

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1200 Session of
1987

INTRODUCED BY WENGER, MELLOW, BRIGHTBILL, LINCOLN, LOEPER,
JUBELIRER, O'PAKE, STAUFFER, LEWIS, SALVATORE, FUMO, ROSS,
TILGHMAN, HANKINS AND JONES, DECEMBER 7, 1987

REFERRED TO JUDICIARY, DECEMBER 7, 1987

AN ACT

1 Amending the act of May 5, 1933 (P.L.364, No.106), entitled, as
2 amended, "An act relating to corporations; defining and
3 providing for the organization, merger, consolidation,
4 reorganization, winding up and dissolution of certain
5 corporations for profit; conferring certain rights, powers,
6 duties and immunities upon them and their officers and
7 shareholders; prescribing the conditions on which such
8 corporations may exercise their powers; providing for the
9 inclusion of certain existing corporations and associations
10 within the provisions of this act; prescribing the terms and
11 conditions upon which certain foreign corporations may be
12 admitted, or may continue, to do business within the
13 Commonwealth; conferring powers and imposing duties on the
14 courts of common pleas, and certain State departments,
15 commissions, and officers; authorizing certain State
16 departments, boards, commissions, or officers to collect fees
17 for services required to be rendered by this act; imposing
18 penalties; and repealing certain acts and parts of acts
19 relating to corporations and other entities," providing for
20 option and conversion rights; further providing for the
21 rights of shareholders; and providing for job protection.

22 The General Assembly of the Commonwealth of Pennsylvania
23 hereby enacts as follows:

24 Section 1. Section 611 of the act of May 5, 1933 (P.L.364,
25 No.106), known as the Business Corporation Law, amended July 20,
26 1968 (P.L.459, No.216), is amended to read:

27 Section 611. Option Rights and Conversion Rights; Preemptive

1 Rights of Shareholders.--A. Except as otherwise provided [in
2 subsection B of this section or] in its articles[, a business
3 corporation may issue shares, option rights or securities having
4 conversion or option rights, without first offering them to
5 shareholders of any class or classes.] prior to the creation and
6 issuance thereof, a business corporation may create and issue
7 (whether or not in connection with the issuance of any of its
8 shares or other securities), option rights or securities having
9 conversion or option rights entitling the holders thereof to
10 purchase or acquire shares, option rights, securities having
11 conversion or option rights, or obligations, of any class or
12 series, or assets, of the corporation, or to purchase or acquire
13 from the corporation, shares, option rights, securities having
14 conversion or option rights, or obligations, of any class or
15 series, owned by the corporation and issued by any other person.
16 Except as otherwise provided in subsection B of this section or
17 in its articles, the shares, option rights, securities having
18 conversion or option rights, or obligations shall be evidenced
19 in such manner as the corporation may determine and may be
20 offered without first offering them to shareholders of any class
21 or classes.

22 B. Unless otherwise provided in its articles, the
23 shareholders of an unlisted corporation shall have a preemptive
24 right to subscribe for shares, option rights, or securities
25 having option rights, issued for cash by the corporation, if the
26 corporation was not incorporated hereunder and its shareholders
27 were or are entitled to preemptive rights at the date the
28 corporation became or becomes subject to this act, but this
29 subsection shall apply neither to the holders of shares of a
30 class issued after the date such corporation became or becomes

1 subject to this act nor to the issue of securities having
2 conversion rights.

3 C. Except as otherwise provided in the articles, shares (or
4 any option rights or securities having conversion or option
5 rights with respect to such shares) which have been offered to
6 shareholders having a preemptive right thereto, at a price and
7 upon terms duly fixed, and which have not been subscribed for by
8 them within the time duly fixed by the articles or the board of
9 directors, may be thereafter offered for subscription to any
10 person or persons at a price and upon terms not more favorable
11 than those at which they were offered to such shareholders.

12 D. The securities, contracts, warrants, or other instruments
13 evidencing any shares, option rights, securities having
14 conversion or option rights, or obligations of a corporation may
15 contain such terms as are fixed by the board of directors,
16 including, without limiting the generality of such authority:
17 restrictions upon the authorization or issuance of additional
18 shares, option rights, securities having conversion or option
19 rights, or obligations; provisions for the adjustment of the
20 conversion or option rights price; provisions concerning rights
21 or adjustments in the event of reorganization, merger,
22 consolidation, sale of assets or other fundamental changes;
23 provisions for the reservation of authorized but unissued shares
24 or other securities; restrictions upon the declaration or
25 payment of dividends or distributions or related party
26 transactions; and conditions relating to the exercise,
27 conversion, transfer or receipt of such shares, option rights,
28 securities having conversion or option rights, or obligations,
29 specifically including, but not limited to, conditions that
30 preclude or limit any person or persons owning or offering to

1 acquire a specified number or percentage of the outstanding
2 common shares, other shares, option rights, securities having
3 conversion or option rights, or obligations of such a
4 corporation or transferee or transferees of any such person or
5 persons from exercising, converting, transferring or receiving
6 such shares, option rights, securities having conversion or
7 option rights, or obligations.

8 Section 2. Section 910 of the act, added December 23, 1983
9 (P.L.395, No.92), is amended to read:

10 Section 910. Right of Shareholders to Receive Payment for
11 Shares Following a Control Transaction.--[A. Unless (1) the
12 bylaws, by amendment adopted within ninety days of the date of
13 enactment of this section and not subsequently rescinded by an
14 article amendment, or (2) the articles explicitly provide that
15 this section shall not be applicable to the corporation, any
16 holder of voting shares of a business corporation that becomes
17 the subject of a control transaction described in subsection B
18 who shall object to the transaction shall be entitled to the
19 rights and remedies herein provided.]

20 A. Any holder of voting shares of a business corporation
21 that becomes the subject of a control transaction described in
22 subsection B who shall object to the transaction shall be
23 entitled to the rights and remedies herein provided, unless (1)
24 the bylaws, by amendment adopted either (i) by March 23, 1984,
25 or (ii) within ninety days after the effective date of this
26 amendatory act, and, in either event, not subsequently rescinded
27 by an article amendment, explicitly provide that this section
28 shall not be applicable to the corporation or (2) the articles
29 explicitly provide that this section shall not be applicable to
30 the corporation by a provision included in the original

1 articles, by an article amendment adopted prior to the date of
2 such control transaction and prior to or on the effective date
3 of this amendatory act pursuant to the procedures then
4 applicable to the corporation, or by an article amendment
5 adopted prior to the date of such control transaction and
6 subsequent to the effective date of this amendatory act pursuant
7 to both (i) the procedures then applicable to the corporation
8 and (ii) unless such proposed amendment has been approved by the
9 board of directors of the corporation, in which event this
10 clause (ii) shall not be applicable, the affirmative vote of the
11 shareholders entitled to cast at least eighty per cent of the
12 votes which all shareholders are entitled to cast thereon. The
13 rights and remedies herein provided shall be in addition to, and
14 not in lieu of, any other rights or remedies provided by this
15 act, the articles of the corporation, the bylaws of the
16 corporation, any securities, option rights or obligations of the
17 corporation or otherwise.

18 B. (1) A controlling person or group shall mean for the
19 purpose of this section a person who has, or a group of persons
20 acting in concert that has, voting power over voting shares of
21 the corporation that would entitle the holders thereof to cast
22 at least [thirty] twenty per cent of the votes that all
23 shareholders would be entitled to cast in an election of
24 directors of the corporation.

25 (2) Notwithstanding the above, (i) a person or group which
26 would otherwise be a controlling person or group within the
27 meaning of this section shall not be deemed such a controlling
28 person or group unless, subsequent to the [enactment of this
29 section] later of the effective date of this amendatory act or
30 the date this section becomes applicable to a corporation by

1 bylaw or article amendment or otherwise, that person or group
2 increases the percentage of outstanding voting shares of the
3 corporation over which it has voting power to in excess of the
4 percentage of outstanding voting shares of the corporation over
5 which that person or group had voting power on [the date of
6 enactment of this section] such later date, and to at least the
7 amount specified in clause (1), as the result of forming or
8 enlarging a group, or acquiring, by purchase, voting power over
9 voting shares of the corporation and (ii) no person or group
10 shall be deemed to be a controlling person or group at any
11 particular time if voting power over any of the following voting
12 shares is required to be counted at such time in order to meet
13 the twenty percent minimum:

14 (a) shares which have been held continuously by a natural
15 person since January 1, 1983, and which are held by such natural
16 person at such time; or

17 (b) shares which are held at such time by any natural person
18 or trust, estate, foundation or other similar entity to the
19 extent such shares were acquired solely by gift, inheritance,
20 bequest, devise or other testamentary distribution or series of
21 such transactions, directly or indirectly, from a natural person
22 who had acquired such shares prior to January 1, 1983; or

23 (c) shares which were acquired pursuant to a stock split,
24 stock dividend or similar recapitalization with respect to
25 shares described under clause (ii) that have been held
26 continuously since their issuance by the corporation by the
27 natural person or entity that acquired them from the
28 corporation, or that were acquired, directly or indirectly, from
29 such natural person or entity, solely pursuant to a transaction
30 or series of transactions described in paragraph (b) of clause

(ii), and that are held at such time by a natural person or entity described in such paragraph (b).

(3) (i) A person shall not be a controlling person under clause (1) if such person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in clause (1) or who are not deemed a controlling person or group under clause (2).

(ii) For the purposes of this section, a person has voting power over a voting share if such person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of, such voting share.

(4) A control transaction shall mean, for the purposes of this section, the acquisition by a person or group of the status of a controlling person or group.

C. Prompt notice that a control transaction has occurred shall be given by the controlling person or group to (1) each shareholder of record of the corporation holding voting shares and (2) to the court of common pleas in the county in this Commonwealth where the registered office of the corporation is located, accompanied by a petition to such court praying that the fair value (as defined in subsection E) of the voting shares of the corporation be determined pursuant to subsection E if the court should receive pursuant to such subsection certificates from shareholders of such corporation. If the controlling person or group so requests, the corporation shall, at the option of

1 the corporation and at the expense of the person or group,
2 either furnish a list of all such shareholders to the person or
3 group or mail the notice to all such shareholders. The notice
4 must state that (i) all shareholders are entitled to demand that
5 they be paid the fair value of their shares; (ii) the minimum
6 value the shareholder can receive under this section is the
7 highest price paid per share by the controlling person or group
8 within the ninety-day period ending on and including the date of
9 the control transaction, and stating that value; and (iii) if
10 the shareholder believes the fair value of his shares is higher,
11 that this section provides an appraisal procedure for
12 determining the fair value of such shares, specifying the name
13 of the court referenced above and its address and the caption of
14 the petition referenced above, and stating that such information
15 is provided for the possible use by such shareholder in electing
16 to proceed with a court-appointed appraiser under subsection E.
17 The controlling person or group may, at its option, supply with
18 the notice referenced in subclause (i) a form for shareholder to
19 demand payment of the minimum value referred to in subclause
20 (ii) directly from the controlling person or group without
21 utilizing the court appointed appraiser procedure of subsection
22 E, requiring the shareholder to state the number and class or
23 series, if any, of the shares owned by him, and stating where
24 the payment demand must be sent and the procedures to be
25 followed. There shall be included in, or enclosed with, the
26 notice a copy of this section [and subsections F through I of
27 section 515 of this act].

28 D. After the occurrence of the control transaction, any
29 holder of voting shares of the corporation may, prior to or
30 within a reasonable time after the notice required by subsection

1 C is given, which time period may be specified in the notice,
2 make written demand on the controlling person or group for
3 payment of the amount provided in subsection E with respect to
4 the voting shares of the corporation held by the shareholder,
5 and the controlling person or group shall [agree] be required to
6 pay that amount to the shareholder pursuant to the procedures
7 specified in subsection E [upon surrender of the share
8 certificate or certificates representing such shares]. The
9 demand of the shareholder shall state the number and class or
10 series, if any, of the shares owned by him with respect to which
11 the demand is made.

12 Nothing contained in this section shall preclude a
13 controlling person or group subject to this section from
14 offering, whether in such notice or otherwise, to purchase
15 voting shares of the corporation at a price other than that
16 provided in subsection E, and nothing contained in this section
17 shall preclude any shareholder from agreeing to sell his voting
18 shares at that or any other price to any person.

19 E. (1) A shareholder making written demand under subsection
20 D shall be entitled to receive cash for each of his shares in an
21 amount equal to the fair value of each voting share as of the
22 [day prior to the] date on which the control transaction occurs,
23 taking into account all relevant factors, including an increment
24 representing a proportion of any value payable for acquisition
25 of control of the corporation. [Either the controlling person or
26 group or the shareholder may proceed under subsections F through
27 I of section 515 for a determination of the fair value of such
28 share as defined in this subsection. The date of notice of the
29 occurrence of the control transaction, or if no notice is given,
30 the date of written demand made by the shareholder, shall be

1 deemed to be the effective date of the plan, the shareholders
2 who make written demand shall be deemed to be the dissenting
3 shareholders, and the controlling person or group shall be
4 deemed to be the corporation for the purposes of those
5 subsections.] For the purposes of this subsection, fair value
6 means a value not less than the highest price paid per share by
7 the controlling person or group at any time during the ninety-
8 day period ending on and including the date of the control
9 transaction plus an increment representing any value, including
10 without limitation any proportion of any value payable for
11 acquisition of control of the corporation, that may not be
12 reflected in such price.

13 (2) If, (i) within forty-five days (or such other time
14 period, if any, as required by applicable law) after the date of
15 the notice required by subsection C, or (ii) if such notice was
16 not provided prior to the date of the written demand by the
17 shareholder under subsection D, then within forty-five days (or
18 such other time period, if any, as required by applicable law)
19 of the date of such written demand, the controlling person or
20 group and the shareholder are unable to agree on the fair value
21 of the shares or on a binding procedure to determine the fair
22 value of the shares, then each shareholder who is unable to
23 agree on both the fair value and on such a procedure with the
24 controlling person or group and who so desires to obtain the
25 rights and remedies herein provided shall, no later than thirty
26 days after the expiration of the applicable forty-five (or
27 other) day period, surrender to the court of common pleas
28 referenced in subsection C certificates representing such shares
29 duly endorsed for transfer to the controlling person or group,
30 with a notice stating that such certificates are being

1 surrendered in connection with the petition referenced in
2 subsection C, or, if no such petition has theretofore been
3 filed, such shareholder may file a petition within such thirty-
4 day period in such court praying that the fair value (as defined
5 herein) of such shares be determined. Any such shareholder who
6 does not so surrender such certificates within such time period
7 shall have no further right to receive, with respect to shares
8 the certificates of which were not so surrendered under this
9 clause, payment under this clause from the controlling person or
10 group with respect to the control transaction giving rise to the
11 shareholder's rights hereunder. Such court shall hold such
12 certificates surrendered to it in escrow for, and shall
13 promptly, following the expiration of the time period during
14 which such certificates may be surrendered, provide a notice to
15 the controlling person or group of the number of shares so
16 surrendered. The controlling person or group shall then make a
17 partial payment for the shares so surrendered to such court,
18 within ten business days of receipt of the notice from such
19 court, at a per-share price equal to the highest price paid per
20 share by the controlling person or group within the ninety-day
21 period ending on and including the date of the control
22 transaction. Such court shall then make payment, as soon as
23 practicable but in any event within ten business days, to the
24 shareholders who so surrendered their shares to the court of the
25 appropriate per share amount received from the controlling
26 person or group.

27 Upon receipt of any share certificate surrendered pursuant to
28 this section, such court shall, as soon as practicable but in
29 any event within thirty days, appoint an appraiser with
30 experience in appraising share values of companies of like

nature to the corporation to determine the fair value of such
shares. The appraiser so appointed by the court shall, as soon
as reasonably practicable, determine the fair value of the
shares subject to its appraisal and the appropriate market rate
of interest on the amount then owed by the controlling person or
group to the holders of such shares. The determination of any
appraiser so appointed by the court shall be final and binding
on both the controlling person or group and all shareholders who
so surrendered their share certificates to such court.

(3) Any amount agreed upon between the parties or determined
pursuant to the procedure agreed upon between the parties shall
be payable by the controlling person or group after it is so
agreed upon or so determined and upon and concurrently with the
delivery of the certificate or certificates representing such
shares to the controlling person or group by the shareholder.

Any amount owed, together with interest, as determined
pursuant to clause (2) shall be payable by the controlling
person or group after it is so determined and upon and
concurrently with the delivery of the certificate or
certificates representing shares surrendered to the court
referenced in subsection C to the controlling person or group by
such court (which shall make such delivery of the certificate or
certificates surrendered to it to the controlling person or
group as soon as practicable but in any event within ten
business days after the determination of the amount owed), and
such court shall then make payment, as soon as practicable but
in any event within ten business days after receipt of payment
from the controlling person or group, to the shareholders who so
surrendered their shares to such court of the appropriate per
share amount received from the controlling person or group.

1 Upon full payment by the controlling person or group of the
2 amount owed to the shareholder or to the court, as appropriate,
3 the shareholder shall cease to have any interest in such shares.

4 (4) Shareholders who surrender their shares to the court
5 pursuant to clause (2) shall retain the right to vote their
6 shares and receive dividends or other distributions thereon
7 until the court receives payment in full for each of the shares
8 so surrendered of the highest price paid per share by the
9 controlling person or group within the ninety-day period ending
10 on and including the date of the control transaction (and,
11 thereafter, the controlling person or group shall be entitled to
12 vote such shares and receive dividends or other distributions
13 thereon). The fair value (as determined by the appraiser) of any
14 dividends or other distributions so received by such
15 shareholders shall be subtracted from any amount owing to such
16 shareholders hereunder.

17 (5) The court referenced in subsection C may appoint such
18 agents, including the transfer agent of the corporation, or any
19 other institution, to hold the shares so surrendered, to effect
20 any necessary change in record ownership of such shares after
21 the payment by the controlling person or group to the court of
22 the amount specified in clause (4), to receive and disburse
23 dividends or other distributions, to provide notices to
24 shareholders and to take such other actions as the court shall
25 determine are appropriate to effect the purposes of this
26 section.

27 (6) The costs and expenses of any appraiser or other agents
28 so appointed by the court shall be assessed against the
29 controlling person or group. The costs and expenses of any other
30 procedure to determine fair value shall be paid as agreed to by

1 the parties agreeing to such procedure.

2 (7) The jurisdiction of the court referenced under
3 subsection C in which the proceeding is commenced is plenary and
4 exclusive and the controlling person or group and all
5 shareholders who so surrendered their shares to such court shall
6 be made a party to the proceeding as in an action against their
7 shares.

8 (8) The corporation shall comply with requests for
9 information, which may be submitted pursuant to procedures
10 maintaining the confidentiality of such information, made by the
11 court or the appraiser so selected by the court.

12 F. A person or group that proposes to engage in a control
13 transaction may comply with the requirements of this section in
14 connection with the control transaction, and the effectiveness
15 of the rights afforded herein to shareholders may be conditioned
16 upon the consummation of the control transaction.

17 The person or group shall give prompt written notice of the
18 satisfaction of any such condition to each shareholder who has
19 made demand as herein provided.

20 G. Subsections A through F shall not apply to any
21 corporation that does not have a class of voting shares
22 registered under the Securities Exchange Act of 1934 (15 U.S.C.
23 § 78a et seq.) or to any person or group that inadvertently
24 becomes a controlling person or group if that controlling person
25 or group, as soon as practicable, divests itself of a sufficient
26 amount of its voting shares so that it is no longer a
27 controlling person or group, or to any corporation that on the
28 effective date of this section is a subsidiary of any other
29 corporation.

30 For purposes of this subsection, subsidiary shall mean any

1 corporation as to which any other corporation has or has the
2 right to acquire, directly or indirectly, through the exercise
3 of all warrants, options and rights and the conversion of all
4 convertible securities, whether issued or granted by the
5 subsidiary or otherwise, voting power over voting shares of the
6 subsidiary that would entitle the holders thereof to cast in
7 excess of fifty per cent of the votes that all shareholders
8 would be entitled to cast in the election of directors of such
9 subsidiary: Provided, however, That a subsidiary will not be
10 deemed to cease being a subsidiary so long as such corporation
11 remains a controlling person or group within the meaning of
12 subsection B.

13 Section 3. The act is amended by adding a section to read:

14 Section 911. Requirements Relating to Certain Business

15 Combinations.--A. For the purposes of this section:

16 (1) "Affiliate" means a person that directly, or indirectly
17 through one or more intermediaries, controls, or is controlled
18 by, or is under common control with, a specified person.

19 (2) "Announcement Date" when used in reference to any
20 business combination, means the date of the first public
21 announcement of the final, definitive proposal for such business
22 combination.

23 (3) "Associate" when used to indicate a relationship with
24 any person, means (a) any corporation or organization of which
25 such person is an officer, director or partner or is, directly
26 or indirectly, the beneficial owner of shares entitling that
27 person to cast at least ten percent of the votes that all
28 shareholders would be entitled to cast in an election of
29 directors of the corporation or organization, (b) any trust or
30 other estate in which such person has a substantial beneficial

interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (c) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person.

(4) "Beneficial Owner" when used with respect to any shares, means a person:

(i) that, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(ii) that, individually or with or through any of its affiliates or associates, has (a) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding (whether or not in writing), or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise: Provided, however, That a person shall not be deemed the beneficial owner of shares tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered shares are accepted for purchase or exchange; or

(b) the right to vote such shares pursuant to any agreement, arrangement or understanding (whether or not in writing): Provided, however, That a person shall not be deemed the beneficial owner of any shares under this item if the agreement, arrangement or understanding to vote such shares (I) arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act and (II) is not then reportable on a Schedule 13D under the Exchange Act (or any comparable or successor report); or

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

8 (5) "Business Combination" when used in reference to any
9 business corporation and any interested shareholder of such
10 business corporation, means:

11 (i) any merger or consolidation of such business corporation
12 or any subsidiary of such business corporation with (a) such
13 interested shareholder or (b) any other corporation (whether or
14 not itself an interested shareholder of such business
15 corporation) which is, or after such merger or consolidation
16 would be, an affiliate or associate of such interested
17 shareholder;

18 (ii) any sale, lease, exchange, mortgage, pledge, transfer
19 or other disposition (in one transaction or a series of
20 transactions) to or with such interested shareholder or any
21 affiliate or associate of such interested shareholder of assets
22 of such business corporation or any subsidiary of such business
23 corporation (a) having an aggregate market value equal to ten
24 per cent or more of the aggregate market value of all the
25 assets, determined on a consolidated basis, of such business
26 corporation, (b) having an aggregate market value equal to ten
27 per cent or more of the aggregate market value of all the
28 outstanding shares of such business corporation, or (c)
29 representing ten per cent or more of the earning power or net
30 income, determined on a consolidated basis, of such business

1 corporation;

2 (iii) the issuance or transfer by such business corporation
3 or any subsidiary of such business corporation (in one
4 transaction or a series of transactions) of any shares of such
5 business corporation or any subsidiary of such business
6 corporation which has an aggregate market value equal to five
7 per cent or more of the aggregate market value of all the
8 outstanding shares of such business corporation to such
9 interested shareholder or any affiliate or associate of such
10 interested shareholder except pursuant to the exercise of option
11 rights to purchase shares, or pursuant to the conversion of
12 securities having conversion rights, offered, or a dividend or
13 distribution paid or made, pro rata to all shareholders of such
14 business corporation;

15 (iv) the adoption of any plan or proposal for the
16 liquidation or dissolution of such business corporation proposed
17 by, or pursuant to any agreement, arrangement or understanding
18 (whether or not in writing) with, such interested shareholder or
19 any affiliate or associate of such interested shareholder;

20 (v) any reclassification of securities (including, without
21 limitation, any split of shares, dividend of shares, or other
22 distribution of shares in respect of shares, or any reverse
23 split of shares), or recapitalization of such business
24 corporation, or any merger or consolidation of such business
25 corporation with any subsidiary of such business corporation, or
26 any other transaction (whether or not with or into or otherwise
27 involving such interested shareholder), proposed by, or pursuant
28 to any agreement, arrangement or understanding (whether or not
29 in writing) with, such interested shareholder or any affiliate
30 or associate of such interested shareholder, which has the

effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of such business corporation or any subsidiary of such business corporation which is, directly or indirectly, owned by such interested shareholder or any affiliate or associate of such interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(vi) any receipt by such interested shareholder or any affiliate or associate of such interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of such business corporation) of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through such business corporation.

(6) "Business Corporation" means an issuer of voting shares which is organized under the laws of this Commonwealth. No business corporation, which is organized under the laws of this Commonwealth, shall cease to be a business corporation as defined herein by reason of events occurring or actions taken while such business corporation is subject to the provisions of this section.

(7) "Common Shares" means any shares other than preferred shares.

(8) "Consummation Date" with respect to any business combination, means the date of consummation of such business combination, or, in the case of a business combination as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such business combination.

1 (9) "Control" including the terms "Controlling," "Controlled
2 By," and "Under Common Control With," means the possession,
3 directly or indirectly, of the power to direct or cause the
4 direction of the management and policies of a person, whether
5 through the ownership of voting shares, by contract, or
6 otherwise. A person's beneficial ownership of shares entitling
7 that person to cast at least ten per cent of the votes that all
8 shareholders would be entitled to cast in an election of
9 directors of the corporation shall create a presumption that
10 such person has control of such corporation. Notwithstanding the
11 foregoing, a person shall not be deemed to have control of a
12 corporation if such person holds voting shares, in good faith
13 and not for the purpose of circumventing this section, as an
14 agent, bank, broker, nominee, custodian or trustee for one or
15 more beneficial owners who do not individually or as a group
16 have control of such corporation.

17 (10) "Exchange Act" means the Securities Exchange Act of
18 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.), as the same has
19 been or hereafter may be amended from time to time.

20 (11) "Interested Shareholder," when used in reference to any
21 business corporation, means any person (other than such business
22 corporation or any subsidiary of such business corporation)
23 that:

24 (i) (a) is the beneficial owner, directly or indirectly, of
25 shares entitling that person to cast at least twenty per cent of
26 the votes that all shareholders would be entitled to cast in an
27 election of directors of the corporation; or

28 (b) is an affiliate or associate of such business
29 corporation and at any time within the five-year period
30 immediately prior to the date in question was the beneficial

owner, directly or indirectly, of shares entitling that person to cast at least twenty per cent of the votes that all shareholders would be entitled to cast in an election of directors of the corporation;

(ii) provided that, for the purpose of determining whether a person is an interested shareholder, (a) the number of votes that would be entitled to be cast in an election of directors of such business corporation shall be calculated by including shares deemed to be beneficially owned by the person through application of clause 4 of subsection A of this section but excluding any other unissued shares of such business corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion or option rights, or otherwise; and (b) there shall be excluded from the beneficial ownership of such interested shareholder any:

(I) shares which have been held continuously by a natural person since January 1, 1983, and which are then held by such natural person; or

(II) shares which are then held by any natural person or trust, estate, foundation or other similar entity to the extent such shares were acquired solely by gift, inheritance, bequest, devise or other testamentary distribution or series of such transactions, directly or indirectly, from a natural person who had acquired such shares prior to January 1, 1983; or

(III) shares which were acquired pursuant to a stock split, stock dividend or similar recapitalization with respect to shares described under paragraph (b) that have been held continuously since their issuance by the corporation by the natural person or entity that acquired them from the corporation, or that were acquired, directly or indirectly, from

such natural person or entity, solely pursuant to a transaction or series of transactions described in subparagraph (II) of paragraph (b), and that are then held by a natural person or entity described in subparagraph (II).

(12) "Market Value" when used in reference to shares or property of any business corporation, means:

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

(ii) in the case of property other than cash or shares, the fair market value of such property on the date in question as determined by the board of directors of such business corporation in good faith.

(13) "Preferred Shares" means any class or series of shares of a business corporation which, under the bylaws or certificate of incorporation of such business corporation, is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the

event of any voluntary liquidation, dissolution or winding up of the business corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Shares" means:

(i) any shares or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(ii) any security convertible, with or without consideration, into shares, or any option right, conversion right or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase shares.

(15) "Share Acquisition Date" with respect to any person and any business corporation, means the date that such person first becomes an interested shareholder of such business corporation.

(16) "Subsidiary" means any corporation as to which any other corporation is the beneficial owner, directly or indirectly, of shares of such first corporation that would entitle such other corporation to cast in excess of fifty per cent of the votes that all shareholders would be entitled to cast in the election of directors of such first corporation.

(17) "Voting Shares" means shares of a corporation entitled to vote generally in the election of directors.

B. Notwithstanding anything to the contrary contained in this act (except the provisions of subsection C of this section), no business corporation shall engage at any time in any business combination with any interested shareholder of such business corporation other than a business combination specified

in any one of clauses (1), (2), (3) or (4) of this subsection:

(1) A business combination approved by the board of directors of such business corporation prior to such interested shareholder's share acquisition date, or where the purchase of shares made by such interested shareholder on such interested shareholder's share acquisition date had been approved by the board of directors of such business corporation prior to such interested shareholder's share acquisition date.

(2) A business combination approved (i) by the affirmative vote of the holders of shares entitling such holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation, not including any voting shares beneficially owned by such interested shareholder or any affiliate or associate of such interested shareholder, at a meeting called for such purpose no earlier than three months after such interested shareholder became, and provided that at the time of such meeting such interested shareholder is, the beneficial owner, directly or indirectly, of shares entitling such interested shareholder to cast at least eighty per cent of the votes that all shareholders would be entitled to cast in an election of directors of the corporation, and provided that such business combination satisfies all the conditions of subclauses (i) through (v) of clause (4) of subsection B or (ii) by the affirmative vote of all of the holders of all of the outstanding common shares.

(3) A business combination approved by the affirmative vote of the holders of shares entitling such holders to cast a majority of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation, not including any voting shares beneficially owned by such

interested shareholder or any affiliate or associate of such
interested shareholder, at a meeting called for such purpose no
earlier than five years after such interested shareholder's
share acquisition date.

(4) A business combination approved at a shareholders'
meeting called for such purpose no earlier than five years after
such interested shareholder's share acquisition date that meets
all of the following conditions:

(i) The aggregate amount of the cash and the market value as
of the consummation date of consideration other than cash to be
received per share by holders of outstanding common shares of
such business corporation in such business combination is at
least equal to the higher of the following:

(a) the highest per share price paid by such interested
shareholder at a time when he was the beneficial owner, directly
or indirectly, of shares entitling that person to cast at least
five per cent of the votes that all shareholders would be
entitled to cast in an election of directors of such business
corporation, for any common shares of the same class or series
acquired by it (I) within the five-year period immediately prior
to the announcement date with respect to such business
combination, or (II) within the five-year period immediately
prior to, or in, the transaction in which such interested
shareholder became an interested shareholder, whichever is
higher; plus, in either case, interest compounded annually from
the earliest date on which such highest per share acquisition
price was paid through the consummation date at the rate for one
year United States treasury obligations from time to time in
effect; less the aggregate amount of any cash dividends paid,
and the market value of any dividends paid other than in cash,

per common share since such earliest date, up to the amount of such interest; and

(b) the market value per common share on the announcement date with respect to such business combination or on such interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per common share since such date, up to the amount of such interest.

(ii) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of such business corporation is at least equal to the highest of the following (whether or not such interested shareholder has previously acquired any shares of such class or series of shares):

(a) the highest per share price paid by such interested shareholder at a time when he was the beneficial owner, directly or indirectly, of shares entitling such person to cast at least five per cent of the votes that all shareholders would be entitled to cast in an election of directors of such business corporation, for any shares of such class or series of shares acquired by it (I) within the five-year period immediately prior to the announcement date with respect to such business combination, or (II) within the five-year period immediately prior to, or in, the transaction in which such interested shareholder became an interested shareholder, whichever is

higher; plus, in either case, interest compounded annually from the earliest date on which such highest per share acquisition price was paid through the consummation date at the rate for one year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of such class or series of shares since such earliest date, up to the amount of such interest;

(b) the highest preferential amount per share to which the holders of shares of such class or series of shares are entitled in the event of any voluntary liquidation, dissolution or winding up of such business corporation, plus the aggregate amount of any dividends declared or due as to which such holders are entitled prior to payment of dividends on some other class or series of shares (unless the aggregate amount of such dividends is included in such preferential amount); and

(c) the market value per share of such class or series of shares on the announcement date with respect to such business combination or on such interested shareholder's share acquisition date, whichever is higher; plus interest compounded annually from such date through the consummation date at the rate for one year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of such class or series of shares since such date, up to the amount of such interest.

(iii) The consideration to be received by holders of a particular class or series of outstanding shares (including common shares) of such business corporation in such business combination is in cash or in the same form as the interested

shareholder has used to acquire the largest number of shares of
such class or series of shares previously acquired by it, and
such consideration shall be distributed promptly.

(iv) The holders of all outstanding shares of such business
corporation not beneficially owned by such interested
shareholder immediately prior to the consummation of such
business combination are entitled to receive in such business
combination cash or other consideration for such shares in
compliance with subclauses (i), (ii) and (iii) of clause (4) of
subsection B.

(v) After such interested shareholder's share acquisition
date and prior to the consummation date with respect to such
business combination, such interested shareholder has not become
the beneficial owner of any additional voting shares of such
business corporation except:

(a) as part of the transaction which resulted in such
interested shareholder becoming an interested shareholder;

(b) by virtue of proportionate splits of shares, share
dividends or other distributions of shares in respect of shares
not constituting a business combination under subclause (v) of
clause (5) of subsection A;

(c) through a business combination meeting all of the
conditions of clauses (1), (2), (3) or (4) of subsection B;

(d) through purchase by such interested shareholder at any
price which, if such price had been paid in an otherwise
permissible business combination the announcement date and
consummation date of which were the date of such purchase, would
have satisfied the requirements of subclauses (i), (ii) and
(iii) of clause (4) of subsection B; or

(e) through purchase required by and pursuant to the

provisions of, and at no less than the fair value (including interest to the date of payment) as determined by a court-appointed appraiser under clause (2) of subsection E of section 910 of this act (or if such fair value was not then so determined, then at a price that would satisfy the conditions in the preceding paragraph (d)).

C. The provisions of this section shall not apply:

(1) to any business combination of a business corporation that does not have a class of voting shares registered under the Exchange Act; or

(2) to any business combination of a business corporation whose articles have been amended to provide that such business corporation shall be subject to the provisions of this section, which did not have a class of voting shares registered under the Exchange Act on the effective date of such amendment, and which is a business combination with an interested shareholder whose share acquisition date is prior to the effective date of such amendment; or

(3) to any business combination of a business corporation (i) the bylaws of which, by amendment adopted within ninety days of the date of enactment of this section, and not subsequently rescinded either by an article amendment or by a bylaw amendment approved by at least eighty-five per cent of the whole board of directors, explicitly provide that this section shall not be applicable to the corporation or (ii) the articles of which explicitly provide that this section shall not be applicable to the corporation by a provision included in the original articles, or by an article amendment adopted pursuant to both (a) the procedures then applicable to the corporation and (b) the affirmative vote of the holders, other than interested

1 shareholders and their affiliates and associates, of shares
2 entitling such holders to cast a majority of the votes that all
3 shareholders would be entitled to cast in an election of
4 directors of such business corporation, excluding the voting
5 shares of interested shareholders and their affiliates and
6 associates, expressly electing not to be governed by this
7 section, provided that such amendment to the articles shall not
8 be effective until eighteen months after such vote of such
9 business corporation's shareholders and shall not apply to any
10 business combination of such business corporation with an
11 interested shareholder whose share acquisition date is on or
12 prior to the effective date of such amendment; or

13 (4) to any business combination of a business corporation
14 with an interested shareholder of such business corporation
15 which became an interested shareholder inadvertently, if such
16 interested shareholder (i) as soon as practicable, divests
17 itself of a sufficient amount of the voting shares of such
18 business corporation so that it no longer is the beneficial
19 owner, directly or indirectly, of shares entitling such person
20 to cast at least twenty per cent of the votes that all
21 shareholders would be entitled to cast in an election of
22 directors of such business corporation, and (ii) would not at
23 any time within the five-year period preceding the announcement
24 date with respect to such business combination have been an
25 interested shareholder but for such inadvertent acquisition;

26 (5) to any business combination with an interested
27 shareholder who was the beneficial owner, directly or
28 indirectly, of shares entitling such person to cast at least
29 fifteen per cent of the votes that all shareholders would be
30 entitled to cast in an election of directors of such business

1 corporation on the effective date of this section and remain so
2 to such interested shareholder's share acquisition date; or
3 (6) to any business corporation that on the effective date
4 of this section is a subsidiary of any other corporation;
5 provided, however, that a corporation that is a subsidiary on
6 the effective date of this section will not be deemed to cease
7 being a subsidiary so long as such other corporation remains a
8 controlling person or group of such subsidiary within the
9 meaning of subsection B of section 910 of this act.

10 D. The rights and remedies herein provided shall be in
11 addition to, and not in lieu of, any other rights or remedies
12 provided by this act, the articles of the corporation, the
13 bylaws of the corporation, any securities, option rights or
14 obligations of the corporation or otherwise.

15 Section 4. This act shall take effect immediately.