

Revisory Di. Pa. 4/22/85 (p. 441)

*See Small Business Amend (3764)
& Do Pass 4/12/85*

SENATE FILE 475

BY MANN

FILED MAR 18 1985

Passed Senate, Date 3-29-85 (p. 1124) Passed House, Date 4-22-85 (p. 1735)

Vote: Ayes 36 Nays 9 Vote: Ayes 84 Nays 12

Approved _____

*Motion to Reconsider (p. 1125)
" 4/1 (p. 1170) Lost 4/9/85*

A BILL FOR

1 An Act relating to corporate takeovers and providing penalties.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. LEGISLATIVE INTENT.

2 1. FINDINGS. The general assembly finds that corporate
3 takeovers, particularly hostile takeovers:

4 a. Exaggerate the tendency of many businesses to focus on
5 short-term performance to the detriment of such long-term
6 societal interests as increased research and development, im-
7 proved productivity, and the modernization of physical plant
8 and employee capabilities.

9 b. Are often inconsistent with the economic interests of
10 shareholders.

11 c. In many instances threaten the jobs and careers of Iowa
12 citizens and undermine the ethical foundations of companies,
13 as when jobs are eliminated and career commitments to
14 employees are breached or ignored.

15 d. Often result in plant closings or consolidations that
16 damage communities dependent on the jobs and taxes provided by
17 these plants.

18 e. Not infrequently wipe out long-standing customer sup-
19 plier relationships and the stability and continuity which
20 these relationships provide throughout society.

21 f. Frequently tie up billions of dollars of scarce capital
22 that could be more effectively applied.

23 g. All too often stifle, and ultimately destroy, the
24 entrepreneurial, innovative spirit of creative individuals in
25 independent firms.

26 h. Are usually conducted in an atmosphere and pursuant to
27 laws that do not provide a reasonable opportunity for affected
28 parties to make informed decisions.

29 2. PURPOSE. The purpose of chapter 502A created under
30 this Act is to:

31 a. Assure that the impacts of corporate takeovers on all
32 affected constituencies are identified and disclosed prior to
33 the consummation of these transactions.

34 b. Provide to shareholders both necessary information and
35 the opportunity to thus cast fully informed votes on any

1 takeover transactions.

2 c. Encourage reasoned decision making by assuring equal
3 financial treatment of all shareholders similarly situated at
4 the time any takeover attempt is initiated.

5 Sec. 2. Section 496A.2, Code 1985, is amended by adding
6 the following new subsections:

7 NEW SUBSECTION. 15. "Acquiring person" means a person
8 that is required to deliver an information statement under
9 section 496A.74A.

10 NEW SUBSECTION. 16. "Control share acquisition" means an
11 acquisition of shares of an issuing public corporation re-
12 sulting in beneficial ownership by an acquiring person of a
13 new range of voting power specified in section 496A.74A,
14 subsection 2, paragraph "d", but does not include any of the
15 following:

16 a. An acquisition before, or pursuant to an agreement en-
17 tered into before, the effective date of this Act.

18 b. An acquisition by a donee pursuant to an inter vivos
19 gift not made to avoid section 496A.74A or by a distributee as
20 defined in section 633.3.

21 c. An acquisition pursuant to a security agreement not
22 created to avoid section 496A.74A.

23 d. An acquisition under sections 496A.68 through 496A.74,
24 if the issuing public corporation is a party to the transac-
25 tion.

26 e. An acquisition from the issuing public corporation.

27 NEW SUBSECTION. 17. "Issuing public corporation" means a
28 corporation with at least fifty shareholders and having its
29 principal place of business or substantial assets located in
30 this state.

31 Sec. 3. NEW SECTION. 496A.28A SOLICITATION FOR PROXY IN
32 CONTROL SHARE ACQUISITIONS.

33 Notwithstanding any contrary provision of this chapter, a
34 proxy relating to a meeting of shareholders required under
35 section 496A.74A, subsection 3, shall be solicited separately

1 from the offer to purchase or solicitation of an offer to sell
2 shares of the issuing public corporation and shall not be
3 solicited sooner than thirty days before the meeting unless
4 otherwise agreed in writing by the acquiring person and the
5 issuing public corporation.

6 Sec. 4. NEW SECTION. 496A.74A CONTROL SHARE ACQUI-
7 TIONS.

8 1. AUTHORIZATION IN ARTICLES.

9 a. Unless otherwise expressly provided in the articles of
10 an issuing public corporation, this section applies to a
11 control share acquisition.

12 b. All shares acquired by an acquiring person in violation
13 of subsection 4 shall be denied voting rights for one year
14 after acquisition, the shares shall be nontransferable on the
15 books of the corporation for one year after acquisition and
16 the corporation, during the one-year period, has the option to
17 call the shares for redemption either at the price at which
18 the shares were acquired or at book value per share as of the
19 last day of the fiscal quarter ended prior to the date of the
20 call for redemption. Such a redemption shall occur on the
21 date set in the call notice but not later than sixty days
22 after the call notice is given.

23 2. INFORMATION STATEMENT. A person proposing to make a
24 control share acquisition shall deliver to the issuing public
25 corporation at its principal executive office an information
26 statement containing all of the following:

27 a. The identity of the person.

28 b. A reference that the statement is made under this sec-
29 tion.

30 c. The number of shares of the issuing public corporation
31 beneficially owned by the person.

32 d. A specification of which of the following ranges of
33 voting power in the election of directors would result from
34 consummation of the control share acquisition:

35 (1) At least ten percent but less than twenty percent.

- 1 (2) At least twenty percent but less than thirty percent.
- 2 (3) At least thirty percent but less than forty percent.
- 3 (4) At least forty percent but less than a majority.
- 4 (5) At least a majority.

5 e. The terms of the proposed control share acquisition,
6 including, but not limited to, the source of funds or other
7 consideration and the material terms of the financial arrange-
8 ments for the control share acquisition, any plans or pro-
9 posals of the acquiring person to liquidate the issuing public
10 corporation, to sell all or substantially all of its assets,
11 or merge it or exchange its shares with any other person, to
12 change the location of its principal executive office or of a
13 material portion of its business activities, to change ma-
14 terially its management or policies of employment, to alter
15 materially its relationship with suppliers or customers or the
16 communities in which it operates, or make any other material
17 change in its business, corporate structure, management or
18 personnel, and other information which would affect the
19 decision of a shareholder with respect to voting on the
20 proposed control share acquisition.

21 3. MEETING OF SHAREHOLDERS. Within five days after re-
22 ceipt of an information statement pursuant to subsection 2, a
23 special meeting of the shareholders of the issuing public
24 corporation shall be called pursuant to section 496A.28 to
25 vote on the proposed control share acquisition. The meeting
26 shall be held no later than fifty-five days after receipt of
27 the information statement, unless the acquiring person agrees
28 to a later date, and no sooner than thirty days after receipt
29 of the information statement, if the acquiring person so
30 requests in writing when delivering the information statement.
31 The notice of the meeting shall at a minimum be accompanied by
32 a copy of the information statement and a statement disclosing
33 that the issuing public company recommends acceptance of,
34 expresses no opinion and is remaining neutral toward, or is
35 unable to take a position with respect to the proposed control

1 share acquisition. The notice of meeting shall be given
2 within twenty-five days after receipt of the information
3 statement.

4 4. CONSUMMATION OF CONTROL SHARE ACQUISITION. The ac-
5 quiring person may consummate the proposed control share ac-
6 quisition if and only if both of the following occur:

7 a. The proposed control share acquisition is approved by
8 the affirmative vote of the holders of a majority of the
9 voting power of all shares entitled to vote which are not
10 beneficially owned by the acquiring person. A class or series
11 of shares of the corporation is entitled to vote as a class or
12 series if any provision of the control share acquisition
13 would, if contained in a proposed amendment to the articles,
14 entitle the class or series to vote as a class or series.

15 b. The proposed control share acquisition is consummated
16 within one hundred eighty days after shareholder approval.

17 Sec. 5. Section 502.601, subsection 1, Code 1985, is
18 amended to read as follows:

19 1. This chapter and chapter 502A shall be administered by
20 the commissioner of insurance of the state of Iowa. The
21 administrator shall appoint a deputy administrator who shall
22 be exempt from the merit system provided for in chapter 19A.
23 The deputy administrator ~~shall be~~ is the principal operations
24 officer of the securities department and ~~shall be~~ is
25 responsible to the administrator for the routine
26 administration of ~~the~~ this chapter, chapter 502A, and the
27 management of the securities department. In the absence of
28 the administrator, whether because of vacancy in the office,
29 by reason of absence, physical disability or other cause, the
30 deputy administrator shall be the acting administrator and
31 shall, for the time being, have and exercise the authority
32 conferred upon the administrator. The administrator may by
33 order from time to time delegate to the deputy administrator
34 any or all of the functions assigned to the administrator in
35 this chapter and chapter 502A. The administrator shall employ

1 officers, attorneys, accountants, and other employees as shall
2 be needed for the administration of the this chapter and
3 chapter 502A.

4 Sec. 6. NEW SECTION. 502A.1 DEFINITIONS.

5 As used in this chapter, unless the context otherwise re-
6 quires:

7 1. An "affiliate" of, or a person "affiliated" with, a
8 specified person means as defined in section 502.102.

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

13 3. "Commissioner" means the commissioner of insurance or
14 the deputy appointed under section 502.601.

15 4. "Equity security" means as defined under section
16 502.102.

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

25 6. "Offeree" means the beneficial owner, residing in Iowa,
26 of equity securities which an offeror offers to acquire in
27 connection with a takeover offer.

28 7. a. "Takeover offer" means the offer to acquire any
29 equity securities of a target company from a resident of this
30 state pursuant to a tender offer or request or invitation for
31 tenders, if after the acquisition of all securities acquired
32 pursuant to the offer either of the following would occur:

33 (1) The offeror would be directly or indirectly a bene-
34 ficial owner of more than ten percent of any class of the out-
35 standing equity securities of the target company.

1 (2) The beneficial ownership by the offeror of any class
2 of the outstanding equity securities of the target company
3 would be increased by more than five percent.

4 Subparagraph (2) does not apply if after the acquisition of
5 all securities acquired pursuant to the offer, the offeror
6 would not be directly or indirectly a beneficial owner of more
7 than ten percent of any class of the outstanding equity
8 securities of the target company.

9 b. Takeover offer does not include:

10 (1) An offer to exchange the securities of one issuer for
11 the securities of another issuer, if the offer is registered
12 under chapter 502.

13 (2) An offer in connection with the acquisition of a
14 security which, together with all other acquisitions by the
15 offeror of securities of the same class of equity securities
16 of the issuer, would not result in the offeror having acquired
17 more than two percent of this class during the preceding
18 twelve-month period.

19 (3) An offer by the issuer to acquire its own equity
20 securities.

21 (4) An offer in which the target company is an insurance
22 company subject to regulation by the commissioner, a financial
23 institution regulated by the commissioner, or a public utility
24 subject to regulation by the Iowa state commerce commission.

25 8. "Target company" means an issuer of publicly traded
26 equity securities which has at least twenty percent of its
27 equity securities beneficially held by residents of this state
28 and has substantial assets in this state. For the purposes of
29 this chapter, an equity security is publicly traded if a
30 trading market exists for the security at the time the offeror
31 makes a takeover offer for the security. A trading market
32 exists if the security is traded on a national securities
33 exchange, whether or not registered pursuant to the Securities
34 Exchange Act of 1934, or the over-the-counter market.

35 9. "Beneficial owner" includes, but is not limited to, a

1 person who directly or indirectly through any contract,
2 arrangement, understanding, relationship, or otherwise has or
3 shares the power to vote or direct the voting of a security or
4 the power to dispose of, or direct the disposition of, the
5 security. "Beneficial ownership" includes, but is not limited
6 to, the right, exercisable within sixty days, to acquire
7 securities through the exercise of options, warrants, or
8 rights or the conversion of convertible securities, or
9 otherwise. The securities subject to these options, warrants,
10 rights, or conversion privileges held by a person shall be
11 deemed to be outstanding for the purpose of computing the
12 percentage of outstanding securities of the class owned by
13 this person, but shall not be deemed to be outstanding for the
14 purpose of computing the percentage of the class owned by any
15 other person. A person shall be deemed the beneficial owner
16 of securities beneficially owned by any relative or spouse or
17 relative of the spouse residing in the home of this person,
18 any trust or estate in which this person owns ten percent or
19 more of the total beneficial interest or serves as trustee or
20 executor, any corporation or entity in which this person owns
21 ten percent or more of the equity, and any affiliate or
22 associate of this person.

23 Sec. 7. NEW SECTION. 502A.2 REGISTRATION OF TAKEOVER
24 OFFERS.

25 1. It is unlawful for a person to make a takeover offer or
26 to acquire any equity securities pursuant to the offer, unless
27 the offer is effective under this chapter. A takeover offer
28 is effective when the offeror files with the commissioner a
29 registration statement containing the information prescribed
30 in subsection 6. The offeror shall deliver a copy of the
31 registration statement by certified mail to the target company
32 at its principal office and publicly disclose the material
33 terms of the proposed offer, not later than the date of filing
34 of the registration statement. Public disclosure requires, at
35 a minimum, that a copy of the registration statement be

1 supplied to all broker-dealers maintaining an office in this
2 state currently quoting the security.

3 2. The registration statement shall be filed on forms
4 prescribed by the commissioner, and shall be accompanied by a
5 consent by the offeror to service of process and the filing
6 fee specified in section 502A.8, and shall contain the fol-
7 lowing information and such additional information as the
8 commissioner by rule prescribes:

9 a. All of the information specified in subsection 6.

10 b. Two copies of all solicitation materials intended to be
11 used in the takeover offer in the form proposed to be
12 published or sent or delivered to offerees.

13 c. If the offeror is other than a natural person, informa-
14 tion concerning its organization and operations, including the
15 year, form and jurisdiction of its organization, a description
16 of each class of equity security and long-term debt, a de-
17 scription of the business conducted by the offeror and its
18 subsidiaries and any material changes in the business during
19 the past three years, a description of the location and
20 character of the principal properties of the offeror and its
21 subsidiaries, a description of any material pending legal or
22 administrative proceedings in which the offeror or any of its
23 subsidiaries is a party, the names of all directors and
24 executive officers of the offeror and their material business
25 activities and affiliations during the past three years, and
26 financial statements of the offeror in a form and for a period
27 of time as the commissioner by rule prescribes.

28 d. If the offeror is a natural person, information con-
29 cerning the person's identity and background, including busi-
30 ness activities and affiliations during the past three years,
31 and a description of any material pending legal or administra-
32 tive proceedings in which the offeror is a party.

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

35 4. Within three calendar days of the date of filing of the

1 registration statement, the commissioner may by order sum-
2 marily suspend the effectiveness of the takeover offer if the
3 commissioner determines that the registration statement does
4 not contain all of the information specified in subsection 6
5 or that the takeover offer materials provided to offerees do
6 not provide full disclosure to offerees of all material in-
7 formation concerning the takeover offer. The suspension shall
8 remain in effect only until the determination following a
9 hearing held pursuant to subsection 5.

10 5. A hearing shall be scheduled by the commissioner with
11 respect to each suspension under this section and shall be
12 held within ten calendar days of the date of the suspension.
13 Chapter 17A does not apply to the hearing. The commissioner's
14 determination made following the hearing shall be made within
15 three calendar days after the hearing has been completed but
16 not more than sixteen calendar days after the date of the
17 suspension. The commissioner may prescribe different time
18 limits than those specified in this subdivision by rule or
19 order. If, based upon the hearing, the commissioner finds
20 that the takeover offer fails to provide for full and fair
21 disclosure to offerees of all material information concerning
22 the offer, or that the takeover offer is in material violation
23 of any provision of this chapter, the commissioner shall
24 permanently suspend the effectiveness of the takeover offer,
25 subject to the right of the offeror to correct disclosure and
26 other deficiencies identified by the commissioner and to
27 reinstitute the takeover offer by filing a new or amended
28 registration statement pursuant to this section.

29 6. The form required to be filed by subsection 2, para-
30 graph "a", shall contain the following information and
31 additional information the commissioner by rule prescribes:

32 a. The identity and background of all persons on whose
33 behalf the acquisition of any equity security of the issuer
34 has been or is to be affected.

35 b. The source and amount of funds or other consideration

1 used or to be used in acquiring any equity security,
2 including, if applicable, a statement describing any
3 securities which are being offered in exchange for the equity
4 securities of the issuer, and if any part of the acquisition
5 price is or will be represented by borrowed funds or other
6 consideration, a description of the material terms of any
7 financing arrangements and the names of the parties from whom
8 the funds were borrowed.

9 c. If the purpose of the acquisition is to gain control of
10 the target company, a statement of any plans or proposals
11 which the person has, upon gaining control, to liquidate the
12 issuer, sell its assets, effect its merger or consolidation,
13 change the location of its principal executive office or of a
14 material portion of its business activities, change its
15 management or policies of employment, materially alter its
16 relationship with suppliers or customers or the communities in
17 which it operates, or make any other major change in its
18 business, corporate structure, management or personnel, and
19 other information which would affect the shareholders'
20 evaluation of the acquisition.

21 d. The number of shares or units of any equity security of
22 the issuer owned beneficially by the person and any affiliate
23 or associate of the person, together with the name and address
24 of each affiliate or associate.

25 e. The material terms of any contract, arrangement, or
26 understanding with any other person with respect to the equity
27 securities of the issuer whereby the person filing the state-
28 ment has or will acquire any interest in additional equity
29 securities of the issuer, or is or will be obligated to trans-
30 fer any interest in the equity securities to another.

31 Sec. 8. NEW SECTION. 502A.3 FILING OF SOLICITATION MA-
32 TERIALS.

33 Copies of all advertisements, circulars, letters or other
34 materials published by the offeror or the target company,
35 soliciting or requesting the acceptance or rejection of the

1 takeover offer, shall be filed with the commissioner and sent
2 to the target company or offeror, respectively, not later than
3 the time copies of the solicitation materials are first pub-
4 lished or used or sent to offerees. The commissioner may
5 prohibit the use of any solicitation materials the
6 commissioner deems false or misleading.

7 Sec. 9. NEW SECTION. 502A.4 FRAUDULENT PRACTICES.

8 It is unlawful for an offeror or target company or a
9 controlling person of an offeror or target company or a
10 broker-dealer acting on behalf of an offeror or target company
11 to engage in a fraudulent practice in connection with a
12 takeover offer. Fraudulent practice includes any of the fol-
13 lowing:

14 1. The publication or use in connection with the offer of
15 a false statement of a material fact or the omission to state
16 a material fact necessary to make the statements made not
17 misleading.

18 2. The sale by any controlling shareholders of a target
19 company of any of their equity securities to the offeror for a
20 consideration greater than that to be paid other stockholders
21 pursuant to the offer or the purchase of any of the securities
22 of a controlling shareholder of the target company by the
23 offeror for a consideration greater than that to be paid other
24 shareholders, pursuant to an agreement not disclosed to the
25 other shareholders.

26 3. The refusal by a target company to permit an offeror
27 who is a stockholder of record to examine its list of stock-
28 holders, and to make extracts from the list, pursuant to the
29 applicable corporation statutes, for the purpose of making a
30 takeover offer in compliance with this chapter, or in lieu
31 thereof, the refusal to mail any solicitation materials
32 published by the offeror to its security holders with
33 reasonable promptness after receipt from the offeror of the
34 materials together with the reasonable expenses of postage and
35 handling.

1 4. The solicitation of an offeree for acceptance or re-
2 jection of a takeover offer or acquisition of an equity
3 security pursuant to a takeover offer before the takeover
4 offer is effective under this chapter or while the offer is
5 suspended under this chapter.

6 Sec. 10. NEW SECTION. 502A.5 LIMITATIONS ON OFFERORS.

7 1. An offeror shall not make a takeover offer which is not
8 made to stockholders in this state on substantially the same
9 terms as the offer is made to stockholders outside this state.

10 2. An offeror shall provide that any equity securities of
11 a target company deposited or tendered pursuant to a takeover
12 offer may be withdrawn by or on behalf of an offeree at any
13 time within seven days from the date the offer has become
14 effective under this chapter and after sixty days from the
15 date the offer has become effective under this chapter, except
16 as the commissioner otherwise prescribes by rule or order for
17 the protection of investors.

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

29 4. If an offeror varies the terms of a takeover offer be-
30 fore its expiration date by increasing the consideration of-
31 fered to security holders, the offeror shall pay the increased
32 consideration for all equity securities accepted, whether the
33 securities have been accepted by the offeror before or after
34 the variation in the terms of the offer.

35 5. An offeror shall not make a takeover offer or acquire

1 any equity securities in this state pursuant to the takeover
2 offer, at any time when a proceeding by the commissioner is
3 pending against the offeror alleging a violation of any provi-
4 sion of this chapter or chapter 502.

5 6. An offeror shall not acquire, remove or exercise con-
6 trol, directly or indirectly, over any target company assets
7 located in this state pursuant to a takeover offer at any time
8 when a proceeding by the commissioner is pending against the
9 offeror alleging a violation of any provision of this chapter
10 or chapter 502.

11 7. An offeror shall not acquire from a resident of this
12 state in any manner any equity securities of any class of a
13 target company at any time within two years following the last
14 purchase of securities pursuant to a takeover offer with
15 respect to that class, including, but not limited to,
16 acquisitions made by purchase, exchange, merger,
17 consolidation, partial or complete liquidation, redemption,
18 reverse stock split, recapitalization, reorganization or any
19 other similar transaction, unless the holders of the equity
20 securities are afforded, at the time of the acquisition, a
21 reasonable opportunity to dispose of the securities to the
22 offeror upon substantially equivalent terms as those provided
23 in the earlier takeover offer.

24 Sec. 11. NEW SECTION. 502A.6 ADMINISTRATION, RULES AND
25 ORDERS.

26 1. In administering this chapter, the commissioner may
27 exercise all powers granted to the commissioner under chapter
28 502, which are not inconsistent with this chapter.

29 2. The commissioner may adopt rules pursuant to chapter
30 17A as necessary to carry out the purposes of this chapter,
31 including rules defining terms used in this chapter.

32 3. The commissioner may by rule or order exempt from any
33 provision of this chapter a proposed takeover offer or a
34 category or type of takeover offer which the commissioner
35 determines does not have the purpose or effect of changing or

1 influencing the control of a target company or if the
2 commissioner determines that compliance with this chapter is
3 not necessary for the protection of the offerees, and the
4 commissioner may similarly exempt any persons from the
5 requirement of filing statements under this chapter.

6 Sec. 12. NEW SECTION. 502A.7 FEES.

7 The commission shall charge a filing fee of two hundred
8 fifty dollars for a registration statement filed by an offeror
9 under this chapter.

10 Sec. 13. NEW SECTION. 502A.8 INJUNCTIONS.

11 If it appears to the commissioner that any person,
12 including a controlling person of an offeror or target company
13 has engaged or is about to engage in an act or practice con-
14 stituting a violation of this chapter or a rule or order is-
15 sued pursuant to this chapter, the commissioner may issue and
16 cause to be served upon the person an order requiring the
17 person to cease and desist, and the commissioner may bring an
18 action in the district court of the appropriate county to
19 enjoin the act or practice and to enforce compliance with this
20 chapter or a rule or order issued pursuant to this chapter, or
21 the commissioner may refer the matter to the attorney general
22 or the county attorney of the appropriate county. Upon a
23 proper showing, the court may grant a permanent or temporary
24 injunction or restraining order and may order rescission of
25 any sales or purchases of securities determined to be unlawful
26 under this chapter or a rule or order issued pursuant to this
27 chapter. The court shall not require the commissioner to post
28 a bond.

29 Sec. 14. NEW SECTION. 502A.9 PENALTIES -- STATUTE OF
30 LIMITATIONS.

31 1. A person, including a controlling person of an offeror
32 or target company, who violates a provision of this chapter or
33 a rule adopted pursuant to this chapter, or an order of the
34 commissioner of which this person has notice, is guilty of a
35 felony for which the person may be fined not more than twenty-

1 five thousand dollars or imprisoned not more than five years,
2 or both. However, violations of section 502A.4 are subject to
3 the penalties provided for fraudulent practices under chapter
4 714. Each of the acts specified constitute a separate offense
5 and a prosecution or conviction for any one of the offenses
6 does not bar prosecution or conviction for any other offense.
7 An indictment or information shall not be returned for a
8 violation of this chapter more than six years after the
9 alleged violation.

10 2. The commissioner may refer evidence available
11 concerning violations of this chapter or of a rule or order
12 adopted pursuant to this chapter to the attorney general or
13 the county attorney of the appropriate county who may, with or
14 without any reference, institute the appropriate criminal
15 proceedings under this chapter. If referred to a county at-
16 torney, the county attorney shall within ninety days file with
17 the commissioner a statement concerning action taken or, if no
18 action has been taken, the reasons for taking no action.

19 3. This chapter does not limit the power of the state to
20 punish a person for conduct which constitutes a crime under
21 any other statute.

22 4. All shares acquired from an Iowa resident in violation
23 of a provision of this chapter or a rule adopted pursuant to
24 this chapter, or an order of the commissioner of which the
25 person has notice, shall be denied voting rights for one year
26 after acquisition, the shares shall be nontransferable on the
27 books of the target company for one year after acquisition and
28 the target company, during this one-year period, has the
29 option to call the shares for redemption either at the price
30 at which the shares were acquired or at book value per share
31 as of the last day of the fiscal quarter ended prior to the
32 date of the call for redemption. Such a redemption shall
33 occur on the date set in the call notice but not later than
34 sixty days after the call notice is given.

35 Sec. 15. NEW SECTION. 502A.10 CIVIL LIABILITIES.

1 1. An offeror who purchases a security in connection with
2 a takeover offer in violation of this chapter is liable to the
3 person selling the security to the offeror who may sue either
4 at law or in equity. In an action for rescission the seller
5 is entitled to recover the security, plus any income received
6 by the purchaser on the security, upon tender of the
7 consideration received. Tender requires only notice of
8 willingness to pay the amount specified in exchange for the
9 security. Notice may be given by service as in civil actions
10 or by certified mail to the last known address of the person
11 liable. Damages are the excess of either the value of the
12 security on the date of purchase or its present value,
13 whichever is greater, over the present value of the considera-
14 tion received for the security.

15 2. Every person who directly or indirectly controls a
16 person liable under subsection 1, every partner, principal
17 executive officer or director of such a person, every person
18 occupying a similar status or performing similar functions,
19 every employee of such a person who materially aids in the act
20 or transaction constituting the violation, and every broker-
21 dealer or agent who materially aids in the act or transaction
22 constituting the violation, is also liable jointly and
23 severally with and to the same extent as the person, unless
24 the person who would otherwise be liable proves that the
25 person did not know, and in the exercise of reasonable care
26 could not have known, of the existence of the facts by reason
27 of which the liability is alleged to exist. Contribution is
28 available as in cases of contract among the several persons so
29 liable.

30 3. An action shall not be maintained under this section
31 unless commenced before the expiration of three years after
32 the act or transaction constituting the violation or the
33 expiration of one year after the discovery of the facts
34 constituting the violation, whichever expires first.

35 4. The rights and remedies under this chapter are in addi-

1 tion to any other rights or remedies that exist at law or in
2 equity.

3 Sec. 16. NEW SECTION. 502A.11 APPLICATION OF CORPORATE
4 TAKEOVER LAW.

5 This chapter does not apply if the target company is a
6 public utility, public utility holding company, national
7 banking association, bank holding company or savings and loan
8 association subject to regulation by a federal agency and the
9 takeover of the company is subject to approval by that agency.

10 Sec. 17. NEW SECTION. 502A.12 APPLICATION OF SECURITIES
11 LAW.

12 All of the provisions of chapter 502 which are not in con-
13 flict with this chapter apply to a takeover offer involving a
14 target company in this state.

15 EXPLANATION

16 This bill incorporates many of the provisions of Minnesota
17 corporate takeover law as amended in 1984. The bill creates
18 chapter 502A and provides that the administration of the chap-
19 ter rests with the commissioner of insurance. The bill de-
20 clares it unlawful for a person to make a takeover offer or to
21 acquire any equity securities pursuant to the offer unless the
22 offer is effective under chapter 502A. The takeover offer is
23 effective when the offeror files with the commissioner of
24 insurance a registration statement containing information re-
25 quired under chapter 502A.

26 The commissioner of insurance may suspend the effectiveness
27 of the takeover offer if the commissioner determines that the
28 registration statement does not contain all of the specified
29 information or that the takeover offer materials provided to
30 offerees do not provide full disclosure to offerees of all
31 material information concerning the takeover offer.

32 The commissioner may by rule or order exempt any provision
33 of chapter 502A for a proposed takeover offer which the
34 commissioner determines does not have the purpose or effect of
35 changing or influencing the control of a target company or

1 where the commissioner determines that compliance is not
2 necessary for the protection of the offerees.

3 A person who violates a provision of chapter 502A or any
4 rule or order of the commission is guilty of a felony for
5 which the person may be fined not more than \$25,000 or im-
6 prisonment for not more than five years, or both. However, if
7 the person commits a fraudulent practice as defined in the
8 bill the penalties of chapter 714 apply.

9 This bill creates and internally cites new sections
10 496A.28A, 496A.74A, and 502A.1 through 502A.12.

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1 Amend Senate File 475 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

4 "Section 1. Section 502.102, subsection 11, Code
5 1985, is amended to read as follows:

6 11. "Securities Act of 1933", "Securities Exchange
7 Act of 1934", "Public Utility Holding Company Act of
8 1935", "Investment Company Act of 1940", "Internal
9 Revenue Code of 1954" and "Agricultural Marketing Act"
10 mean the federal statutes of those names, ~~as amended~~
11 ~~before January 17, 1976.~~

12 Sec. 2. Section 502.102, subsections 14, 15, 16
13 and 17, Code 1985, are amended by striking the
14 subsections and inserting the following:

15 14. For the purposes of sections 502.211 through
16 502.218, unless the context otherwise requires:

17 a. "Associate" means a person acting jointly or in
18 concert with another for the purpose of acquiring,
19 holding or disposing of, or exercising any voting
20 rights attached to the equity securities of a target
21 company.

22 b. "Equity security" means any stock or similar
23 security, and includes the following:

24 (1) Any security convertible, with or without
25 consideration, into a stock or similar security.

26 (2) Any warrant or right to subscribe to or
27 purchase a stock of similar security.

28 (3) Any security carrying a warrant or right to
29 subscribe to or purchase a stock or similar security.

30 (4) Any other security which the administrator
31 deems to be of a similar nature and considers
32 necessary or appropriate, according to rules
33 prescribed by the administrator for the public
34 interest and protection of investors, to be treated as
35 an equity security.

36 c. "Offeror" means a person who makes or in any
37 manner participates in making a takeover offer. It
38 does not include a supervised financial institution or
39 broker-dealer loaning funds to an offeror in the
40 ordinary course of its business, or any supervised
41 financial institution, broker-dealer, attorney,
42 accountant, consultant, employee, or other person
43 furnishing information or advice to or performing
44 ministerial duties for an offeror, and who does not
45 otherwise participate in the takeover offer.

46 d. "Offeree" means the beneficial owner, who is a
47 resident of this state, of equity securities which an
48 offeror offers to acquire in connection with a
49 takeover offer.

50 e. "Takeover offer":

1 (1) Means the offer to acquire any equity
2 securities of a target company from a resident of this
3 state pursuant to a tender offer or request or
4 invitation for tenders, if after the acquisition of
5 all securities acquired pursuant to the offer either
6 of the following are true:

7 (a) The offeror would be directly or indirectly a
8 beneficial owner of more than ten percent of any class
9 of the outstanding equity securities of the target
10 company.

11 (b) The beneficial ownership by the offeror of any
12 class of the outstanding equity securities of the
13 target company would be increased by more than five
14 percent. However, this provision does not apply if
15 after the acquisition of all securities acquired
16 pursuant to the offer, the offeror would not be
17 directly or indirectly a beneficial owner of more than
18 ten percent of any class of the outstanding equity
19 securities of the target company.

20 (2) Does not include the following:

21 (a) An offer in connection with the acquisition of
22 a security which, together with all other acquisitions
23 by the offeror of securities of the same class of
24 equity securities of the target company, would not
25 result in the offeror having acquired more than two
26 percent of this class of securities during the
27 preceding twelve-month period.

28 (b) An offer by the target company to acquire its
29 own equity securities if such offer is subject to
30 section 13(e) of the Securities Exchange Act of 1934.

31 (c) An offer in which the target company is an
32 insurance company or insurance holding company subject
33 to regulation by the commissioner of insurance, a
34 financial institution subject to regulation by the
35 state superintendent of banking or the state auditor,
36 or a public utility subject to regulation by the
37 commerce commission.

38 f. "Target company" means an issuer of publicly-
39 traded equity securities which has at least twenty
40 percent of its equity securities beneficially held by
41 residents of this state and has substantial assets in
42 this state. For the purposes of this chapter, an
43 equity security is publicly traded if a trading market
44 exists for the security. A trading market exists if
45 the security is traded on a national securities
46 exchange, whether or not registered pursuant to the
47 Securities Exchange Act of 1934, or on the over-the-
48 counter market.

49 g. "Beneficial owner" includes, but is not limited
50 to, any person who directly or indirectly, through any

1 contract, arrangement, understanding, or relationship,
2 has or shares the power to vote or direct the voting
3 of a security or has or shares the power to dispose of
4 or otherwise direct the disposition of the security.
5 A person is the beneficial owner of securities
6 beneficially owned by any relative or spouse or
7 relative of the spouse residing in the home of the
8 person, any trust or estate in which the person owns
9 ten percent or more of the total beneficial interest
10 or serves as trustee or executor, any corporation or
11 entity in which the person owns ten percent or more of
12 the equity, and any affiliate or associate of the
13 person.

14 h. "Beneficial ownership" includes, but is not
15 limited to, the right, exercisable within sixty days,
16 to acquire securities through the exercise of options,
17 warrants, or rights or the conversion of convertible
18 securities. The securities subject to these options,
19 warrants, rights, or conversion privileges held by a
20 person are outstanding for the purpose of computing
21 the percentage of outstanding securities of the class
22 owned by the person, but are not outstanding for the
23 purpose of computing the percentage of the class owned
24 by any other person.

25 15. "Interest at the legal rate" means the
26 interest rate for judgments specified in section
27 535.3.

28 Sec. 3. Section 502.211, Code 1985, is amended by
29 striking the section and inserting the following:

30 502.211 REGISTRATION REQUIREMENT.

31 1. It is unlawful for a person to make a takeover
32 offer or to acquire any equity securities pursuant to
33 the offer unless the offer is valid under sections
34 502.211 through 502.218. A takeover offer is
35 effective when the offeror files with the
36 administrator a registration statement containing the
37 information prescribed in subsection 6. Not later
38 than the date of filing of the registration statement,
39 the offeror shall deliver a copy of the registration
40 statement by certified mail to the target company at
41 its principal office and publicly disclose the
42 material terms of the proposed offer. Public
43 disclosure shall require, at a minimum, that a copy of
44 the registration statement be supplied to all broker-
45 dealers maintaining an office in this state currently
46 quoting the security.

47 2. The registration statement shall be filed on
48 forms prescribed by the administrator, and shall be
49 accompanied by a consent by the offeror to service of
50 process and filing fee specified in section 502.216,

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1 and contain the following information:

2 a. All information specified in subsection 6.

3 b. Two copies of all solicitation materials
4 intended to be used in the takeover offer, and in the
5 form proposed to be published, sent, or delivered to
6 offerees.

7 c. Additional information as prescribed by the
8 administrator by rule, pursuant to chapter 17A, prior
9 to the making of the offer.

10 3. Registration shall not be considered approval
11 by the administrator, and any representation to the
12 contrary is unlawful.

13 4. Within three calendar days of the date of
14 filing of the registration statement, the
15 administrator may, by order, summarily suspend the
16 effectiveness of the takeover offer if the
17 administrator determines that the registration does
18 not contain all of the information specified in
19 subsection 6 or that the takeover offer materials
20 provided to offerees do not provide full disclosure to
21 offerees of all material information concerning the
22 takeover offer. The suspension shall remain in effect
23 only until the determination following a hearing held
24 pursuant to subsection 5.

25 5. A hearing shall be scheduled by the
26 administrator for each suspension under this section,
27 and the hearing shall be held within ten calendar days
28 of the date of the suspension. The administrator's
29 determination following the hearing shall be made
30 within three calendar days after the hearing has been
31 completed, but not more than sixteen days after the
32 date of the suspension. The administrator may
33 prescribe different time periods than those specified
34 in the subsection by rule or order.

35 If, based upon the hearing, the administrator finds
36 that the registration statement fails to provide for
37 full and fair disclosure of all material information
38 concerning the offer, or that the takeover is in
39 violation of any of the provisions of section 502.211
40 through 502.218, the administrator shall permanently
41 suspend the effectiveness of the takeover offer,
42 subject to the right of the offeror to correct
43 disclosure and other deficiencies identified by the
44 administrator and to reinstate the takeover offer by
45 filing a new or amended registration statement
46 pursuant to this section.

47 6. The form required to be filed by subsection 2,
48 paragraph "a", shall contain all of the following
49 information:

50 a. The identity and background of all persons on

1 whose behalf the acquisition of any equity security of
2 the target company has been or is to be effected.

3 b. The source and amount of funds or other
4 consideration used or to be used in acquiring any
5 equity security including, if applicable, a statement
6 describing any securities which are being offered in
7 exchange for the equity securities of the target
8 company and, if any part of the acquisition price is
9 or will be represented by borrowed funds or other
10 consideration, a description of the material terms of
11 any financing arrangements and the names of the
12 parties from whom the funds were or are to be
13 borrowed.

14 c. If the offeror is other than a natural person,
15 information concerning its organization and
16 operations, including the year, form and jurisdiction
17 of its organization, a description of each class of
18 equity security and long-term debt, a description of
19 the business conducted by the offeror and its
20 subsidiaries and any material changes in the offeror
21 or subsidiaries during the past three years, a
22 description of the location and character of the
23 principal properties of the offeror and its
24 subsidiaries, a description of any pending and
25 material legal or administrative proceedings in which
26 the offeror or any of its affiliates is a party, the
27 names of all directors and executive officers of the
28 offeror and their material business activities and
29 affiliations during the past five years, and financial
30 statements of the offeror in a form and for periods of
31 time as the administrator may, pursuant to chapter 17A
32 and prior to the making of the offer, prescribe.

33 d. If the offeror is a natural person, information
34 concerning the offeror's identity and background,
35 including business activities and affiliations during
36 the past five years and a description of any pending
37 and material legal or administrative proceedings in
38 which the offeror is a party.

39 e. If the purpose of the acquisition is to gain
40 control of the target company, the material terms of
41 any plans or proposals which the offeror has, upon
42 gaining control, to liquidate the target company, sell
43 its assets, effect its merger or consolidation, change
44 the location of its principal executive office or of a
45 material portion of its business activities, change
46 its management or policies of employment, materially
47 alter its relationship with suppliers or customers or
48 the community in which it operates, or make any other
49 major changes in its business, corporate structure,
50 management or personnel, and other information which

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1 would materially affect the shareholders' evaluation
2 of the acquisition.

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

8 g. The material terms of any contract,
9 arrangement, or understanding with any other person
10 with respect to the equity securities of the target
11 company by which the offeror has or will acquire any
12 interest in additional equity securities of the target
13 company, or is or will be obligated to transfer any
14 interest in the equity securities to another.

15 h. Information required to be included in a tender
16 offer statement pursuant to section 14(d) of the
17 Securities Exchange Act of 1934 and the rules and
18 regulations of the securities and exchange commission
19 issued pursuant to the Act.

20 Sec. 4. Section 502.212, Code 1985, is amended by
21 striking the section and inserting the following:

22 502.212 FILING OF SOLICITATION MATERIALS.

23 Copies of all advertisements, circulars, letters,
24 or other materials disseminated by the offeror or the
25 target company, soliciting or requesting the
26 acceptance or rejection of a takeover offer shall be
27 filed with the administrator and sent to the target
28 company or offeror not later than the time the
29 solicitation or request materials are first published,
30 sent, or given to the offerees. The administrator may
31 prohibit the use of any materials deemed false or
32 misleading.

33 Sec. 5. Section 502.213, Code 1985, is amended by
34 striking the section and inserting the following:

35 502.213 FRAUDULENT AND DECEPTIVE PRACTICES.

36 It is unlawful for an offeror, target company,
37 affiliate or associate of an offeror or target
38 company, or broker-dealer acting on behalf of an
39 offeror or target company to engage in a fraudulent,
40 deceptive, or manipulative act or practice in
41 connection with a takeover offer. For purposes of
42 this section, an unlawful act or practice includes,
43 but is not limited to, the following:

44 1. The publication or use in connection with a
45 takeover offer of a false statement of a material
46 fact, or the omission of a material fact which renders
47 the statements made misleading.

48 2. The purchase of any of the equity securities of
49 an officer, director, or beneficial owner of five
50 percent or more of the equity securities of the target

1 company by the offeror or the target company for a
2 consideration greater than that to be paid to other
3 shareholders, unless the terms of the purchase are
4 disclosed in a registration statement filed pursuant
5 to section 502.11.

6 3. The refusal by a target company to permit an
7 offeror who is a shareholder of record to examine or
8 copy its list of shareholders, pursuant to the
9 applicable corporation statutes, for the purpose of
10 making a takeover offer.

11 4. The refusal by a target company to mail any
12 solicitation materials published by the offeror to its
13 security holders with reasonable promptness after
14 receipt from the offeror of the materials, together
15 with the reasonable expenses of postage and handling.

16 5. The solicitation of any offeree for acceptance
17 or rejection of a takeover offer, or acquisition of
18 any equity security pursuant to a takeover offer, when
19 the offer is suspended under sections 502.211,
20 provided, however, that the target company may
21 communicate during a suspension with its equity
22 security holders to the extent required to respond to
23 the takeover offer made pursuant to the Securities
24 Exchange Act of 1934.

25 Sec. 6. Section 502.214, Code 1985, is amended by
26 striking the section and inserting the following:

27 502.214 LIMITATIONS ON OFFERORS.

28 1. A takeover offer shall contain substantially
29 the same terms for shareholders residing within and
30 outside this state.

31 2. An offeror shall provide that any equity
32 securities of a target company deposited or tendered
33 pursuant to a takeover offer may be withdrawn by or on
34 behalf of an offeree within seven days after the date
35 the offer has become effective and after sixty days
36 from the date the offer has become effective, or as
37 otherwise determined by the administrator pursuant to
38 a rule or order issued for the protection of the
39 shareholders.

40 3. If an offeror makes a takeover offer for less
41 than all the outstanding equity securities of any
42 class and, within ten days after the offer has become
43 effective and copies of the offer, or notice of any
44 increase in the consideration offered, are first
45 published or sent or given to equity security holders,
46 the number of securities deposited or tendered
47 pursuant to the offer is greater than the number of
48 securities that the offeror has offered to accept and
49 pay for, the securities shall be accepted pro rata,
50 disregarding fractions, according to the number of

1 securities deposited or tendered for each offeree.

2 4. If an offeror varies the terms of a takeover
3 offer before the offer's expiration date by increasing
4 the consideration offered to equity security holders,
5 the offeror shall pay the increased consideration for
6 all equity securities accepted, whether the securities
7 have been accepted by the offeror before or after the
8 variation in the terms of the offer.

9 5. An offeror shall not make a takeover offer or
10 acquire any equity securities in this state pursuant
11 to a takeover offer during the period of time that an
12 administrator's proceeding alleging a violation of
13 this chapter is pending against the offeror.

14 6. An offeror shall not acquire, remove, or
15 exercise control, directly or indirectly, over any
16 target company assets located in this state pursuant
17 to a takeover offer during the period of time that an
18 administrator's proceeding alleging a violation of
19 this chapter is pending against the offeror.

20 7. An offeror shall not acquire from a resident of
21 this state an equity security of any class of a target
22 company at any time within two years following the
23 last purchase of securities pursuant to a takeover
24 offer with respect to that class, including, but not
25 limited to, acquisitions made by purchase, exchange,
26 merger, consolidation, partial or complete
27 liquidation, redemption, reverse stock split,
28 recapitalization, reorganization, or any other similar
29 transaction, unless the holders of the equity
30 securities are afforded, at the time of the
31 acquisition, a reasonable opportunity to dispose of
32 the securities to the offeror upon substantially
33 equivalent terms as those provided in the earlier
34 takeover offer.

35 Sec. 7. Section 502.215, Code 1985, is amended by
36 striking the section and inserting the following:

37 502.215 ADMINISTRATION -- RULES AND ORDERS.

38 1. The administrator shall make and adopt rules
39 and forms as the administrator determines are
40 necessary to carry out the purposes of sections
41 502.211 through 502.218.

42 2. The administrator may by rule or order exempt
43 from any provision of sections 502.211 through 502.218
44 the following:

45 a. A proposed takeover offer or a category or type
46 of takeover offer which the administrator determines
47 does not have the purpose or effect of changing or
48 influencing the control of a target company.

49 b. A proposed takeover offer for which the
50 administrator determines that compliance with the

1 sections is not necessary for the protection of the
2 offerees.

3 c. A person from the requirement of filing
4 statements.

5 3. In the event of a conflict between the
6 provisions of chapter 17A and the provisions of
7 sections 502.211 through 502.218, the provisions of
8 sections 502.211 through 502.218 shall prevail.

9 Sec. 8. NEW SECTION. 502.216 FEES AND EXPENSES.

10 The administrator shall charge a nonrefundable
11 filing fee of two hundred fifty dollars for a
12 registration statement filed by an offeror.

13 Sec. 9. NEW SECTION. 502.217 APPLICATION OF
14 CORPORATE TAKEOVER LAW.

15 If the target company is a public utility, public
16 utility holding company, national banking association,
17 bank holding company, or savings and loan association
18 which is subject to regulation by a federal agency and
19 the take over of such company is subject to approval
20 by the federal agency, sections 502.211 through
21 502.218 do not apply.

22 Sec. 10. NEW SECTION. 502.218 APPLICATION OF
23 SECURITIES LAW.

24 All of the provisions of this chapter which are not
25 in conflict with sections 502.211 through 502.218,
26 apply to any takeover offer involving a target
27 company.

28 Sec. 11. Section 502.407, Code 1985, is amended to
29 read as follows:

30 502.407 MISSTATEMENTS IN PUBLICITY.

31 It is unlawful for any person to make or cause to
32 be made, in any public report or press release, or in
33 other information which is either made generally
34 available to the public or used in opposition to a
35 tender offer, any statement of a material fact
36 relating to an issuer a target company or made in
37 connection with a tender offer which is, at the time
38 and in the light of the circumstances under which it
39 is made, false or misleading, if it is reasonably
40 foreseeable that such statement will induce other
41 persons to buy, sell or hold securities of the issuer
42 target company.

43 Sec. 12. Section 502.501, Code 1985, is amended by
44 adding the following new subsection:

45 NEW SUBSECTION. 3. In addition to other remedies
46 provided in this chapter, in a proceeding alleging a
47 violation of sections 502.211 through 502.218 the
48 court may provide that all shares acquired from a
49 resident of this state in violation of any provision
50 of this chapter or rule order issued pursuant to this

1 chapter be denied voting rights for one year after
2 acquisition, that the shares be nontransferable on the
3 books of the target company, or that during this one-
4 year period the target company have the option to call
5 the shares for redemption either at the price at which
6 the shares were acquired or at book value per share as
7 of the last day of the fiscal quarter ended prior to
8 the date of the call for redemption, which redemption
9 shall occur on the date set in the call notice but not
10 later than sixty days after the call notice is given.

11 Sec. 13. There is established a committee to study
12 the laws and penalties relating to corporate takeovers
13 composed of nine members. The members shall be
14 appointed as follows:

15 1. A democratic and a republican member of the
16 senate and a democratic and a republican member of the
17 house, to be appointed by the legislative council.

18 2. The superintendent of securities, or the
19 superintendent's designee.

20 3. The attorney general, or the attorney general's
21 designee.

22 4. Three public members, to be appointed by the
23 office of the governor, who shall have the following
24 qualifications:

25 a. One member to be an attorney currently licensed
26 to practice law in this state and knowledgeable on
27 corporate law matters.

28 b. One member to be a stock broker-dealer
29 currently licensed to buy, sell, or otherwise deal in
30 securities in this state.

31 c. One member to be a professor of law currently
32 teaching in the area of corporate law and procedure.

33 Public members of the study committee shall receive
34 a per diem of forty dollars and be reimbursed for
35 their travel and other necessary expenses actually
36 incurred in the performance of their official duties.

37 Public employees who are members of the study
38 committee shall be reimbursed for travel and other
39 expenses actually incurred in the performance of their
40 official duties.

41 The study committee may request that the
42 legislative council provide staff for the study
43 committee from the staff of the legislative service
44 bureau. The state government agencies shall provide
45 any assistance requested by the study committee.

46 The study committee shall transmit copies of its
47 final report to the general assembly on or before
48 January 13, 1986."

SENATE FILE 475

H-3923

1 Amend Senate File 475 as passed by the Senate as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 502.102, subsection 11, Code
6 1985, is amended to read as follows:

7 11. "Securities Act of 1933", "Securities Exchange
8 Act of 1934", "Public Utility Holding Company Act of
9 1935", "Investment Company Act of 1940", "Internal
10 Revenue Code of 1954" and "Agricultural Marketing Act"
11 mean the federal statutes of those names, ~~as amended~~
12 ~~before January 17, 1976.~~

13 Sec. 2. Section 502.102, subsections 14, 15, 16
14 and 17, Code 1985, are amended by striking the
15 subsections and inserting the following:

16 14. For the purposes of sections 502.211 through
17 502.218, unless the context otherwise requires:

18 a. "Associate" means a person acting jointly or in
19 concert with another for the purpose of acquiring,
20 holding or disposing of, or exercising any voting
21 rights attached to the equity securities of a target
22 company.

23 b. "Equity security" means any stock or similar
24 security, and includes the following:

25 (1) Any security convertible, with or without
26 consideration, into a stock or similar security.

27 (2) Any warrant or right to subscribe to or
28 purchase a stock of similar security.

29 (3) Any security carrying a warrant or right to
30 subscribe to or purchase a stock or similar security.

31 (4) Any other security which the administrator
32 deems to be of a similar nature and considers
33 necessary or appropriate, according to rules
34 prescribed by the administrator for the public
35 interest and protection of investors, to be treated as
36 an equity security.

37 c. "Offeror" means a person who makes or in any
38 manner participates in making a takeover offer. It
39 does not include a supervised financial institution or
40 broker-dealer loaning funds to an offeror in the
41 ordinary course of its business, or any supervised
42 financial institution, broker-dealer, attorney,
43 accountant, consultant, employee, or other person
44 furnishing information or advice to or performing
45 ministerial duties for an offeror, and who does not
46 otherwise participate in the takeover offer.

47 d. "Offeree" means the beneficial owner, who is a
48 resident of this state, of equity securities which an
49 offeror offers to acquire in connection with a
50 takeover offer.

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Page Two

1 e. "Takeover offer":

2 (1) Means the offer to acquire any equity
3 securities of a target company from a resident of this
4 state pursuant to a tender offer or request or
5 invitation for tenders, if after the acquisition of
6 all securities acquired pursuant to the offer either
7 of the following are true:

8 (a) The offeror would be directly or indirectly a
9 beneficial owner of more than ten percent of any class
10 of the outstanding equity securities of the target
11 company.

12 (b) The beneficial ownership by the offeror of any
13 class of the outstanding equity securities of the
14 target company would be increased by more than five
15 percent. However, this provision does not apply if
16 after the acquisition of all securities acquired
17 pursuant to the offer, the offeror would not be
18 directly or indirectly a beneficial owner of more than
19 ten percent of any class of the outstanding equity
20 securities of the target company.

21 (2) Does not include the following:

22 (a) An offer in connection with the acquisition of
23 a security which, together with all other acquisitions
24 by the offeror of securities of the same class of
25 equity securities of the target company, would not
26 result in the offeror having acquired more than two
27 percent of this class of securities during the
28 preceding twelve-month period.

29 (b) An offer by the target company to acquire its
30 own equity securities if such offer is subject to
31 section 13(e) of the Securities Exchange Act of 1934.

32 (c) An offer in which the target company is an
33 insurance company or insurance holding company subject
34 to regulation by the commissioner of insurance, a
35 financial institution subject to regulation by the
36 state superintendent of banking or the state auditor,
37 or a public utility subject to regulation by the
38 commerce commission.

39 f. "Target company" means an issuer of publicly-
40 traded equity securities which has at least twenty
41 percent of its equity securities beneficially held by
42 residents of this state and has substantial assets in
43 this state. For the purposes of this chapter, an
44 equity security is publicly traded if a trading market
45 exists for the security. A trading market exists if
46 the security is traded on a national securities
47 exchange, whether or not registered pursuant to the
48 Securities Exchange Act of 1934, or on the over-the-
49 counter market.

50 g. "Beneficial owner" includes, but is not limited

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1 to, any person who directly or indirectly, through any
2 contract, arrangement, understanding, or relationship,
3 has or shares the power to vote or direct the voting
4 of a security or has or shares the power to dispose of
5 or otherwise direct the disposition of the security.
6 A person is the beneficial owner of securities
7 beneficially owned by any relative or spouse or
8 relative of the spouse residing in the home of the
9 person, any trust or estate in which the person owns
10 ten percent or more of the total beneficial interest
11 or serves as trustee or executor, any corporation or
12 entity in which the person owns ten percent or more of
13 the equity, and any affiliate or associate of the
14 person.

15 h. "Beneficial ownership" includes, but is not
16 limited to, the right, exercisable within sixty days,
17 to acquire securities through the exercise of options,
18 warrants, or rights or the conversion of convertible
19 securities. The securities subject to these options,
20 warrants, rights, or conversion privileges held by a
21 person are outstanding for the purpose of computing
22 the percentage of outstanding securities of the class
23 owned by the person, but are not outstanding for the
24 purpose of computing the percentage of the class owned
25 by any other person.

26 15. "Interest at the legal rate" means the
27 interest rate for judgments specified in section
28 535.3.

29 Sec. 3. Section 502.211, Code 1985, is amended by
30 striking the section and inserting the following:

31 502.211 REGISTRATION REQUIREMENT.

32 1. It is unlawful for a person to make a takeover
33 offer or to acquire any equity securities pursuant to
34 the offer unless the offer is valid under sections
35 502.211 through 502.218. A takeover offer is
36 effective when the offeror files with the
37 administrator a registration statement containing the
38 information prescribed in subsection 6. Not later
39 than the date of filing of the registration statement,
40 the offeror shall deliver a copy of the registration
41 statement by certified mail to the target company at
42 its principal office and publicly disclose the
43 material terms of the proposed offer. Public
44 disclosure shall require, at a minimum, that a copy of
45 the registration statement be supplied to all broker-
46 dealers maintaining an office in this state currently
47 quoting the security.

48 2. The registration statement shall be filed on
49 forms prescribed by the administrator, and shall be
50 accompanied by a consent by the offeror to service of

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1 process and filing fee specified in section 502.216,
2 and contain the following information:

3 a. All information specified in subsection 6.

4 b. Two copies of all solicitation materials
5 intended to be used in the takeover offer, and in the
6 form proposed to be published, sent, or delivered to
7 offerees.

8 c. Additional information as prescribed by the
9 administrator by rule, pursuant to chapter 17A, prior
10 to the making of the offer.

11 3. Registration shall not be considered approval
12 by the administrator, and any representation to the
13 contrary is unlawful.

14 4. Within three calendar days of the date of
15 filing of the registration statement, the
16 administrator may, by order, summarily suspend the
17 effectiveness of the takeover offer if the
18 administrator determines that the registration does
19 not contain all of the information specified in
20 subsection 6 or that the takeover offer materials
21 provided to offerees do not provide full disclosure to
22 offerees of all material information concerning the
23 takeover offer. The suspension shall remain in effect
24 only until the determination following a hearing held
25 pursuant to subsection 5.

26 5. A hearing shall be scheduled by the
27 administrator for each suspension under this section,
28 and the hearing shall be held within ten calendar days
29 of the date of the suspension. The administrator's
30 determination following the hearing shall be made
31 within three calendar days after the hearing has been
32 completed, but not more than sixteen days after the
33 date of the suspension. The administrator may
34 prescribe different time periods than those specified
35 in the subsection by rule or order.

36 If, based upon the hearing, the administrator finds
37 that the registration statement fails to provide for
38 full and fair disclosure of all material information
39 concerning the offer, or that the takeover is in
40 violation of any of the provisions of section 502.211
41 through 502.218, the administrator shall permanently
42 suspend the effectiveness of the takeover offer,
43 subject to the right of the offeror to correct
44 disclosure and other deficiencies identified by the
45 administrator and to reinstate the takeover offer by
46 filing a new or amended registration statement
47 pursuant to this section.

48 6. The form required to be filed by subsection 2,
49 paragraph "a", shall contain all of the following
50 information:

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1 a. The identity and background of all persons on
2 whose behalf the acquisition of any equity security of
3 the target company has been or is to be effected.

4 b. The source and amount of funds or other
5 consideration used or to be used in acquiring any
6 equity security including, if applicable, a statement
7 describing any securities which are being offered in
8 exchange for the equity securities of the target
9 company and, if any part of the acquisition price is
10 or will be represented by borrowed funds or other
11 consideration, a description of the material terms of
12 any financing arrangements and the names of the
13 parties from whom the funds were or are to be
14 borrowed.

15 c. If the offeror is other than a natural person,
16 information concerning its organization and
17 operations, including the year, form and jurisdiction
18 of its organization, a description of each class of
19 equity security and long-term debt, a description of
20 the business conducted by the offeror and its
21 subsidiaries and any material changes in the offeror
22 or subsidiaries during the past three years, a
23 description of the location and character of the
24 principal properties of the offeror and its
25 subsidiaries, a description of any pending and
26 material legal or administrative proceedings in which
27 the offeror or any of its affiliates is a party, the
28 names of all directors and executive officers of the
29 offeror and their material business activities and
30 affiliations during the past five years, and financial
31 statements of the offeror in a form and for periods of
32 time as the administrator may, pursuant to chapter 17A
33 and prior to the making of the offer, prescribe.

34 d. If the offeror is a natural person, information
35 concerning the offeror's identity and background,
36 including business activities and affiliations during
37 the past five years and a description of any pending
38 and material legal or administrative proceedings in
39 which the offeror is a party.

40 e. If the purpose of the acquisition is to gain
41 control of the target company, the material terms of
42 any plans or proposals which the offeror has, upon
43 gaining control, to liquidate the target company, sell
44 its assets, effect its merger or consolidation, change
45 the location of its principal executive office or of a
46 material portion of its business activities, change
47 its management or policies of employment, materially
48 alter its relationship with suppliers or customers or
49 the community in which it operates, or make any other
50 major changes in its business, corporate structure,

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1 management or personnel, and other information which
2 would materially affect the shareholders' evaluation
3 of the acquisition.

4 f. The number of shares or units of any equity
5 security of the target company owned beneficially by
6 the offeror and any affiliate or associate of the
7 offeror, together with the name and address of each
8 affiliate or associate.

9 g. The material terms of any contract,
10 arrangement, or understanding with any other person
11 with respect to the equity securities of the target
12 company by which the offeror has or will acquire any
13 interest in additional equity securities of the target
14 company, or is or will be obligated to transfer any
15 interest in the equity securities to another.

16 h. Information required to be included in a tender
17 offer statement pursuant to section 14(d) of the
18 Securities Exchange Act of 1934 and the rules and
19 regulations of the securities and exchange commission
20 issued pursuant to the Act.

21 Sec. 4. Section 502.212, Code 1985, is amended by
22 striking the section and inserting the following:

23 502.212 FILING OF SOLICITATION MATERIALS.

24 Copies of all advertisements, circulars, letters,
25 or other materials disseminated by the offeror or the
26 target company, soliciting or requesting the
27 acceptance or rejection of a takeover offer shall be
28 filed with the administrator and sent to the target
29 company or offeror not later than the time the
30 solicitation or request materials are first published,
31 sent, or given to the offerees. The administrator may
32 prohibit the use of any materials deemed false or
33 misleading.

34 Sec. 5. Section 502.213, Code 1985, is amended by
35 striking the section and inserting the following:

36 502.213 FRAUDULENT AND DECEPTIVE PRACTICES.

37 It is unlawful for an offeror, target company,
38 affiliate or associate of an offeror or target
39 company, or broker-dealer acting on behalf of an
40 offeror or target company to engage in a fraudulent,
41 deceptive, or manipulative act or practice in
42 connection with a takeover offer. For purposes of
43 this section, an unlawful act or practice includes,
44 but is not limited to, the following:

45 1. The publication or use in connection with a
46 takeover offer of a false statement of a material
47 fact, or the omission of a material fact which renders
48 the statements made misleading.

49 2. The purchase of any of the equity securities of
50 an officer, director, or beneficial owner of five

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1 percent or more of the equity securities of the target
2 company by the offeror or the target company for a
3 consideration greater than that to be paid to other
4 shareholders, unless the terms of the purchase are
5 disclosed in a registration statement filed pursuant
6 to section 502.11.

7 3. The refusal by a target company to permit an
8 offeror who is a shareholder of record to examine or
9 copy its list of shareholders, pursuant to the
10 applicable corporation statutes, for the purpose of
11 making a takeover offer.

12 4. The refusal by a target company to mail any
13 solicitation materials published by the offeror to its
14 security holders with reasonable promptness after
15 receipt from the offeror of the materials, together
16 with the reasonable expenses of postage and handling.

17 5. The solicitation of any offeree for acceptance
18 or rejection of a takeover offer, or acquisition of
19 any equity security pursuant to a takeover offer, when
20 the offer is suspended under section 502.211,
21 provided, however, that the target company may
22 communicate during a suspension with its equity
23 security holders to the extent required to respond to
24 the takeover offer made pursuant to the Securities
25 Exchange Act of 1934.

26 Sec. 6. Section 502.214, Code 1985, is amended by
27 striking the section and inserting the following:

28 502.214 LIMITATIONS ON OFFERORS.

29 1. A takeover offer shall contain substantially
30 the same terms for shareholders residing within and
31 outside this state.

32 2. An offeror shall provide that any equity
33 securities of a target company deposited or tendered
34 pursuant to a takeover offer may be withdrawn by or on
35 behalf of an offeree within seven days after the date
36 the offer has become effective and after sixty days
37 from the date the offer has become effective, or as
38 otherwise determined by the administrator pursuant to
39 a rule or order issued for the protection of the
40 shareholders.

41 3. If an offeror makes a takeover offer for less
42 than all the outstanding equity securities of any
43 class and, within ten days after the offer has become
44 effective and copies of the offer, or notice of any
45 increase in the consideration offered, are first
46 published or sent or given to equity security holders,
47 the number of securities deposited or tendered
48 pursuant to the offer is greater than the number of
49 securities that the offeror has offered to accept and
50 pay for, the securities shall be accepted pro rata,

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1 disregarding fractions, according to the number of
2 securities deposited or tendered for each offeree.

3 4. If an offeror varies the terms of a takeover
4 offer before the offer's expiration date by increasing
5 the consideration offered to equity security holders,
6 the offeror shall pay the increased consideration for
7 all equity securities accepted, whether the securities
8 have been accepted by the offeror before or after the
9 variation in the terms of the offer.

10 5. An offeror shall not make a takeover offer or
11 acquire any equity securities in this state pursuant
12 to a takeover offer during the period of time that an
13 administrator's proceeding alleging a violation of
14 this chapter is pending against the offeror.

15 6. An offeror shall not acquire, remove, or
16 exercise control, directly or indirectly, over any
17 target company assets located in this state pursuant
18 to a takeover offer during the period of time that an
19 administrator's proceeding alleging a violation of
20 this chapter is pending against the offeror.

21 7. An offeror shall not acquire from a resident of
22 this state an equity security of any class of a target
23 company at any time within two years following the
24 last purchase of securities pursuant to a takeover
25 offer with respect to that class, including, but not
26 limited to, acquisitions made by purchase, exchange,
27 merger, consolidation, partial or complete
28 liquidation, redemption, reverse stock split,
29 recapitalization, reorganization, or any other similar
30 transaction, unless the holders of the equity
31 securities are afforded, at the time of the
32 acquisition, a reasonable opportunity to dispose of
33 the securities to the offeror upon substantially
34 equivalent terms as those provided in the earlier
35 takeover offer.

36 Sec. 7. Section 502.215, Code 1985, is amended by
37 striking the section and inserting the following:

38 502.215 ADMINISTRATION -- RULES AND ORDERS.

39 1. The administrator shall make and adopt rules
40 and forms as the administrator determines are
41 necessary to carry out the purposes of sections
42 502.211 through 502.218.

43 2. The administrator may by rule or order exempt
44 from any provision of sections 502.211 through 502.218
45 the following:

46 a. A proposed takeover offer or a category or type
47 of takeover offer which the administrator determines
48 does not have the purpose or effect of changing or
49 influencing the control of a target company.

50 b. A proposed takeover offer for which the

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1 administrator determines that compliance with the
2 sections is not necessary for the protection of the
3 offerees.

4 c. A person from the requirement of filing
5 statements.

6 3. In the event of a conflict between the
7 provisions of chapter 17A and the provisions of
8 sections 502.211 through 502.218, the provisions of
9 sections 502.211 through 502.218 shall prevail.

10 Sec. 8. NEW SECTION. 502.216 FEES AND EXPENSES.

11 The administrator shall charge a nonrefundable
12 filing fee of two hundred fifty dollars for a
13 registration statement filed by an offeror.

14 Sec. 9. NEW SECTION. 502.217 APPLICATION OF
15 CORPORATE TAKEOVER LAW.

16 If the target company is a public utility, public
17 utility holding company, national banking association,
18 bank holding company, or savings and loan association
19 which is subject to regulation by a federal agency and
20 the take over of such company is subject to approval
21 by the federal agency, sections 502.211 through
22 502.218 do not apply.

23 Sec. 10. NEW SECTION. 502.218 APPLICATION OF
24 SECURITIES LAW.

25 All of the provisions of this chapter which are not
26 in conflict with sections 502.211 through 502.218,
27 apply to any takeover offer involving a target
28 company.

29 Sec. 11. Section 502.407, Code 1985, is amended to
30 read as follows:

31 502.407 MISSTATEMENTS IN PUBLICITY.

32 It is unlawful for any person to make or cause to
33 be made, in any public report or press release, or in
34 other information which is either made generally
35 available to the public or used in opposition to a
36 tender offer, any statement of a material fact
37 relating to an issuer a target company or made in
38 connection with a tender offer which is, at the time
39 and in the light of the circumstances under which it
40 is made, false or misleading, if it is reasonably
41 foreseeable that such statement will induce other
42 persons to buy, sell or hold securities of the issuer
43 target company.

44 Sec. 12. Section 502.501, Code 1985, is amended by
45 adding the following new subsection:

46 NEW SUBSECTION. 3. In addition to other remedies
47 provided in this chapter, in a proceeding alleging a
48 violation of sections 502.211 through 502.218 the
49 court may provide that all shares acquired from a
50 resident of this state in violation of any provision

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1 of this chapter or rule order issued pursuant to this
2 chapter be denied voting rights for one year after
3 acquisition, that the shares be nontransferable on the
4 books of the target company, or that during this one-
5 year period the target company have the option to call
6 the shares for redemption either at the price at which
7 the shares were acquired or at book value per share as
8 of the last day of the fiscal quarter ended prior to
9 the date of the call for redemption, which redemption
10 shall occur on the date set in the call notice but not
11 later than sixty days after the call notice is given."

H-3923 FILED APRIL 19, 1985 BY SWARTZ of Marshall
Adopted 4/22/85 (p 1735)

SENATE FILE 475

H-3807

1 Amend Senate File 475 as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Sec. . NEW SECTION. 476.18A ALLOCATION OF
6 ACQUISITION COSTS.

7 The commission shall not allow an investor-owned
8 public utility to treat as below-the-line expenditures
9 the purchase cost or associated costs involved in the
10 purchase of an existing electric or gas public
11 utility. The commission shall assign the purchase
12 cost and associated costs to the stockholders of the
13 investor-owned public utility."

14 2. Title page, line 1, by inserting after the
15 word "to" the following: "corporations including
16 provisions relating to costs charged by investor-owned
17 public utilities and to".

18 3. By renumbering sections as necessary.

H-3807 FILED APRIL 16, 1985 BY PARKER of Jasper
Placed o/o 4/22 (p 1735)

SENATE FILE 475

H-3769

1 Amend Senate File 475 as passed by the Senate as
2 follows:

3 1. By striking page 2, line 5 through page 5,
4 line 16.

5 2. Page 9, line 6, by striking the figure
6 "502A.8" and inserting the figure "502A.7".

H-3769 FILED APRIL 12, 1985 BY COMMITTEE ON SMALL
BUSINESS AND COMMERCE
Placed o/o 4/22 (p 1735)

1 Amend the House amendment S-3947 to Senate File 475
2 as amended, passed and reprinted by the Senate as
3 follows:

4 1. Page 1, by inserting after line 4 the
5 following:

6 "Section 1. Section 496A.2, Code 1985, is amended
7 by adding the following new subsections:

8 NEW SUBSECTION. 15. "Acquiring person" means a
9 person that is required to deliver an information
10 statement under section 496A.74A.

11 NEW SUBSECTION. 16. "Control share acquisition"
12 means an acquisition of shares of an issuing public
13 corporation resulting in beneficial ownership by an
14 acquiring person of a new range of voting power
15 specified in section 496A.74A, subsection 2, paragraph
16 "d", but does not include any of the following:

17 a. An acquisition before, or pursuant to an
18 agreement entered into before, the effective date of
19 this Act.

20 b. An acquisition by a donee pursuant to an inter
21 vivos gift not made to avoid section 496A.74A or by a
22 distributee as defined in section 633.3.

23 c. An acquisition pursuant to a security agreement
24 not created to avoid section 496A.74A.

25 d. An acquisition under sections 496A.68 through
26 496A.74, if the issuing public corporation is a party
27 to the transaction.

28 e. An acquisition from the issuing public
29 corporation.

30 NEW SUBSECTION. 17. "Issuing public corporation"
31 means a corporation with at least fifty shareholders
32 and having its principal place of business or
33 substantial assets located in this state.

34 Sec. 2. NEW SECTION. 496A.28A SOLICITATION FOR
35 PROXY IN CONTROL SHARE ACQUISITIONS.

36 Notwithstanding any contrary provision of this
37 chapter, a proxy relating to a meeting of shareholders
38 required under section 496A.74A, subsection 3, shall
39 be solicited separately from the offer to purchase or
40 solicitation of an offer to sell shares of the issuing
41 public corporation and shall not be solicited sooner
42 than thirty days before the meeting unless otherwise
43 agreed in writing by the acquiring person and the
44 issuing public corporation.

45 Sec. 3. NEW SECTION. 496A.74A CONTROL SHARE
46 ACQUISITIONS.

47 1. AUTHORIZATION IN ARTICLES.

48 a. Unless otherwise expressly provided in the
articles of an issuing public corporation, this
section applies to a control share acquisition.

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1 b. All shares acquired by an acquiring person in
2 violation of subsection 4 shall be denied voting
3 rights for one year after acquisition, the shares
4 shall be nontransferable on the books of the
5 corporation for one year after acquisition and the
6 corporation, during the one-year period, has the
7 option to call the shares for redemption either at the
8 price at which the shares were acquired or at book
9 value per share as of the last day of the fiscal
10 quarter ended prior to the date of the call for
11 redemption. Such a redemption shall occur on the date
12 set in the call notice but not later than sixty days
13 after the call notice is given.

14 2. INFORMATION STATEMENT. A person proposing to
15 make a control share acquisition shall deliver to the
16 issuing public corporation at its principal executive
17 office an information statement containing all of the
18 following:

19 a. The identity of the person.

20 b. A reference that the statement is made under
21 this section.

22 c. The number of shares of the issuing public
23 corporation beneficially owned by the person.

24 d. A specification of which of the following
25 ranges of voting power in the election of directors
26 would result from consummation of the control share
27 acquisition:

28 (1) At least ten percent but less than twenty
29 percent.

30 (2) At least twenty percent but less than thirty
31 percent.

32 (3) At least thirty percent but less than forty
33 percent.

34 (4) At least forty percent but less than a
35 majority.

36 (5) At least a majority.

37 e. The terms of the proposed control share
38 acquisition, including, but not limited to, the source
39 of funds or other consideration and the material terms
40 of the financial arrangements for the control share
41 acquisition, any plans or proposals of the acquiring
42 person to liquidate the issuing public corporation, to
43 sell all or substantially all of its assets, or merge
44 it or exchange its shares with any other person, to
45 change the location of its principal executive office
46 or of a material portion of its business activities,
47 to change materially its management or policies of
48 employment, to alter materially its relationship with
49 suppliers or customers or the communities in which it
50 operates, or make any other material change in its

1 business, corporate structure, management or
2 personnel, and other information which would affect
3 the decision of a shareholder with respect to voting
4 on the proposed control share acquisition.

5 3. MEETING OF SHAREHOLDERS. Within five days
6 after receipt of an information statement pursuant to
7 subsection 2, a special meeting of the shareholders of
8 the issuing public corporation shall be called
9 pursuant to section 496A.28 to vote on the proposed
10 control share acquisition. The meeting shall be held
11 no later than fifty-five days after receipt of the
12 information statement, unless the acquiring person
13 agrees to a later date, and no sooner than thirty days
14 after receipt of the information statement, if the
15 acquiring person so requests in writing when
16 delivering the information statement. The notice of
17 the meeting shall at a minimum be accompanied by a
18 copy of the information statement and a statement
19 disclosing that the issuing public company recommends
20 acceptance of, expresses no opinion and is remaining
21 neutral toward, or is unable to take a position with
22 respect to the proposed control share acquisition.
23 The notice of meeting shall be given within twenty-
24 five days after receipt of the information statement.

25 4. CONSUMMATION OF CONTROL SHARE ACQUISITION. The
26 acquiring person may consummate the proposed control
27 share acquisition if and only if both of the following
28 occur:

29 a. The proposed control share acquisition is
30 approved by the affirmative vote of the holders of a
31 majority of the voting power of all shares entitled to
32 vote which are not beneficially owned by the acquiring
33 person. A class or series of shares of the
34 corporation is entitled to vote as a class or series
35 if any provision of the control share acquisition
36 would, if contained in a proposed amendment to the
37 articles, entitle the class or series to vote as a
38 class or series.

39 b. The proposed control share acquisition is
40 consummated within one hundred eighty days after
41 shareholder approval."

42 2. Page 10, by inserting after line 11 the
43 following:

44 "Sec. 13. Sections 1 through 3 of this Act take
45 effect July 1, 1986."

Loos 4/26/85 (p 1691)
motion to rescind (p 1721)

1 Amend the House amendment S-3947 to Senate File 475
2 as amended, passed, and reprinted by the Senate as
3 follows:

4 1. Page 1, line 50, by inserting after the word
5 "offer." the following: "However, for the purposes of
6 section 502.217, if the offeree is a municipal
7 utility, an offer of either equity securities or
8 assets are sufficient to make the municipal utility an
9 offeree, irregardless of any other test within this
10 definition."

11 2. Page 2, line 38, by inserting after the word
12 "commission." the following: "However, for the
13 purpose of section 502.217, if the public utility is a
14 municipal utility, the term "take over offer" includes
15 municipal utilities, notwithstanding any other portion
16 of or test within this definition."

17 3. Page 2, line 49, by inserting after the word
18 "market." the following: "However, for the purposes
19 of section 502.217, the term "target company" shall
20 include municipal utilities notwithstanding any other
21 portion of or test within this definition."

22 4. Page 3, line 14, by inserting after the word
23 "person." the following: "For the purposes of section
24 502.217, the term "beneficial owner" includes the
25 owner of stock or assets of a municipal utility
26 irregardless of any other portion of or test within
27 this definition."

28 5. Page 3, line 25, by inserting after the word
29 "person." the following: "For the purposes of section
30 502.217, the term "beneficial ownership" includes the
31 ownership of stock or assets of a municipal utility
32 irregardless of any other portion of or test within
33 this definition."

34 6. Page 9, by striking lines 14 through 22 and
35 inserting the following:

36 "Sec. 9. NEW SECTION. 502.17 APPLICATION OF
37 CORPORATE TAKEOVER LAW.

38 If the target company is a public utility, public
39 utility holding company, national banking association,
40 bank holding company, or savings and loan association
41 which is subject to regulation by a federal agency and
42 the take over of such company is subject to approval
43 by the federal agency, sections 502.211 through
44 502.216 and 502.218 do not apply. However, for the
45 purposes of this section, if the target company is a
46 public utility, and a takeover has been consummated,
47 either by stock purchase or purchase of assets and if
48 that offeror is an investor-owned public utility, the
49 successful offeror shall not be allowed by the Iowa
50 state commerce commission to treat as below-the-line

1 expenditures the purchase cost of stock or assets
2 involved in the acquisition of an existing electric or
3 gas public utility. The purchase cost and associated
4 costs shall be borne by the stockholders of the
5 investor-owned public utility."

S-4074

SENATE FILE 475

1 Amend the House amendment S-3947 to Senate File 475
2 as amended, passed and reprinted by the Senate as
3 follows:

4 1. Page 1, by inserting after line 4 the
5 following:

6 "Sec. ____ . Section 496A.2, Code 1985, is amended
7 by adding the following new subsections:

8 NEW SUBSECTION. 15. "Acquiring person" means a
9 person that is required to deliver an information
10 statement under section 496A.74A.

11 NEW SUBSECTION. 16. "Control share acquisition"
12 means an acquisition of shares of an issuing public
13 corporation resulting in beneficial ownership by an
14 acquiring person of a new range of voting power
15 specified in section 496A.74A, subsection 2, paragraph
16 "d", but does not include any of the following:

17 a. An acquisition before, or pursuant to an
18 agreement entered into before, the effective date of
19 this Act.

20 b. An acquisition by a donee pursuant to an inter
21 vivos gift not made to avoid section 496A.74A or by a
22 distributee as defined in section 633.3.

23 c. An acquisition pursuant to a security agreement
24 not created to avoid section 496A.74A.

25 d. An acquisition under sections 496A.68 through
26 496A.74, if the issuing public corporation is a party
27 to the transaction.

28 e. An acquisition from the issuing public
29 corporation.

30 NEW SUBSECTION. 17. "Issuing public corporation"
31 means a corporation with at least fifty shareholders
32 and having its principal place of business or
33 substantial assets located in this state.

34 Sec. ____ . NEW SECTION. 496A.28A SOLICITATION FOR
35 PROXY IN CONTROL SHARE ACQUISITIONS.

36 Notwithstanding any contrary provision of this
37 chapter, a proxy relating to a meeting of shareholders
38 required under section 496A.74A, subsection 3, shall
39 be solicited separately from the offer to purchase or
40 solicitation of an offer to sell shares of the issuing
41 public corporation and shall not be solicited sooner
42 than thirty days before the meeting unless otherwise
43 agreed in writing by the acquiring person and the
44 issuing public corporation.

45 Sec. ____ . NEW SECTION. 496A.74A CONTROL SHARE
46 ACQUISITIONS.

47 1. AUTHORIZATION IN ARTICLES.

48 a. Unless otherwise expressly provided in the
49 articles of an issuing public corporation, this
50 section applies to a control share acquisition.

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1 b. All shares acquired by an acquiring person in
2 violation of subsection 4 shall be denied voting
3 rights for one year after acquisition, the shares
4 shall be nontransferable on the books of the
5 corporation for one year after acquisition and the
6 corporation, during the one-year period, has the
7 option to call the shares for redemption either at the
8 price at which the shares were acquired or at book
9 value per share as of the last day of the fiscal
10 quarter ended prior to the date of the call for
11 redemption. Such a redemption shall occur on the date
12 set in the call notice but not later than sixty days
13 after the call notice is given.

14 2. INFORMATION STATEMENT. A person proposing to
15 make a control share acquisition shall deliver to the
16 issuing public corporation at its principal executive
17 office an information statement containing all of the
18 following:

19 a. The identity of the person.

20 b. A reference that the statement is made under
21 this section.

22 c. The number of shares of the issuing public
23 corporation beneficially owned by the person.

24 d. A specification of which of the following
25 ranges of voting power in the election of directors
26 would result from consummation of the control share
27 acquisition:

28 (1) At least ten percent but less than twenty
29 percent.

30 (2) At least twenty percent but less than thirty
31 percent.

32 (3) At least thirty percent but less than forty
33 percent.

34 (4) At least forty percent but less than a
35 majority.

36 (5) At least a majority.

37 e. The terms of the proposed control share
38 acquisition, including, but not limited to, the source
39 of funds or other consideration and the material terms
40 of the financial arrangements for the control share
41 acquisition, any plans or proposals of the acquiring
42 person to liquidate the issuing public corporation, to
43 sell all or substantially all of its assets, or merge
44 it or exchange its shares with any other person, to
45 change the location of its principal executive office
46 or of a material portion of its business activities,
47 to change materially its management or policies of
48 employment, to alter materially its relationship with
49 suppliers or customers or the communities in which it
50 operates, or make any other material change in its

1 business, corporate structure, management or
2 personnel, and other information which would affect
3 the decision of a shareholder with respect to voting
4 on the proposed control share acquisition.

5 3. MEETING OF SHAREHOLDERS. Within five days
6 after receipt of an information statement pursuant to
7 subsection 2, a special meeting of the shareholders of
8 the issuing public corporation shall be called
9 pursuant to section 496A.28 to vote on the proposed
10 control share acquisition. The meeting shall be held
11 no later than fifty-five days after receipt of the
12 information statement, unless the acquiring person
13 agrees to a later date, and no sooner than thirty days
14 after receipt of the information statement, if the
15 acquiring person so requests in writing when
16 delivering the information statement. The notice of
17 the meeting shall at a minimum be accompanied by a
18 copy of the information statement and a statement
19 disclosing that the issuing public company recommends
20 acceptance of, expresses no opinion and is remaining
21 neutral toward, or is unable to take a position with
22 respect to the proposed control share acquisition.

The notice of meeting shall be given within twenty-
five days after receipt of the information statement.

23 4. CONSUMMATION OF CONTROL SHARE ACQUISITION. The
24 acquiring person may consummate the proposed control
25 share acquisition if and only if both of the following
26 occur:

27 a. The proposed control share acquisition is
28 approved by the affirmative vote of the holders of a
29 majority of the voting power of all shares entitled to
30 vote which are not beneficially owned by the acquiring
31 person. A class or series of shares of the
32 corporation is entitled to vote as a class or series
33 if any provision of the control share acquisition
34 would, if contained in a proposed amendment to the
35 articles, entitle the class or series to vote as a
36 class or series.

37 b. The proposed control share acquisition is
38 consummated within one hundred eighty days after
39 shareholder approval."
40
41

1 Amend the House amendment S-3947 to Senate File 475
2 as amended, passed and reprinted by the Senate as
3 follows:

4 1. Page 1, by inserting after line 4 the
5 following:

6 "Sec. ____ . Section 496A.2, Code 1985, is amended
7 by adding the following new subsections:

8 NEW SUBSECTION. 15. "Acquiring person" means a
9 person that is required to deliver an information
10 statement under section 496A.74A.

11 NEW SUBSECTION. 16. "Control share acquisition"
12 means an acquisition of shares of an issuing public
13 corporation resulting in beneficial ownership by an
14 acquiring person of a new range of voting power
15 specified in section 496A.74A, subsection 2, paragraph
16 "d", but does not include any of the following:

17 a. An acquisition before, or pursuant to an
18 agreement entered into before, the effective date of
19 this Act.

20 b. An acquisition by a donee pursuant to an inter
21 vivos gift not made to avoid section 496A.74A or by a
22 distributee as defined in section 633.3.

23 c. An acquisition pursuant to a security agreement
24 not created to avoid section 496A.74A.

25 d. An acquisition under sections 496A.68 through
26 496A.74, if the issuing public corporation is a party
27 to the transaction.

28 e. An acquisition from the issuing public
29 corporation.

30 NEW SUBSECTION. 17. "Issuing public corporation"
31 means a corporation with at least fifty shareholders
32 and having its principal place of business or
33 substantial assets located in this state.

34 Sec. ____ . NEW SECTION. 496A.28A SOLICITATION FOR
35 PROXY IN CONTROL SHARE ACQUISITIONS.

36 Notwithstanding any contrary provision of this
37 chapter, a proxy relating to a meeting of shareholders
38 required under section 496A.74A, subsection 3, shall
39 be solicited separately from the offer to purchase or
40 solicitation of an offer to sell shares of the issuing
41 public corporation and shall not be solicited sooner
42 than thirty days before the meeting unless otherwise
43 agreed in writing by the acquiring person and the
44 issuing public corporation.

45 Sec. ____ . NEW SECTION. 496A.74A CONTROL SHARE
46 ACQUISITIONS.

47 1. AUTHORIZATION IN ARTICLES.

48 a. Unless otherwise expressly provided in the
49 articles of an issuing public corporation, this
50 section applies to a control share acquisition.

1 b. All shares acquired by an acquiring person in
2 violation of subsection 4 shall be denied voting
3 rights for one year after acquisition, the shares
4 shall be nontransferable on the books of the
5 corporation for one year after acquisition and the
6 corporation, during the one-year period, has the
7 option to call the shares for redemption either at the
8 price at which the shares were acquired or at book
9 value per share as of the last day of the fiscal
10 quarter ended prior to the date of the call for
11 redemption. Such a redemption shall occur on the date
12 set in the call notice but not later than sixty days
13 after the call notice is given.

14 2. INFORMATION STATEMENT. A person proposing to
15 make a control share acquisition shall deliver to the
16 issuing public corporation at its principal executive
17 office an information statement containing all of the
18 following:

19 a. The identity of the person.

20 b. A reference that the statement is made under
21 this section.

22 c. The number of shares of the issuing public
23 corporation beneficially owned by the person.

24 d. A specification of which of the following
25 ranges of voting power in the election of directors
26 would result from consummation of the control share
27 acquisition:

28 (1) At least ten percent but less than twenty
29 percent.

30 (2) At least twenty percent but less than thirty
31 percent.

32 (3) At least thirty percent but less than forty
33 percent.

34 (4) At least forty percent but less than a
35 majority.

36 (5) At least a majority.

37 e. The terms of the proposed control share
38 acquisition, including, but not limited to, the source
39 of funds or other consideration and the material terms
40 of the financial arrangements for the control share
41 acquisition, any plans or proposals of the acquiring
42 person to liquidate the issuing public corporation, to
43 sell all or substantially all of its assets, or merge
44 it or exchange its shares with any other person, to
45 change the location of its principal executive office
46 or of a material portion of its business activities,
47 to change materially its management or policies of
48 employment, to alter materially its relationship with
49 suppliers or customers or the communities in which it
50 operates, or make any other material change in its

1 business, corporate structure, management or
2 personnel, and other information which would affect
3 the decision of a shareholder with respect to voting
4 on the proposed control share acquisition.

5 3. MEETING OF SHAREHOLDERS. Within five days
6 after receipt of an information statement pursuant to
7 subsection 2, a special meeting of the shareholders of
8 the issuing public corporation shall be called
9 pursuant to section 496A.28 to vote on the proposed
10 control share acquisition. The meeting shall be held
11 no later than fifty-five days after receipt of the
12 information statement, unless the acquiring person
13 agrees to a later date, and no sooner than thirty days
14 after receipt of the information statement, if the
15 acquiring person so requests in writing when
16 delivering the information statement. The notice of
17 the meeting shall at a minimum be accompanied by a
18 copy of the information statement and a statement
19 disclosing that the issuing public company recommends
20 acceptance of, expresses no opinion and is remaining
21 neutral toward, or is unable to take a position with
22 respect to the proposed control share acquisition.
23 The notice of meeting shall be given within twenty-

24 five days after receipt of the information statement.
25 4. CONSUMMATION OF CONTROL SHARE ACQUISITION. The
26 acquiring person may consummate the proposed control
27 share acquisition if and only if both of the following
28 occur:

29 a. The proposed control share acquisition is
30 approved by the affirmative vote of the holders of a
31 majority of the voting power of all shares entitled to
32 vote which are not beneficially owned by the acquiring
33 person. A class or series of shares of the
34 corporation is entitled to vote as a class or series
35 if any provision of the control share acquisition
36 would, if contained in a proposed amendment to the
37 articles, entitle the class or series to vote as a
38 class or series.

39 b. The proposed control share acquisition is
40 consummated within one hundred eighty days after
41 shareholder approval."

W/12 4/26 (f. 1691)

HOUSE AMENDMENT TO
SENATE FILE 475

1 Amend Senate File 475 as passed by the Senate as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. Section 502.102, subsection 11, Code
6 1985, is amended to read as follows:

7 11. "Securities Act of 1933", "Securities Exchange
8 Act of 1934", "Public Utility Holding Company Act of
9 1935", "Investment Company Act of 1940", "Internal
10 Revenue Code of 1954" and "Agricultural Marketing Act"
11 mean the federal statutes of those names ~~as amended~~
12 ~~before January 17, 1976.~~

13 Sec. 2. Section 502.102, subsections 14, 15, 16
14 and 17, Code 1985, are amended by striking the
15 subsections and inserting the following:

16 14. For the purposes of sections 502.211 through
17 502.218, unless the context otherwise requires:

18 a. "Associate" means a person acting jointly or in
19 concert with another for the purpose of acquiring,
20 holding or disposing of, or exercising any voting
21 rights attached to the equity securities of a target
22 company.

23 b. "Equity security" means any stock or similar
24 security, and includes the following:

25 (1) Any security convertible, with or without
26 consideration, into a stock or similar security.

27 (2) Any warrant or right to subscribe to or
28 purchase a stock of similar security.

29 (3) Any security carrying a warrant or right to
30 subscribe to or purchase a stock or similar security.

31 (4) Any other security which the administrator
32 deems to be of a similar nature and considers
33 necessary or appropriate, according to rules
34 prescribed by the administrator for the public
35 interest and protection of investors, to be treated as
36 an equity security.

37 c. "Offeror" means a person who makes or in any
38 manner participates in making a takeover offer. It
39 does not include a supervised financial institution or
40 broker-dealer loaning funds to an offeror in the
41 ordinary course of its business, or any supervised
42 financial institution, broker-dealer, attorney,
43 accountant, consultant, employee, or other person
44 furnishing information or advice to or performing
45 ministerial duties for an offeror, and who does not
46 otherwise participate in the takeover offer.

47 d. "Offeree" means the beneficial owner, who is a
resident of this state, of equity securities which an
offeror offers to acquire in connection with a
50 takeover offer.

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1 e. "Takeover offer":

2 (1) Means the offer to acquire any equity
3 securities of a target company from a resident of this
4 state pursuant to a tender offer or request or
5 invitation for tenders, if after the acquisition of
6 all securities acquired pursuant to the offer either
7 of the following are true:

8 (a) The offeror would be directly or indirectly a
9 beneficial owner of more than ten percent of any class
10 of the outstanding equity securities of the target
11 company.

12 (b) The beneficial ownership by the offeror of any
13 class of the outstanding equity securities of the
14 target company would be increased by more than five
15 percent. However, this provision does not apply if
16 after the acquisition of all securities acquired
17 pursuant to the offer, the offeror would not be
18 directly or indirectly a beneficial owner of more than
19 ten percent of any class of the outstanding equity
20 securities of the target company.

21 (2) Does not include the following:

22 (a) An offer in connection with the acquisition of
23 a security which, together with all other acquisitions
24 by the offeror of securities of the same class of
25 equity securities of the target company, would not
26 result in the offeror having acquired more than two
27 percent of this class of securities during the
28 preceding twelve-month period.

29 (b) An offer by the target company to acquire its
30 own equity securities if such offer is subject to
31 section 13(e) of the Securities Exchange Act of 1934.

32 (c) An offer in which the target company is an
33 insurance company or insurance holding company subject
34 to regulation by the commissioner of insurance, a
35 financial institution subject to regulation by the
36 state superintendent of banking or the state auditor,
37 or a public utility subject to regulation by the
38 commerce commission.

39 f. "Target company" means an issuer of publicly-
40 traded equity securities which has at least twenty
41 percent of its equity securities beneficially held by
42 residents of this state and has substantial assets in
43 this state. For the purposes of this chapter, an
44 equity security is publicly traded if a trading market
45 exists for the security. A trading market exists if
46 the security is traded on a national securities
47 exchange, whether or not registered pursuant to the
48 Securities Exchange Act of 1934, or on the over-the-
49 counter market.

50 g. "Beneficial owner" includes, but is not limited

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1 to, any person who directly or indirectly, through any
2 contract, arrangement, understanding, or relationship,
3 has or shares the power to vote or direct the voting
4 of a security or has or shares the power to dispose of
5 or otherwise direct the disposition of the security.
6 A person is the beneficial owner of securities
7 beneficially owned by any relative or spouse or
8 relative of the spouse residing in the home of the
9 person, any trust or estate in which the person owns
10 ten percent or more of the total beneficial interest
11 or serves as trustee or executor, any corporation or
12 entity in which the person owns ten percent or more of
13 the equity, and any affiliate or associate of the
14 person.

15 h. "Beneficial ownership" includes, but is not
16 limited to, the right, exercisable within sixty days,
17 to acquire securities through the exercise of options,
18 warrants, or rights or the conversion of convertible
19 securities. The securities subject to these options,
20 warrants, rights, or conversion privileges held by a
21 person are outstanding for the purpose of computing
22 the percentage of outstanding securities of the class
23 owned by the person, but are not outstanding for the
24 purpose of computing the percentage of the class owned
25 by any other person.

26 15. "Interest at the legal rate" means the
27 interest rate for judgments specified in section
28 535.3.

29 Sec. 3. Section 502.211, Code 1985, is amended by
30 striking the section and inserting the following:

31 502.211 REGISTRATION REQUIREMENT.

32 1. It is unlawful for a person to make a takeover
33 offer or to acquire any equity securities pursuant to
34 the offer unless the offer is valid under sections
35 502.211 through 502.218. A takeover offer is
36 effective when the offeror files with the
37 administrator a registration statement containing the
38 information prescribed in subsection 6. Not later
39 than the date of filing of the registration statement,
40 the offeror shall deliver a copy of the registration
41 statement by certified mail to the target company at
42 its principal office and publicly disclose the
43 material terms of the proposed offer. Public
44 disclosure shall require, at a minimum, that a copy of
45 the registration statement be supplied to all broker-
46 dealers maintaining an office in this state currently
47 quoting the security.

48 2. The registration statement shall be filed on
49 forms prescribed by the administrator, and shall be
50 accompanied by a consent by the offeror to service of

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1 process and filing fee specified in section 502.216,
2 and contain the following information:

3 a. All information specified in subsection 6.

4 b. Two copies of all solicitation materials
5 intended to be used in the takeover offer, and in the
6 form proposed to be published, sent, or delivered to
7 offerees.

8 c. Additional information as prescribed by the
9 administrator by rule, pursuant to chapter 17A, prior
10 to the making of the offer.

11 3. Registration shall not be considered approval
12 by the administrator, and any representation to the
13 contrary is unlawful.

14 4. Within three calendar days of the date of
15 filing of the registration statement, the
16 administrator may, by order, summarily suspend the
17 effectiveness of the takeover offer if the
18 administrator determines that the registration does
19 not contain all of the information specified in
20 subsection 6 or that the takeover offer materials
21 provided to offerees do not provide full disclosure to
22 offerees of all material information concerning the
23 takeover offer. The suspension shall remain in effect
24 only until the determination following a hearing held
25 pursuant to subsection 5.

26 5. A hearing shall be scheduled by the
27 administrator for each suspension under this section,
28 and the hearing shall be held within ten calendar days
29 of the date of the suspension. The administrator's
30 determination following the hearing shall be made
31 within three calendar days after the hearing has been
32 completed, but not more than sixteen days after the
33 date of the suspension. The administrator may
34 prescribe different time periods than those specified
35 in the subsection by rule or order.

36 If, based upon the hearing, the administrator finds
37 that the registration statement fails to provide for
38 full and fair disclosure of all material information
39 concerning the offer, or that the takeover is in
40 violation of any of the provisions of section 502.211
41 through 502.218, the administrator shall permanently
42 suspend the effectiveness of the takeover offer,
43 subject to the right of the offeror to correct
44 disclosure and other deficiencies identified by the
45 administrator and to reinstate the takeover offer by
46 filing a new or amended registration statement
47 pursuant to this section.

48 6. The form required to be filed by subsection 2,
49 paragraph "a", shall contain all of the following
50 information:

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1 a. The identity and background of all persons on
2 whose behalf the acquisition of any equity security of
3 the target company has been or is to be effected.

4 b. The source and amount of funds or other
5 consideration used or to be used in acquiring any
6 equity security including, if applicable, a statement
7 describing any securities which are being offered in
8 exchange for the equity securities of the target
9 company and, if any part of the acquisition price is
10 or will be represented by borrowed funds or other
11 consideration, a description of the material terms of
12 any financing arrangements and the names of the
13 parties from whom the funds were or are to be
14 borrowed.

15 c. If the offeror is other than a natural person,
16 information concerning its organization and
17 operations, including the year, form and jurisdiction
18 of its organization, a description of each class of
19 equity security and long-term debt, a description of
20 the business conducted by the offeror and its
21 subsidiaries and any material changes in the offeror
22 or subsidiaries during the past three years, a
23 description of the location and character of the
24 principal properties of the offeror and its
25 subsidiaries, a description of any pending and
26 material legal or administrative proceedings in which
27 the offeror or any of its affiliates is a party, the
28 names of all directors and executive officers of the
29 offeror and their material business activities and
30 affiliations during the past five years, and financial
31 statements of the offeror in a form and for periods of
32 time as the administrator may, pursuant to chapter 17A
33 and prior to the making of the offer, prescribe.

34 d. If the offeror is a natural person, information
35 concerning the offeror's identity and background,
36 including business activities and affiliations during
37 the past five years and a description of any pending
38 and material legal or administrative proceedings in
39 which the offeror is a party.

40 e. If the purpose of the acquisition is to gain
41 control of the target company, the material terms of
42 any plans or proposals which the offeror has, upon
43 gaining control, to liquidate the target company, sell
44 its assets, effect its merger or consolidation, change
45 the location of its principal executive office or of a
46 material portion of its business activities, change
47 its management or policies of employment, materially
48 alter its relationship with suppliers or customers or
49 the community in which it operates, or make any other
50 major changes in its business, corporate structure,

1 management or personnel, and other information which
2 would materially affect the shareholders' evaluation
3 of the acquisition.

4 f. The number of shares or units of any equity
5 security of the target company owned beneficially by
6 the offeror and any affiliate or associate of the
7 offeror, together with the name and address of each
8 affiliate or associate.

9 g. The material terms of any contract,
10 arrangement, or understanding with any other person
11 with respect to the equity securities of the target
12 company by which the offeror has or will acquire any
13 interest in additional equity securities of the target
14 company, or is or will be obligated to transfer any
15 interest in the equity securities to another.

16 h. Information required to be included in a tender
17 offer statement pursuant to section 14(d) of the
18 Securities Exchange Act of 1934 and the rules and
19 regulations of the securities and exchange commission
20 issued pursuant to the Act.

21 Sec. 4. Section 502.212, Code 1985, is amended by
22 striking the section and inserting the following:

23 502.212 FILING OF SOLICITATION MATERIALS.

24 Copies of all advertisements, circulars, letters,
25 or other materials disseminated by the offeror or the
26 target company, soliciting or requesting the
27 acceptance or rejection of a takeover offer shall be
28 filed with the administrator and sent to the target
29 company or offeror not later than the time the
30 solicitation or request materials are first published,
31 sent, or given to the offerees. The administrator may
32 prohibit the use of any materials deemed false or
33 misleading.

34 Sec. 5. Section 502.213, Code 1985, is amended by
35 striking the section and inserting the following:

36 502.213 FRAUDULENT AND DECEPTIVE PRACTICES.

37 It is unlawful for an offeror, target company,
38 affiliate or associate of an offeror or target
39 company, or broker-dealer acting on behalf of an
40 offeror or target company to engage in a fraudulent,
41 deceptive, or manipulative act or practice in
42 connection with a takeover offer. For purposes of
43 this section, an unlawful act or practice includes,
44 but is not limited to, the following:

45 1. The publication or use in connection with a
46 takeover offer of a false statement of a material
47 fact, or the omission of a material fact which renders
48 the statements made misleading.

49 2. The purchase of any of the equity securities of
50 an officer, director, or beneficial owner of five

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1 percent or more of the equity securities of the target
2 company by the offeror or the target company for a
3 consideration greater than that to be paid to other
4 shareholders, unless the terms of the purchase are
5 disclosed in a registration statement filed pursuant
6 to section 502.11.

7 3. The refusal by a target company to permit an
8 offeror who is a shareholder of record to examine or
9 copy its list of shareholders, pursuant to the
10 applicable corporation statutes, for the purpose of
11 making a takeover offer.

12 4. The refusal by a target company to mail any
13 solicitation materials published by the offeror to its
14 security holders with reasonable promptness after
15 receipt from the offeror of the materials, together
16 with the reasonable expenses of postage and handling.

17 5. The solicitation of any offeree for acceptance
18 or rejection of a takeover offer, or acquisition of
19 any equity security pursuant to a takeover offer, when
20 the offer is suspended under section 502.211,
21 provided, however, that the target company may
22 communicate during a suspension with its equity
23 security holders to the extent required to respond to
24 the takeover offer made pursuant to the Securities
25 Exchange Act of 1934.

26 Sec. 6. Section 502.214, Code 1985, is amended by
27 striking the section and inserting the following:

28 502.214 LIMITATIONS ON OFFERORS.

29 1. A takeover offer shall contain substantially
30 the same terms for shareholders residing within and
31 outside this state.

32 2. An offeror shall provide that any equity
33 securities of a target company deposited or tendered
34 pursuant to a takeover offer may be withdrawn by or on
35 behalf of an offeree within seven days after the date
36 the offer has become effective and after sixty days
37 from the date the offer has become effective, or as
38 otherwise determined by the administrator pursuant to
39 a rule or order issued for the protection of the
40 shareholders.

41 3. If an offeror makes a takeover offer for less
42 than all the outstanding equity securities of any
43 class and, within ten days after the offer has become
44 effective and copies of the offer, or notice of any
45 increase in the consideration offered, are first
46 published or sent or given to equity security holders,
47 the number of securities deposited or tendered
48 pursuant to the offer is greater than the number of
49 securities that the offeror has offered to accept and
50 pay for, the securities shall be accepted pro rata,

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1 disregarding fractions, according to the number of
2 securities deposited or tendered for each offeree.

3 4. If an offeror varies the terms of a takeover
4 offer before the offer's expiration date by increasing
5 the consideration offered to equity security holders,
6 the offeror shall pay the increased consideration for
7 all equity securities accepted, whether the securities
8 have been accepted by the offeror before or after the
9 variation in the terms of the offer.

10 5. An offeror shall not make a takeover offer or
11 acquire any equity securities in this state pursuant
12 to a takeover offer during the period of time that an
13 administrator's proceeding alleging a violation of
14 this chapter is pending against the offeror.

15 6. An offeror shall not acquire, remove, or
16 exercise control, directly or indirectly, over any
17 target company assets located in this state pursuant
18 to a takeover offer during the period of time that an
19 administrator's proceeding alleging a violation of
20 this chapter is pending against the offeror.

21 7. An offeror shall not acquire from a resident of
22 this state an equity security of any class of a target
23 company at any time within two years following the
24 last purchase of securities pursuant to a takeover
25 offer with respect to that class, including, but not
26 limited to, acquisitions made by purchase, exchange,
27 merger, consolidation, partial or complete
28 liquidation, redemption, reverse stock split,
29 recapitalization, reorganization, or any other similar
30 transaction, unless the holders of the equity
31 securities are afforded, at the time of the
32 acquisition, a reasonable opportunity to dispose of
33 the securities to the offeror upon substantially
34 equivalent terms as those provided in the earlier
35 takeover offer.

36 Sec. 7. Section 502.215, Code 1985, is amended by
37 striking the section and inserting the following:

38 502.215 ADMINISTRATION -- RULES AND ORDERS.

39 1. The administrator shall make and adopt rules
40 and forms as the administrator determines are
41 necessary to carry out the purposes of sections
42 502.211 through 502.218.

43 2. The administrator may by rule or order exempt
44 from any provision of sections 502.211 through 502.218
45 the following:

46 a. A proposed takeover offer or a category or type
47 of takeover offer which the administrator determines
48 does not have the purpose or effect of changing or
49 influencing the control of a target company.

50 b. A proposed takeover offer for which the

1 administrator determines that compliance with the
2 sections is not necessary for the protection of the
3 offerees.

4 c. A person from the requirement of filing
5 statements.

6 3. In the event of a conflict between the
7 provisions of chapter 17A and the provisions of
8 sections 502.211 through 502.218, the provisions of
9 sections 502.211 through 502.218 shall prevail.

10 Sec. 8. NEW SECTION. 502.216 FEES AND EXPENSES.

11 The administrator shall charge a nonrefundable
12 filing fee of two hundred fifty dollars for a
13 registration statement filed by an offeror.

14 Sec. 9. NEW SECTION. 502.217 APPLICATION OF
15 CORPORATE TAKEOVER LAW.

16 If the target company is a public utility, public
17 utility holding company, national banking association,
18 bank holding company, or savings and loan association
19 which is subject to regulation by a federal agency and
20 the take over of such company is subject to approval
21 by the federal agency, sections 502.211 through
22 502.218 do not apply.

23 Sec. 10. NEW SECTION. 502.218 APPLICATION OF
24 SECURITIES LAW.

25 All of the provisions of this chapter which are not
26 in conflict with sections 502.211 through 502.218,
27 apply to any takeover offer involving a target
28 company.

29 Sec. 11. Section 502.407, Code 1985, is amended to
30 read as follows:

31 502.407 MISSTATEMENTS IN PUBLICITY.

32 It is unlawful for any person to make or cause to
33 be made, in any public report or press release, or in
34 other information which is either made generally
35 available to the public or used in opposition to a
36 tender offer, any statement of a material fact
37 relating to an issuer a target company or made in
38 connection with a tender offer which is, at the time
39 and in the light of the circumstances under which it
40 is made, false or misleading, if it is reasonably
41 foreseeable that such statement will induce other
42 persons to buy, sell or hold securities of the issuer
43 target company.

44 Sec. 12. Section 502.501, Code 1985, is amended by
45 adding the following new subsection:

46 NEW SUBSECTION. 3. In addition to other remedies
47 provided in this chapter, in a proceeding alleging a
48 violation of sections 502.211 through 502.218 the
49 court may provide that all shares acquired from a
50 resident of this state in violation of any provision

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1 of this chapter or rule order issued pursuant to this
2 chapter be denied voting rights for one year after
3 acquisition, that the shares be nontransferable on the
4 books of the target company, or that during this one-
5 year period the target company have the option to call
6 the shares for redemption either at the price at which
7 the shares were acquired or at book value per share as
8 of the last day of the fiscal quarter ended prior to
9 the date of the call for redemption, which redemption
10 shall occur on the date set in the call notice but not
11 later than sixty days after the call notice is given."

S-3947 Filed April 24, 1985

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