENDS TO MAKE WITH REGARD
2 TO ANY COLLECTIVE BARGAINING AGREEMENTS.

3 (5) The number of shares or units of any equity security of
4 the target company owned beneficially by such person and any
5 affiliate or associate of such person, together with the name
6 and address of each affiliate or associate.

7 (6) Particulars as to any contracts, arrangements or
8 understandings to which an offeror is party with respect to any
9 equity security of the target company, including without
10 limitation transfers of any equity security, joint ventures,
11 loan or option arrangements, puts and calls, guarantees of loan,
12 guarantees against loss, guarantees of profits, division of
13 losses or profits, or the giving or withholding of proxies,
14 naming the persons with whom such contracts, arrangements, or
15 understandings have been entered into.

16 (7) PARTICULARS AS TO ANY CONTRACT, ARRANGEMENT OR <—
17 UNDERSTANDING BETWEEN ANY OFFEROR AND ANY OFFICER, DIRECTOR OR
18 OWNER OF 10% OR MORE OF THE OUTSTANDING STOCK OF THE TARGET
19 COMPANY RELATING TO EMPLOYMENT OF OR PURCHASE OF SERVICES OR
20 PROPERTY FROM ANY SUCH OFFICER, DIRECTOR OR SHAREHOLDER.

21 ~~(7)~~ (8) Complete information on the organization and <—
22 operations of the offeror, including without limitation the year
23 of organization, form of organization, jurisdiction in which it
24 is organized, a description of each class of the offeror's
25 equity securities and of its long term debt, financial
26 statements for the current period and for the three most recent
27 annual accounting periods, a brief description of the location
28 and general character of the principal physical properties of
29 the offeror and its subsidiaries, A DESCRIPTION OF ITS EMPLOYEE <—
30 RELATIONS HISTORY DURING THE PAST FIVE YEARS INCLUDING STRIKES

1 AND FINDINGS OF UNFAIR LABOR PRACTICES BY THE NATIONAL LABOR
2 RELATIONS BOARD, a description of material pending legal or
3 administrative proceedings other than routine litigation to
4 which the offeror or any of its subsidiaries is a party or of
5 which any of their property is the subject, a brief description
6 of the business done and projected by the offeror and its
7 subsidiaries and any material changes therein during the past
8 three years, the names and residence addresses of all directors
9 and executive officers of the offeror and its affiliates and
10 their ~~material-business~~ PRINCIPAL OCCUPATIONS together with <—
11 biographical activities and affiliations during the past three
12 years. For the purposes of this paragraph, legal or
13 administrative proceedings involving antitrust, equal
14 opportunity and environmental matters shall be considered
15 material.

16 (8) Such other and further documents, exhibits, data, and
17 information as may be required by regulation of the commission
18 necessary to make fair, full, and effective disclosure to
19 offerees of all information material to a decision to accept or
20 reject the offer.

21 Section 6. Filing of Solicitation Materials.--Copies of all
22 advertisements, circulars, letters or other materials published
23 by the offeror or the target company, soliciting or requesting
24 the acceptance or rejection of the takeover offer, shall be
25 filed with the commission and sent to the target company or
26 offeror, respectively, not later than the time copies of such
27 solicitation materials are first published or used or sent to
28 offerees if not previously filed with the commission and mailed
29 to the target company or offeror. The commission may prohibit
30 the use of any solicitation materials deemed false or

1 misleading.

2 Section 7. Limitations on Offerors.--(a) ~~No offeror may make~~ <—
3 ~~a takeover offer involving a target company which is not made to~~
4 ~~shareholders in this Commonwealth on substantially the same~~
5 ~~terms as the offer is made to shareholders outside this~~
6 ~~Commonwealth.~~

7 ~~(b)~~ An offeror shall provide that any equity securities of a
8 target company deposited or tendered pursuant to a takeover
9 offer may be withdrawn by or on behalf of any offeree at any
10 time within seven days from the date the offer has become
11 effective under this act and, if the offeror has not taken up
12 the equity securities within 60 days from the date the offer has
13 become effective under this act, except as the commission may
14 otherwise prescribe by regulation or order for the protection of
15 investors.

16 ~~(c)~~ (B) If an offeror makes a takeover offer for less than <—
17 all the outstanding equity securities of any class; and copies
18 of the offer, or notice of any increase in the consideration
19 offered, are first published or sent or given to security
20 holders; and the number of securities deposited or tendered
21 pursuant thereto within ten days after the offer has become
22 effective under this act is greater than the number the offeror
23 has offered to accept and pay for, the securities shall be
24 accepted pro rata, disregarding fractions, according to the
25 number of securities deposited or tendered by each offeree.

26 ~~(d)~~ (C) If an offeror varies the terms of a takeover offer <—
27 before its expiration date by increasing the consideration
28 offered to security holders, the offeror shall pay the increased
29 consideration for all equity securities accepted whether such
30 securities have been accepted by the offeror before or after the

1 increase in the terms of the offer.

2 ~~(e)~~ (D) No offeror may make a takeover offer involving a <—
3 ~~target company in this Commonwealth~~, or acquire any equity
4 securities of a target company pursuant to the offer, at any
5 time when an administrative or injunctive proceeding is pending
6 on behalf of the commission against the offeror alleging a
7 violation of this act or the act of December 5, 1972 (P.L.1280,
8 No.284), known as the "Pennsylvania Securities Act of 1972."

9 ~~(f)~~ (E) No offeror may acquire, remove or exercise control, <—
10 directly or indirectly, over any assets of a target company
11 ~~located in this Commonwealth~~ unless the takeover offer is <—
12 effective or exempt under this act, except as permitted by order
13 of the commission.

14 SECTION 8. EXEMPT TRANSACTIONS AND SECURITIES.--THE <—
15 FOLLOWING SECURITIES OR OFFERS TO PURCHASE SECURITIES SHALL BE
16 EXEMPTED FROM SECTION 4:

17 (A) AN OFFER AS TO WHICH THE TARGET COMPANY, ACTING THROUGH
18 ITS BOARD OF DIRECTORS, RECOMMENDS ACCEPTANCE TO ITS
19 SHAREHOLDERS, IF AT THE TIME SUCH RECOMMENDATION IS FIRST
20 COMMUNICATED TO THE SHAREHOLDERS, THE OFFEROR HAS FILED A NOTICE
21 WITH THE COMMISSION CONTAINING THE FOLLOWING: (I) THE
22 INFORMATION SPECIFIED IN SECTION 13(D) OF THE SECURITIES
23 EXCHANGE ACT OF 1934, (II) AN UNDERTAKING TO NOTIFY SECURITY
24 HOLDERS OF THE TARGET COMPANY THAT A NOTICE HAS BEEN FILED WITH
25 THE COMMISSION WHICH CONTAINS SUBSTANTIAL ADDITIONAL INFORMATION
26 ABOUT THE OFFERING, WHICH NOTICE IS AVAILABLE FOR INSPECTION AT
27 THE COMMISSION'S PRINCIPAL OFFICE DURING BUSINESS HOURS, (III)
28 SUCH FACTS AS ARE NECESSARY TO ESTABLISH THIS EXEMPTION AND (IV)
29 THE FEE SPECIFIED IN SECTION 10.

30 (B) ANY SECURITY OR OFFER TO PURCHASE ANY SECURITY AS TO

1 WHICH THE COMMISSION BY REGULATION OR ORDER FINDS THE
2 REGISTRATION IS NOT NECESSARY OR APPROPRIATE FOR THE PROTECTION
3 OF INVESTORS.

4 Section 8 9. Administration, Rules and Orders.--(a) This act <—
5 shall be administered by the Pennsylvania Securities Commission
6 which may exercise all powers granted to it under this act and
7 the act of December 5, 1972 (P.L.1280, No.284), known as the
8 "Pennsylvania Securities Act of 1972" in the administration of
9 this act.

10 (b) The commission may make, amend and rescind any
11 regulations, forms or orders necessary to carry out this act.
12 All regulations of the commission (other than those relating
13 solely to its internal administration) shall be of general
14 application and future effect and shall be made, amended or
15 rescinded in accordance with the act of June 4, 1945 (P.L.1388,
16 No.442), known as the "Administrative Agency Law," and the act
17 of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth
18 Documents Law," and no regulation shall be effective until a
19 public hearing is held thereon or until 30 days after the
20 regulation is published pursuant to such "Commonwealth Documents
21 Law." The commission may, in its discretion, waive any
22 requirement of any regulation or form in situations where, in
23 its opinion, such requirement is not necessary in the public
24 interest or for the protection of investors.

25 Section 9 10. Fees and Expenses.--~~The commission shall~~ <—
26 ~~charge a filing fee of \$750 for a registration statement filed~~
27 ~~by an offeror.~~ (A) THE COMMISSION SHALL CHARGE THE FOLLOWING <—
28 FEES FOR REGISTRATION STATEMENTS FILED PURSUANT TO SECTION 4,
29 THE COMPUTATION OF THE VALUE OF THE OFFER BEING DETERMINED BY
30 REFERENCE TO THE MAXIMUM CASH CONSIDERATION PAYABLE BY THE

1 OFFEROR FOR THE SECURITIES WHICH ARE THE SUBJECT OF THE TAKEOVER
2 OFFER OR, IF THE CONSIDERATION SHALL BE ANYTHING OTHER THAN
3 SOLELY CASH, TO THE FAIR MARKET VALUE OF THE MAXIMUM
4 CONSIDERATION BEING OFFERED FOR SUCH SECURITIES:

5 (1) FOR AN OFFER VALUED AT LEAST FIVE MILLION DOLLARS, \$750.

6 (2) FOR AN OFFER VALUED AT FIVE MILLION DOLLARS OR MORE, BUT
7 LESS THAN TEN MILLION DOLLARS, \$1,000.

8 (3) FOR AN OFFER VALUED AT TEN MILLION DOLLARS OR MORE, BUT
9 LESS THAN TWENTY-FIVE MILLION DOLLARS, \$1,500.

10 (4) FOR AN OFFER VALUED AT TWENTY-FIVE MILLION DOLLARS OR
11 MORE, \$2,500.

12 (B) THE FEE FOR FILING A NOTICE UNDER SECTION 8 IS \$50.

13 (C) ANY TARGET COMPANY MAKING ANY FILING PURSUANT TO SECTION
14 6 SHALL BE CHARGED A FEE OF \$500, PAYABLE AT THE TIME OF THE
15 INITIAL FILING.

16 (D) THE FEE FOR ANY EXAMINATION, AUDIT OR INVESTIGATION IS
17 THE ACTUAL AMOUNT OF ALL SALARY COSTS AND OTHER COMPENSATION
18 PAID TO THE PERSONS MAKING THE EXAMINATION, AUDIT, OR
19 INVESTIGATION, PLUS THE ACTUAL AMOUNT OF EXPENSES REASONABLY
20 INCURRED IN THE PERFORMANCE OF THE WORK. SUCH FEE SHALL ONLY BE
21 PAYABLE BY A REGISTRANT, APPLICANT FOR REGISTRATION, ISSUER OR
22 OTHER PERSON IN CONNECTION WITH AN INVESTIGATION BY THE
23 COMMISSION WHERE SUCH PERSON HAS BEEN FOUND GUILTY OF A
24 VIOLATION OF THE PROVISIONS OF THIS ACT.

25 Section ~~10~~ 11. Injunctions.--Whenever it shall appear to the <—
26 commission that any person, including a controlling person of an
27 offeror or target company, has engaged or is about to engage in
28 any act or practice constituting a violation of this act, or any
29 regulation or order promulgated hereunder:

30 (1) the commission may issue and cause to be served upon any

1 person violating any of the provisions of this act, an order
2 requiring the persons in violation thereof to cease and desist
3 therefrom; and

4 (2) the commission may bring an action in Commonwealth Court
5 to enjoin the acts or practices and to force compliance with
6 this act, or any regulation or order hereunder. ~~or it may refer~~ <—
7 ~~the matter to the Attorney General.~~ Upon a proper showing, the
8 court may grant a permanent or temporary injunction or
9 restraining order without bond to enforce the provisions of this
10 act, and may order rescission of any sales or purchases of
11 securities determined to be unlawful under this act, or any
12 rules or order hereunder.

13 Section ~~11~~ 12. Criminal Penalties.--(a) Any person, <—
14 including a controlling person of an offeror or target company,
15 who WILFULLY violates any of the provisions of sections 4, 5, 6 <—
16 or 7 or any regulation thereunder, or any order of which he has
17 notice, may upon conviction, be sentenced to pay a fine of not
18 more than \$1,000, or to imprisonment for not more than one year,
19 or to both. Each of the acts specified shall constitute a
20 separate offense and a prosecution or conviction for any one of
21 such offenses shall not bar prosecution or conviction for any
22 other offense. No indictment or information may be returned more
23 than five years after the alleged violation.

24 (b) The commission may refer such evidence as is available
25 concerning violations of ~~the~~ THIS act or of any regulation or <—
26 order hereunder to the Attorney General who may institute the
27 appropriate criminal proceedings under this act. If referred to
28 the Attorney General, he shall within 90 days file with the
29 commission a statement concerning any action taken or, if no
30 action has been taken, the reasons therefor.

(c) Nothing in this act limits the power of the Commonwealth to punish any person for any conduct which constitutes a crime under any other statute.

Section ~~12~~ 13. Civil Liabilities.--(a) Any offeror who purchases a security in connection with a takeover in violation of this act, shall be liable to the person selling the security to him who may sue either at law or in equity. In an action for rescission the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable. ~~Damages~~ IF THE PURCHASER NO LONGER OWNS THE SECURITY, DAMAGES are the excess of either the value of the security on the date of purchase or its present value, whichever is greater, over the present value of the consideration received for the security.

(b) Every person who directly controls a person liable under subsection (a), every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless the person who would otherwise be so liable proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is

1 contribution as in cases of contract among the several persons
2 so liable.

3 (c) No action may be maintained under this section unless
4 commenced before the expiration of ~~three~~ TWO years after the act <—
5 or transaction constituting the violation or the expiration of
6 one year after the discovery of the facts constituting the
7 violation, whichever first expires.

8 (d) The rights and remedies under this section are in
9 addition to any other rights or remedies that may exist at law
10 or in equity.

11 Section ~~13~~ 14. Application of Corporate Takeover Law.--This <—
12 act does not apply when:

13 (1) the offeror or the target company is a public utility or
14 a public utility holding company as defined in section 2 of the
15 Federal "Public Utility Holding Company Act of 1935," 49 Stat.
16 803, 15 U.S.C. 79, as amended, and the takeover offer is subject
17 to approval by the appropriate Federal agency as provided in
18 such act;

19 (2) the offeror or the target company is a bank or a bank
20 holding company subject to the Federal "Bank Holding Company Act
21 of 1956," 70 Stat. 133, 12 U.S.C. 1841, as amended, and the
22 takeover offer is subject to approval by the appropriate Federal
23 agency as provided in such act, OR THE TARGET COMPANY IS A BANK <—
24 OR A BANK HOLDING COMPANY COVERED BY SECTION 112 OF THE ACT OF
25 NOVEMBER 30, 1965 (P.L.847, NO.356), AS AMENDED, KNOWN AS THE
26 "BANKING CODE OF 1965.

27 ~~(e)~~ (3) The offeror or the target company is a savings and <—
28 loan holding company as defined in section 2 of the Federal
29 "Savings and Loan Holding Company Amendments of 1967," 82 Stat.
30 5, 12 U.S.C. 1730A, as amended, and the takeover offer is

1 subject to approval by the appropriate Federal agency as
2 provided in such act.

3 ~~(d) The offeror and the target company are banks and the~~ <—
4 ~~offer is part of a merger transaction subject to approval by~~
5 ~~appropriate Federal supervisory authorities.~~

6 (4) THE TARGET COMPANY IS A BANK AND THE OFFER IS PART OF A <—
7 TRANSACTION INVOLVING A MERGER, CONSOLIDATION, PURCHASE OF
8 ASSETS OR ASSUMPTION OF LIABILITIES SUBJECT TO APPROVAL BY AN
9 APPROPRIATE FEDERAL SUPERVISORY AUTHORITY.

10 ~~(e)~~ (5) In the case of a target company, the acquisition of <—
11 shares of such company is subject to regulation under the act of
12 May 17, 1921 (P.L.682, No.284), known as "The Insurance Company
13 Law of 1921," ~~or under the act of November 30, 1965 (P.L.847,~~ <—
14 ~~No.356), known as the "Banking Code of 1965,"~~ or under the act
15 of May 28, 1937 (P.L.1053, No.286), known as the "Public Utility
16 Law."

17 Section ~~14~~ 15. Application of Securities Law.--All of the <—
18 definitions and provisions of the act of December 5, 1972
19 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of
20 1972," which are not in conflict with this act shall apply to
21 any takeover offer involving a target company in this
22 Commonwealth.

23 Section ~~15~~ 16. Effective Date.--This act shall take effect <—
24 immediately.