

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 440
SENATE BILL 706

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF CERTAIN NORTH
CAROLINA LAWS REGARDING CORPORATE ACQUISITIONS.

The General Assembly of North Carolina enacts:

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

"Chapter 75E.
"Unlawful Activities in Connection With
Certain Corporate Transactions.

"§ 75E-1. Definitions.

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

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

"§ 75E-2. Unlawful activities in connection with business combinations and control share acquisitions.

It shall be unlawful for any person:

- (1) To consummate any business combination in violation of Article 9 of Chapter 55 of the General Statutes.
- (2) To make a control share acquisition without complying with the provisions of Article 9A of Chapter 55 of the General Statutes.
- (3) To make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with: (i) the application of Article 9 of Chapter 55 of the General Statutes to any business combination or to the acquisition of beneficial ownership, directly or indirectly, of more than twenty percent (20%) of the voting shares of a corporation within

the meaning of Article 9; or (ii) the application of Article 9A of Chapter 55 of the General Statutes to any control share acquisition.

- (4) To willfully and knowingly aid or abet any other person to engage in conduct which is prohibited by this Chapter.

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

The Attorney General may conduct such investigations as the Attorney General deems necessary to determine compliance by all persons or entities with the provisions of Articles 9 and 9A of Chapter 55 of the General Statutes. In performing any such investigations, the Attorney General shall have all the powers given him by G.S. 75-10. The provisions of G.S. 75-11 and G.S. 75-12 shall apply to this Chapter.

"§ 75E-4. Enforcement.

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

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

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

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

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

"§ 75E-5. Civil penalties.

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

"§ 75E-6. Remedies cumulative.

The remedies provided in this Chapter are cumulative.

"§ 75E-7. Chapter not exclusive.

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

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

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

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

"§ 75E-9. Validity; saving clause.

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

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives