



## Ohio Revised Code Section 1704.05 Exceptions.

Effective: July 10, 2014

Legislation: Senate Bill 202 - 130th General Assembly

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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.