

CHAPTER 53**CORPORATE TAKEOVER OFFERS***S.F. 470*

AN ACT relating to corporate takeovers.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 502.102, subsection 11, Code 1987, is amended to read as follows:

11. "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Company Act of 1940", "Internal Revenue Code of 1954" and "Agricultural Marketing Act" mean the federal statutes of those names, ~~as amended before January 1, 1976.~~

Sec. 2. Section 502.102, subsections 14, 15, 16 and 17, Code 1987, are amended by striking the subsections and inserting the following:

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

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

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

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

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

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

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

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

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 takeover offer.

e. "Takeover offer":

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

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

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

(2) Does not include the following:

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

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

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

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

g. "Beneficial owner" includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

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

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

Sec. 3. Section 502.211, Code 1987, is amended by striking the section and inserting the following:

502.211 REGISTRATION REQUIREMENT.

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

2. The registration statement shall be filed on forms prescribed by the administrator, and shall be accompanied by a consent by the offeror to service of process and filing fee specified in section 502.216, and contain the following information:

a. All information specified in subsection 6.

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

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

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

4. Within three calendar days of the date of filing of the registration statement, the administrator may, by order, summarily suspend the effectiveness of the takeover offer if the administrator determines that the registration does not contain all of the information specified in

subsection 6 or that the takeover offer materials provided to offerees do not provide full disclosure to offerees of all material information concerning the takeover offer. The suspension shall remain in effect only until the determination following a hearing held pursuant to subsection 5.

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

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

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

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

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

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

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

e. If the purpose of the acquisition is to gain control of the target company, the material terms of any plans or proposals which the offeror has, upon gaining control, to liquidate the target company, sell its assets, effect its merger or consolidation, change the location of its principal executive office or of a material portion of its business activities, change its management or policies of employment, materially alter its relationship with suppliers or customers or the community in which it operates, or make any other major changes in its business, corporate structure, management or personnel, and other information which would materially affect the shareholders' evaluation of the acquisition.

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

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

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

Sec. 4. Section 502.212, Code 1987, is amended by striking the section and inserting the following:

502.212 FILING OF SOLICITATION MATERIALS.

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

Sec. 5. Section 502.213, Code 1987, is amended by striking the section and inserting the following:

502.213 FRAUDULENT AND DECEPTIVE PRACTICES.

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

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

2. The purchase of any of the equity securities of an officer, director, or beneficial owner of five percent or more of the equity securities of the target company by the offeror or the target company for a consideration greater than that to be paid to other shareholders, unless the terms of the purchase are disclosed in a registration statement filed pursuant to section 502.211.

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

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

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

Sec. 6. Section 502.214, Code 1987, is amended by striking the section and inserting the following:

502.214 LIMITATIONS ON OFFERORS.

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

2. An offeror shall provide that any equity securities of a target company deposited or tendered pursuant to a takeover offer may be withdrawn by or on behalf of an offeree within seven days after the date the offer has become effective and after sixty days from the date

the offer has become effective, or as otherwise determined by the administrator pursuant to a rule or order issued for the protection of the shareholders.

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

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

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

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

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

Sec. 7. Section 502.215, Code 1987, is amended by striking the section and inserting the following:

502.215 ADMINISTRATION — RULES AND ORDERS.

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

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

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

b. A proposed takeover offer for which the administrator determines that compliance with the sections is not necessary for the protection of the offerees.

c. A person from the requirement of filing statements.

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

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

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

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

If the target company is a public utility, public utility holding company, national banking association, bank holding company, or savings and loan association which is subject to regulation by a federal agency and the takeover of such company is subject to approval by the federal agency, sections 502.211 through 502.218 do not apply.

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

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

Sec. 11. Section 502.407, Code 1987, is amended to read as follows:

502.407 MISSTATEMENTS IN PUBLICITY.

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

Sec. 12. Section 502.501, Code 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 3. In addition to other remedies provided in this chapter, in a proceeding alleging a violation of sections 502.211 through 502.218 the court may provide that all shares acquired from a resident of this state in violation of any provision of this chapter or rule or order issued pursuant to this chapter be denied voting rights for one year after acquisition, that the shares be nontransferable on the books of the target company, or that during this one-year period the target company have the option to call the shares for redemption either at the price at which the shares were acquired or at book value per share as of the last day of the fiscal quarter ended prior to the date of the call for redemption, which redemption shall occur on the date set in the call notice but not later than sixty days after the call notice is given.

Approved April 24, 1987

CHAPTER 54

PROBATE FINAL REPORTS

H.F. 132

AN ACT relating to the final report of a personal representative in probate.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 633.477, subsection 9, Code 1987, is amended to read as follows:

9. An accounting of all ~~the moneys and personal~~ property coming into the hands of the personal representative and a detailed accounting of all cash receipts and disbursements. The accounting may be omitted if waived by all interested parties.

Approved April 24, 1987