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.)