

CHAPTER 80B

CORPORATE TAKE-OVERS

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80B.01 DEFINITIONS.

Subdivision 1. When used in sections 80B.01 to 80B.13, unless the context otherwise requires, the following words shall have the meanings herein ascribed to them.

Subd. 2. "Affiliate" of a person means any person controlling, controlled by, or under common control with such person.

Subd. 3. "Associate" of a person means any person acting jointly or in concert with such person for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of an issuer.

Subd. 4. "Commissioner" means the commissioner of commerce.

Subd. 5. "Equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner shall deem to be of similar nature and consider necessary or appropriate, by such rules as he may prescribe in the public interest and for the protection of investors, to treat as an equity security.

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.

Subd. 7. "Offeree" means the beneficial owner, residing in Minnesota, of equity securities which an offeror offers to acquire in connection with a take-over offer.

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; 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 percent. 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;

(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.

Subd. 9. "Target company" means an issuer of publicly traded equity securities which has at least 20 percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. 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 securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or the over-the-counter market.

Subd. 10. "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/or 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 shall be deemed 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 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.

History: 1973 c 331 s 1; 1974 c 406 s 94,95; 1980 c 516 s 2; 1984 c 488 s 2

80B.02 [Repealed, 1984 c 488 s 19]

80B.03 REGISTRATION OF TAKE-OVER OFFERS.

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 6. The offeror shall deliver a copy of the registration statement by certified mail 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.

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 directors and executive officers of the offeror and their material business activities and affiliations 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;

(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.

Subd. 3. [Repealed, 1984 c 488 s 19]

Subd. 3a. Registration is not deemed approval by the commissioner and any representation to the contrary is unlawful.

Subd. 4. [Repealed, 1984 c 488 s 19]

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 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.

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'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 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 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 section 80B.03.

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:

(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;

(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.

History: 1973 c 331 s 3; 1974 c 406 s 97; 1984 c 488 s 3-8

80B.04 FILING OF SOLICITATION MATERIALS.

Copies of all advertisements, circulars, letters or other materials published by the offeror or the target company, soliciting or requesting the acceptance or rejection of the take-over offer, shall be filed with the commissioner and sent to the target company or offeror, respectively, not later than the time copies of such solicitation materials are first published or used or sent to offerees. The commissioner may prohibit the use of any solicitation materials deemed false or misleading.

History: 1973 c 331 s 4

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 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 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, 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) 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.

History: 1973 c 331 s 5; 1984 c 488 s 9

80B.06 LIMITATIONS ON OFFERORS.

Subdivision 1. No offeror may make a take-over offer which is not made to stockholders in this state on substantially the same terms as the offer is made to stockholders outside this state.

Subd. 2. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a take-over offer may be withdrawn by or on behalf of any offeree at any time within seven days from the date the offer has become effective under sections 80B.01 to 80B.13 and after 60 days from the date the offer has become effective under sections 80B.01 to 80B.13, except as the commissioner may otherwise prescribe by rule or order for the protection of investors.

Subd. 3. If an offeror makes a take-over offer for less than all the outstanding equity securities of any class, and if the number of securities deposited or tendered pursuant thereto within ten days after the offer has become effective under sections 80B.01 to 80B.13 and copies of the offer, or notice of any increase in the consideration offered, are first published or sent or given to security holders is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted pro rata, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

Subd. 4. If an offeror varies the terms of a take-over offer before its expiration date by increasing the consideration offered to security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeror before or after the variation in the terms of the offer.

Subd. 5. No offeror may make a take-over offer or acquire any equity securities in this state pursuant to the take-over offer, at any time when any proceeding by the commissioner is pending against the offeror alleging a violation of any provision of sections 80B.01 to 80B.13 or chapter 80A.

Subd. 6. No offeror may acquire, remove or exercise control, directly or indirectly, over any target company assets located in this state pursuant to a take-over offer at any time when any proceeding by the commissioner is pending against the offeror alleging a violation of any provision of this chapter or chapter 80A.

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 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 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.

History: 1973 c 331 s 6; 1974 c 406 s 98; 1984 c 488 s 10

80B.07 ADMINISTRATION, RULES AND ORDERS.

Subdivision 1. In administering the provisions of sections 80B.01 to 80B.13, the commissioner may exercise all powers granted to him under chapter 80A, which are not inconsistent with sections 80B.01 to 80B.13.

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Subd. 2. The commissioner may make and adopt such rules and forms as are necessary to carry out the purposes of sections 80B.01 to 80B.13, including, without limitation, rules defining terms used in sections 80B.01 to 80B.13.

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.

History: 1973 c 331 s 7; 1974 c 406 s 99; 1980 c 516 s 2; 1984 c 488 s 11

80B.08 FEES AND EXPENSES.

The commissioner shall charge a filing fee of \$250 for a registration statement filed by an offeror.

History: 1973 c 331 s 8; 1984 c 488 s 12

80B.09 INJUNCTIONS.

Whenever it appears to the commissioner that any person, including a controlling person of an offeror or target company, has engaged or is about to engage in any act or practice constituting a violation of sections 80B.01 to 80B.13 or any rule or order hereunder, (1) he may issue and cause to be served upon any person violating any of the provisions of sections 80B.01 to 80B.13 an order requiring the person guilty thereof to cease and desist therefrom; and (2) he may bring an action in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with sections 80B.01 to 80B.13 or any rule or order hereunder, or he may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order and may order rescission of any sales or purchases of securities determined to be unlawful under sections 80B.01 to 80B.13 or any rule or order hereunder. The court may not require the commissioner to post a bond.

History: 1973 c 331 s 9

80B.10 PENALTIES.

Subdivision 1. Any person, including a controlling person of an offeror or target company, who 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.

Subd. 2. The commissioner may refer such evidence as is available concerning violations of sections 80B.01 to 80B.13 or of any rule or order hereunder to the attorney general or the county attorney of the appropriate county who may, with or without any reference, institute the appropriate criminal proceedings under sections 80B.01 to 80B.13. If referred to a county attorney, he shall within 90 days file with the commissioner a statement concerning any action taken or, if no action has been taken, the reasons therefor.

Subd. 3. Nothing in sections 80B.01 to 80B.13 limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

Subd. 4. All shares 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.

History: 1973 c 331 s 10; 1984 c 488 s 13

80B.11 CIVIL LIABILITIES.

Subdivision 1. Any offeror who purchases a security in connection with a take-over offer in violation of sections 80B.01 to 80B.13 shall be liable to the person selling the security to him who may sue either at law or in equity. In an action for rescission the seller shall be entitled to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received. Tender requires only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable. Damages are the excess of either the value of the security on the date of purchase or its present value, whichever is greater, over the present value of the consideration received for the security.

Subd. 2. Every person who directly or indirectly controls a person liable under subdivision 1, every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, is also liable jointly or severally with and to the same extent as such person, unless the person who would otherwise be so liable proves that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

Subd. 3. No action may be maintained under this section unless commenced before the expiration of three years after the act or transaction constituting the violation or the expiration of one year after the discovery of the facts constituting the violation, whichever first expires.

Subd. 4. The rights and remedies under sections 80B.01 to 80B.13 are in addition to any other rights or remedies that may exist at law or in equity.

History: 1973 c 331 s 11

80B.12 APPLICATION OF CORPORATE TAKE-OVER LAW.

Subd. 1. [Repealed, 1984 c 488 s 19]

Subd. 2. If the target company is a public utility, public utility holding company, national banking association, bank holding company or savings and loan association subject to regulation by a federal agency and the take-over of such

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company is subject to approval by that agency sections 80B.01 to 80B.13 shall not apply.

Subd. 3. [Repealed, 1984 c 488 s 19]

History: 1973 c 331 s 12; 1980 c 614 s 123

80B.13 APPLICATION OF SECURITIES LAW.

All of the provisions of chapter 80A, which are not in conflict with sections 80B.01 to 80B.13 shall apply to any take-over offer involving a target company in this state.

History: 1973 c 331 s 13; 1974 c 406 s 100