

Sec. 22. [611A.221] **ADDITIONAL POWER.** The department of correction's victim service unit is authorized to accept and expend funds received from other state agencies, other units of governments and other agencies, that result from the distribution of resource materials.

Sec. 23. **EFFECTIVE DATE.**

Section 3 is effective the day following final enactment and applies to crimes committed on or after that date. Section 9 is effective January 1, 1986. Sections 1, 2, and 4 to 8 are effective August 1, 1985. Sections 10 to 17, and 21, are effective July 1, 1985. Sections 18 to 20 are effective January 1, 1986; however, the commissioner of public safety shall not appoint a crime victim ombudsman until the commissioner of finance has determined that sufficient money will be available from the federal government to pay all the costs of the crime victim ombudsman's office. Section 22 is effective the day after final enactment.

Approved June 24, 1985

CHAPTER 5 — S.F.No. 10

An act relating to corporations; regulating corporate take-overs and control share acquisitions; defining terms; prescribing penalties; amending Minnesota Statutes 1984, sections 80B.01, subdivisions 6, 8, and 9; 80B.03, subdivisions 1, 2, 4a, 5, and 6; 80B.05; 80B.06, subdivision 7; 80B.07, subdivision 3; 80B.10, subdivisions 1, 4, and by adding a subdivision; 302A.011, subdivisions 37, 39, and by adding a subdivision; 302A.449, subdivision 7; and 302A.671; repealing Minnesota Statutes 1984, section 80B.06, subdivisions 3, 4, and 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1984, section 80B.01, subdivision 6, is amended to read:

Subd. 6. "Offeror" means a person who makes or in any way participates in making a take-over offer. Offeror does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer. When two or more persons act as a partnership, limited partnership, syndicate, or other group for the purpose of acquiring, owning or voting securities of a target company, the syndicate or group is an "offeror."

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 2. Minnesota Statutes 1984, section 80B.01, subdivision 8, is amended to read:

Subd. 8. "Take-over offer" means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer either (1) the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company and was directly or indirectly the beneficial owner of less than ten percent of any class of the outstanding equity securities of the target company prior to the commencement of the offer; or (2) the beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five ten percent of that class and the offeror was directly or indirectly the beneficial owner of ten percent or more of any class of the outstanding equity securities of the target company prior to the commencement of the offer. ~~Clause (2) does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.~~ Take-over offer does not include:

(a) ~~An offer to exchange the securities of one issuer for the securities of another issuer, if the offer is registered under chapter 80A;~~

(b) ~~An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the issuer, would not result in the offeror having acquired more than two percent of this class during the preceding 12-month period;~~

(c) ~~An offer by the issuer to acquire its own equity securities unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;~~

(d) ~~An offer in which the target company is an insurance company subject to regulation by the commissioner, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the public utilities commission.~~

Sec. 3. Minnesota Statutes 1984, section 80B.01, subdivision 9, is amended to read:

Subd. 9. "Target company" means an issuer of publicly traded equity securities which has at least 20 percent of its equity securities beneficially ~~held owned~~ owned by residents of this state and ~~has substantial owns or controls assets in located within~~ within this state which have a fair market value of at least \$1,000,000. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security at the time the offeror makes a take-over offer for the security. A trading market exists if the security is traded on a national

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securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or the over-the-counter market.

Sec. 4. Minnesota Statutes 1984, section 80B.03, subdivision 1, is amended to read:

Subdivision 1. It is unlawful for any person to make a take-over offer or to acquire any equity securities pursuant to the offer, unless the offer is effective under sections 80B.01 to 80B.13. A take-over offer is effective when the offeror files with the commissioner a registration statement containing the information prescribed in section 80B.03, ~~subdivision~~ subdivisions 2 and 6. The offeror shall deliver a copy of the registration statement by certified mail personal service to the target company at its principal office and publicly disclose the material terms of the proposed offer, not later than the date of filing of the registration statement. Public disclosure shall require, at a minimum, that a copy of the registration statement be supplied to all broker-dealers maintaining an office in this state currently quoting the security.

Sec. 5. Minnesota Statutes 1984, section 80B.03, subdivision 2, is amended to read:

Subd. 2. The registration statement shall be filed on forms prescribed by the commissioner, and shall be accompanied by a consent by the offeror to service of process and the filing fee specified in section 80B.08, and shall contain the following information ~~and such additional information as the commissioner by rule prescribes:~~

(a) all of the information specified in section 80B.03, subdivision 6;

(b) two copies of all solicitation materials intended to be used in the take-over offer in the form proposed to be published or sent or delivered to offerees;

(c) if the offeror is other than a natural person, information concerning its organization and operations, including the year, form and jurisdiction of its organization, a description of each class of equity security and long term debt, a description of the business conducted by the offeror and its subsidiaries and any material changes therein during the past three years, a description of the location and character of the principal properties of the offeror and its subsidiaries, a description of any material pending legal or administrative proceedings in which the offeror or any of its subsidiaries is a party, the names of all persons directly or indirectly controlling the offeror, directors and executive officers of the offeror and their material business activities and, their business affiliations during the past three years and any material legal or administrative proceedings in which the controlling persons, directors, or executive officers are or were a party during the past three years, and financial statements of the offeror in such form and for such period of time as the commissioner may by rule prescribe;

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(d) if the offeror is a natural person, information concerning his identity and background, including his business activities and affiliations during the past three years, and a description of any material pending legal or administrative proceedings in which the offeror is a party.

Sec. 6. Minnesota Statutes 1984, section 80B.03, subdivision 4a, is amended to read:

Subd. 4a. Within three calendar days of the date of filing of the registration statement, the commissioner may by order summarily suspend the effectiveness of the take-over offer if the commissioner determines that the registration statement does not contain all of the information specified in ~~subdivision~~ subdivisions 2 and 6 or that the take-over offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the take-over offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subdivision 5.

Sec. 7. Minnesota Statutes 1984, section 80B.03, subdivision 5, is amended to read:

Subd. 5. A hearing shall be scheduled by the commissioner with respect to each suspension under this section and shall be held within ten calendar days of the date of the suspension. Chapter 14 does not apply to the hearing. The commissioner may allow any interested party to appear at and participate in the hearing in a manner considered appropriate by the commissioner. The commissioner's determination made following the hearing shall be made within three calendar days after such hearing has been completed but not more than 16 calendar days after the date of the suspension. The commissioner may prescribe ~~different~~ time limits that are shorter than those specified in this subdivision by rule or order. If, based upon the hearing, the commissioner finds that the ~~take-over offer fails to provide for registration statement does not contain all of the information provided in subdivisions 2 and 6 or that the take-over offer materials provided to offerees do not provide full and fair disclosure to offerees of all material information concerning the offer, or that the take-over offer is in material violation of any provision of sections 80B.01 to 80B.13, the commissioner shall permanently suspend the effectiveness of the take-over offer, subject to the right of the offeror to correct disclosure and other deficiencies identified by the commissioner and to reinstitute the take-over offer by filing a new or amended registration statement pursuant to this section 80B.03.~~

Sec. 8. Minnesota Statutes 1984, section 80B.03, subdivision 6, is amended to read:

Subd. 6. The form required to be filed by subdivision 2, clause (a), shall contain the following information ~~and additional information the commissioner may by rule prescribe:~~

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(a) the identity and background of all persons on whose behalf the acquisition of any equity security of the issuer has been or is to be affected;

(b) the source and amount of funds or other consideration used or to be used in acquiring any equity security, including, if applicable, a statement describing any securities which are being offered in exchange for the equity securities of the issuer, and if any part of the acquisition price is or will be represented by borrowed funds or other consideration, a description of the material terms of any financing arrangements and the names of the parties from whom the funds were borrowed;

(c) if the purpose of the acquisition is to gain control of the target company, a statement of ~~any~~ plans or proposals which the person has, upon gaining control, to liquidate the issuer, sell its assets, effect its merger or consolidation, to change the location of its principal executive office or of a material portion of its business activities, to change its management or policies of employment, to materially alter its relationship with suppliers or customers or the communities in which it operates, or make any other major change in its business, corporate structure, management or personnel, and ~~other information which would affect the shareholders' evaluation of the acquisition such other~~ objective facts as would be substantially likely to affect a reasonable shareholder's evaluation of the take-over offer;

(d) the number of shares or units of any equity security of the issuer owned beneficially by the person and any affiliate or associate of the person, together with the name and address of each affiliate or associate;

(e) the material terms of any contract, arrangement, or understanding with any other person with respect to the equity securities of the issuer whereby the person filing the statement has or will acquire any interest in additional equity securities of the issuer, or is or will be obligated to transfer any interest in the equity securities to another.

Sec. 9. Minnesota Statutes 1984, section 80B.05, is amended to read:

80B.05 FRAUDULENT AND DECEPTIVE PRACTICES.

It is unlawful for any offeror or target company or any controlling person of an offeror or target company or any broker-dealer acting on behalf of an offeror or target company to engage in any fraudulent, deceptive or manipulative acts or practices in connection with a take-over offer. Fraudulent, deceptive and manipulative acts or practices include, without limitation:

(1) The publication or use in connection with the offer of any false statement of a material fact or the omission to state a material fact necessary to make the statements made not misleading;

(2) The sale by any controlling shareholders of a target company of any or their equity securities to the offeror for a consideration greater than that to be

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paid other stockholders pursuant to the offer or the purchase of any of the securities of a controlling shareholder of the target company by the offeror for a consideration greater than that to be paid other shareholders, pursuant to an agreement not disclosed to the other shareholders;

(3) The refusal by a target company incorporated under the laws of this state to permit an offeror who is a stockholder of record to examine its list of stockholders, and to make extracts therefrom, pursuant to the applicable ~~corporation~~ statutes and rules of this state and the United States, for the purpose of making a take-over offer in compliance with sections 80B.01 to 80B.13, or in lieu thereof, to mail any solicitation materials published by the offeror to its security holders with reasonable promptness after receipt from the offeror of such materials together with the reasonable expenses of postage and handling;

(4) Except for forms of communication described in section 80C.19, subdivision 4, the solicitation of any offeree for acceptance or rejection of a take-over offer or acquisition of any equity security pursuant to a take-over offer before the take-over offer is effective under sections 80B.01 to 80B.13 or while the offer is suspended under sections 80B.01 to 80B.13.

Notwithstanding any contrary provisions of this chapter, during the time a take-over offer is suspended under sections 80B.01 to 80B.13, the offeror may distribute to offerees who are residents of this state the take-over offer materials, and any amendments to the offer, if the following statement, printed in not less than ten point bold face type, is affixed by the offeror or with the offeror's consent to the front cover of the materials: "The commissioner of commerce, state of Minnesota, has suspended the solicitation and effectiveness within the state of Minnesota of the attached offering materials. Until further notice, the attached materials are sent for informative purposes only and are not a solicitation to purchase shares." During the time any take-over offer is suspended under sections 80B.01 to 80B.13, if the offeror elects to distribute materials to offerees who are residents of this state for informational purposes, the target company may distribute to offerees who are residents of this state a statement of the target company's position with respect to the take-over offer and the take-over offer materials, if the following statement, printed in not less than ten point bold face type, is attached to the front cover of the target company's communication: "The commissioner of commerce, state of Minnesota, has suspended the solicitation and effectiveness within the state of Minnesota of the offer addressed herein. Until further notice, the attached materials are sent for informative purposes only and are not a solicitation to reject or accept the offer."

Sec. 10. Minnesota Statutes 1984, section 80B.06, subdivision 7, is amended to read:

Subd. 7. No offeror may acquire from any resident of this state in any manner any equity securities of any class of a target company at any time within two years following the last purchase of securities pursuant to a take-over offer

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with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization or any other similar transaction, unless the holders of the equity securities are resident is afforded, at the time of the acquisition, a reasonable opportunity to dispose of the securities to the offeror upon substantially equivalent terms as those provided in the earlier take-over offer.

Sec. 11. Minnesota Statutes 1984, section 80B.07, subdivision 3, is amended to read:

Subd. 3. The commissioner may by rule or order exempt from any provisions of sections 80B.01 to 80B.13 any proposed take-over offer or any category or type of take-over offer which the commissioner determines does not have the purpose or effect of changing or influencing the control of a target company or where he determines that compliance with sections 80B.01 to 80B.13 is not necessary for the protection of the offerees, ~~and the commissioner may similarly exempt any persons from the requirement of filing statements under sections 80B.01 to 80B.13.~~

Sec. 12. Minnesota Statutes 1984, section 80B.10, subdivision 1, is amended to read:

Subdivision 1. Any person, including a controlling person of an offeror or target company, who willfully violates any provision of sections 80B.01 to 80B.13 or any rule thereunder, or any order of the commissioner of which this person has notice, may be fined not more than \$25,000 or imprisoned not more than five years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense. No indictment or information may be returned under sections 80B.01 to 80B.13 more than six years after the alleged violation.

Sec. 13. Minnesota Statutes 1984, section 80B.10, subdivision 4, is amended to read:

Subd. 4. All shares of a target company incorporated under the laws of this state acquired from a Minnesota resident in violation of any provision of this chapter or any rule hereunder, or any order of the commissioner of which the person has notice, shall be denied voting rights for one year after acquisition, the shares shall be nontransferable on the books of the target company for one year after acquisition and the target company shall, during this one-year period, have the option to call the shares for redemption ~~either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption.~~ Such a redemption shall occur on the date set in the call notice but not later than 60 days after the call notice is given.

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Sec. 14. Minnesota Statutes 1984, section 80B.10, is amended by adding a subdivision to read:

Subd. 5. RIGHTS OF ACTION. Offerors, offerees, and target companies may sue at law or in equity to enforce the provisions of this chapter.

Sec. 15. Minnesota Statutes 1984, section 302A.011, subdivision 37, is amended to read:

Subd. 37. ACQUIRING PERSON. "Acquiring person" means a person that is required to deliver an information statement under section 302A.671 proposing to make a control share acquisition. When two or more persons act as a partnership, limited partnership, syndicate, or other group for purposes of acquiring, owning or voting securities of an issuing public corporation, the syndicate or group is a "person."

"Acquiring person" does not include a licensed broker/dealer or licensed underwriter who (1) purchases shares of an issuing public corporation solely for purposes of resale to the public; and (2) is not acting in concert with an acquiring person.

Sec. 16. Minnesota Statutes 1984, section 302A.011, subdivision 39, is amended to read:

Subd. 39. ISSUING PUBLIC CORPORATION. "Issuing public corporation" means a corporation with at least 50 shareholders and having which has either its principal place of business or substantial assets located in this state or owns or controls assets located within this state that have a fair market value of at least \$1,000,000.

Sec. 17. Minnesota Statutes 1984, section 302A.011, is amended by adding a subdivision to read:

Subd. 41. BENEFICIAL OWNERSHIP. Beneficial owner includes, but is not limited to, any person who directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares the power to vote or direct the voting of a security and the power to dispose of, or direct the disposition of, the security. "Beneficial ownership" includes, but is not limited to, the right, exercisable within 60 days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities, or otherwise. The securities subject to these options, warrants, rights, or conversion privileges held by a person shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by this person, but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned by any other person. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of this person, any trust or estate in which this person owns ten percent or more of the total beneficial interest or serves as

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trustee or executor, any corporation or entity in which this person owns ten percent or more of the equity, and any affiliate or associate of this person.

Sec. 18. Minnesota Statutes 1984, section 302A.449, subdivision 7, is amended to read:

Subd. 7. **PROXY IN CONTROL SHARE ACQUISITION.** Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under section 302A.671, subdivision 3, must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and must not be solicited ~~sooner~~ less than 30 days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation. Except for irrevocable proxies appointed in the regular course of business and not in connection with a control share acquisition, all proxies appointed for or in connection with the shareholder authorization of a control share acquisition pursuant to section 302A.671 shall be at all times terminable at will prior to the obtaining of the shareholder authorization, whether or not the proxy is coupled with an interest. Without affecting any vote previously taken, the proxy may be terminated in any manner permitted by section 302A.449, subdivision 3, or by giving oral notice of the termination in the open meeting of shareholders held pursuant to section 302A.671, subdivision 3. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

Sec. 19. Minnesota Statutes 1984, section 302A.671, is amended to read:

302A.671 CONTROL SHARE ACQUISITIONS.

Subdivision 1. **AUTHORIZATION IN ARTICLES.** (a) Unless otherwise expressly provided in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section ~~applies~~ does not apply to a control share acquisition.

(b) All shares acquired by an acquiring person in violation of subdivision 4 shall be denied voting rights for one year after acquisition, the shares shall be nontransferable on the books of the corporation for one year after acquisition and the corporation shall, during the one-year period, have the option to call the shares for redemption ~~either~~ at the price at which the shares were acquired ~~or~~ at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption. Such a redemption shall occur on the date set in the call notice but not later than 60 days after the call notice is given.

Subd. 2. **INFORMATION STATEMENT.** ~~A~~ An acquiring person proposing to make a control share acquisition shall deliver to the issuing public corporation at its principal executive office an information statement containing all of the following:

- (a) the identity of the acquiring person;

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(b) a reference that the statement is made under this section;

(c) the number of shares of the issuing public corporation beneficially owned by the acquiring person;

(d) a specification of which of the following ranges of voting power in the election of directors would result from consummation of the control share acquisition:

(1) at least ~~ten~~ 20 percent but less than ~~20~~ 33-1/3 percent;

(2) at least ~~20~~ 33-1/3 percent but less than ~~30~~ or equal to 50 percent;

(3) at least ~~30~~ percent but less than ~~40~~ percent over 50 percent;

(4) at least ~~40~~ percent but less than a majority;

(5) at least a majority; and

(e) the terms of the proposed control share acquisition, including, but not limited to, the source of funds or other consideration and the material terms of the financial arrangements for the control share acquisition, ~~any~~ plans or proposals of the acquiring person to liquidate the issuing public corporation, to sell all or substantially all of its assets, or merge it or exchange its shares with any other person, to change the location of its principal executive office or of a material portion of its business activities, to change materially its management or policies of employment, to alter materially its relationship with suppliers or customers or the communities in which it operates, or make any other material change in its business, corporate structure, management or personnel, and such other ~~information which~~ objective facts as would be substantially likely to affect the decision of a shareholder with respect to voting on the proposed control share acquisition.

Subd. 3. **MEETING OF SHAREHOLDERS.** Within five days after receipt of an information statement pursuant to subdivision 2, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, to vote on the proposed control share acquisition. The meeting shall be held no later than 55 days after receipt of the information statement, unless the acquiring person agrees to a later date, and no sooner than 30 days after receipt of the information statement, if the acquiring person so requests in writing when delivering the information statement. The notice of the meeting shall at a minimum be accompanied by a copy of the information statement and a statement disclosing that the board of directors of the issuing public company corporation recommends acceptance of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to the proposed control share acquisition. The notice of meeting shall be given within 25 days after receipt of the information statement.

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Subd. 4. **CONSUMMATION OF CONTROL SHARE ACQUISITION.** (a) The acquiring person may consummate the proposed control share acquisition if and only if both of the following occur:

(1) the proposed control share acquisition is approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote which are not beneficially owned by the acquiring person.

A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the control share acquisition would, if contained in a proposed amendment to the articles, entitle the class or series to vote as a class or series; and

(2) the proposed control share acquisition is consummated within 180 days after shareholder approval.

Subd. 5. RIGHTS OF ACTION. An acquiring person, an issuing public corporation, and shareholders of an issuing public corporation may sue at law or in equity to enforce the provisions of this section and section 302A.449, subdivision 7.

Subd. 6. RETURN OF SHARES IF ACQUISITION NOT CONSUMMATED. If the proposed control share acquisition is not consummated in accordance with this section, the acquiring person shall immediately return any and all shares held in anticipation of the consummation to the shareholders from whom the person received the shares.

Sec. 20. **REPEALER.**

Minnesota Statutes 1984, section 80B.06, subdivisions 3, 4, and 6 are repealed.

Sec. 21. **EFFECTIVE DATE.**

The amendments to Minnesota Statutes, section 302A.671, subdivision 1, paragraph (a), made by this act are effective August 1, 1986.

Approved June 24, 1985

CHAPTER 6 — S.F.No. 15

An act relating to occupations and professions; regulating persons who lay out, install, or maintain certain alarm systems; changing membership on the board of electricity; prescribing a penalty; amending Minnesota Statutes 1984, sections 326.01, by adding a subdivision; 326.241; 326.242, subdivisions 8 and 12; 326.243, as amended; 326.244, subdivisions 4, 5, as amended, and by adding a subdivision; and 326.246, as amended; proposing coding for new law in Minnesota Statutes, chapter 326.

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