



Ohio Revised Code

Section 1707.043 Preventing manipulative practices.

Effective: April 11, 1990

Legislation: Senate Bill 321 - 118th General Assembly

(A) For the purpose of preventing manipulative practices by a person who makes a proposal, or publicly discloses the intention or possibility of making a proposal, to acquire control of a corporation formed under the laws of this state, any profit realized, directly or indirectly, from the disposition of any equity securities of a corporation by a person who, within eighteen months before disposition directly or indirectly, alone or in concert with others, made a proposal, or publicly disclosed the intention or possibility of making a proposal, to acquire control of the corporation, inures to and is recoverable by the corporation.

(B) No profit from the disposition of equity securities shall inure to or be recoverable by a corporation under this section if any of the following apply:

(1) The equity securities were acquired by the person disposing of them at any of the following times:

- (a) More than eighteen months before the date on which the proposal or public disclosure was made;
- (b) Before the effective date of this section;
- (c) Pursuant to a contract executed prior to the effective date of this section.

(2) The person who disposed of the equity securities proves in a court of competent jurisdiction either of the following:

- (a) At the time the proposals or public disclosures were made, the person's sole purpose in making the proposals or public disclosures was to succeed in acquiring control of the corporation and under the circumstances, including, without limitation, the person's proposed price, financing and other acquisition plans, the person's financial resources and capabilities, and all other alternatives reasonably anticipated to become available to the corporation's shareholders, there were reasonable



grounds to believe that the person would acquire control of the corporation;

(b) The person's public disclosure concerning the intention or possibility of making a proposal to acquire control of the corporation and all other potentially manipulative conduct and practices by or on his behalf were not effected with a purpose of affecting market trading and thereby increasing any profit or decreasing any loss which the person might realize, directly or indirectly, from the disposition of the equity securities and did not have a material effect upon the price or volume of market trading in the equity securities. Evidence with respect to the past practices of such person is admissible and relevant in respect to the person's intent or purpose under divisions (B)(2)(a) and (b) of this section.

(3) The aggregate amount of all profit the person realized, directly or indirectly, does not exceed two hundred fifty thousand dollars.

(C) Equity securities acquired by a person as a result of a share split, share dividend, or other similar distribution by a corporation of equity securities issued by it not involving a sale of the equity securities, is deemed to have been acquired by such person on the date on which the person acquired the equity security with respect to which the equity securities were subsequently distributed by the corporation.

(D) No profit or any portion thereof recoverable by a corporation in an action brought under section 16(b) of the federal "securities exchange act of 1934," is recoverable by the corporation under this section.

(E)(1) A corporation may commence an action to recover any profit recoverable under this section in any court of competent jurisdiction. If the corporation fails or refuses to bring the action within sixty days after written request by any holder of any equity security in the corporation or fails to diligently prosecute the action, the holder may bring the action on behalf of the corporation. If a court of competent jurisdiction enters a judgment requiring the payment of any such profits, the party who brought the action is entitled to all costs, including reasonable attorney fees, incurred in connection with the enforcement of this section.

(2) No action shall be brought by or on behalf of a corporation upon a cause of action arising under



this section at any time after two years from the date on which the disposition of equity securities occurred.

(F) This section does not apply to any corporation which 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 or to any corporation whose articles or regulations provide by specific reference to this section that this section does not apply to the corporation and its equity securities.

(G) The division of securities, pursuant to Chapter 119. of the Revised Code, may adopt reasonable rules to define terms used in this section and types of conduct or practices which the division determines are either of the following:

(1) Comprehended as within the purpose of this section as set forth in division (A) of this section and therefore subject to this section;

(2) Not comprehended as within the purpose of division (A) of this section and therefore exempt from this section.

(H) As used in this section:

(1) "Corporation" and "person" have the same meanings as in section 1701.01 of the Revised Code.

(2) "Profit from the disposition of equity securities of a corporation" means both of the following:

(a) The excess of the fair market value of the consideration directly or indirectly received or to be received from the disposition, less the usual and customary broker's commissions actually paid in connection with the disposition, over the fair market value of the consideration directly or indirectly paid for the acquisition of the equity securities, plus the usual and customary broker's commissions actually paid in connection with the acquisition;

(b) The value of any tax benefit to which a person is directly or indirectly entitled resulting from disposition of equity securities of the corporation for consideration with a value that is less than the



fair market value of the equity securities at the time of disposition.

(3) "Disposition of equity securities of a corporation" means any sale, exchange, transfer, or other disposition of any kind of the equity securities or any contract to sell, exchange, transfer, or otherwise dispose of the equity securities, to any other person, including the corporation, for valuable consideration.

(4) "Equity securities" means any of the following:

(a) Shares of any class or series of a corporation;

(b) Any securities convertible into or exercisable for shares of any class or series of a corporation, with or without additional consideration;

(c) Any warrant, right, or option to subscribe for or to purchase shares of any class or series of the corporation, or any securities convertible into shares of any class or series;

(d) Any interest, direct or indirect, in any equity securities.

(5) "Publicly disclosed," "publicly discloses," and "public disclosure" includes, but is not limited to, any disclosure, whether or not required by law, that becomes public and was made or caused to be made by a person:

(a) With the intent or expectation that the disclosure become public; or

(b) To another person where the person making or causing to be made the disclosure, knows or reasonably should know, that the person who receives the disclosure is not under an obligation to refrain from making the disclosure, directly or indirectly, to the public and such person does make the disclosure, directly or indirectly, to the public.

(6) "To acquire control of the corporation" means the acquisition by any person, directly or indirectly, either alone or in concert with another person, of the power, whether or not exercised, to direct or cause the direction of the management and policies of the corporation, whether through the



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ownership of voting shares, by contract or otherwise, unless any proposal, or public disclosure of the intention or possibility of making a proposal, to acquire control of the corporation made by such person affirmatively states that the person does not intend, either alone or in concert with another person, to exercise control of the corporation and such person does not, directly or indirectly, exercise control of the corporation prior to his disposition of any equity securities of the corporation.