Article 9A.

Control Share Acquisitions.

§ 55-9A-01. Short title and definitions.

(a) The provisions of this Article shall be known and may be cited as The North Carolina Control Share Acquisition Act.

(b) In this Article:

(1) "Beneficial ownership" of shares means the sole or shared ownership of any shares or the sole or shared power to vote any shares or to direct the exercise of voting power of any shares, whether such ownership or power is direct or indirect or through any contract, arrangement, understanding, relationship or otherwise, and includes shares beneficially owned by any person acting in concert with such beneficial owner pursuant to any contract, arrangement, understanding, relationship or otherwise. Notwithstanding the foregoing, beneficial ownership does not include shares acquired in the ordinary course of business for the benefit of others in good faith and not for the purpose of circumventing this Article, unless the acquiror of such shares may exercise or direct the exercise of voting of such shares without instruction from others.

(2) "Control shares" means shares of a covered corporation that when added to all other shares of the corporation beneficially owned by a person would entitle (except for this Article) that person to voting power in the election of directors that is equal to or greater than any of the following levels of voting power:

a. One-fifth of all voting power.

b. One-third of all voting power.

c. A majority of all voting power.

(3) "Control share acquisition" means the acquisition by any person of beneficial ownership of control shares, except that the acquisition of beneficial ownership of any shares of a covered corporation does not constitute a control share acquisition if the acquisition is consummated in any of the following circumstances:

a. Before April 30, 1987.

b. Pursuant to a contract existing before April 30, 1987, with either:

(i) The covered corporation; or

(ii) A seller of such shares who owned such shares before April 30, 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 Article.

e. Pursuant to a transaction effected in compliance with applicable law, but only if the transaction is pursuant to an agreement to which the covered corporation is a party.

f. Pursuant to the sale of such shares by the covered corporation or its parent or subsidiary corporation.

g. Pursuant to a written agreement to which the covered corporation is a party that permits the purchasers of shares from the covered corporation or its parent or subsidiary corporation also to purchase in any manner within 90 days before or after the purchase from the covered corporation

or its parent or subsidiary up to the same aggregate number of shares as were sold by the covered corporation or its parent or subsidiary corporation.

h. By an employee benefit plan established by the covered corporation.

i. Before the corporation became a covered corporation.

For purposes of this definition, shares acquired within any consecutive 90-day period or shares acquired pursuant to a plan to make a control share acquisition are considered to have been acquired in the same acquisition.

(4) "Interested shares" means the shares of a covered corporation beneficially owned by any of the following persons:

a. Any person who has acquired or proposes to acquire control shares in a control share acquisition.

b. Any officer of the covered corporation.

c. Any employee of the covered corporation who is also a director of the corporation.

(5) "Covered corporation" means a corporation that:

a. Is incorporated under the laws of North Carolina and has substantial assets within North Carolina;

b. Has a class of shares registered under Section 12 of the Securities Exchange Act of 1934;

c. Has its principal place of business or principal office within North Carolina; and

d. Has either:

(i) More than ten percent (10%) of its shareholders resident in North Carolina; or

(ii) More than ten percent (10%) of its shares owned by North Carolina residents.

(6) The residence of a shareholder is presumed to be the address appearing in the records of the corporation.

(7) For purposes of calculating the percentages or numbers described in subsection (b)(5) of this section, any shares held in trust or by a nominee shall be deemed to be held by the beneficiaries of such trust or by the beneficiaries of such shares held by such nominee. (1987, c. 182, s. 1; 1989, c. 200, s. 1; c. 265, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 12.16; 2001-201, s. 16.)

§ 55-9A-02. Acquiring person statement.

Any person who has made a control share acquisition or who has made a bona fide written offer to make a control share acquisition may at the person's election deliver an acquiring person statement to the covered corporation at the covered corporation's principal office. The acquiring person statement must set forth all of the following:

(1) The identity of the acquiring person and each other beneficial owner of shares that are beneficially owned by the acquiring person.

(2) A statement that the acquiring person statement is given pursuant to this Article.

(3) The number of shares of the covered corporation beneficially owned by the acquiring person and each other beneficial owner named under subdivision (1) of this section.

(4) The level of voting power above which the control share acquisition falls or would, if consummated, fall.
(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. Representations of the acquiring person, together with a statement in reasonable detail of the facts upon which they are based, 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. (1987, c. 182, s. 1; 1989, c. 200, s. 1, c. 265, s. 1.)

§ 55-9A-03. Meeting of shareholders.

(a) If the acquiring person so requests at the time of delivery of an acquiring person statement and gives an undertaking to pay the covered corporation's expenses of a special meeting, within 10 days after delivery of such request the directors of the covered corporation shall call a special meeting of shareholders of the covered corporation for the purpose of considering the voting rights to be accorded the control shares acquired or to be acquired in the control share acquisition.

(b) Unless the acquiring person agrees in writing to another date, the special meeting of shareholders shall be held within 50 days after the receipt by the covered corporation of the request.

(c) If no request is made, the voting rights to be accorded the control shares acquired in the control share acquisition shall be considered at the next special or annual meeting of shareholders.

(d) If the acquiring person so requests in writing at the time of delivery of the acquiring person statement, the special meeting must not be held sooner than 30 days after receipt by the covered corporation of the acquiring person statement. (1987, c. 182, s. 1; 1989, c. 265, s. 1.)

§ 55-9A-04. Notice.

If a special meeting is requested pursuant to G.S. 55-9A-03, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the covered corporation. Notice of any special or annual meeting at which the voting rights of control shares are to be considered shall be given to all shareholders who are entitled to vote at the meeting and who are shareholders of record as of the record date set for the meeting, and to all holders of interested shares, and such notice must include or be accompanied by each of the following:

(1) A copy of the acquiring person statement delivered to the covered corporation pursuant to this Article.
(2) A statement by the board of directors of the covered corporation, authorized by a majority of its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to granting voting rights to the control shares acquired or proposed to be acquired in the control share acquisition.
(3) If the shareholders would have a right of redemption under G.S. 55-9A-06, a statement, displayed with reasonable prominence, describing such right and advising the shareholders that it will be available only to those who give the

written notice required by G.S. 55-9A-06(b). (1987, c. 182, s. 1; 1989, c. 200, s. 1, c. 265, s. 1.)

§ 55-9A-05. Voting rights.

(a) Control shares acquired in a control share acquisition shall not have voting rights unless such rights are granted by resolution adopted by the shareholders of the covered corporation.

(b) To be approved under this section, the resolution must be adopted by the affirmative vote of the holders of at least a majority of all the outstanding shares of the covered corporation (not including interested shares) entitled to vote for the election of directors; provided that if applicable law or an articles of incorporation or bylaw provision adopted by the shareholders before the occurrence of the control share acquisition that is the subject of the vote prescribes voting by separate classes of shares, the resolution must also be adopted by the affirmative vote of the holders of at least a majority of each such class (but excluding in any such case all interested shares); and provided further that if applicable law or an articles of incorporation or bylaw provision adopted by the shareholders before the occurrence of the control share acquisition that is the subject of the vote prescribes voting by shares that would not otherwise be entitled to vote, such shares shall be treated solely for purposes of this section as shares entitled to vote for directors (but excluding in any such case all interested shares). (1987, c. 182, s. 1; 1989, c. 265, s. 1.)

§ 55-9A-06. Right of redemption by shareholders.

(a) Unless otherwise provided in the articles of incorporation or a bylaw of the covered corporation adopted by the shareholders before a control share acquisition has occurred and subject to G.S. 55-6-40, if control shares acquired in a control share acquisition are accorded voting rights and the holders of the control shares have a majority of all voting power for the election of directors, all shareholders of the covered corporation (other than holders of control shares) have rights as prescribed in this section to have their shares redeemed by the corporation at the fair value of those shares as of the day prior to the date on which the vote was taken under G.S. 55-9A-05.

(b) If the notice of meeting at which voting rights are accorded to control shares contains the statement required by G.S. 55-9A-04(3), a shareholder will not have any right of redemption under this section unless he gives to the corporation, prior to or at the meeting of shareholders at which the voting rights to be accorded to control shares are considered, written notice that if voting rights are accorded to such shares he may ask for the redemption of his shares hereunder.

(c) As soon as practicable after control shares held by persons having a majority of all voting power for the election of directors have been accorded voting rights, the board of directors shall cause a notice to be sent to all shareholders of the corporation advising them of the facts and that if they gave the notice required by subsection (b) of this section they may have rights to have their shares redeemed at the fair value of those shares pursuant to this section.

(d) Within 30 days after the date on which a shareholder receives such notice, such shareholder may make written demand on the corporation for payment of the fair value of his shares, and after such demand, if such shareholder has complied with the notice requirement in subsection (b) of this section, the corporation shall redeem his shares at their fair value within 30 days after the date on which the corporation receives such shareholder's written demand for payment.

(e) 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. (1987, c. 182, s. 1; 1989, c. 200, s. 1, c. 265, s. 1.)

§ 55-9A-07. Severability.

If any provision or clause of this Article or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Article that can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable. (1987, c. 182, s. 1; 1989, c. 265, s. 1.)

§ 55-9A-08. Construction.

The provisions of this Article shall apply notwithstanding any provisions of Article 7 of this Chapter and in the event of any conflict between this Article and Article 7, the provisions of this Article shall control. (1989, c. 265, s. 1.)

§ 55-9A-09. Exemptions.

The provisions of this Article shall not be applicable to any corporation if, on or before September 30, 1990, or such earlier date as may be irrevocably established by resolution of the board of directors, or at any time before the corporation becomes, or after it ceases to be, a covered corporation, the board of directors adopts a bylaw stating that the provisions of this Article shall not be applicable to the corporation; or, in the case of a corporation formed after August 12, 1987, its initial articles of incorporation provide that this Article shall not be applicable to the corporation; or on or after September 1, 2000, and on or before December 31, 2000, the board of directors of a corporation to which the provisions of this Article were applicable on September 1, 2000, adopts a bylaw stating that the provisions of this Article shall not be applicable to the corporation. Neither adoption nor failure to adopt such a bylaw or provision shall constitute grounds for any cause of action against the corporation, or any officer or director of the corporation. (1987, c. 773, s. 12; 1989, c. 200, s. 1; c. 265, s. 1; 2000-140, s. 47.)