

# AN ACT

To amend sections 1701.01, 1701.11, 1701.71, 1704.01, and 1704.05 of the Revised Code to provide exceptions to the applicability of the Control Share Acquisition Act, to require board approval for Act opt-out amendments of a corporation's regulations or articles of incorporation, and to apply a three-year look-back period to ownership of shares for purposes of determining applicability of certain shareholder transaction laws.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1701.01, 1701.11, 1701.71, 1704.01, and 1704.05 of the Revised Code be amended to read as follows:

Sec. 1701.01. As used in sections 1701.01 to 1701.98 of the Revised Code, unless the context otherwise requires:

(A) "Corporation" or "domestic corporation" means a corporation for profit formed under the laws of this state.

(B) "Foreign corporation" means a corporation for profit formed under the laws of another state, and "foreign entity" means an entity formed under the laws of another state.

(C) "State" means the United States; any state, territory, insular possession, or other political subdivision of the United States, including the District of Columbia; any foreign country or nation; and any province, territory, or other political subdivision of such foreign country or nation.

(D) "Articles" includes original articles of incorporation, certificates of reorganization, amended articles, and amendments to any of these, and, in the case of a corporation created before September 1, 1851, the special charter and any amendments to it made by special act of the general assembly or pursuant to general law.

(E) "Incorporator" means a person who signed the original articles of incorporation.

(F) "Shareholder" means a person whose name appears on the books of the corporation as the owner of shares of the corporation. Unless the articles,

the regulations adopted by the shareholders, the regulations adopted by the directors pursuant to division (A)(1) of section 1701.10 of the Revised Code, or the contract of subscription otherwise provides, "shareholder" includes a subscriber to shares, whether the subscription is received by the incorporators or pursuant to authorization by the directors, and such shares shall be deemed to be outstanding shares.

(G) "Person" includes, without limitation, a natural person, a corporation, whether nonprofit or for profit, a partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

(H) The location of the "principal office" of a corporation is the place named as the principal office in its articles.

(I) The "express terms" of shares of a class are the statements expressed in the articles with respect to such shares.

(J) Shares of a class are "junior" to shares of another class when any of their dividend or distribution rights are subordinate to, or dependent or contingent upon, any right of, or dividend on, or distribution to, shares of such other class.

(K) "Treasury shares" means shares belonging to the corporation and not retired that have been either issued and thereafter acquired by the corporation or paid as a dividend or distribution in shares of the corporation on treasury shares of the same class; such shares shall be deemed to be issued, but they shall not be considered as an asset or a liability of the corporation, or as outstanding for dividend or distribution, quorum, voting, or other purposes, except, when authorized by the directors, for dividends or distributions in authorized but unissued shares of the corporation of the same class.

(L) To "retire" a share means to restore it to the status of an authorized but unissued share.

(M) "Redemption price of shares" means the amount required by the articles to be paid on redemption of shares.

(N) "Liquidation price" means the amount or portion of assets required by the articles to be distributed to the holders of shares of any class upon dissolution, liquidation, merger, or consolidation of the corporation, or upon sale of all or substantially all of its assets.

(O) "Insolvent" means that the corporation is unable to pay its obligations as they become due in the usual course of its affairs.

(P) "Parent corporation" or "parent" means a domestic or foreign corporation that owns and holds of record shares of another corporation, domestic or foreign, entitling the holder of the shares at the time to exercise

a majority of the voting power in the election of the directors of the other corporation without regard to voting power that may thereafter exist upon a default, failure, or other contingency; "subsidiary corporation" or "subsidiary" means a domestic or foreign corporation of which another corporation, domestic or foreign, is the parent.

(Q) "Combination" means a transaction, other than a merger or consolidation, wherein either of the following applies:

(1) Voting shares of a domestic corporation are issued or transferred in consideration in whole or in part for the transfer to itself or to one or more of its subsidiaries, domestic or foreign, of all or substantially all the assets of one or more corporations, domestic or foreign, with or without good will or the assumption of liabilities;

(2) Voting shares of a foreign parent corporation are issued or transferred in consideration in whole or in part for the transfer of such assets to one or more of its domestic subsidiaries.

"Transferee corporation" in a combination means the corporation, domestic or foreign, to which the assets are transferred, and "transferor corporation" in a combination means the corporation, domestic or foreign, transferring such assets and to which, or to the shareholders of which, the voting shares of the domestic or foreign corporation are issued or transferred.

(R) "Majority share acquisition" means the acquisition of shares of a corporation, domestic or foreign, entitling the holder of the shares to exercise a majority of the voting power in the election of directors of such corporation without regard to voting power that may thereafter exist upon a default, failure, or other contingency, by either of the following:

(1) A domestic corporation in consideration in whole or in part, for the issuance or transfer of its voting shares;

(2) A domestic or foreign subsidiary in consideration in whole or in part for the issuance or transfer of voting shares of its domestic parent.

(S) "Acquiring corporation" in a combination means the domestic corporation whose voting shares are issued or transferred by it or its subsidiary or subsidiaries to the transferor corporation or corporations or the shareholders of the transferor corporation or corporations; and "acquiring corporation" in a majority share acquisition means the domestic corporation whose voting shares are issued or transferred by it or its subsidiary in consideration for shares of a domestic or foreign corporation entitling the holder of the shares to exercise a majority of the voting power in the election of directors of such corporation.

(T) When used in connection with a combination or a majority share

acquisition, "voting shares" means shares of a corporation, domestic or foreign, entitling the holder of the shares to vote at the time in the election of directors of such corporation without regard to voting power which may thereafter exist upon a default, failure, or other contingency.

(U) "An emergency" exists when the governor, or any other person lawfully exercising the power and discharging the duties of the office of governor, proclaims that an attack on the United States or any nuclear, atomic, or other disaster has caused an emergency for corporations, and such an emergency shall continue until terminated by proclamation of the governor or any other person lawfully exercising the powers and discharging the duties of the office of governor.

(V) "Constituent corporation" means an existing corporation merging into or into which is being merged one or more other entities in a merger or an existing corporation being consolidated with one or more other entities into a new entity in a consolidation, whether any of the entities is domestic or foreign, and "constituent entity" means any entity merging into or into which is being merged one or more other entities in a merger, or an existing entity being consolidated with one or more other entities into a new entity in a consolidation, whether any of the entities is domestic or foreign.

(W) "Surviving corporation" means the constituent domestic or foreign corporation that is specified as the corporation into which one or more other constituent entities are to be or have been merged, and "surviving entity" means the constituent domestic or foreign entity that is specified as the entity into which one or more other constituent entities are to be or have been merged.

(X) "Close corporation agreement" means an agreement that satisfies the three requirements of division (A) of section 1701.591 of the Revised Code.

(Y) "Issuing public corporation" means a domestic corporation with fifty or more shareholders that has its principal place of business, its principal executive offices, assets having substantial value, or a substantial percentage of its assets within this state, and as to which no valid close corporation agreement exists under division (H) of section 1701.591 of the Revised Code.

(Z)(1) "Control share acquisition" means the acquisition, directly or indirectly, by any person of shares of an issuing public corporation that, when added to all other shares of the issuing public corporation in respect of which the person may exercise or direct the exercise of voting power as provided in this division, would entitle the person, immediately after the acquisition, directly or indirectly, alone or with others, to exercise or direct

the exercise of the voting power of the issuing public corporation in the election of directors within any of the following ranges of such voting power:

- (a) One-fifth or more but less than one-third of such voting power;
- (b) One-third or more but less than a majority of such voting power;
- (c) A majority or more of such voting power.

A bank, broker, nominee, trustee, or other person that acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code shall, however, be deemed to have voting power only of shares in respect of which such person would be able, without further instructions from others, to exercise or direct the exercise of votes on a proposed control share acquisition at a meeting of shareholders called under section 1701.831 of the Revised Code.

(2) The acquisition by any person of any shares of an issuing public corporation does not constitute a control share acquisition for the purpose of section 1701.831 of the Revised Code if the acquisition was or is consummated in, results from, or is the consequence of any of the following circumstances:

- (a) Prior to November 19, 1982;
- (b) Pursuant to a contract existing prior to November 19, 1982;
- (c) By bequest or inheritance, by operation of law upon the death of an individual, or by any other transfer without valuable consideration, including a gift, that is made in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code;
- (d) Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code;
- (e) Pursuant to a merger or consolidation adopted, or a combination or majority share acquisition authorized, by vote of the shareholders of the issuing public corporation in compliance with section 1701.78, 1701.781, 1701.79, 1701.791, or 1701.83 of the Revised Code, or pursuant to a merger adopted in compliance with section 1701.802 of the Revised Code;
- (f) The person's being entitled, immediately thereafter, to exercise or direct the exercise of voting power of the issuing public corporation in the election of directors within the same range theretofore attained by that person either in compliance with the provisions of section 1701.831 of the Revised Code or as a result solely of the issuing public corporation's purchase of shares issued by it;
- (g) The person's being engaged in business as an underwriter of

securities who acquires the shares directly from the issuing public corporation or an affiliate or associate of the issuing public corporation through its participation in good faith in a firm commitment underwriting registered under the "Securities Act of 1933," 15 U.S.C. 77a et seq., and not for the purpose of circumventing section 1701.831 of the Revised Code.

The acquisition by any person of shares of an issuing public corporation in a manner described under division (Z)(2) of this section shall be deemed a control share acquisition authorized pursuant to section 1701.831 of the Revised Code within the range of voting power under division (Z)(1)(a), (b), or (c) of this section that such person is entitled to exercise after the acquisition, provided, in the case of an acquisition in a manner described under division (Z)(2)(c) or (d) of this section, the transferor of shares to such person had previously obtained any authorization of shareholders required under section 1701.831 of the Revised Code in connection with the transferor's acquisition of shares of the issuing public corporation.

(3) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing section 1701.831 of the Revised Code from any person whose control share acquisition previously had been authorized by shareholders in compliance with section 1701.831 of the Revised Code, or from any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition but for division (Z)(2) or (3) of this section, does not constitute a control share acquisition for the purpose of section 1701.831 of the Revised Code unless such acquisition entitles the person making the acquisition, directly or indirectly, alone or with others, to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of voting power authorized pursuant to section 1701.831 of the Revised Code, or deemed to be so authorized under division (Z)(2) of this section.

(AA) "Acquiring person" means any person who has delivered an acquiring person statement to an issuing public corporation pursuant to section 1701.831 of the Revised Code.

(BB) "Acquiring person statement" means a written statement that complies with division (B) of section 1701.831 of the Revised Code.

(CC)(1) "Interested shares" means the shares of an issuing public corporation in respect of which any of the following persons may exercise or direct the exercise of the voting power of the corporation in the election of directors:

- (a) An acquiring person;
- (b) Any officer of the issuing public corporation elected or appointed by

the directors of the issuing public corporation;

(c) Any employee of the issuing public corporation who is also a director of such corporation;

(d) Any person that acquires such shares for valuable consideration during the period beginning with the date of the first public disclosure of a proposal for, or expression of interest in, a control share acquisition of the issuing public corporation; a transaction pursuant to section 1701.76, 1701.78, 1701.781, 1701.79, 1701.791, 1701.83, or 1701.86 of the Revised Code that involves the issuing public corporation or its assets; or any action that would directly or indirectly result in a change in control of the issuing public corporation or its assets, and ending on the record date established by the directors pursuant to section 1701.45 and division (D) of section 1701.831 of the Revised Code, if either of the following applies:

(i) The aggregate consideration paid or given by the person who acquired the shares, and any other persons acting in concert with the person, for all such shares exceeds two hundred fifty thousand dollars;

(ii) The number of shares acquired by the person who acquired the shares, and any other persons acting in concert with the person, exceeds one-half of one per cent of the outstanding shares of the corporation entitled to vote in the election of directors.

(e) Any person that transfers such shares for valuable consideration after the record date described in division (CC)(1)(d) of this section as to shares so transferred, if accompanied by the voting power in the form of a blank proxy, an agreement to vote as instructed by the transferee, or otherwise.

(2) If any part of this division is held to be illegal or invalid in application, the illegality or invalidity does not affect any legal and valid application thereof or any other provision or application of this division or section 1701.831 of the Revised Code that can be given effect without the invalid or illegal provision, and the parts and applications of this division are severable.

(DD) "Certificated security" and "uncertificated security" have the same meanings as in section 1308.01 of the Revised Code.

(EE) "Entity" means any of the following:

(1) A for profit corporation existing under the laws of this state or any other state;

(2) Any of the following organizations existing under the laws of this state, the United States, or any other state:

(a) A business trust or association;

(b) A real estate investment trust;

(c) A common law trust;

(d) An unincorporated business or for profit organization, including a general or limited partnership;

(e) A limited liability company;

(f) A nonprofit corporation.

Sec. 1701.11. (A)(1) Regulations for the government of a corporation, the conduct of its affairs, and the management of its property, consistent with law and the articles, may be adopted, amended, or repealed in any of the following ways:

(a) Within ninety days after the corporation is formed, by the directors in accordance with division (A)(1) of section 1701.10 of the Revised Code;

(b) By the shareholders at a meeting held for that purpose, by the affirmative vote of the holders of shares entitling them to exercise a majority of the voting power of the corporation on the proposal, or if the articles or regulations that have been adopted so provide, by the affirmative vote of the holders entitling them to exercise a greater proportion than a majority of the voting power of the corporation on the proposal;

(c) Without a meeting, by the written consent of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal, or if the articles or regulations that have been adopted so provide or permit, by the written consent of the holders of shares entitling them to exercise a greater or lesser proportion but not less than a majority of the voting power of the corporation on the proposal;

(d) If and to the extent that the articles or regulations so provide or permit and unless a provision of the Revised Code reserves such authority to shareholders, by the directors, provided that no provision or permission in the articles or regulations may divest shareholders of the power, or limit the shareholders' power, to adopt, amend, or repeal regulations.

(2) Any amendment of regulations and any amended or new regulations adopted by shareholders of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code that would change or eliminate the classification of directors shall be adopted only by the shareholders at a meeting held for that purpose, by the affirmative vote of holders of shares entitling them to exercise the voting power of the corporation that is required for shareholders at a meeting under division (A)(1)(b) of this section, and also by the affirmative vote of the holders of a majority of disinterested shares voted on the proposal determined as specified in division (C)(9) of section 1704.01 of the Revised Code.

(3) Any amendment of regulations and any amended or new regulations adopted by shareholders of an issuing public corporation that would provide that section 1701.831 of the Revised Code does not apply to control share

acquisitions of shares of the issuing public corporation shall be adopted:

(a) Upon the recommendation by the affirmative vote of a majority of the authorized number of directors of the issuing public corporation in favor of such amendment or new regulation; and

(b) By the shareholders at a meeting held for that purpose, by the affirmative vote of holders of shares entitling them to exercise the voting power of the corporation that is required for shareholders at a meeting under division (A)(1)(b) of this section.

(B) Without limiting the generality of the authority described in division (A) of this section, the regulations may include provisions with respect to all of the following:

(1) The place, if any, and time for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of shareholders;

(2) The taking of a record of shareholders or the temporary closing of books against transfers of shares;

(3) The number, classification, manner of fixing or changing the number, qualifications, term of office, and compensation or manner of fixing compensation, of directors;

(4) The place, if any, and time for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of the directors;

(5) The appointment of an executive and other committees of the directors, and their authority;

(6) The titles, qualifications, duties, term of office, compensation or manner of fixing compensation, and the removal, of officers;

(7) The terms on which new certificates for shares may be issued in the place of lost, stolen, or destroyed certificates;

(8) The manner in which and conditions upon which a certificated security, and the conditions upon which an uncertificated security, and the shares represented by a certificated or uncertificated security, may be transferred, restrictions on the right to transfer the shares, and reservations of liens on the shares;

(9)(a) Restrictions on the transfer and the right to transfer shares of either of the following:

(i) An issuing public corporation to any person in a control share acquisition;

(ii) A corporation with fifty or more shareholders to any person in an acquisition that would be a control share acquisition if the corporation were an issuing public corporation.

(b) The restrictions on the transfer and the right to transfer shares described in division (B)(9)(a)(i) and (ii) of this section may include requirements and procedures for consent to an acquisition of the shares by directors based on a determination by the directors of the best interests of the corporation and its shareholders, consent to an acquisition of the shares by shareholders, and reasonable sanctions for a violation of those requirements, including the right of the corporation to refuse to transfer, to redeem, or to deny voting or other shareholder rights appurtenant to shares acquired in an acquisition of the shares.

(10) Defining, limiting, or regulating the exercise of the authority of the corporation, the directors, or the officers;

(11) Defining, limiting, or regulating the exercise of the authority of the shareholders; provided, that any amendment of the regulations that would change or eliminate any such provision shall be adopted only by the shareholders.

(C) The shareholders of a corporation may adopt and may authorize the directors to adopt, either before or during an emergency, as that term is defined in division (U) of section 1701.01 of the Revised Code, emergency regulations that shall be operative only during an emergency. The emergency regulations may include any provisions that are authorized to be included in regulations by divisions (A) and (B) of this section. In addition, unless expressly prohibited by the articles or the regulations, the emergency regulations may make any provision, notwithstanding any different provisions in this chapter and notwithstanding any different provisions in the articles or the regulations that are not expressly stated to be operative during an emergency, that may be practical or necessary with respect to the following:

(1) The place, if any, and time for holding, the manner of and authority for calling, giving notice of, and conducting, and the requirements of a quorum for, meetings of the directors;

(2) The creation and appointment of an executive and other committees of the directors and the delegation of authority to the committees by the board;

(3) The creation, existence, and filling of vacancies, including temporary vacancies, in the office of director;

(4) The selection, by appointment, election, or otherwise, of officers and other persons to serve as directors for a meeting of the board in the absence from the meeting of one or more of the directors;

(5) The creation, existence, and filling of vacancies, including temporary vacancies, in any office;

(6) The order of rank and the succession to the duties and authority of officers.

(D)(1) Unless the corporation complies with division (D)(2) of this section, if the regulations are amended or new regulations are adopted other than by the shareholders at a meeting held for that purpose, the secretary of the corporation shall send a copy of the amendment or the new regulations by mail, overnight delivery service, or any other means of communication authorized by the shareholder to whom a copy of the amendment or new regulations is sent, to each shareholder of record as of the date of the adoption of the amendment or the new regulations.

(2) Any corporation that files periodic reports with the United States securities and exchange commission pursuant to section 13 of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78m, as amended, or section 15(d) of the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78o(d), as amended, may satisfy the notice to shareholders of record requirement of division (D)(1) of this section by including a copy of the amendment or the new regulations in a report filed in accordance with those sections within twenty days after the adoption of the amendment or the new regulations.

(E) No person dealing with the corporation shall be charged with constructive notice of the regulations.

(F) Unless expressly prohibited by the articles or the regulations or unless otherwise provided by the emergency regulations, the following special rules shall be applicable during an emergency notwithstanding any different provision elsewhere in this chapter:

(1) Meetings of the directors may be called by any officer or director.

(2) Notice of the time and place of each meeting of the directors shall be given to such of the directors as it may be feasible to reach at the time and by the means of communication, written or oral, personal or mass, as may be practicable at the time.

(3) The director or directors present at any meeting of the directors that has been duly called and notice of which has been duly given shall constitute a quorum for the meeting, and, in the absence of one or more of the directors, the director or directors present may appoint one or more of the officers of the corporation directors for the meeting.

(4) If none of the directors attends a meeting of the directors that has been duly called and notice of which has been duly given, the officers of the corporation who are present, not exceeding three, in order of rank, shall be directors for the meeting, shall constitute a quorum for the meeting, and may appoint one or more of the other officers of the corporation directors for the

meeting.

(5) If the chief executive officer dies, is missing, or for any other reason is temporarily or permanently incapable of discharging the duties of the office, the next ranking officer who is available shall assume the duties and authority of the office of the deceased, missing, or incapacitated chief executive officer until such time as the directors otherwise order.

(6) The offices of secretary and treasurer shall be deemed to be of equal rank, and, within the same office and as between the offices of secretary and treasurer, rank shall be determined by priority in time of the first election to the office or, if two or more persons have been first elected to the office at the same time, by seniority in age.

Sec. 1701.71. (A)(1)(a) ~~Except as otherwise provided in this division~~ divisions (A)(1)(b), (c), and (d) of this section or division (A)(2) of this section, the shareholders, at a meeting held for that purpose, may adopt an amendment, including any amendment that could be adopted by the directors, by the affirmative vote of the holders of shares entitling them to exercise two-thirds of the voting power of the corporation on the proposal or, if the articles provide or permit, by the affirmative vote of a greater or lesser proportion, but not less than a majority, of such voting power, and by the affirmative vote of the holders of shares of any particular class that is required by the articles. ~~Any~~

(b) Any amendment that would change or eliminate the classification of directors of an issuing public corporation whose directors are classified pursuant to section 1701.57 of the Revised Code shall be adopted by the shareholders only at a meeting expressly held for that purpose, by the affirmative votes required under this division (A)(1)(a) of this section, and also by the affirmative vote of the holders of at least a majority of disinterested shares voted on the proposal determined as specified in division (C)(9) of section 1704.01 of the Revised Code. If

(c) Any amendment that would provide that section 1701.831 of the Revised Code does not apply to control share acquisitions of shares of an issuing public corporation shall be adopted:

(i) Upon the recommendation by the affirmative vote of a majority of the authorized number of directors of the issuing public corporation in favor of such amendment; and

(ii) By the shareholders only at a meeting expressly held for the purpose, by the affirmative votes required under division (A)(1)(a) of this section.

(d) If, at the time an amendment to eliminate cumulative voting rights permitted by division (B)(10) of section 1701.69 of the Revised Code is

acted upon by the shareholders, a corporation does not have issued and outstanding shares that are listed on a national securities exchange or are regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association, that amendment shall not be adopted if the votes of a sufficient number of shares are cast against the amendment that, if cumulatively voted at an election of all the directors, or all the directors of a particular class, as the case may be, would at the time the amendment is acted upon by the shareholders be sufficient to elect at least one director.

(2) Whenever under division (B) of this section the holders of shares of any particular class are entitled to vote as a class on the adoption of an amendment, the amendment, in order to be adopted, must receive the affirmative vote of the holders of at least two-thirds of the shares of that class or, if the articles provide or permit, a greater or lesser proportion, but not less than a majority, of the shares of that class. If the proposed amendment would authorize any particular corporate action that, under any applicable provision of law or under the existing articles, could be authorized only by or pursuant to a specified vote of shareholders, the amendment, in order to be adopted, must receive the affirmative vote so specified.

(B) Regardless of limitations or restrictions in the articles on the voting rights of the shares of any class, the holders of shares of a particular class, and in the cases specified in divisions (B)(6), (7), and (8) of this section the holders of shares of every class, shall be entitled to vote as a class on the adoption of an amendment that does any of the following:

(1) Increases or decreases the par value of the issued shares of the particular class, except in the case of an amendment to the articles adopted by the directors pursuant to division (B)(10) of section 1701.70 of the Revised Code;

(2) Changes issued shares of the particular class, whether with or without par value, into a lesser number of shares of the same class or into the same or a different number of shares of any other class, with or without par value, previously or then authorized;

(3) Changes the express terms, or adds express terms, of the shares of the particular class in any manner substantially prejudicial to the holders of the shares;

(4) Changes the express terms of issued shares of any class senior to the particular class in any manner substantially prejudicial to the holders of shares of the particular class;

(5) Authorizes shares of another class that are convertible into, or

authorizes the conversion of shares of another class into, shares of the particular class, or authorizes the directors to fix or alter conversion rights of shares of another class that are convertible into shares of the particular class; provided, however, both of the following apply:

(a) The failure to obtain the shareholders' approval only prevents the conversion of the shares until the shareholders' approval is obtained and does not otherwise affect the authorization or any other express terms of the shares;

(b) The articles may provide that no vote of the holders of common shares, as a class, is required in connection with the authorization of shares of any class that are convertible into common shares.

(6) Provides, in the case of an amendment described in division (B)(1) or (2) of this section, that the stated capital of the corporation shall be reduced or eliminated as a result of the amendment, or provides, in the case of an amendment described in division (B)(5) of this section, that the stated capital of the corporation shall be reduced or eliminated upon the exercise of such conversion rights, provided that any reduction or elimination is consistent with section 1701.30 of the Revised Code;

(7) Changes substantially the purposes of the corporation, or provides that a subsequent amendment to the articles may be adopted that changes substantially the purposes of the corporation;

(8) Changes a corporation into a nonprofit corporation.

(C) An amendment that changes a corporation into a nonprofit corporation shall contain a statement of purposes proper in the case of a nonprofit corporation and a statement that, after the effective date of the amendment, the corporation shall be subject to the provisions of the Revised Code relating to nonprofit corporations. In the case of a corporation formed on or after June 9, 1927, the amendment also shall provide for the cancellation of all outstanding shares and the terms and considerations, if any, for the cancellation. In the case of a corporation formed prior to June 9, 1927, the amendment may provide for the cancellation of outstanding shares, but if it does not so provide, the amendment shall contain a provision forbidding the payment of dividends or distributions on any shares after the effective date of the amendment.

Sec. 1704.01. As used in this chapter, unless the context otherwise requires:

(A) "Corporation," "domestic corporation," "foreign corporation," "state," "articles," "shareholder," "person," "principal office," "express terms," "treasury shares," "parent corporation," "parent," "subsidiary corporation," "subsidiary," "combination," "transferee corporation,"

"majority share acquisition," "acquiring corporation," "voting shares" when used in connection with a combination or majority share acquisition, "constituent corporation," "surviving corporation," "close corporation agreement," and "issuing public corporation" have the same meanings as in section 1701.01 of the Revised Code.

(B) "Chapter 1704. transaction" means any of the following:

(1) A merger, consolidation, combination, or majority share acquisition between or involving an issuing public corporation or any subsidiary of an issuing public corporation and any of the following:

(a) An interested shareholder;

(b) A person, partnership, corporation, or other entity, however organized, whether or not it is an interested shareholder, that is, or after the merger, consolidation, combination, or majority share acquisition would be, an affiliate or associate of an interested shareholder.

(2)(a) Subject to the exception in division (B)(2)(b) of this section, a purchase, lease, sale, distribution, dividend, exchange, mortgage, pledge, transfer, or other disposition of assets, directly or indirectly owned or controlled by the issuing public corporation, by, to, with, or for the benefit of an interested shareholder or an affiliate or associate of an interested shareholder in one or more transactions, if, in any of those transactions, the assets meet any of the following conditions:

(i) The assets have an aggregate fair market value equal to at least five per cent of the aggregate fair market value of all the assets, determined on a consolidated basis, of the issuing public corporation;

(ii) The assets have an aggregate fair market value equal to at least five per cent of the aggregate fair market value of all the outstanding shares of the issuing public corporation;

(iii) The assets represent at least ten per cent of the earning power or income of the issuing public corporation, determined on a consolidated after-tax basis and after excluding any transaction other than in the ordinary course of business.

(b) One or more transactions in the ordinary course of business of an issuing public corporation on terms no more favorable to the interested shareholder than those acceptable to third parties, as shown by contemporaneous transactions, is not a Chapter 1704. transaction under division (B)(2)(a) of this section.

(3)(a) Subject to the exception in division (B)(3)(b) of this section, a purchase, lease, sale, exchange, transfer, or other disposition of assets directly or indirectly owned or controlled by the interested shareholder or an affiliate or associate of the interested shareholder, by, to, with, or for the

benefit of the issuing public corporation in one or more transactions, if, in any of those transactions, the assets meet any of the conditions set forth in division (B)(2)(a)(i), (ii), or (iii) of this section.

(b) One or more transactions in the ordinary course of business of an issuing public corporation on terms no more favorable to the interested shareholder than those acceptable to third parties, as shown by contemporaneous transactions, is not a Chapter 1704. transaction under division (B)(3)(a) of this section.

(4) The issuance or transfer to an interested shareholder or an associate or affiliate of an interested shareholder of any shares, or of any rights to acquire shares, of the issuing public corporation or a subsidiary of the issuing public corporation by the issuing public corporation or a subsidiary of the issuing public corporation, in one or more transactions, if the shares, or the rights, have an aggregate fair market value equal to at least five per cent of the aggregate fair market value of all the outstanding shares of the issuing public corporation and if the shares, or the rights, are not issued or transferred pursuant to the exercise of warrants, rights, or options to purchase that have been issued, or pursuant to a dividend paid or a distribution made, proportionately to all shareholders of the issuing public corporation.

(5) The adoption of a plan or proposal for the dissolution, winding up of the affairs, or liquidation of the issuing public corporation that is proposed by, on behalf of, or pursuant to a written or unwritten agreement, arrangement, or understanding with an interested shareholder or an affiliate or associate of an interested shareholder.

(6) Any of the following, if the direct or indirect effect is to increase the proportionate share of the outstanding shares of the issuing public corporation or a subsidiary of the issuing public corporation beneficially owned by an interested shareholder or an affiliate or associate of an interested shareholder, unless the increase is the result of immaterial changes due to fractional share adjustments:

(a) A reclassification of securities, including a share split, a share dividend or other distribution of shares, or a reverse share split;

(b) A recapitalization of the issuing public corporation;

(c) A merger, consolidation, combination, or majority share acquisition between or involving the issuing public corporation and a subsidiary of the issuing public corporation;

(d) Any other transaction, whether or not with, into, or involving the interested shareholder, that is proposed by, on behalf of, or pursuant to a written or unwritten agreement, arrangement, or understanding with the

interested shareholder or an affiliate or associate of the interested shareholder.

(7) Receipt by an interested shareholder or an affiliate or associate of an interested shareholder of the direct or indirect benefit of a loan, advance, pension or any other employee benefit plan termination, guarantee, pledge, mortgage, security agreement, financing statement, deed of trust, or other financial assistance, or a tax credit or other tax advantage, provided by or through the issuing public corporation or any subsidiary of the issuing public corporation unless the interested shareholder receives the benefit proportionately as a holder of shares of the issuing public corporation.

(C) When used in connection with a Chapter 1704. transaction:

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or acts in concert with, a specified person.

(2) "Announcement date" means the date of the first public announcement of a definitive proposal for a Chapter 1704. transaction.

(3) "Associate" of a person means any of the following:

(a) A corporation, partnership, or other entity, however organized, of which the person is an officer, director, or partner or is the beneficial owner of shares entitling that person to exercise at least ten per cent of the voting power in the election of the directors or other governing body of that corporation, partnership, or other entity;

(b) A trust or other estate, including any employee stock ownership or benefit plan, however designated, in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar fiduciary capacity;

(c) A relative or spouse of the person, or a relative of the spouse of the person, who has the same principal residence as the person.

(4) "Beneficial owner" of shares means a person who, with respect to particular shares, meets any of the following conditions:

(a) The person directly or indirectly, alone or with others, including affiliates or associates of that person, beneficially owns the shares;

(b) The person directly or indirectly, alone or with others, including affiliates or associates of that person, has the right, whether exercisable immediately or only after the passage of time, conditionally, unconditionally, or otherwise, to acquire the shares pursuant to a written or unwritten agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants, calls, options, or otherwise;

(c) The person directly or indirectly, alone or with others, including affiliates or associates of that person, has the right to vote or direct the

voting of the shares pursuant to a written or unwritten agreement, arrangement, or understanding;

(d) The person has a written or unwritten agreement, arrangement, or understanding with another person who is directly or indirectly a beneficial owner, or whose affiliates or associates are direct or indirect beneficial owners, of the shares, if the agreement, arrangement, or understanding is for the purpose of the first person's or the other person's acquiring, holding, disposing of, voting, or directing the voting of the shares to or for the benefit of the first person. A bank, broker, nominee, trustee, or other person who acquires shares for the benefit of others in the ordinary course of business in good faith and not for the purpose of circumventing the provisions of this chapter shall, however, be deemed to be the beneficial owner only of shares in respect of which that person, without further instruction from others, holds voting power.

(5) "Consummation date" means the date on which consummation of a Chapter 1704. transaction occurs.

(6) "Control," "controlled by," or "under common control with" refers to the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the exercise of or the ability to exercise voting power, by contract, or otherwise, except that "control" of a corporation is not established for purposes of this division if a person, in good faith and not for the purpose of circumventing the provisions of this chapter, holds voting power as an agent, custodian, bank, broker, nominee, or trustee for one or more beneficial owners who do not individually or as a group have control of the corporation.

(7) "Exchange Act" means the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C.A. 78a-78jj, as amended, and any successor or replacement legislation and amendments to the successor or replacement legislation.

(8) "Interested shareholder," with respect to an issuing public corporation, means a person other than the issuing public corporation, a subsidiary of that issuing public corporation, any employee stock ownership or benefit plan of the issuing public corporation or a subsidiary of that issuing public corporation, or any trustee or fiduciary with respect to any such plan acting in such capacity who ~~is~~ meets either of the following criteria:

(a) Is the beneficial owner of a sufficient number of shares of the issuing public corporation that, when added to all other shares of the issuing public corporation in respect of which that person may exercise or direct the exercise of voting power, would entitle that person, directly or indirectly,

alone or with others, including affiliates and associates of that person, to exercise or direct the exercise of ten per cent of the voting power of the issuing public corporation in the election of directors after taking into account all of that person's beneficially owned shares that are not currently outstanding;

(b) At any time within the three-year period immediately prior to the date on which it is sought to be determined whether the person is an interested shareholder, was the beneficial owner of a sufficient number of shares of the issuing public corporation that, when added to all other shares of the issuing public corporation in respect of which that person may have exercised or directed the exercise of voting power at the time it beneficially owned such shares, entitled that person, directly or indirectly, alone or with others, including affiliates and associates of that person, to exercise or direct the exercise of ten per cent of the voting power of the issuing public corporation in election of directors after taking into account all of the person's beneficially owned shares that were not, at the time it beneficially owned such shares, currently outstanding.

(9) "Disinterested shares" means voting shares beneficially owned by any person not an interested shareholder or an affiliate or associate of an interested shareholder.

(10) "Share acquisition date," with respect to any person, means the date on which that person first becomes an interested shareholder of an issuing public corporation.

(11) "Voting shares" means shares of a domestic or foreign corporation, entitling the holder of the shares to vote at the time in the election of directors of the corporation without regard to the voting power represented by shares that thereafter may exist upon a default, failure, or other contingency.

Sec. 1704.05. This chapter does not apply to any of the following:

(A) A Chapter 1704. transaction if on the interested shareholder's share acquisition date, the issuing public corporation, other than a bank as defined in section 1101.01 of the Revised Code, did not have a class of voting shares registered or traded on a national securities exchange or registered under section 12(g) of the Exchange Act or was not required to file periodic reports and information pursuant to section 15(d) of the Exchange Act.

(B)(1) A Chapter 1704. transaction if the interested shareholder was an interested shareholder on the date immediately preceding the effective date of this section; except that this chapter shall apply, and the share acquisition date shall be the date, when the interested shareholder increases its beneficial ownership of voting power of the issuing public corporation to a

proportion in excess of the proportion of voting power that the interested shareholder beneficially owned on the date immediately preceding the effective date of this section unless the interested shareholder's subsequent increase in beneficial ownership results from or is the consequence of any of the following circumstances:

(a) The increase is by bequest or inheritance, by operation of law upon the death of any individual, or by any other transfer without valuable consideration, including a gift, that is made in good faith and not for the purpose of circumventing the provisions of this chapter;

(b) The increase is pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing the provisions of this chapter;

(c) The increase is the result solely of the purchase by the issuing public corporation of shares issued by it;

(d) The increase is in accordance with approval by the directors of the issuing public corporation before the increase occurred.

(2) If this chapter would have applied to the increase of beneficial ownership described in division (B)(1) of this section but for the application of an exception described in division (B)(1)(a), (b), (c), or (d) of this section, this chapter shall apply if the interested shareholder's subsequent increase in its proportion of beneficial ownership is not the result or a consequence of any of the circumstances described in division (B)(1)(a), (b), (c), or (d) of this section.

(C) A Chapter 1704. transaction if the interested shareholder was an interested shareholder on the date immediately preceding the effective date of this section and inadvertently increases its beneficial ownership of voting power of the issuing public corporation to a proportion in excess of the proportion of voting power that the interested shareholder beneficially owned on the date immediately preceding the effective date of this section, provided that, as soon as practicable, the interested shareholder divests itself of beneficial ownership of a sufficient number of voting shares of the issuing public corporation that the interested shareholder is no longer the beneficial owner of a proportion of voting power in excess of the proportion of voting power that the interested shareholder beneficially owned on the date immediately preceding the effective date of this section.

(D)(1) A Chapter 1704. transaction if a person becomes an interested shareholder through an acquisition of voting shares that resulted from or was the consequence of any of the circumstances described in division (B)(1)(a), (b), (c), or (d) of this section, except that this chapter shall apply, and the share acquisition date shall be the date, when the interested shareholder

increases its beneficial ownership of voting power of the issuing public corporation to a proportion in excess of the proportion of voting power that the interested shareholder beneficially owned on the date on which it became an interested shareholder unless the interested shareholder's subsequent increase in beneficial ownership results from or is a consequence of any of the circumstances described in division (B)(1)(a), (b), (c), or (d) of this section.

(2) If this chapter would have applied to the acquisition of voting shares described in division (D)(1) of this section but for the application of an exception described in division (B)(1)(a), (b), (c), or (d) of this section, this chapter shall apply if the interested shareholder's subsequent increase in its proportion of beneficial ownership is not the result or a consequence of any of the circumstances described in division (B)(1)(a), (b), (c), or (d) of this section.

(E) A Chapter 1704. transaction if a person became an interested shareholder inadvertently, provided that, as soon as practicable, the person divests itself of beneficial ownership of a sufficient number of voting shares of the issuing public corporation that the person no longer is an interested shareholder.

(F)(1) Subject to division (F)(2) of this section, a Chapter 1704. transaction if the original articles of the issuing public corporation state, or if the articles of the issuing public corporation have been amended in compliance with the provisions of section 1701.70, 1701.71, or 1701.72 of the Revised Code to state, by specific reference to this chapter, that this chapter does not apply to the corporation and if any of the following applies:

(a) The corporation had fewer than fifty shareholders or was not an issuing public corporation when the statement initially was set forth in the articles.

(b) No shareholder of the corporation qualified as an interested shareholder when the statement was initially set forth in the articles.

(c) The statement was contained in an amendment to the articles and the amendment was approved, upon the recommendation by the affirmative vote of a majority of the authorized number of directors of the corporation in favor of such amendment, by the holders of two-thirds of all outstanding shares of the corporation entitled to vote in the election of directors and by the holders of two-thirds of all outstanding disinterested shares of the acquiring public corporation entitled to vote in the election of directors.

(2) If, however, a Chapter 1704. transaction would have been prohibited but for the adoption of an amendment to the articles in compliance with division (F)(1)(b) or (c) of this section, the issuing public corporation shall

not engage in a Chapter 1704. transaction for twelve months following the adoption of the amendment; in addition, if this chapter would have applied to a person who became an interested shareholder prior to the adoption of such an amendment, this chapter shall continue to apply to a Chapter 1704. transaction between the issuing public corporation and the interested shareholder as if the amendment had not been adopted.

(G) A Chapter 1704. transaction between an acquiring public corporation and any employee benefit plan, or any trust under any employee benefit plan, established by the issuing public corporation, and any distribution or payment made by the employee benefit plan or trust to any beneficiary.

(H) A Chapter 1704. transaction that involves any acquisition of securities of an issuing public corporation pursuant to an employee stock option plan, an employee stock purchase plan, an employee stock bonus plan, an employee stock ownership plan, or any similar plan designed to benefit one or more employees established by the issuing public corporation, provided the acquisition of the securities and the establishment of, any amendment to, and the administration of the plan are in good faith and not for the purpose of circumventing the provisions of this chapter.

(I) A Chapter 1704. transaction that involves compensation directly or indirectly received by a director, officer, employee, agent, or independent contractor of an issuing public corporation in return for services rendered or to be rendered to the issuing public corporation, provided the payment of the compensation and the services rendered, or to be rendered, are in good faith and not for the purpose of circumventing the provisions of this chapter.

(J) A Chapter 1704. transaction that involves any loan of money or property of an issuing public corporation to a director, officer, employee, agent, or independent contractor of the issuing public corporation, provided the loan is designed to encourage the rendering of needed, valuable, and efficient services to the issuing public corporation and provided the loan is made and the services are rendered, or are to be rendered, in good faith and not for the purpose of circumventing the provisions of this chapter.

(K) A Chapter 1704. transaction in which an issuing public corporation makes a loan of money or other property to, guarantees any loan of money or other property to, or guarantees any obligation of, an employee stock ownership plan, as defined in Section 4975(e)(7) of the "Internal Revenue Code of 1986," 68A Stat. 3, 26 U.S.C.A. 1, as amended, of the issuing public corporation.

SECTION 2. That existing sections 1701.01, 1701.11, 1701.71, 1704.01,

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and 1704.05 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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130th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_