

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 706

Short Title: Enforce Corp. Acquisition Law.

(Public)

Sponsors: Senator Soles.

Referred to: Judiciary I.

April 18, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE ENFORCEMENT OF CERTAIN NORTH  
3 CAROLINA LAWS REGARDING CORPORATE ACQUISITIONS.

4 The General Assembly of North Carolina enacts:

5 Section 1. The General Statutes of North Carolina are amended by adding a  
6 new Chapter to read:

7 **“CHAPTER 75E.**  
8 **“UNLAWFUL ACTIVITIES IN CONNECTION WITH**  
9 **CERTAIN CORPORATE TRANSACTIONS.**

10 **“§ 75E-1. Definitions.**

11 The following words and phrases as used in this Chapter shall have the following  
12 meanings unless the context clearly requires otherwise:

- 13 (1) ‘Acquiring person statement’ has the same meaning as G.S. 55-9A-02.  
14 (2) ‘Business combination’ has the same meaning as G.S. 55-9-01(b)(1).  
15 (3) ‘Control share acquisition’ has the same meaning as G.S. 55-9A-  
16 01(b)(3).  
17 (4) ‘Person’ includes ‘entity’ (as that term is defined in G.S. 55-9-40(9),  
18 ‘individual’ (as that term is defined in G.S. 55-1-40(13)) and, without  
19 limiting the generality of the foregoing, ‘other entity’ (as that term is  
20 defined in G.S. 55-9-01(b)(6)).

21 **“§ 75E-2. Unlawful activities in connection with business combinations and control**  
22 **share acquisitions.**

23 It shall be unlawful for any person:

- 1           (1) To consummate any business combination in violation of Article 9 of  
2 Chapter 55 of the General Statutes.
- 3           (2) To make a control share acquisition without complying with the  
4 provisions of Article 9A of Chapter 55 of the General Statutes.
- 5           (3) To make any untrue statement of a material fact or omit to state any  
6 material fact necessary in order to make the statements made, in the  
7 light of the circumstances under which they are made, not misleading,  
8 or to engage in any fraudulent, deceptive, or manipulative acts or  
9 practices, in connection with: (i) the application of Article 9 of  
10 Chapter 55 of the General Statutes to any business combination or to  
11 the acquisition of beneficial ownership, directly or indirectly, of more  
12 than twenty percent (20%) of the voting shares of a corporation within  
13 the meaning of Article 9; or (ii) the application of Article 9A of  
14 Chapter 55 of the General Statutes to any control share acquisition.  
15 'Fraudulent, deceptive, or manipulative acts or practices' include  
16 (without limiting the generality of the foregoing) those acts and  
17 practices proscribed by rules or regulations promulgated by the  
18 Attorney General under G.S. 75E-3.
- 19           (4) To willfully and knowingly aid or abet any other person to engage in  
20 conduct which is prohibited by this Chapter.

21 **"§ 75E-3. Investigative and regulatory powers of the Attorney General.**

22 The Attorney General may conduct such investigations as the Attorney General  
23 deems necessary to determine compliance by all persons or entities with the provisions  
24 of Articles 9 and 9A of Chapter 55 of the General Statutes. The Attorney General may  
25 adopt rules to implement this Chapter.

26 **"§ 75E-4. Enforcement.**

27 The Attorney General may institute a civil action to prevent or restrain violations of  
28 G.S. 75E-2.

29 A person injured by a violation of G.S. 75E-2 may maintain an action for damages  
30 or for an injunction or both against any person who has committed the violation. The  
31 holders of the voting shares of a corporation that is the subject of a proposed business  
32 combination that is to be consummated in violation of G.S. 75E-2 shall, for purposes of  
33 the previous sentence, be deemed to be injured by such violation, notwithstanding the  
34 fact that such business combination has not been consummated.

35 In a proceeding under this section, the court shall determine whether a violation has  
36 been committed and enter any judgment or decree necessary to remove the effects of  
37 any violation it finds and to prevent continuation or renewal of the violation in the  
38 future.

39 If an application for an injunction is granted, after due notice to all parties, and a  
40 hearing thereon, the complainant (including, without limiting the generality hereof, the  
41 Attorney General) may be awarded costs and reasonable attorneys' fees.

42 In an action for damages, if the defendant is found to have willfully violated G.S.  
43 75E-2, the person injured may be awarded up to three times the amount of actual  
44 damages which result from the violation, with costs and reasonable attorneys' fees.

1 **"§ 75E-5. Civil penalties.**

2 In any suit instituted by the Attorney General in which the defendant is found to  
3 have violated G.S. 75E-2, the court may, in its discretion, impose a civil penalty against  
4 the defendant of not more than one hundred thousand dollars (\$100,000) for each  
5 violation; provided that, if the court shall determine that such violation was willful, it  
6 may in its discretion treble such penalty; provided, further, that in either of the  
7 foregoing circumstances, the court may in its discretion award to the Attorney General  
8 costs and reasonable attorneys' fees. Any penalty assessed pursuant to this section shall  
9 be paid to the General Fund of the State of North Carolina.

10 **"§ 75E-6. Remedies cumulative.**

11 The remedies provided in this Chapter are cumulative.

12 **"§ 75E-7. Chapter not exclusive.**

13 This Chapter shall not be deemed to supersede, restrict, or otherwise limit any other  
14 applicable laws of this State.

15 **"§ 75E-8. Designation of Secretary of State for service.**

16 Every nonresident person who is or is about to become the beneficial owner, directly  
17 or indirectly, of more than twenty percent (20%) of the voting shares of a corporation  
18 within the meaning of Article 9 of Chapter 55 or to make a control share acquisition,  
19 except a foreign corporation which has appointed and keeps a resident agent in this  
20 State, shall be deemed to have appointed the Secretary of State as its agent upon whom  
21 may be served any lawful process, authorized by this Chapter with the same effect as  
22 though served upon the person personally.

23 Service of process pursuant to this section shall be accomplished by leaving a copy  
24 of the process in the office of the Secretary of State, but it shall not be effective unless  
25 notice of the service and a copy of the process is sent by certified or registered mail to  
26 the nonresident person served, at such person's last known address.

27 **"§ 75E-9. Validity; saving clause.**

28 In the event any provision or application of this Chapter shall be held illegal or  
29 invalid for any reason, such holding shall not affect the legality or validity of any other  
30 provision or application thereof."

31 Sec. 2. This act is effective upon ratification.