

ACT 56

S.B. NO. 959

A Bill for an Act Relating to Take-Over Bid Disclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 417E-1, Hawaii Revised Statutes, is amended by amending the definition of "take-over bid" to read:

- (7) "Take-over bid" means an offer, other than an exempt offer, made by an offeror directly or through an agent by advertisement or any other written or oral communication to offerees to purchase such number of shares or other units of any class of equity security of the offeree company that, together with the offeror's presently-owned shares or other units, will in the aggregate exceed ten per cent of the outstanding shares or other units of such class of equity security."

SECTION 2. Section 417E-1, Hawaii Revised Statutes, is amended by amending the definition of "exempt offer" to read:

- "(8) "Exempt offer" means with respect to any class of equity securities of the offeree company (a) an isolated offer to purchase shares from individual stockholders and not made to stockholders generally, (b) an offer made by corporation to purchase (i) its own shares or (ii) shares of a subsidiary at least fifty-one per cent of the voting stock of

which is directly or indirectly owned beneficially by the parent corporation, (c) an offer to acquire shares of a corporation with less than one hundred shareholders, and (d) an offer to acquire shares of a corporation with less than \$1,000,000 in assets.”

SECTION 3. Section 417E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read:

“(10) “Offeror’s presently owned shares or other units” means the aggregate number of shares or other units of an offeree company (a) beneficially owned, and (b) subject to a right of acquisition, directly or indirectly, on the date of a take-over bid, by (i) the offeror, and (ii) each associate of the offeror.”

SECTION 4. Section 417E-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

“(c) An application for registration of a take-over bid shall contain the following information and such other information as the commissioner prescribes:

- (1) The name, nationality, address and business experience of the offeror and each associate of the offeror, and the name and address of the offeree company;
- (2) The terms and conditions of the take-over bid, which shall include the applicable provisions of section 417E-2, and a statement of the aggregate consideration the offeror may become bound to pay;
- (3) The source and amount of the funds or other consideration used or to be used in making the take-over bid, and if any part of such funds or consideration is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of making such bid, a description of the transaction and the names of the parties thereto;
- (4) Any plans to sell or mortgage any assets of the offeree company to finance the take-over bid;
- (5) Any plans or proposals that the offeror may have to liquidate the offeree company, to sell its assets to or merge it with any other person, or to make any other material change in its business or corporate structure;
- (6) The number of shares for which the take-over bid is made which are owned directly or indirectly by the offeror and each associate of the offeror;
- (7) Any information as to any contracts, arrangements, or understandings with any person with respect to any securities of the offeree company, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties 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, and giving the details thereof;

- (8) Complete information on the organization of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of such business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, and the approximate amount of any material interest, direct or indirect, of any of the directors or officers in any material transaction during the past three years, or in any proposed material transactions to which the offeror or any of its subsidiaries was or is to be a party;
- (9) Material information concerning the identity and background of any offeror who is not a corporation, including his material business activities and affiliations during the past three years and a description of any pending legal or administrative proceedings in which the offeror is a party;
- (10) A statement as to whether any filing with respect to the take-over bid has been made pursuant to the laws of the United States or of any other State or territory thereof, and if so, a true copy of each such filing shall accompany the application."

SECTION 5. Section 417E-3, Hawaii Revised Statutes, is amended by amending subsection (e) to read:

"(e) At the time of filing the application for registration as prescribed in this section, the applicant shall pay to the commissioner a fee of one-tenth of one percent of the aggregate consideration which the offeror is bound to pay for the equity securities for which a take-over bid is proposed to be made, but not less than \$200 nor more than \$1,000."

SECTION 6. Section 417E-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read:

"(c) No suit shall be maintained to enforce any liability created under this section unless brought within two years after the transaction upon which it is based; provided that if any person liable by reason of subsection (a) or (b) makes a written offer, before suit is brought, to return the shares taken up pursuant to the take-over bid, together with all dividends received thereon, upon the tender of the consideration received from the offeror, no offeree shall maintain a suit under this section who shall have refused or failed to accept such offer within ninety days of its receipt."

SECTION 7. Section 417E-12, Hawaii Revised Statutes, is amended to read:

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“Sec. 417E-12 Appeals to circuit court, first circuit; time; bonds; costs; decree; further appeal. An appeal may be taken by any aggrieved person from any final order of the commissioner to the circuit court of the first circuit in the manner provided in chapter 91. The appellant shall execute a bond in the penal sum of \$1,000 to the State, with sufficient surety, to be approved by the commissioner or the court, conditioned upon the faithful prosecution of the appeal to final judgment, and the payment of all such costs as shall be adjudged against the appellant. The review on appeal shall be conducted by the court without a jury, and, except as otherwise provided in section 91-14, shall be confined to the record. An appeal may be taken from the judgment of the circuit court to the supreme court.”

SECTION 8. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 9. This Act shall take effect upon its approval.

(Approved May 7, 1975.)

*Edited accordingly.