

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

SENATOR ZEMPRELLI, BUSINESS AND COMMERCE, AS AMENDED,
NOVEMBER 19, 1975

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.

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 to acquire
28 any equity security of a target company, pursuant to a tender
29 offer, if after the acquisition thereof, the offeror would,
30 directly or indirectly, be a beneficial owner of more than 5% of

1 any class of the outstanding equity securities of the target
2 company. "Takeover offer" does not include (i) an offer to
3 acquire equity securities to be effected by a registered broker-
4 dealer on a stock exchange or in the over-the-counter market if
5 the broker performs only the customary broker's function and
6 receives no more than the customary broker's commission and if
7 neither the principal nor the broker solicits or arranges for
8 the solicitation of orders to sell such equity securities, (ii)
9 offers made by a dealer for his own account in the ordinary
10 course of his business of buying and selling such security,
11 (iii) an offer to acquire such equity security solely in
12 exchange for other securities, or the acquisition of such equity
13 security pursuant to such offer, for the sole account of the
14 offeror, in good faith and not for the purpose of avoiding this
15 section, and not involving any public offering of such other
16 securities within the meaning of section 4 of Title I of the
17 "Securities Act of 1933," 48 Stat. 77, 15 U.S.C. 77D (2), as
18 amended or sections 201 and 202 of the act of December 5, 1972
19 (P.L.1280, No.284), known as the "Pennsylvania Securities Act of
20 1972," (iv) an offer as to which the target company, acting
21 through its board of directors, recommends acceptance to its
22 shareholders, if the offer is made to all shareholders on
23 substantially equal terms, (v) an offer which, if accepted by
24 all the offerees, will not result in the offeror having acquired
25 more than 2% of the same class of equity securities of the
26 issuer within the preceding 12-month period, (vi) an offer by
27 the issuer to acquire its own equity securities, (vii) an
28 isolated offer to purchase shares from individual shareholders
29 not made to shareholders generally, in good faith and not for
30 the purpose of avoiding this act, and (viii) any offer which the

1 commission, by regulation or order, shall exempt from the
2 definition of "takeover offer" as not being entered into for the
3 purpose of and not having the effect of, changing or influencing
4 the control of the issuer or otherwise as not comprehended
5 within the purposes of this act.

6 "Target company" means an issuer of securities whose equity
7 securities are or are to be the subject of a takeover offer (i)
8 which is organized under the laws of this Commonwealth, or (ii)
9 has its principal office and substantial assets located in this
10 Commonwealth.

11 Section 4. Registration of Takeover Offers.--(a) It is
12 unlawful for any ~~person~~ OFFEROR to make a takeover offer <—
13 involving a target company in this Commonwealth, or to acquire
14 any equity securities of the target company pursuant to the
15 offer, unless at least 20 days prior thereto such ~~person~~ OFFEROR <—
16 (i) files with the commission a registration statement
17 containing the information prescribed by section 5, (ii) sends a
18 copy of the registration statement by certified mail to the
19 target company at its principal office and (iii) publicly
20 discloses the material terms of the proposed offer.

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

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

1 the offer if it determines that the registration statement does
2 not contain all of the information specified in section 5 or
3 that the solicitation materials do not provide full disclosure
4 to offerees of all material information 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, the offer shall not become effective until
18 registered by order of the commission. Registration is not
19 deemed to be approval of the offer by the commission and any
20 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.

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

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

14 (7) Complete information on the organization and operations
15 of the offeror, including without limitation the year of
16 organization, form of organization, jurisdiction in which it is
17 organized, a description of each class of the offeror's equity
18 securities and of its long term debt, financial statements for
19 the current period and for the three most recent annual
20 accounting periods, a brief description of the location and
21 general character of the principal physical properties of the
22 offeror and its subsidiaries, a description of material pending
23 legal or administrative proceedings other than routine
24 litigation to which the offeror or any of its subsidiaries is a
25 party or of which any of their property is the subject, a brief
26 description of the business done and projected by the offeror
27 and its subsidiaries and any material changes therein during the
28 past three years, the names and residence addresses of all
29 directors and executive officers of the offeror and its
30 affiliates and their material business together with

1 biographical activities and affiliations during the past three
2 years. For the purposes of this paragraph, legal or
3 administrative proceedings involving antitrust, equal
4 opportunity and environmental matters shall be considered
5 material.

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

11 Section 6. Filing of Solicitation Materials.--Copies of all
12 advertisements, circulars, letters or other materials published
13 by the offeror or the target company, soliciting or requesting
14 the acceptance or rejection of the takeover offer, shall be
15 filed with the commission and sent to the target company or
16 offeror, respectively, not later than the time copies of such
17 solicitation materials are first published or used or sent to
18 offerees if not previously filed with the commission and mailed
19 to the target company or offeror. The commission may prohibit
20 the use of any solicitation materials deemed false or
21 misleading.

22 Section 7. Limitations on Offerors.--(a) No offeror may make
23 a takeover offer involving a target company which is not made to
24 shareholders in this Commonwealth on substantially the same
25 terms as the offer is made to shareholders outside this
26 Commonwealth.

27 (b) An offeror shall provide that any equity securities of a
28 target company deposited or tendered pursuant to a takeover
29 offer may be withdrawn by or on behalf of any offeree at any
30 time within seven days from the date the offer has become

1 effective under this act and, if the offeror has not taken up
2 the equity securities within 60 days from the date the offer has
3 become effective under this act, except as the commission may
4 otherwise prescribe by regulation or order for the protection of
5 investors.

6 (c) If an offeror makes a takeover offer for less than all
7 the outstanding equity securities of any class; and copies of
8 the offer, or notice of any increase in the consideration
9 offered, are first published or sent or given to security
10 holders; and the number of securities deposited or tendered
11 pursuant thereto within ten days after the offer has become
12 effective under this act is greater than the number the offeror
13 has offered to accept and pay for, the securities shall be
14 accepted pro rata, disregarding fractions, according to the
15 number of securities deposited or tendered by each offeree.

16 (d) If an offeror varies the terms of a takeover offer
17 before its expiration date by increasing the consideration
18 offered to security holders, the offeror shall pay the increased
19 consideration for all equity securities accepted whether such
20 securities have been accepted by the offeror before or after the
21 increase in the terms of the offer.

22 (e) No offeror may make a takeover offer involving a target
23 company in this Commonwealth, or acquire any equity securities
24 of a target company pursuant to the offer, at any time when an
25 administrative or injunctive proceeding is pending on behalf of
26 the commission against the offeror alleging a violation of this
27 act or the act of December 5, 1972 (P.L.1280, No.284), known as
28 the "Pennsylvania Securities Act of 1972."

29 (f) No offeror may acquire, remove or exercise control,
30 directly or indirectly, over any assets of a target company

1 located in this Commonwealth unless the takeover offer is
2 effective or exempt under this act, except as permitted by order
3 of the commission.

4 Section 8. 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. Fees and Expenses.--The commission shall charge a
26 filing fee of \$750 for a registration statement filed by an
27 offeror.

28 Section 10. Injunctions.--Whenever it shall appear to the
29 commission that any person, including a controlling person of an
30 offeror or target company, has engaged or is about to engage in

1 any act or practice constituting a violation of this act, or any
2 regulation or order promulgated hereunder:

3 (1) the commission may issue and cause to be served upon any
4 person violating any of the provisions of this act, an order
5 requiring the persons in violation thereof to cease and desist
6 therefrom; and

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

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

27 (b) The commission may refer such evidence as is available
28 concerning violations of the act or of any regulation or order
29 hereunder to the Attorney General who may institute the
30 appropriate criminal proceedings under this act. If referred to

1 the Attorney General, he shall within 90 days file with the
2 commission a statement concerning any action taken or, if no
3 action has been taken, the reasons therefor.

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

7 Section 12. Civil Liabilities.--(a) Any offeror who
8 purchases a security in connection with a takeover in violation
9 of this act, shall be liable to the person selling the security
10 to him who may sue either at law or in equity. In an action for
11 rescission the seller shall be entitled to recover the security,
12 plus any income received by the purchaser thereon, upon tender
13 of the consideration received. Tender requires only notice of
14 willingness to pay the amount specified in exchange for the
15 security. Any notice may be given by service as in civil actions
16 or by certified mail to the last known address of the person
17 liable. Damages are the excess of either the value of the
18 security on the date of purchase or its present value, whichever
19 is greater, over the present value of the consideration received
20 for the security.

21 (b) Every person who directly controls a person liable under
22 subsection (a), every partner, principal executive officer or
23 director of such person, every person occupying a similar status
24 or performing similar functions, every employee of such person
25 who materially aids in the act or transaction constituting the
26 violation, and every broker-dealer or agent who materially aids
27 in the act or transaction constituting the violation, is also
28 liable jointly and severally with and to the same extent as such
29 person, unless the person who would otherwise be so liable
30 proves that he did not know, and in the exercise of reasonable

1 care could not have known, of the existence of the facts by
2 reason of which the liability is alleged to exist. There is
3 contribution as in cases of contract among the several persons
4 so liable.

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

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

13 Section 13. Application of Corporate Takeover Law.--This act
14 does not apply when:

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

21 (2) the offeror or the target company is a bank or a bank
22 holding company subject to the Federal "Bank Holding Company Act
23 of 1956," 70 Stat. 133, 12 U.S.C. 1841, as amended, and the
24 takeover offer is subject to approval by the appropriate Federal
25 agency as provided in such act.

26 (c) The offeror or the target company is a savings and loan
27 holding company as defined in section 2 of the Federal "Savings
28 and Loan Holding Company Amendments of 1967," 82 Stat. 5, 12
29 U.S.C. 1730A, as amended, and the takeover offer is subject to
30 approval by the appropriate Federal agency as provided in such

1 act.

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

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

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

18 Section 15. Effective Date.--This act shall take effect
19 immediately.