

**SUBSTITUTE FOR  
HOUSE BILL NO. 4764**

A bill to amend 1972 PA 284, entitled  
"Business corporation act,"  
by amending section 791 (MCL 450.1791), as amended by 1993 PA 91,  
and by adding section 798a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 791. (1) As used in this chapter, "control share  
2 acquisition" means the acquisition, directly or indirectly, by  
3 any person of ownership of, or the power to direct the exercise  
4 of voting power with respect to, issued and outstanding control  
5 shares.  
6       (2) For purposes of this section, shares or the power to  
7 direct the exercise of voting power acquired within a 90-day  
8 period, or shares or the power to direct the exercise of voting  
9 power acquired pursuant to a plan to make a control share  
10 acquisition, are considered to have been acquired in the same

1 acquisition.

2 (3) For purposes of this section, a person who acquires  
3 shares in the ordinary course of business for the benefit of  
4 others in good faith and not for the purpose of circumventing  
5 this chapter has voting power only of shares in respect of which  
6 that person would be able to exercise or direct the exercise of  
7 votes without further instruction from others.

8 (4) For purposes of this section, the acquisition of any  
9 shares of an issuing public corporation does not constitute a  
10 control share acquisition if the acquisition is consummated in  
11 any of the following circumstances:

12 (a) Before January 1, 1988.

13 (b) Pursuant to a contract existing before January 1, 1988.

14 (c) By gift, testamentary disposition, marital settlement,  
15 descent and distribution, or otherwise without consideration.

16 (d) Pursuant to the satisfaction of a pledge or other  
17 security interest created in good faith and not for the purpose  
18 of circumventing this chapter.

19 (e) Pursuant to a merger or share exchange effected in  
20 compliance with sections 701 to 735 if the issuing public  
21 corporation is a party to the agreement of merger or share  
22 exchange.

23 (f) By a governmental official acting in an official or  
24 fiduciary capacity.

25 (5) For purposes of this section, the acquisition of shares  
26 of an issuing public corporation in good faith and not for the  
27 purpose of circumventing this chapter by any person whose voting

1 rights previously had been authorized by shareholders in  
2 compliance with this chapter, or whose previous acquisition of  
3 shares of an issuing public corporation would have constituted a  
4 control share acquisition but for subsection (4), does not  
5 constitute a control share acquisition, unless the acquisition  
6 entitles a person, directly or indirectly, alone or as part of a  
7 group, to exercise or direct the exercise of voting power of the  
8 corporation in the election of directors in excess of the range  
9 of the voting power which the acquiring person was entitled to  
10 exercise or direct prior to such acquisition.

11       **(6) For purposes of this section, the formation of a group**  
12 **does not constitute a control share acquisition of shares of an**  
13 **issuing public corporation held by members of the group.**

14       **Sec. 798a. Shares without voting rights because the**  
15 **formation of a group after April 1, 1988 was deemed to be a**  
16 **control share acquisition shall have the same voting rights as**  
17 **were accorded the shares before the formation of the group.**