

Chapter 6 Control Shares Acquisitions Act

61-6-1 Short title.

This chapter is known as the "Control Shares Acquisitions Act."

Enacted by Chapter 2, 1987 Special Session 1

Enacted by Chapter 2, 1987 Special Session 1

61-6-2 "Control shares" defined.

- (1) As used in this chapter, "control shares" means shares that except for this chapter would have voting power with respect to shares of an issuing public corporation that, when added to all other shares of the issuing public corporation owned by a person or in respect to which that person may exercise or direct the exercise of voting power, would entitle that person, immediately after acquisition of the shares (directly or indirectly, alone or as a part of a group), to exercise or direct the exercise of the voting power, including voting power pursuant to a revocable proxy, of the issuing public corporation in the election of directors within any of the following ranges of voting power:
 - (a) 1/5 or more but less than 1/3 of all voting power;
 - (b) 1/3 or more but less than a majority of all voting power; or
 - (c) a majority or more of all voting power.
- (2) Shares entitling a person, immediately after acquisition of the shares (directly or indirectly, including pursuant to a revocable proxy or as part of a group), to exercise or direct the exercise of less than 1/5 of all voting power of the issuing public corporation in the election of directors shall not be control shares, even if acquired in a control share acquisition. Shares cease to be control shares upon their transfer to a person who is not an affiliate of the transferor or an affiliate or member of a group with which the applicable control share acquisition was made, except to the extent the shares become control shares as a result of their acquisition by the transferee.

Amended by Chapter 106, 2000 General Session

61-6-3 Control share acquisition" defined.

- (1)
 - (a) As used in this chapter, "control share acquisition" means:
 - (i) the acquisition, directly or indirectly, by any person of ownership of issued and outstanding control shares; or
 - (ii) the acquisition of power to direct the exercise of voting power with respect to issued and outstanding control shares, including the acquisition of voting power pursuant to a revocable proxy except as provided in Subsection (1)(b).
 - (b) "Control share acquisition" does not mean the acquisition of voting power pursuant to a revocable proxy if the revocable proxy is solicited by the issuing public corporation or the board of directors of the issuing public corporation in connection with shareholders' meetings or actions of the issuing public corporation.

- (2) For purposes of this section, shares acquired within 90 days or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.
- (3) For purposes of this section, a person who acquires shares in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this chapter has voting power only of shares in respect of which that person would be able to exercise or direct the exercise of votes without further instruction from others.
- (4) The acquisition of any shares of an issuing public corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:
 - (a) before May 29, 1987;
 - (b) pursuant to a contract existing before May 29, 1987;
 - (c) pursuant to the laws of descent and distribution;
 - (d) pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this chapter;
 - (e) pursuant to a direct issue by or transfer from the issuing public corporation of its own shares, except that shares issued or transferred upon the conversion of a convertible security or upon exercising an option, warrant, or other right to purchase shares constitutes a control share acquisition unless the convertible security, option, warrant, or other right was acquired directly from the issuing public corporation by the acquiring person; or
 - (f) pursuant to a merger or plan of share exchange effected in compliance with Title 16, Chapter 10a, Part 11, Merger and Share Exchange, or Title 16, Chapter 10a, Part 12, Sale of Property, if the issuing public corporation is a party to the agreement of merger or plan of share exchange.
- (5)
 - (a) The acquisition of shares of an issuing public corporation in good faith and not for the purpose of circumventing this chapter does not constitute a control share acquisition if the acquisition of shares is by or from:
 - (i) any person whose voting rights had previously been authorized by shareholders in compliance with this chapter; or
 - (ii) any person whose previous acquisition of shares of an issuing public corporation would have constituted a control share acquisition were it not for Subsection (4).
 - (b) Subsection (5)(a) does not apply if the acquisition entitles any person (directly or indirectly, alone or as part of a group) to exercise or direct the exercise of voting power of the corporation in the election of directors in excess of the range of the voting power otherwise authorized.

Amended by Chapter 106, 2000 General Session

61-6-4 "Interested shares" defined.

- (1) As used in this chapter, "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, on or after the applicable record date, in the election of directors:
 - (a) an acquiring person or member of a group with respect to a control share acquisition;
 - (b) any officer of the issuing public corporation; or
 - (c) any employee of the issuing public corporation who is also a director of the corporation.
- (2) "Interested shares" does not mean the shares of an issuing public corporation in respect of which any of the persons described in Subsections (1)(a) through (c) may exercise or direct the

exercise of the voting power of the corporation in the election of directors if the voting power is based solely on a revocable proxy given in response to a proxy solicitation made in accordance with Section 14 of the Securities Exchange Act of 1934, as amended.

Amended by Chapter 268, 1995 General Session

61-6-5 Issuing public corporation defined.

- (1) As used in this chapter, "issuing public corporation" means a corporation, other than a depository institution, that is organized under the laws of this state and that has:
 - (a) 100 or more shareholders;
 - (b) its principal place of business, its principal office, or substantial assets within the state; and
 - (c)
 - (i) more than 10% of its shareholders resident in the state;
 - (ii) more than 10% of its shares owned by Utah residents; or
 - (iii) 10,000 shareholders resident in the state.
- (2) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.
- (3) Shares held by banks or other depository institutions (except as trustee or guardian), brokers, or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this section.
- (4) As used in this chapter, "depository institution" means a depository institution or a depository institution holding company as defined in Section 7-1-103.
- (5) A nonprofit corporation as defined in Section 16-6a-102 is not considered to be an issuing public corporation for purposes of this chapter.

Amended by Chapter 315, 2007 General Session

61-6-6 Optional exemption from this chapter.

A corporation's articles of incorporation or bylaws may provide that this chapter does not apply to control share acquisitions of shares of the corporation. To be effective, any such provision must have been adopted prior to the control share acquisition. Absent such a provision, control shares of an issuing public corporation acquired in a control share acquisition have only such voting rights as are conferred by Section 61-6-10.

Enacted by Chapter 2, 1987 Special Session 1

Enacted by Chapter 2, 1987 Special Session 1

61-6-7 Statement by acquiring person.

Any person who proposes to make or has made a control share acquisition may deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement shall set forth all of the following:

- (1) the identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares;
- (2) a declaration that the acquiring person statement is given pursuant to this chapter;
- (3) the number of shares of the issuing public corporation owned (directly or indirectly) by the acquiring person and each other member of the group;
- (4) the range of voting power under which the control share acquisition falls or would, if consummated, fall; and

- (5) if the control share acquisition has not taken place:
 - (a) a description in reasonable detail of the terms of the proposed control share acquisition; and
 - (b) a statement by the acquiring person supported by reasonably detailed facts that the proposed control share acquisition, if consummated, will not be contrary to law, and that the acquiring person has the financial capacity to make the proposed control share acquisition.

Enacted by Chapter 2, 1987 Special Session 1

Enacted by Chapter 2, 1987 Special Session 1

61-6-8 Special meetings to consider voting rights -- Time limits -- Annual meetings.

- (1) Upon delivery of an acquiring person statement under Section 61-6-7, an acquiring person may request a special meeting of shareholders if the acquiring person gives an undertaking to pay the corporation's expenses of the special meeting within 10 days after the date of the meeting. After receiving the request, the directors of the issuing public corporation shall call a special meeting of shareholders of the issuing public corporation for the purpose of considering the voting rights to be accorded the shares acquired or to be acquired in the control share acquisition.
- (2) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after receipt by the issuing public corporation of the request.
- (3) If no request is made, the voting rights to be accorded the shares acquired in the control share acquisition shall be presented to the next special or annual meeting of shareholders.
- (4) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting may not be held sooner than 30 days after receipt by the issuing public corporation of the acquiring person statement.

Enacted by Chapter 2, 1987 Special Session 1

Enacted by Chapter 2, 1987 Special Session 1

61-6-9 Notice of special or annual meetings to consider voting rights.

- (1) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not they are entitled to vote at the meeting.
- (2) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by the following:
 - (a) a copy of the acquiring person statement delivered to the issuing public corporation; and
 - (b) a statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control share acquisition.

Enacted by Chapter 2, 1987 Special Session 1

Enacted by Chapter 2, 1987 Special Session 1

61-6-10 Voting rights -- Approval.

- (1) Control shares acquired in a control share acquisition have the same voting rights as were accorded the shares before the control share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

- (2) To be approved under this section, the resolution shall be approved:
- (a) by each voting group entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares; and
 - (b) by each class of outstanding shares by a majority of all the holders of the outstanding shares of the class, if the proposed control share acquisition would, when fully implemented, result in any of the changes described in Section 16-10a-1004.

Amended by Chapter 277, 1992 General Session

61-6-11 Shares subject to redemption.

- (1) If authorized in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, an issuing public corporation may redeem, at fair market value, control shares acquired in a control share acquisition with respect to which no acquiring person statement has been filed with the issuing public corporation. Any such redemption shall be consummated according to the procedures adopted by the corporation and shall take place at any time within 60 days after the last acquisition of control shares by the acquiring person.
- (2) Control shares acquired in a control share acquisition are not subject to redemption after an acquiring person statement has been filed, unless the shares are not accorded full voting rights by the shareholders as provided in Section 61-6-10.

Enacted by Chapter 2, 1987 Special Session 1

Enacted by Chapter 2, 1987 Special Session 1

61-6-12 Dissenter's rights.

- (1) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control share acquisition has occurred, in the event control shares acquired in a control share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation have dissenter's rights as provided in this chapter.
- (2) As soon as practicable after such events have occurred, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that they have dissenter's rights to receive the fair value of their shares under Sections 16-10a-1301 through 16-10a-1331.
- (3) As used in this section, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control share acquisition.

Amended by Chapter 277, 1992 General Session