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SYMPOSIUM ON STATE CORPORATE ANTI-TAKEOVER LEGISLATION

ARTICLES

- Introduction 197
Randall E. Schumann

- Hostile Corporate Takeovers: History and Overview 203
Philip N. Hablutzel and David R. Selmer

This Article covers the history of corporate anti-takeover from pre-Williams Act proxy fights, through the Williams Act changes, to first and second generation state anti-takeover legislation. The Article also describes and compares anti-takeover legislation with special emphasis on the Indiana statute and the new Delaware statute.

- Control Share Statutes 237
Fred Axley, Roberta Blum Stein and Andrew McCune

This Article gives an overview of the different types of anti-takeover legislation, paying particular attention to control share statutes. The Article follows the development of control share statutes and the surrounding litigation in Missouri, Hawaii, Ohio and Indiana. The Article also points to questions that remain unanswered by the CTS decision, and operational problems with current control share statutes.

- The Dynamics of State Protectionism: A Short Critique of the
CTS Decision 259
Thomas J. Bamonte

This Article argues that while political forces make protectionist anti-takeover legislation "inevitable," the judiciary, prior to the CTS decision, had used the Commerce Clause and other theories to correct any imbalances by upholding the overriding national interest in the preservation of open national markets. The Article concludes that Congress should take affirmative steps to preempt protectionist state legislation, and in the interim, the CTS decision should be read narrowly.

In Defense of State Takeover Laws	273
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This Article argues that an economic efficiency model of corporate takeover fails to take into account a number of important, and often-times local concerns. The Article further argues that there are a number of deficiencies and inadequacies in the current federal legislation. These factors support the conclusion in this Article that state anti-takeover legislation has an important role in the area of corporate acquisition and its regulation.

What is Wrong With Takeover Legislation	293
George C. Hook	

This Article explores the different types of takeover legislation, both state and federal, and outlines the problems and difficulties of each type. The Article also takes a short look at the Model State Control Share Act, and concludes that the Model Act does not accomplish what it set out to do.

The Model State Control Share Act: The Best State Takeover Law Alternative	329
Evan M. Kjellenberg	

This Article briefly looks at the different types of takeover legislation, including the new Delaware statute and the Indiana statute. The Article then presents the Model State Control Share Act and argues that the Model Act is the best alternative available. The Article further provides a breakdown of the major provisions of the Model Act which differ from the Indiana statute and thereby make the Model Act superior.

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This Comment looks at the difficult issues surrounding living wills, and how courts or legislatures will treat cases where no living will exists. The Comment focuses on a series of New Jersey cases, and concludes with a suggested comprehensive statute which would cover loopholes left open by the current Illinois statutory scheme. The Comment is followed by two appendices which set out the text of the original Illinois Living Will Act and the 1988 changes to the Illinois Living Will Act.

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This Comment explores the fraudulent scheme or device exception to the general rule in Illinois prohibiting a tort action for promissory fraud. The Comment advocates the adoption in Illinois of the "total facts test" set out in Zaborowski v. Hoffman Rosner Corp. which would allow for recovery of punitive damages, but only when the "scheme" consists of more than a single misrepresentation.

**Lender Liability Under a Workout Agreement: A View Towards
a More Balanced Approach 505**

This Comment discusses the modern trend of workout agreements and the particular difficulties these agreements have given rise to. The Comment discusses the inadequacies of the traditional theories used in lender liability settings, and advocates the imposition of a fiduciary relationship in workout agreements where the lender is given control of the operation of the debtor's business.

CASENOTES

The "Soft" Existing Legal Protection of Software and the Preemption of State Shrink-Wrap License Enforcement Acts 531

This Note presents an overview of the existing legal means of protecting proprietary interests in computer software that are perceived as inadequate by the software industry. An analysis of Vault v. Quaid follows, and this Note concludes that current state-enacted shrink-wrap license enforcement acts that would supplement the existing legal means of protecting software from unauthorized copying are preempted by the federal Copyright Act, and thus software developers are left to rely on the remaining, albeit inadequate, means of protection.