THE CRITICAL FACTS

1. The Amendment Will Increase, Not Decrease, Shareholder Values.

The opponents claim that the amendment will decrease shareholder values. They are wrong. It will increase such values.

The problem addressed by the amendment arises from a 1969 enactment under which a 51% stockholder is able to force out the 49% minority and assume complete ownership of a corporation. Corporate raiders in recent years learned how to use this legal quirk to coerce stockholders into selling at lower-than-fair prices.

This is how it works:

Raiders are attracted to corporations whose asset value is greater than its aggregate market value. Such disparity usually occurs because of factors wholly unrelated to the corporation itself -- budget deficits, oil embargoes, decline of the dollar, etc.. The question is, who is to reap

most of the benefits from this disparity -- the raider or the stockholders?

Assume a corporation whose stock sells for $60 whose assets are worth $100. The raider offers $70 per share, telling the stockholders that those who don't tender may be forced out for even less. Market professionals -- the arbitrageurs, the investment bankers, the quick-buck artists -- rush to tender, even though they may know the true facts. $70 is better than $60, and who knows what those left behind will have to take. If the raider succeeds in getting 51%, he freezes out the rest and now he has the $100 of assets in his pocket. It is this ability to freeze out the minority that coerces the stockholders and gives the raider his unfair advantage.

The amendment removes this coercion by restricting the ability of raiders to force out minority stockholders who are usually the small, widely-spread long-term investors in the corporation, not the quick-buck Wall Street professionals.

Professor Donald G. Margotta, Professor of Finance at Northeastern University, has studied the effect of the adoption of the New Jersey takeover statute -- a more restrictive statute than the one proposed here -- on the stock prices of New Jersey corporations during the period from January 23, 1986, when the legislation was introduced, to April 1, 1987 when the act had been in effect for approximately 8

months. Margotta's study examined five critical dates in the history of the legislation and determined that there were no statistically significant effects on the stock prices of the affected companies. The study concluded:

> The New Jersey legislation had no effect on stock prices of companies incorporated in New Jersey.

Professor Margotta did a similar study of the Ohio anti-takeover laws -- again, statutes far more "anti"-takeover than the proposed Delaware legislation -- and concluded that neither of two successive enactments significantly affected the long-term shareholders of Ohio corporations. Professor Margotta's study notes -- with respect to the Ohio, New Jersey and New York takeover statutes -- that while there do appear to be small drops in stock prices around the date of passage, they are generally statistically insignificant and are followed by rebounding stock prices.

2. The Amendment Will Not Stop Tender Offers.

There will still be companies worth $100 whose stock because of market conditions is selling for $60, and there will still be astute businessmen who see an opportunity for profit. But without the ability to use the coercive threat of freeze out, that businessman will have to offer more to get a majority interest from stockholders who are no longer under coercive pressure to sell, and he will have to share the benefits of his deal with those who do not tender.

Instead of paying $70, the acquirer may have to pay $80 or more to take over, and the additional money will

flow to stockholders, not the raider and the quick-buck Wall Street professionals.

3. Pensions Are Not Threatened By The Amendment.

The claim that this legislation will reduce pension benefits is scandalous and without foundation. Even if the legislation did have some effect on stock value -- which is unlikely -- the amount of a retiree's pension benefits is established by an individual plan, in most cases years before his retirement. Those benefits are required by federal law to be funded in trust funds not subject to the claims of the employer's creditors. Employers are obligated to fund promised pension benefits by yearly contributions in prescribed minimum amounts as set forth in a federal law known as ERISA (Employment Retirement Income Security Act). ERISA requires that the sufficiency of this funding be monitored by independent actuaries, so that if the value of the common stock segment of a pension fund drops, the employer has to make up any shortfall by increased contributions, so that the plan remains actuarially sound. And the payment of pension plan benefits are unconditionally guaranteed by a federal corporation which receives annual contributions from employers, the Pension Benefit Guarantee Corporation. As a result of all this, pension benefits are not affected by day-to-day swings in the market for common stocks (which make up only a part of most pension fund portfolios) since they are guaranteed under the law. In fact, the legislation may actually

help employees who look forward to future pension benefits because it is intended to regulate the takeover of corporations by raiders who eliminate jobs by selling corporate assets and frequently dip into overfunded pension plans to repay their acquisition debt.

4. A 90-Year Tradition Is In Jeopardy.

For nearly 90 years, the General Assembly has relied upon the expertise of the Delaware Corporate Bar and its own independent review in matters affecting the General Corporation Law. This practice has served both Delaware and the nation well. Our corporation statute is generally recognized as the most even-handed corporation law of any state. The voluntary incorporation here of so many national corporations has made them subject to that law, to the great benefit of Delaware's revenue base. The opponents would have us reject this tradition.

Crediting the expertise of the Delaware Corporate Bar is said by them to be a surrender to "special interests." This is another distortion. A committee of lawyers who in their respective private practices represent all interests in the corporate community, including several specializing in speaking for small stockholders, worked for 5 months to draft this proposal. The Committee's final vote was 14-1. The vote of the Corporation Law Section of the bar as a whole was equally overwhelming and the vote of the Bar Association's Executive Committee recommending adoption was unanimous.

Delaware has not always been in the forefront of the world of incorporations. In the early years of this century, New Jersey was dominant. Even the du Pont Company was originally incorporated as a New Jersey corporation. Around 1910, New Jersey legislators stopped looking to its corporate bar for guidance. New Jersey incorporations dried up. Delaware's growth in the field dates directly from that time.

Above everything else, corporations seek states of incorporation which have a consistent, knowledgeable legislative approach, not those that are subject to the changing political pressures. Up to now Delaware has supplied this approach. The defeat of this bill because of hysteria whipped up by special interest groups would raise a serious question as to our ability to continue to fulfill this role, and 90 years of valuable service to the state and the nation could go down the drain.