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HOUSE OF REPRESENTATIVES
134TH GENERAL ASSEMBLY

SPONSOR: Representatives Hebner,
Spence, Petrilli, Buckworth,
Corrozi

HOUSE BILL NO. 396

DEC 23 1987

AN ACT TO AMEND CHAPTER 1 TITLE 8, DELAWARE CODE RELATING TO THE
GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-
thirds of all members elected to each House thereof concurring therein):

1 Amend Subchapter VI, Chapter 1, Title 8, Delaware Code, by
2 adding a new section to read as follows:

3 "§ 203 Business Combinations With Interested Stockholders

4 (a) Notwithstanding any other provision of this chapter, a
5 corporation shall not engage in any business combination with any
6 interested stockholder for a period of 3 years following the date
7 that such stockholder became an interested stockholder, unless
8 (1) prior to such date the board of directors of the corporation
9 approved either the business combination or the transaction which
10 resulted in the stockholder becoming an interested stockholder,
11 or (2) upon consummation of the transaction which resulted in the
12 stockholder becoming an interested stockholder, the interested
13 stockholder owned at least 85% of the voting stock of the
14 corporation outstanding at the time the transaction commenced,
15 excluding for purposes of determining the number of shares
16 outstanding those shares owned (i) by persons who are directors
17 and also officers and (ii) employee stock plans in which employee
18 participants do not have the right to determine confidentially
19 whether shares held subject to the plan will be tendered in a
20 tender or exchange offer, or (3) on or subsequent to such date

HR:X:X

1 the business combination is approved by the board of directors
2 and authorized at an annual or special meeting of stockholders,
3 and not by written consent, by the affirmative vote of at least
4 66-2/3% of the outstanding voting stock which is not owned by the
5 interested stockholder.

6 (b) The restrictions contained in this section shall not
7 apply if:

8 (1) the corporation's original certificate of
9 incorporation contains a provision expressly electing not to be
10 governed by this section;

11 (2) the corporation, by action of its board of
12 directors, adopts an amendment to its bylaws within 90 days of
13 the effective date of this section expressly electing not to be
14 governed by this section, which amendment shall not be further
15 amended by the board of directors;

16 (3) the corporation, by action of its stockholders,
17 adopts an amendment to its certificate of incorporation or bylaws
18 expressly electing not to be governed by this section, provided
19 that, in addition to any other vote required by law, such
20 amendment to the certificate of incorporation or bylaws must be
21 approved by the affirmative vote of a majority of the shares
22 entitled to vote. An amendment adopted pursuant to this
23 paragraph shall not be effective until 12 months after the
24 adoption of such amendment and shall not apply to any business
25 combination between such corporation and any person who became an
26 interested stockholder of such corporation on or prior to such
27 adoption. A bylaw amendment adopted pursuant to this paragraph
28 shall not be further amended by the board of directors;

29 (4) the corporation does not have a class of voting
30 stock that is (i) listed on a national securities exchange, (ii)
31 authorized for quotation on an inter dealer quotation system of a
32 registered national securities association or (iii) held of
33 record by more than 2,000 stockholders, unless any of the

1 foregoing results from action taken, directly or indirectly, by
2 an interested stockholder or from a transaction in which a person
3 becomes an interested stockholder;

4 (5) a stockholder becomes an interested stockholder
5 inadvertently and (i) as soon as practicable divests sufficient
6 shares so that the stockholder ceases to be an interested
7 stockholder and (ii) would not, at any time within the 3-year
8 period immediately prior to a business combination between the
9 corporation and such stockholder, have been an interested
10 stockholder but for the inadvertent acquisition; or

11 (6) the business combination is proposed prior to the
12 consummation or abandonment of and subsequent to the earlier of
13 the public announcement or the notice required hereunder of a
14 proposed transaction which (i) constitutes one of the
15 transactions described in the second sentence of this paragraph;
16 (ii) is with or by a person who either was not an interested
17 stockholder during the previous 3 years or who became an
18 interested stockholder with the approval of the corporation's
19 board of directors; and (iii) is approved or not opposed by a
20 majority of the members of the board of directors then in office
21 (but not less than 1) who were directors prior to any person
22 during the previous 3 years becoming an interested stockholder or
23 were recommended for election or elected to succeed such
24 directors by a majority of such directors. The proposed
25 transactions referred to in the preceding sentence are limited to
26 (x) a merger or consolidation of the corporation (except for a
27 merger in respect of which, pursuant to section 251(f) of this
28 chapter, no vote of the stockholders of the corporation is
29 required); (y) a sale, lease, exchange, mortgage, pledge,
30 transfer or other disposition (in one transaction or a series of
31 transactions), whether as part of a dissolution or otherwise, of
32 assets of the corporation or of any direct or indirect
33 majority-owned subsidiary of the corporation (other than to any

1 direct or indirect wholly-owned subsidiary or to the corporation)
2 having an aggregate market value equal to 50% or more of either
3 the aggregate market value of all of the assets of the
4 corporation determined on a consolidated basis or the aggregate
5 market value of all the outstanding stock of the corporation; or
6 (z) a proposed tender or exchange offer for 50% or more of the
7 outstanding voting stock of the corporation. The corporation
8 shall give not less than 20 days notice to all interested
9 stockholders prior to the consummation of any of the transactions
10 described in clauses (x) or (y) of the second sentence of this
11 paragraph.

12 Notwithstanding paragraphs (1), (2), (3) and (4) of this
13 subsection, a corporation may elect by a provision of its
14 original certificate of incorporation or any amendment thereto to
15 be governed by this section, provided that any such amendment to
16 the certificate of incorporation shall not apply to restrict a
17 business combination between the corporation and an interested
18 stockholder of the corporation if the interested stockholder
19 became such prior to the effective date of the amendment.

20 (c) As used in this section only, the term:

21 (1) "affiliate" means a person that directly, or
22 indirectly through one or more intermediaries, controls, or is
23 controlled by, or is under common control with, another person.

24 (2) "associate," when used to indicate a relationship
25 with any person, means (i) any corporation or organization of
26 which such person is a director, officer or partner or is,
27 directly or indirectly, the owner of 20% or more of any class of
28 voting stock, (ii) any trust or other estate in which such person
29 has at least a 20% beneficial interest or as to which such person
30 serves as trustee or in a similar fiduciary capacity, and (iii)
31 any relative or spouse of such person, or any relative of such
32 spouse, who has the same residence as such person.

33 (3) "business combination," when used in reference to

1 any corporation and any interested stockholder of such
2 corporation, means:

3 (i) any merger or consolidation of the
4 corporation or any direct or indirect majority-owned subsidiary
5 of the corporation with (A) the interested stockholder, or (B)
6 with any other corporation if the merger or consolidation is
7 caused by the interested stockholder and as a result of such
8 merger or consolidation subsection (a) of this section is not
9 applicable to the surviving corporation;

10 (ii) any sale, leases, exchange, mortgage,
11 pledge, transfer or other disposition (in one transaction or a
12 series of transactions) or except proportionately as a
13 stockholder of such corporation to or with the interested
14 stockholder, whether as part of a dissolution or otherwise, of
15 assets of the corporation or of any direct or indirect
16 majority-owned subsidiary of the corporation which assets have an
17 aggregate market value equal to 10% or more of either the
18 aggregate market value of all the assets of the corporation
19 determined on a consolidated basis or the aggregate market value
20 of all the outstanding stock of the corporation;

21 (iii) any transaction which results in the
22 issuance or transfer by the corporation or by any direct or
23 indirect majority-owned subsidiary of the corporation of any
24 stock of the corporation or of such subsidiary to the interested
25 stockholder, except (A) pursuant to the exercise of warrants or
26 rights to purchase stock offered or distributed, or a dividend or
27 distribution paid or made, pro rata to all holders of a class or
28 series of stock of such corporation, (B) pursuant to the exchange
29 or conversion of securities exchangeable for or convertible into
30 stock of such corporation or any such subsidiary which securities
31 were outstanding prior to the time that the interested
32 stockholder became such, (C) pursuant to an exchange offer by the
33 corporation to purchase stock of the same class or series made on

1 the same terms to all holders of said stock or (D) any issuance
2 or transfer of stock by the corporation, provided however, that
3 in no case under (A-D) above shall there be an increase in the
4 interested stockholder's proportionate share of the stock of any
5 class or series of the corporation or of the voting stock of the
6 corporation;

7 (iv) any transaction involving the corporation
8 or any direct or indirect majority-owned subsidiary of the
9 corporation which has the effect, directly or indirectly, of
10 increasing the proportionate share of the stock of any class or
11 series, or securities convertible into the stock of any class or
12 series, of the corporation or of any such subsidiary which is
13 owned by the interested stockholder, except as a result of
14 immaterial changes due to fractional share adjustments or as a
15 result of any purchase or redemption of any shares of stock not
16 caused, directly or indirectly, by the interested stockholder; or

17 (v) any receipt by the interested stockholder
18 of the benefit, directly or indirectly (except proportionately as
19 a stockholder of such corporation) of any loans, advances,
20 guarantees, pledges, or other financial benefits (other than
21 those expressly permitted in subparagraphs (i)-(iv) above)
22 provided by or through the corporation or any direct or indirect
23 majority owned subsidiary.

24 (4) "control," including the term "controlling,"
25 "controlled by" and "under common control with," means the
26 possession, directly or indirectly, of the power to direct or
27 cause the direction of the management and policies of a person,
28 whether through the ownership of voting stock, by contract, or
29 otherwise. A person who is the owner of 20% or more of a
30 corporation's outstanding voting stock shall be presumed to have
31 control of such corporation, in the absence of proof by a
32 preponderance of the evidence to the contrary. Notwithstanding
33 the foregoing, a presumption of control shall not apply where

1 such person holds voting stock, in good faith and not for the
2 purpose of circumventing this section, as an agent, bank, broker,
3 nominee, custodian or trustee for one or more owners who do not
4 individually or as a group have control of such corporation.
5 (5) "interested stockholder" means any person (other
6 than the corporation and any direct or indirect majority-owned
7 subsidiary of the corporation), that (i) is the owner of 15% or
8 more of the outstanding voting stock of the corporation, or (ii)
9 is an affiliate or associate of the corporation, and was the
10 owner of 15% or more of the outstanding voting stock of the
11 corporation at any time within the 3-year period immediately
12 prior to the date on which it is sought to be determined whether
13 such person is an interested stockholder; and the affiliates and
14 associates of such person; provided, however, that the term
15 "interested stockholder" shall not include any person (x) who (A)
16 owned shares in excess of the 15% limitation set forth herein as
17 of, or acquired such shares pursuant to a tender offer commenced
18 prior to, December 23, 1987 or pursuant to an exchange offer
19 announced prior to the aforesaid date and commenced within 90
20 days thereafter and continued to own shares in excess of such 15%
21 limitation or would have but for action by the corporation or (B)
22 acquired said shares from a person described in (A) above by
23 gift, inheritance or in a transaction in which no consideration
24 was exchanged or (y) whose ownership of shares in excess of the
25 15% limitation set forth herein is the result of action taken
26 solely by the corporation, provided that such person shall be an
27 interested stockholder if thereafter he acquires additional
28 shares of voting stock of the corporation, except as a result of
29 further corporate action not caused, directly or indirectly, by
30 such person. For the purpose of determining whether a person is
31 an interested stockholder, the voting stock of the corporation
32 deemed to be outstanding shall include stock deemed to be owned
33 by the person through application of paragraph (8) of this

1 subsection but shall not include any other unissued stock of such
2 corporation which may be issuable pursuant to any agreement,
3 arrangement or understanding, or upon exercise of conversion
4 rights, warrants or options, or otherwise.

5 (6) "person" means any individual, corporation,
6 partnership, unincorporated association or other entity.

7 (7) "voting stock" means stock of any class or series
8 entitled to vote generally in the election of directors.

9 (8) "owner," including the terms "own" and "owned", when
10 used with respect to any stock means a person that individually
11 or with or through any of its affiliates or associates:

12 (i) beneficially owns such stock, directly or
13 indirectly; or

14 (ii) has (A) the right to acquire such stock
15 (whether such right is exercisable immediately or only after the
16 passage of time) pursuant to any agreement, arrangement or
17 understanding, or upon the exercise of conversion rights,
18 exchange rights, warrants or options, or otherwise; provided,
19 however, that a person shall not be deemed the owner of stock
20 tendered pursuant to a tender or exchange offer made by such
21 person or any of such person's affiliates or associates until
22 such tendered stock is accepted for purchase or exchange; or (B)
23 the right to vote such stock pursuant to any agreement,
24 arrangement or understanding; provided, however, that a person
25 shall not be deemed the owner of any stock because of such
26 person's right to vote such stock if the agreement, arrangement
27 or understanding to vote such stock arises solely from a
28 revocable proxy or consent given in response to a proxy or
29 consent solicitation made to 10 or more persons; or

30 (iii) has any agreement, arrangement or understanding
31 for the purpose of acquiring, holding, voting (except voting
32 pursuant to a revocable proxy or consent as described in item (B)
33 of clause (ii) of this paragraph), or disposing of such stock

1 with any other person that beneficially owns, or whose affiliates
2 or associates beneficially own, directly or indirectly, such
3 stock.

4 (d) No provision of a certificate of incorporation or bylaw
5 shall require, for any vote of stockholders required by this
6 section, a greater vote of stockholders than that specified in
7 this section.

8 (e) The Court of Chancery is hereby vested with exclusive
9 jurisdiction to hear and determine all matters with respect to
10 this section."

SYNOPSIS

Section 203 is intended to strike a balance between the benefits of an unfettered market for corporate shares and the well documented and judicially recognized need to limit abusive takeover tactics. To achieve this end, the statute will delay for three years business combinations with acquirors not approved by the board unless the acquiror is able to obtain in his offer 85% of the stock as defined in the statute. This provision is intended to encourage a full and fair offer. Following the principles of corporate democracy, two-thirds of the stockholders other than the acquiror may vote to exempt a given business combination from the restrictions of the statute. Any corporation may decide to opt out of the statute within 90 days of enactment by action of its board or, at any time, by action of its stockholders. The effect of stockholder action in this regard is delayed for 12 months to avoid circumvention of the statute.

The statute is not intended to alter the case law development of directors' fiduciary duties of care and loyalty in responding to challenges to control or the burden of proof with regard to compliance with those duties. Nor is the statute intended to prevent the use of any other lawful defensive measure.



SPONSOR: Reps.: Hebner, Amick
Boykin, Buckworth,
Carey, Corrozi,
Davis, DiPinto,
Dixon, Ewing, Fallon,
George, Gilligan, Lee,
Petrilli, Plant,
Quillen, Spence; Sens.,
Bair, Bane, Connor,
Knox, Slatcher, Still

HOUSE OF REPRESENTATIVES

134TH GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1

JAN 13 1988

TO

HOUSE BILL NO. 396

AN ACT TO AMEND CHAPTER 1, TITLE 8, DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: (Two-thirds of all members elected to each House thereof concurring therein):

1 Section 1. Amend Subchapter VI, Chapter 1, Title 8, Delaware Code, by
2 adding a new section to read as follows:

3 §203. Business Combinations With Interested Stockholders

4 (a) Notwithstanding any other provisions of this chapter, a
5 corporation shall not engage in any business combination with any
6 interested stockholder for a period of 3 years following the date
7 that such stockholder became an interested stockholder, unless (1)
8 prior to such date the board of directors of the corporation
9 approved either the business combination or the transaction which
10 resulted in the stockholder becoming an interested stockholder, or
11 (2) upon consummation of the transaction which resulted in the
12 stockholder becoming an interested stockholder, the interested
13 stockholder owned at least 85% of the voting stock of the
14 corporation outstanding at the time the transaction commenced,
15 excluding for purposes of determining the number of shares

1 outstanding those shares owned (i) by persons who are directors
2 and also officers and (ii) employee stock plans in which employee
3 participants do not have the right to determine confidently
4 whether shares held subject to the plan will be tendered in a
5 tender or exchange offer, or (3) on or subsequent to such date the
6 business combination is approved by the board of directors and
7 authorized at an annual or special meeting of stockholders, and
8 not by written consent, by the affirmative vote of at least
9 66-2/3% of the outstanding voting stock which is not owned by the
10 interested stockholder.

11 (b) The restrictions contained in this section shall not apply if:

12 (1) the corporation's original certificates of incorporation
13 contains a provision expressly electing not to be governed by
14 this section;

15 (2) the corporation, by action of its board of directors,
16 adopts an amendment to its bylaws within 90 days of the
17 effective date of this section expressly electing not to be
18 governed by this section, which amendment shall not be further
19 amended by the board of directors;

20 (3) the corporation, by action of its stockholders, adopts an
21 amendment to its certificate of incorporation or bylaws
22 expressly electing not to be governed by this section,
23 provided that, in addition to any other vote required by law,
24 such amendment to the certificate of incorporation or bylaws
25 must be approved by the affirmative vote of a majority of the
26 shares entitled to vote. An amendment adopted pursuant to
27 this paragraph shall not be effective until 12 months after
28 the adoption of such amendment and shall not apply to any
29 business combination between such corporation and any person
30 who became an interested stockholder of such corporation on or
31 prior to such adoption. A bylaw amendment adopted pursuant to
32 this paragraph shall not be further amended by the board of
33 directors;

34 (4) the corporation does not have a class of voting stock
35 that is (i) listed on a national securities exchange, (ii)

1 authorized for quotation on an inter dealer quotation system
2 of a registered national securities association or (iii) held
3 of record by more than 2,000 stockholders, unless any of the
4 foregoing results from action taken, directly or indirectly,
5 by an interested stockholder or from a transaction in which a
6 person becomes an interested stockholder;

7 (5) a stockholder becomes an interested stockholder
8 inadvertently and (i) as soon as practicable divests
9 sufficient shares so that the stockholder ceases to be an
10 interested stockholder and (ii) would not, at any time within
11 the 3 year period immediately prior to a business combination
12 between the corporation and such stockholder, have been an
13 interested stockholder but for the inadvertent acquisition; or
14 (6) the business combination is proposed prior to the
15 consummation or abandonment of and subsequent to the earlier
16 of the public announcement or the notice required hereunder of
17 a proposed transaction which (i) constitutes one of the
18 transactions described in the second sentence of this
19 paragraph; (ii) is with or by a person who either was not an
20 interested stockholder during the previous 3 years or who
21 became an interested stockholder with the approval of the
22 corporation's board of directors; and (iii) is approved or
23 not opposed by a majority of the members of the board of
24 directors then in office (but not less than 1) who were
25 directors prior to any person becoming an interested
26 stockholder during the previous 3 years or were recommended
27 for election or elected to succeed such directors. The
28 proposed transactions referred to in the preceding sentence
29 are limited to (x) a merger or consolidation of the
30 corporation (except for a merger in respect of which, pursuant
31 to section 251 (f) of the chapter, no vote of the stockholders
32 of the corporation is required); (y) a sale, lease, exchange,
33 mortgage, pledge, transfer or other disposition (in one
34 transaction or a series of transactions), whether as part of a
35 dissolution or otherwise, of assets of the corporation or of

1 any direct or indirect majority-owned subsidiary of the
2 corporation (other than to any direct or indirect wholly-owned
3 subsidiary or to the corporation) having an aggregate market
4 value equal to 50% or more of either that aggregate market
5 value of all of the assets of the corporation determined on a
6 consolidated basis or the aggregate market value of all the
7 outstanding stock of the corporation; or (z) a proposed tender
8 or exchange offer for 50% or more of the outstanding voting
9 stock of the corporation. The corporation shall give not less
10 then 20 days notice to all interested stockholder prior to the
11 consummation of any of the transaction described in clauses
12 (x) or (y) of the second sentence of the
13 paragraph. Notwithstanding paragraphs (1), (2), (3) and (4) of
14 this subsection, a corporation may elect by a provision of its
15 original certificate of incorporation or any amendment thereto
16 to be governed by this section, provided that any such
17 amendment to the certificate of incorporation shall not apply
18 to restrict a business combination between the corporation and
19 an interested stockholder of the corporation if the interested
20 stockholder became such prior to the effective date of the
21 amendment.

22 (c) As used in this section only, the term:

23 (1) 'affiliate' means a person that directly, or
24 indirectly through one or more intermediaries, controls,
25 or is controlled by, or is under common control with,
26 another person.

27 (2) 'associate,' when used to indicate a relationship
28 with any person, means (i) any corporation or organization
29 of which such person is a director, officer or partner or
30 is, directly or indirectly, the owner of 20% or more of
31 any class of voting stock, (ii) any trust or other estate
32 in which such person has at least a 20% beneficial
33 interest or as to which such person serves as trustee or
34 in a similar fiduciary capacity, and (iii) any relative or
35 spouse of such person, or any relative of such spouse, who

1 has the same residence as such person.

2 (3) 'business combination,' when used in reference to any
3 corporation and any interested stockholder of such
4 corporation, means:

5 (i) any merger or consolidation of the corporation
6 or any direct or indirect majority-owned subsidiary of
7 the corporation with (A) the interested stockholder, or
8 (B) with any other corporation if the merger or
9 consolidation is caused by the interested stockholder and
10 as a result of such merger or consolidation subsection
11 (a) of this section is not applicable to the surviving
12 corporation;

13 (ii) any sales, lease, exchange, mortgage, pledge,
14 transfer or other disposition (in one transaction or a
15 series of transactions), except proportionately as a
16 stockholder of such corporation, to or with the
17 interested stockholder, whether as part of a dissolution
18 or otherwise, of assets of the corporation or of any
19 direct or indirect majority-owned subsidiary of the
20 corporation which assets have an aggregate market value
21 equal to 10% or more of either the aggregate market value
22 of all the assets of the corporation determined on a
23 consolidated basis or the aggregate market value of all
24 the outstanding stock of the corporation;

25 (iii) any transaction which results in the issuance or
26 transfer by the corporation or by any direct or indirect
27 majority-owned subsidiary of the corporation of any stock
28 of the corporation or of such subsidiary to the
29 interested stockholder, except (A) pursuant to the
30 exercise, exchange or conversion of securities
31 exercisable for, exchangeable for or convertible into
32 stock of such corporation or any such subsidiary which
33 securities were outstanding prior to the time that the
34 interested stockholder became such, (B) pursuant to a
35 dividend or distribution paid or made, or the exercise,
36 exchange or conversion of securities exercisable for,
37 exchangeable for

1 or convertible into stock of such corporation or any such
2 subsidiary which security is distributed, pro rata to all
3 holders of a class or series of stock of such corporation
4 subsequent to the time the interested stockholder became
5 such, (C) pursuant to an exchange offer by the corporation
6 to purchase stock made on the same terms to all holders of
7 said stock, or (D) any issuance or transfer of stock by
8 the corporation, provided however, that in no case under
9 (B) - (D) above shall there be an increase in the
10 interested stockholder's proportionate share of the stock
11 of any class or series of the corporation or of the voting
12 stock of the corporation;

13 (iv) any transaction involving the corporation or
14 any direct or indirect majority-owned subsidiary of
15 the corporation which has the effect, directly or
16 indirectly, of increasing the proportionate share of
17 the stock of any class or series, or securities
18 convertible into the stock of any class or series, of
19 the corporation or of any such subsidiary which is
20 owned by the interested stockholder, except as a
21 result of immaterial changes due to fractional share
22 adjustments or as a result of any purchase or
23 redemption of any shares of stock not caused,
24 directly or indirectly, by the interested
25 stockholder; or

26 (v) any receipt by the interested stockholder of the
27 benefit, directly or indirectly (except
28 proportionately as a stockholder of such corporation)
29 of any loans, advances, guarantees, pledges, or other
30 financial benefits (other than those expressly
31 permitted in subparagraphs (i)-(iv) above) provided
32 by or through the corporation or any direct or
33 indirect majority owned subsidiary.

34 (4) 'control,' including the term 'controlling,'
35 'controlled by' and 'under common control with,' means the
36 possession, directly or indirectly, of the power to direct
37 or cause the direction of the management and policies of a

1 person, whether through the ownership of voting stock, by
2 contract, or otherwise. A person who is the owner of 20%
3 or more of a corporation's outstanding voting stock shall
4 be presumed to have control of such corporation, in the
5 absence of proof by a preponderance of the evidence to the
6 contrary. Notwithstanding the foregoing, a presumption of
7 control shall not apply where such person holds voting
8 stock, in good faith and not for the purpose of
9 circumventing this section, as an agent, bank, broker,
10 nominee, custodian or trustee for one or more owners who
11 do not individually or as a group of such corporation.

12 (5) 'interested stockholder' means any person (other than
13 the corporation and any direct or indirect majority-owned
14 subsidiary of the corporation) that (i) is the owner of
15 15% or more of the outstanding voting stock of the
16 corporation, or (ii) is an affiliate or associate of the
17 corporation and was the owner of 15% or more of the
18 outstanding voting stock of the corporation at any time
19 within the 3-year period immediately prior to the date on
20 which it is sought to be determined whether such person is
21 an interested stockholder; and the affiliates and
22 associates of such person; provided, however, that the
23 term 'interested stockholder' shall not include (x) any
24 person who (A) owned shares in excess of the 15% limitation
25 set forth herein as of, or acquired such shares pursuant
26 to a tender offer commenced prior to, December 23, 1987 or
27 pursuant to an exchange offer announced prior to the
28 aforesaid date and commenced within 90 days thereafter and
29 continued to own shares in excess of such 15% limitation
30 or would have but for action by the corporation or (B)
31 acquired said shares from a person described in (A) above
32 by gift, inheritance or in a transaction in which no
33 consideration was exchanged; or (y) any person whose
34 ownership of shares in excess of the 15% limitation set
35 forth herein is the result of action taken solely by the
36 corporation provided that such person shall be an

1 interested stockholder if thereafter he acquires
2 additional shares of voting stock of the corporation,
3 except as a result of further corporate action not caused,
4 directly or indirectly, by such person. For the purpose
5 of determining whether a person is an interested
6 stockholder, the voting stock of the corporation deemed to
7 be outstanding shall include stock deemed to be owned by
8 the person through application of paragraph (8) of this
9 subsection but shall not include any other unissued stock
10 of such corporation which may be issuable pursuant to any
11 agreement, arrangement or understanding, or upon exercise
12 of conversion rights, warrants or options, or otherwise.

13 (6) 'person' means any individual, corporation,
14 partnership, unincorporated association or other entity.

15 (7) 'voting stock' means stock of any class or series
16 entitled to vote generally in the election of directors.

17 (8) 'owner' including the terms 'own' and 'owned' when
18 used with respect to any stock means a person that
19 individually or with or through any of its affiliates or
20 associates:

21 (i) beneficially owns such stock, directly or
22 indirectly; or

23 (ii) has (A) the right to acquire such stock
24 (whether such right is exercisable immediately or
25 only after the passage of time) pursuant to any
26 agreement, arrangement or understanding, or upon the
27 exercise of conversion rights, exchange rights,
28 warrants or options, or otherwise; provided, however,
29 that a person shall not be deemed the owner of stock
30 tendered pursuant to a tender or exchange offer made
31 by such person or any of such person's affiliates or
32 associates until such tendered stock is accepted for
33 purchase or exchange; or (B) the right to vote such
34 stock pursuant to any agreement, arrangement or
35 understanding; provided, however, that a person shall
36 not be deemed the owner of any stock because of such

1 person's right to vote such stock if the agreement,
2 arrangement or understanding to vote such stock
3 arises solely from a revocable proxy or consent given
4 in response to a proxy or consent solicitation made
5 to 10 or more persons; or
6 (iii) has any agreement, arrangement or
7 understanding for the purpose of acquiring, holding,
8 voting (except voting pursuant to a revocable proxy
9 or consent as described in
10 item (B) of clause (ii) of the paragraph), or
11 disposing of such stock with any other person that
12 beneficially owns, or whose affiliates or associates
13 beneficially own, directly or indirectly, such stock.
14 (d) No provision of a certificate of incorporation or bylaw
15 shall require, for any vote of stockholders required by this
16 section, a greater vote of stockholders than that specified in
17 this section.
18 (e) The Court of Chancery is hereby vested with exclusive
19 jurisdiction to hear and determine all matters with respect to
20 this section."

SYNOPSIS

Section 203 is intended to strike a balance between the benefits of an unfettered market for corporate shares and the well documented and judicially recognized need to limit abusive takeover tactics. To achieve this end, the statute will delay for three years business combinations with acquirors not approved by the board unless the acquiror is able to obtain in his offer 85% of the stock as defined in the statute. This provision is intended to encourage a full and fair offer. Following the principles of corporate democracy, two-thirds of the stockholders other than the acquiror may vote or exempt a given business combination from the restrictions of the statute. Any corporation may decide to opt out the statute within 90 days of enactment by action of its board or, at any time, by action of its stockholders. The effect of stockholder action in this regard is delayed for 12 months to avoid circumvention of the statute.

The statute is not intended to alter the case law development of directors' fiduciary duties of care and loyalty in responding to challenges to control or the burden of proof with regard to compliance with those duties. Nor is the statute intended to prevent the use of any other lawful defensive measure.



SPONSOR: Rep. Oberle

HOUSE OF REPRESENTATIVES

134TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

JAN 20 1988

TO

HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 396

- 1 AMEND House Substitute No.1 to House Bill No. 396 by adding the following:
2 "Section 2. This Act shall become effective upon a majority vote of
3 stockholders occurring on or after July 1, 1988."

SYNOPSIS

This Amendment provides that the bill be subject to shareholder approval on or after July 1, 1988.



SPONSOR: Rep. Oberle

HOUSE OF REPRESENTATIVES

134TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 2

JAN 20 1988

TO

HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 396

- 1 AMEND House Substitute No. 1 to House Bill No. 396 by adding the following:
- 2 "Section 2. This Act shall become effective for a corporation upon an
- 3 affirmative vote, at the next annual or special meeting of its
- 4 stockholders, by a majority of the outstanding voting stock which is not
- 5 owned by directors or officers of the corporation."

SYNOPSIS

This Amendment makes the act effective upon a majority vote of outstanding stock, not owned by directors or officers of the corporation.



SPONSOR: Rep. Hebner

HOUSE OF REPRESENTATIVES

134TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 3

JAN 26 1988

TO

HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 396

1 AMEND House Substitute No. 1 to House Bill No. 396 by deleting the word
2 "confidently" as it appears on Page 2, Line 3, and inserting in lieu thereof
3 the word "confidentially";

4 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
5 word "certificates" as it appears on Page 2, Line 12 and by inserting in lieu
6 thereof the word "certificate";

7 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
8 word "adandonment" as it appears on Page 3, Line 15, and inserting in lieu
9 thereof the word "abandonment";

10 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by inserting
11 after the word "directors" as it appears on Page 3, Line 27, the following:
12 "by a majority of such directors";

13 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
14 word "stockholder" as it appears on Page 4, Line 10, and inserting in lieu
15 thereof the word "stockholders";

16 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
17 word "transaction" as it appears on Page 4, Line 11, and inserting in lieu
18 thereof the word "transactions";

19 FURTHER AMEND House substitute No. 1 to House Bill No. 396 by deleting the
20 word "the" as it appears on Page 4 at the end of Line 12, and inserting in
21 lieu thereof the word "this";

1 of 2

1 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
2 word "sales" as it appears on Page 5, Line 13, and by inserting in lieu
3 thereof the word "sale";

4 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
5 word "he" as it appears on Page 6, Line 19, and inserting in lieu thereof the
6 word "the";

7 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by inserting in
8 between the words "group" and "of" as they appear on Page 7, Line 11, the
9 following: "have control";

10 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
11 word "that" as it appears on Page 7, Line 12, and inserting in lieu thereof
12 the word "than";

13 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
14 word "ammounced" as it appears on Page 7, Line 27, and inserting in lieu
15 thereof the word "announced";

16 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
17 word "owened" as it appears on Page 8, Line 7, and inserting in lieu thereof
18 the word "owned";

19 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by deleting the
20 word "the" as it appears on Page 9, Line 10, and inserting in lieu thereof the
21 word "this".

22 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by adding the
23 following:

24 "Section 2. The provisions of this Act are severable and any
25 provision held invalid shall not affect or impair any of the remaining
26 provisions of this Act."

SYNOPSIS

 This amendment corrects several typographical errors contained within the bill and inserts language that was inadvertently deleted from the bill. This Amendment also adds a severability provision to the Act.



SPONSOR: Reps. George,
Petrilli,
Spence,
Gilligan

HOUSE OF REPRESENTATIVES

134TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 4

JAN 26 1988

TO

HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 396

- 1 AMEND House Substitute No. 1 to House Bill No. 396 by adding the
2 following:
3 "Section 2. Amend Subsection (a), Section 259, subchapter IX,
4 Chapter 1, Title 8, Delaware Code by adding after the words 'disabilities and
5 duties' and after the words 'of the respective constituent corporations' the
6 following:
7 ', including any duties under collective bargaining agreements,'".

SYNOPSIS

This Amendment is intended to make it clear that negotiated labor contracts survive a merger or consolidation .



SPONSOR: Reps. Oberle
and Campanelli

HOUSE OF REPRESENTATIVES
134TH GENERAL ASSEMBLY
HOUSE AMENDMENT NO. _____

5

JAN 26 1988

TO

HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 396

1 AMEND House Substitute No. 1 to House Bill No. 396 by redesignating
2 subsections "(d)" and "(e)" as they appear on lines 14 and 18, page 9 as new
3 subsections "(e)" and "(f)" respectively.

4 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by adding a
5 new subsection to read as follows:

6 "(d) (1) Any corporation electing to be governed by the provisions
7 of this section shall set forth in its certificate of incorporation and bylaws
8 that if said corporation engages in a business combination with any interested
9 shareholder pursuant to this section, such corporation or resulting business
10 combination shall not terminate or cause to be terminated any labor contract
11 in which employees are covered and which is negotiated by any labor
12 organization, by a collective bargaining agent, or by a representative until
13 the expiration date of such labor contract and such labor contract shall
14 continue in effect until its expiration date.

15 (2) The provisions of subsection (d) (1) shall be liberally
16 construed to protect the interests of employees under existing labor
17 contracts."

SYNOPSIS

This Amendment is intended to guarantee that negotiated labor contracts survive the action of a corporation which elects to be governed by the provisions of the Act.



SPONSOR: Reps. Oberle
and Campanelli

HOUSE OF REPRESENTATIVES

134TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 6

JAN 26 1988

TO

HOUSE SUBSTITUTE NO. 1

TO

HOUSE BILL NO. 396

1 AMEND House Substitute No. 1 to House Bill No. 396 by adding the
2 following:

3 "Section 2. Amend Subsection (a), Section 259, subchapter IX,
4 Chapter 1, Title 8, Delaware Code by adding after the words 'disabilities and
5 duties' and after the words 'of the respective constituent corporations' the
6 following:

7 ', including any duties under collective bargaining agreements,'".

8 FURTHER AMEND House Substitute No. 1 to House Bill No. 396 by adding the
9 following:

10 " Section 3. Amend Section 259, subchapter IX, Chapter 1, Title
11 8, Delaware Code by designating a new subsection to read as follows:

12 '(c) Notwithstanding any other provisions of this Title, no
13 merger or consolidation or 'business combination', as defined in §203 of this
14 Title, shall result in the termination or impairment of the provision of any
15 labor contract covering employees and negotiated by any labor organization or
16 by a collective bargaining agent or by a representative and notwithstanding
17 such merger, consolidation or business combination, such contract shall
18 continue in effect until its termination date. This subsection shall be
19 liberally construed to protect the interests of employees under existing labor
20 contracts.'"

SYNOPSIS

This Amendment is intended to guarantee that negotiated labor contracts survive the action of a corporation in merger, consolidation, or business combination situations.



SPONSOR: Sen. Sharp

DELAWARE STATE SENATE

134TH GENERAL ASSEMBLY

SENATE BILL NO. 31 1 JAN 12 1986

AN ACT TO AMEND CHAPTER 1, TITLE 8, DELAWARE CODE RELATING TO THE GENERAL CORPORATION LAW.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each House thereof concurring therein):

1 Section 1. Amend Subsection (b) of Section 102, Title 8, Delaware Code, by adding a new
2 Subsection (8) thereto to read as follows:

3 "8(a) A provision stating the corporation shall not engage in any business
4 combination with any interested stockholder for a period of 3 years following the date
5 that such stockholder became an interested stockholder, unless (1) prior to such date
6 the board of directors of the corporation approved either the business combination or
7 the transaction which resulted in the stockholder becoming an interested stockholder, or
8 (2) upon consummation of the transaction which resulted in the stockholder becoming an
9 interested stockholder, the interested stockholder owned at least 85% of the voting
10 stock of the corporation outstanding at the time the transaction commenced, excluding
11 for purposes of determining the number of shares outstanding those shares owned (i) by
12 persons who are directors and also officers and (ii) employee stock plans in which
13 employee participants do not have the right to determine confidentially whether shares
14 held subject to the plan will be tendered in a tender or exchange offer, or (3) on or
15 subsequent to such date the business combination is approved by the board of directors
16 and authorized at an annual or special meeting of stockholders, and not by written
17 consent, by the affirmative vote of at least 66-2/3% of the outstanding voting stock
18 which is not owned by the interested stockholder.

19 (b) As used in this section only, the term:

20 (1) 'affiliate' means a person that directly, or indirectly through one or more
21 intermediaries, controls, or is controlled by, or is under common control with, another
22 person.

1 (2) 'associate,' when used to indicate a relationship with any person, means (i)
2 any corporation or organization of which such person is a director, officer or partner
3 or is, directly or indirectly, the owner of 20% or more of any class of voting stock,
4 (ii) any trust or other estate in which such person has at least a 20% beneficial
5 interest or as to which such person serves as trustee or in a similar fiduciary
6 capacity, and (iii) any relative or spouse of such person, or any relative of such
7 spouse, who has the same residence as such person.

8 (3) 'business combination,' when used in reference to any corporation and any
9 interested stockholder of such corporation, means:

10 (i) any merger or consolidation of the corporation or any direct or indirect
11 majority-owned subsidiary of the corporation with (A) the interested stockholder,
12 or (B) with any other corporation if the merger or consolidation is caused by the
13 interested stockholder and as a result of such merger or consolidation subsection
14 (a) of this section is not applicable to the surviving corporation;

15 (ii) any sale, lease, exchange, mortgage, pledge, transfer or other
16 disposition (in one transaction or a series of transactions), except
17 proportionately as a stockholder of such corporation, to or with the interested
18 stockholder, whether as part of a dissolution or otherwise, of assets of the
19 corporation or of any direct or indirect majority-owned subsidiary of the
20 corporation which assets have an aggregate market value equal to 10% or more of
21 either the aggregate market value of all the assets of the corporation determined
22 on a consolidated basis or the aggregate market value of all the outstanding stock
23 of the corporation;

24 (iii) any transaction which results in the issuance or transfer by the
25 corporation or by any direct or indirect majority-owned subsidiary of the
26 corporation of any stock of the corporation or of such subsidiary to the interested
27 stockholder, except (A) pursuant to the exercise of warrants or rights to purchase
28 stock offered or distributed, or a dividend or distribution paid or made, pro rata
29 to all holders of a class or series of stock of such corporation, (B) pursuant to
30 the exercise, exchange or conversion of securities exercisable for, exchangeable
31 for or convertible into stock of such corporation or any such subsidiary which
32 securities were outstanding prior to the time that the interested stockholder
33 became such, (C) pursuant to an exchange offer by the corporation to purchase stock
34 of the same class or series made on the same terms to all holders of said stock or
35 (D) any issuance or transfer of stock by the corporation, provided however, that in
36 no case under (A-D) above shall there be an increase in the interested

1 stockholder's proportionate share of the stock of any class or series of the
2 corporation or of the voting stock of the corporation;

3 (iv) any transaction involving the corporation or any direct or indirect
4 majority-owned subsidiary of the corporation which has the effect, directly or
5 indirectly, of increasing the proportionate share of the stock of any class or
6 series, or securities convertible into the stock of any class or series, of the
7 corporation or of any such subsidiary which is owned by the interested stockholder,
8 except as a result of immaterial changes due to fractional share adjustments or as
9 a result of any purchase or redemption of any shares of stock not caused, directly
10 or indirectly, by the interested stockholder; or

11 (v) any receipt by the interested stockholder of the benefit, directly or
12 indirectly (except proportionately as a stockholder of such corporation) of any
13 loans, advances, guarantees, pledges, or other financial benefits (other than those
14 expressly permitted in subparagraphs (i)-(iv) above) provided by or through the
15 corporation or any direct or indirect majority owned subsidiary.

16 (4) 'control,' including the term 'controlling,' 'controlled by' and 'under common
17 control with,' means the possession, directly or indirectly, of the power to direct or
18 cause the direction of the management and policies of a person, whether through the
19 ownership of voting stock, by contract, or otherwise. A person who is the owner of 20%
20 or more of a corporation's outstanding voting stock shall be presumed to have control of
21 such corporation, in the absence of proof by a preponderance of the evidence to the
22 contrary. Notwithstanding the foregoing, a presumption of control shall not apply where
23 such person holds voting stock, in good faith and not for the purpose of circumventing
24 this section, as an agent, bank, broker, nominee, custodian or trustee for one or more
25 owners who do not individually or as a group have control of such corporation.

26 (5) 'interested stockholder' means any person (other than the corporation and any
27 direct or indirect majority-owned subsidiary of the corporation), that (i) is the owner
28 of 15% or more of the outstanding voting stock of the corporation, or (ii) is an
29 affiliate or associate of the corporation, and was the owner of 15% or more of the
30 outstanding voting stock of the corporation at any time within the 3-year period
31 immediately prior to the date on which it is sought to be determined whether such person
32 is an interested stockholder; and the affiliates and associates of such person;
33 provided, however, that the term 'interested stockholder' shall not include any person
34 (x) who (A) owned shares in excess of the 15% limitation set forth herein as of, or
35 acquired such shares pursuant to a tender offer commenced prior to, January 12, 1988, or
36 pursuant to an exchange offer announced prior to the aforesaid date and commenced within

1 90 days thereafter and continued to own shares in excess of such 15% limitation or would
2 have but for action by the corporation or (B) acquired said shares
3 from a person described in (A) above by gift, inheritance or in transaction in which no
4 consideration was exchanged; or (y) whose ownership of shares in excess of the 15%
5 limitation set forth herein is the result of action taken solely by the corporation
6 provided that such person shall be an interested stockholder if thereafter he acquires
7 additional shares of voting stock of the corporation, except as a result of further
8 corporate action not caused, directly or indirectly, by such person. For the purpose of
9 determining whether a person is an interested stockholder, the voting stock of the
10 corporation deemed to be outstanding shall include stock deemed to be owned by the
11 person through application of paragraph (8) of this subsection but shall not include any
12 other unissued stock of such corporation which may be issuable pursuant to any
13 agreement, arrangement or understanding, or upon exercise of conversion rights, warrants
14 or options, or otherwise.

15 (6) 'person' means any individual, corporation, partnership, unincorporated
16 association or other entity.

17 (7) 'voting stock' means stock of any class or series entitled to vote generally
18 in the election of directors.

19 (8) 'owner,' including the terms 'own' and 'owned', when used with respect to any
20 stock means a person that individually or with or through any of its affiliates or
21 associates:

22 (i) beneficially owns such stock, directly or indirectly; or

23 (ii) has (A) the right to acquire such stock (whether such right is
24 exercisable immediately or only after the passage of time) pursuant to any
25 agreement, arrangement or understanding, or upon the exercise of conversion rights,
26 exchange rights, warrants or options, or otherwise; provided, however, that a
27 person shall not be deemed the owner of stock tendered pursuant to a tender or
28 exchange offer made by such person or any of such person's affiliates or associates
29 until such tendered stock is accepted for purchase or exchange; or (B) the right to
30 vote such stock pursuant to any agreement, arrangement or understanding; provided,
31 however, that a person shall not be deemed the owner of any stock because of such
32 person's right to vote such stock if the agreement, arrangement or understanding to
33 vote such stock arises solely from a revocable proxy or consent given in response
34 to a proxy or consent solicitation made to 10 or more persons; or

35 (iii) has any agreement, arrangement or understanding for the purpose of

[illegible]

1 acquiring, holding, voting (except voting pursuant to a revocable proxy or consent
2 as described in item (B) of clause (ii) of this paragraph), or disposing of such
3 stock with any other person that beneficially owns, or whose affiliates or
4 associates beneficially own, directly or indirectly, such stock.

5 (c) No provision of a certificate of incorporation or bylaw shall require, for any vote
6 of stockholders required by this section, a greater vote of stockholders than that
7 specified in this section.

8 (d) The Court of Chancery is hereby vested with exclusive jurisdiction to hear and
9 determine all matters with respect to this section."

SYNOPSIS

Section 102(b)8 is intended to strike a balance between the benefits of an unfettered market for corporate shares and the well documented and judicially recognized need to limit abusive takeover tactics. To achieve this end the statute will delay for three years business combinations with acquirors not approved by the board unless the acquiror is able to obtain in his offer 85% of the stock as defined in the statute. This provision is intended to encourage a full and fair offer and may be included in the original certificate of incorporation or an amendment approved by the stockholders.

The statute is not intended to alter the case law development of directors' fiduciary duties of care and loyalty in responding to challenges to control or the burden of proof with regard to compliance with those duties. Nor is the statute intended to prevent the use of any other lawful defensive measure.

Author: Sen. Sharp

