CHAPTER 552
CORPORATE TAKE-OVER LAW

552.01 Definitions. In this chapter:

(1) “Division” means the division of securities.

(2) “Equity security” means any shares of stock or similar securities, or any securities convertible into such securities, or carrying any warrant or right to subscribe to or purchase such securities, or any such warrant or right, or any other security which, for the protection of investors, is deemed an equity security pursuant to rule of the division.

(3) “Offeror” means a person who makes or in any way participates in making a take-over offer and includes all affiliates and associates of that person, and all persons acting jointly or in concert for the purpose of acquiring, holding or disposing of or exercising any voting rights attached to the equity securities for which a take-over offer is made. “Offeror” does not include any bank or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and not otherwise participating in the take-over offer.

(4) “Offeree” means a record or beneficial owner of a security that an offeror acquires, or offers or proposes to acquire, in connection with a take-over offer.

(5) “Take-over offer” means the offer to acquire or the acquisition of any equity security of a target company, pursuant to a tender offer or request or invitation for tenders, if after the acquisition thereof the offeror would be directly or indirectly a beneficial owner of more than 5% of any class of the outstanding equity securities of the issuer. “Take-over offer” does not include an offer or acquisition of any equity security of a target company pursuant to:

(a) Brokers’ transactions effected by or through a broker-dealer in the ordinary course of its business.

(b) An exchange offer for securities of another issuer, if the offer is exempted from registration under ch. 551 and does not involve any public offering under the securities act of 1933.

(c) An offer made to not more than 10 persons in this state during any period of 12 consecutive months.

(d) An offer made to all the stockholders of the target company, if the number of its stockholders does not exceed 100 at the time of the offer.

(e) An offer if the acquisition of any equity security pursuant thereto, together with all other acquisitions by the offeror of securities of the same class during the preceding 12 months, would not exceed 5% of that class of the outstanding equity securities of the issuer.

(f) An offer by the target company to acquire its own equity securities.

(6) “Target company” means a corporation or other issuer of securities:

(a) Which is organized under the laws of this state or has its principal office in this state;

(b) Which has substantial assets located in this state;

(c) Whose equity securities of any class are or have been registered under ch. 551 or predecessor laws, or are registered under section 12 of the securities exchange act of 1934 or which is an entity identified in s. 551.22 (3), (4) or (5); and

(d) Which has at least 100 record holders of securities qualifying under par. (c) who are residents of this state or which has at least 5% of the securities qualifying under par. (c) held by residents of this state.


Cross Reference: See also s. DFI−Sec 21.01, Wis. adm. code.

State regulation of tender offers. Moylan, 58 MLR 687.


552.03 Filing of ownership information. (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a target company, is directly or indirectly a beneficial owner of more than 5% of any class of the outstanding equity securities of the issuer shall, within 10 days after such acquisition, file with the division a form prescribed by the division a statement containing the following information and such additional information as the division by rule prescribes:

(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 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 transaction and the names of the parties thereto.

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

(d) The number of shares or units of any equity security of the target company of which each such person and each associate of such person and each person included as an offeror is the beneficial owner or which each such person has a right to acquire, directly or indirectly, together with the name and address of each such person.
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(e) Material information as to any contracts, arrangements or understandings with any person with respect to any equity security of the target company, including transfers of any equity security, joint ventures, loan or option arrangements, puts and calls, guarantees of loan, guarantees against loss, guarantees of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements or understandings have been entered into.

(2) If the target company is an issuer the acquisition of whose equity securities is subject to the requirements of s. 13 (d) of the securities exchange act of 1934, any person may file with the commissioner a signed copy of the statement prescribed therein in lieu of the statement prescribed in sub. (1).

(3) Any person may file with the division, in lieu of the statement prescribed in sub. (1) and unless otherwise ordered by the division, a statement containing the person’s name and address, the number of shares or units of any equity security of the target company which are beneficially owned directly or indirectly by the person and each of the person’s associates, the date of their acquisition and such other information as the division may by rule prescribe, if the person certifies that such securities were acquired by the person in the ordinary course of the person’s business and not for the purpose or having the effect of changing or influencing the control of the issuer nor in connection with or as a participant in any transaction having such purpose or effect, and that the person does not intend to make a take-over offer involving the target company.

(4) If any material change occurs in the facts set forth in the statement, the person filing the statement shall, within 10 days thereafter, file with the division an amendment describing the change, in accordance with rules adopted by the division.

(5) Each person required to file any statement or amendment thereto with the division under this section shall send a signed copy of such statement or amendment by certified mail to the target company at its principal office not later than the date of filing.

(6) No person required to file any ownership statement under this section, who is delinquent in the filing of such statement, may file a registration statement relating to a proposed take-over offer for a period of 60 days after the date of filing of the ownership statement, except as may be permitted by order of the division.

History: 1971 c. 300; 1981 c. 16 ss. 6 to 8, 18; 1985 a. 195; 1995 a. 27.

Cross Reference: See also ss. DFI−Sec 21.01, 22.01, 22.02, 24.01, and 29.01, Wis. adm. code.

552.05 Registration of take-over offers. (1) It is unlawful for any person to make a take-over offer involving a target company in this state, or to acquire any equity securities of a target company pursuant to the offer, unless the offer is effective under this chapter or is exempted by rule or order of the division. The division may by an exemption order, with or without petition of the offeror, permit a take-over offer to be made without prior registration under this chapter if the offeror’s purchase of any securities tendered incident to the offer is conditioned upon subsequent registration under this chapter. The division may hold a hearing under this paragraph with respect to the registration of a take-over offer which is subject to an exemption order. Before a take-over offer becomes effective under this chapter, the offeror shall file with the division a registration statement containing the information prescribed in sub. (2), and send 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, not later than the date of filing of the registration statement.

(2) The registration statement shall be filed on forms prescribed by the division, and shall be accompanied by a consent by the offeror to service of process specified in s. 551.65 (1) and the filing fee specified in s. 552.15 (1), and shall contain the following information and such additional information as the division by rule prescribes:

(a) All of the information specified in s. 552.03 (1), any part of which may be incorporated by reference to the extent that it was previously filed.

(b) Three copies of the proposed take−over offer, including all material terms thereof, in the form proposed to be published or sent or delivered to security holders of the target company.

(c) Material information concerning the organization and operations of any offeror which is a corporation, including the year, form and jurisdiction of its organization, a description of each class of its capital stock and long−term debt, a description of the business done by the offeror and its subsidiaries and any material changes therein during the past 3 years, a description of the location and character of the principal properties of the offeror and its subsidiaries, a description of any material pending legal or administrative proceedings in which the offeror or any of its subsidiaries is a party, the names of all directors and executive officers of the offeror and their material business activities and affiliations during the past 3 years, and financial statements of the offeror for its 3 most recent annual accounting periods and any current period.

(d) Material information concerning the identity and background of any offeror who is not a corporation, including the offeror’s material business activities and affiliations during the past 3 years, and a description of any material pending legal or administrative proceedings in which the offeror is a party.

(3) The division may require the offeror to file any other documents, exhibits and information that the division deems material to the take−over offer, and the division may permit the omission of any of the information specified in sub. (2) if the division determines that such information is not required for the protection of offerees. The division may by order summarily delay the effective date of the offer if the division determines that the registration statement does not contain all of the information specified in sub. (2) or does not provide full disclosure to offerees of all material information concerning the offer.

(4) A take−over offer becomes effective 10 days after the date of filing the registration statement with the division unless delayed by order, or unless prior thereto the division calls a hearing with respect to the offer. The division may call a hearing if it is necessary or appropriate for the protection of offerees in this state. Within 5 days after the filing of the registration statement, the target company, acting through its board of directors, may petition the division to hold a hearing with respect to the take−over offer, except that the target company may not request a hearing if it has requested a hearing with respect to the take−over offer under a law of any other state similar to this chapter. The petition shall set forth the specific basis asserted under sub. (5) for denying, delaying or requiring amendment of the registration statement. Within 72 hours after the petition is filed the division shall either call a hearing or notify the target company in writing or by telephone or telegraph why a hearing was not called. If a hearing is called by the division and the target company subsequently requests a hearing with respect to the take-over offer under a law of another state similar to this chapter the division shall dismiss any hearing proceedings under this chapter. If a hearing is called, the offer is not effective until registered by order of the division, except that the division may issue an exemption order permitting a conditional take-over offer under sub. (1) to commence.

(5) Any hearing called by the division under this section shall be held within 20 days of the date of filing of the registration statement under sub. (1), and any determination made following the hearing shall be made within 30 days after the filing, unless extended by order of the division for the convenience of the parties or for the protection of offerees in this state, but an extension may not exceed offering period limitations relating to take−over offers prescribed by the securities exchange act of 1934 or rules and regulations under that act, if the take−over offer is subject to the secu-
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552.11  Limitations on offerors. (1) No offeror may make a take−over offer involving a target company which is not made to security holders in this state on substantially the same terms as the offer is made to security holders outside this state.

(2) An offeror shall provide that any equity securities of a target company subject to s. 552.05 deposited or tendered pursuant to a registered take−over offer may be withdrawn by or on behalf of any offeree at any time within 7 days from the date the offer has become effective under this chapter and after 60 days from the date the offer has become effective under this chapter, except as the division may otherwise prescribe by rule or order for the protection of investors. In any offer permitted to commence by an exemption order under s. 552.05 (1), the offeror shall provide that any equity securities tendered or deposited pursuant to the conditional offer will be purchased by the offeree only in the event a subsequent registration of the offer occurs under this chapter.

(3) If an offeror makes a take−over offer for less than all the outstanding equity securities of any class of securities of a target company subject to s. 552.05, and if the number of securities deposited or tendered pursuant thereto within 20 days after the offer has become effective under this chapter and copies of the offer, or notice of any increase in the consideration offered, are first published or sent to security holders or by order or for the protection of investors is greater than the number the offeror has offered to accept and pay for, the securities shall be accepted proportionally, disregarding fractions, according to the number of securities deposited or tendered by each offeree.

(4) If an offeror varies the terms of a take−over offer for a target company subject to s. 552.05 before its expiration date by increasing the consideration offered to security holders, the offeror shall pay the increased consideration for all equity securities accepted, whether such securities have been accepted by the offeree before or after the variation in the terms of the offer.

Wisconsin Statutes Archive.
(5) No offeror may make a take-over offer involving a target company subject to s. 552.05, or acquire any equity securities of the target company pursuant to the offer, at any time when an administrative or injunctive proceeding has been brought by the division against the offeror for violation of this chapter that has not been finally determined.

(6) No offeror may acquire, remove or exercise control, directly or indirectly, over any assets located in this state of a target company subject to s. 552.05 unless the take-over offer is effective or exempt under this chapter, except as permitted by order of the division.

History: 1971 c. 300; 1979 c. 110 s. 60 (12); 1981 c. 16; 1983 a. 200; 1995 a. 27.

552.13 Administration, rules and orders. (1) This chapter shall be administered by the division, which may exercise all powers granted to the division under ch. 551 which are not inconsistent with this chapter.

(2) The division may adopt rules necessary to carry out the purposes of this chapter, including rules defining fraudulent or deceptive practices and other terms used in this chapter.

(3) The division may by rule or order exempt from any provisions of this chapter take-over offers that the division determines are not made for the purpose or do not have the effect of changing or influencing the control of a target company or where compliance with this chapter is not necessary for the protection of offerees in this state, and may exempt any person from the filing of statements under this chapter.

(4) The division may by order direct any person to file any statement provided for in this chapter if it appears that such person is required to file such statement and is delinquent in the filing of such statement.

History: 1971 c. 300; 1981 c. 16 ss. 13, 18; 1995 a. 27.

Cross Reference: See also ss. DFI−Sec 24.01 and 24.02, Wis. adm. code.

552.15 Fees and expenses. (1) The division shall charge a filing fee of $100 for a registration statement filed by an offeror and $100 for a request for hearing filed by a target company.

(2) The expenses reasonably attributable to any hearing held under this chapter shall be charged ratably to the offeror and the target company.

(3) The expenses reasonably attributable to the examination of solicitation materials shall be charged to the person filing them, but the expenses so charged shall not exceed such maximum amounts as the division by rule prescribes.

History: 1971 c. 300; 1981 c. 16; 1995 a. 27.

Cross Reference: See also s. DFI−Sec 27.01, Wis. adm. code.

552.17 Injunctions. Whenever it appears that any person, including a controlling person of an offeror or target company, has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter, the division may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter, or may refer the matter to the attorney general or the district attorney of the appropriate county.

Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, may order rescission of any sales or purchases of securities determined to be unlawful under this chapter or any rule or order under this chapter or may grant other appropriate relief. The court may not require the division to post a bond.

History: 1971 c. 300; 1981 c. 16; 1995 a. 27.

552.19 Criminal penalties. (1) Any person, including a controlling person of an offeror or target company, who willfully violates this chapter or any rule under this chapter, or any order of which the person has notice, is guilty of a Class H felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of the offenses does not bar prosecution or conviction for any other offense.

NOTE: Sub. (1) is shown as amended eff. 2−1−03 by 2001 Wis. Act 109. Prior to 2−1−03 it reads:

(1) Any person, including a controlling person of an offeror or target company, who willfully violates this chapter or any rule under this chapter, or any order of which the person has notice, is guilty of a Class H felony. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any one of the offenses does not bar prosecution or conviction for any other offense.

(2) The division may refer such evidence as is available concerning violations of this chapter or of any rule or order under this chapter to the attorney general or the district attorney of the appropriate county who may, with or without any reference, institute the appropriate criminal proceedings under this chapter. If referred to a district attorney, the district attorney shall, within 90 days, file with the division a statement concerning any action taken or, if no action has been taken, the reasons therefor.

(3) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.


552.21 Civil liabilities. (1) Any offeror who purchases a security in connection with a take−over offer not in compliance with this chapter or by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, is liable to any person who materially aids in the act or transaction constituting the violation, and every broker−dealer or agent who materially aids in the act or transaction constituting the violation, is liable jointly or severally with and to the same extent as such person, unless the person liable under this subsection proves that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts on which the violation was based.

(2) Every person who directly or indirectly controls a person liable under sub. (1), every partner, principal executive officer or director of such person, every person occupying a similar status or performing similar functions, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker−dealer or agent who materially aids in the act or transaction constituting the violation, is also liable jointly or severally with and to the same extent as such person, unless the person liable under this subsection proves that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts on which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(3) No action may be maintained under this section unless commenced before the expiration of 3 years after the act or transaction constituting the violation, but the time specified for commencing such action shall be extended by reason of any fact and for the time specified in ss. 893.13 and 893.16 to 893.23.

(4) The rights and remedies under this chapter are in addition to any other rights or remedies that may exist at law or in equity.

History: 1971 c. 300; 1979 c. 323 s. 33; 1981 c. 16; 1983 a. 216.

552.23 Application of chapter. (1) If the target company is an insurance company subject to regulation by the commissioner of insurance, a banking corporation subject to regulation by the department of banking, a savings bank or savings and loan association subject to regulation by the division of savings institutions, or a company subject to regulation by the public service commission, the department of transportation or the office of the commissioner of railroads, the division of securities shall promptly furnish a copy of the registration statement filed under this chapter to the regulatory agency having supervision of the target company. Any hearing under this chapter involving any such target company shall be held jointly with the regulatory agency having supervision, and any determination following the hearing shall be made jointly with that regulatory agency.

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(2) If the target company is a public utility, public utility holding company, national banking association, bank holding company; a bank, trust company, savings bank or savings and loan association organized under the laws of any state and subject to regulation with respect to the issuance or guarantee of its securities by a governmental unit of that state; or a federal savings and loan association; and the take-over of any such company or association is subject to approval by order of a federal agency, this chapter shall not apply.

(3) This chapter shall not apply to any offer involving a class vote by stockholders of the target company, pursuant to its articles of incorporation or the applicable corporation statute, on a merger, consolidation or sale of corporate assets in consideration of the issuance of securities of another corporation, or sale of its securities in exchange for cash or securities of another corporation.


Cross Reference: See also s. DFI−Sec 28.01, Wis. adm. code.

552.25 Application of securities law. All of the provisions of ch. 551 which are not in conflict with this chapter shall apply to any take−over offer involving a target company in this state.

History: 1971 c. 300.