



Aida Montano

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 6**

123rd General Assembly  
(As Reported by H. Civil & Commercial Law)

**Reps. D. Miller, Schuler, DePiero, Opfer, Trakas, Ford, Sullivan, Gerberry, Boyd, Jones, Stapleton, O'Brien, Winkler, Mottley, Schuck, Allen, Willamowski, Jacobson, Callender, Womer Benjamin, Salerno, Peterson, Buchy**

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### **BILL SUMMARY**

- Specifies in the General Corporation Law that a proxy may be appointed by a verifiable communication authorized by the person making the appointment.
- Specifies that any transmission that creates a record capable of authentication, including electronic mail or an electronic, telephonic, or other transmission that appoints a proxy, is a sufficient verifiable communication to appoint a proxy.
- Specifically prohibits any person in purchasing securities from knowingly engaging in any act or practice that is declared illegal, defined as fraudulent, or prohibited in the Ohio Securities Law.

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### **CONTENT AND OPERATION**

#### **Appointment of proxy**

##### **Existing law**

Under the General Corporation Law, a person who is entitled to attend a shareholders' meeting, to vote at the meeting, or to execute consents, waivers, or releases may be represented or may vote at the meeting, execute consents, waivers, and releases, and exercise any other rights, by proxy or proxies appointed by a writing signed by that person. A telegram or cablegram appearing to have been transmitted by the person appointing the proxy, or a photographic, photostatic, or equivalent reproduction of a writing, appointing a proxy is a sufficient writing. (Sec. 1701.48(A) and (B).)

### **Operation of the bill**

The bill specifies that a proxy or proxies may be appointed by a writing signed by the person making the appointment (existing law) or by a verifiable communication authorized by the person making the appointment (added by the bill) (sec. 1701.48(A)). The bill makes a distinction between the following methods of appointing a proxy or proxies (sec. 1701.48(B)):

(1) A signed writing (existing law). A photographic, photostatic, facsimile transmission (added by the bill), or equivalent reproduction of a writing that is signed by a person as described in "**Existing law**," above, and that appoints a proxy is a sufficient writing to appoint a proxy.

(2) An authorized verifiable communication. Any transmission creating a record capable of authentication, including, but not limited to, a telegram or cablegram (existing law), electronic mail, or an electronic, telephonic, or other transmission (added by the bill), that appears to have been transmitted by a person as described in "**Existing law**," above, and that appoints a proxy is a sufficient verifiable communication to appoint a proxy.

The bill provides that no appointment of a proxy is valid after the expiration of 11 months after it is made unless the writing or "verifiable communication" specifies the date on which it is to expire or the length of time it is to continue in force (sec. 1701.48(C)).

### **Revocation of appointment of proxy**

Existing law authorizes the person appointing a proxy, without affecting any vote previously taken, to revoke a revocable appointment by a later appointment received by the corporation or by giving notice of revocation to the corporation in writing or in open meeting. The bill provides that notice of revocation to the corporation also may be given in a "verifiable communication." (Sec. 1701.48(D).)

### **Powers of proxy**

Existing law provides that unless the writing appointing a proxy otherwise provides (sec. 1701.48(F)):

(1) Each proxy has the power of substitution and, if three or more proxies are appointed, a majority of them or of their substitutes may appoint one or more substitutes to act for all.

(2) If more than one proxy is appointed, then (a) with respect to voting or executing consents, waivers, or releases, or objections to consents at a shareholders' meeting, a majority of the proxies who attend the meeting, or if only one attends then that one, may exercise all the voting and consenting authority at the meeting; and if one or more attend and a majority do not agree on any particular issue, each proxy so attending is entitled to exercise that authority with respect to an equal number of shares, (b) with respect to exercising any other authority, a majority may act for all.

The bill retains these powers of a proxy unless the writing or "verifiable communication" appointing a proxy otherwise provides (sec. 1701.48(F)).

### **Fraudulent acts in the purchase of securities**

#### **Existing law**

The Ohio Securities Law prohibits any person in *selling* securities from knowingly engaging in any act or practice that is declared as illegal, defined as fraudulent, or prohibited in that Law (sec. 1707.44(G)). (See **COMMENT 1**.) The Ohio Securities Law defines "fraud," "fraudulent acts," "fraudulent practices," or "fraudulent transactions" as anything recognized on or after July 22, 1929, as such in courts of law or equity; any device, scheme, or artifice to defraud or to obtain money or property by means of any false pretense, representation, or promise; any fictitious or pretended purchase or sale of securities; and any act, practice, transaction, or course of business relating to the *sale* of securities that is fraudulent or that has operated or would operate as a *fraud upon the purchaser* (sec. 1707.01(J)).

#### **Operation of the bill**

The bill applies the Ohio Securities Law's prohibitions against fraudulent and other illegal acts or practices to the *purchase* of securities. It specifically prohibits any person in *purchasing* securities from knowingly engaging in any act or practice that is declared illegal, defined as fraudulent, or prohibited in the Ohio Securities Law (sec. 1707.44(G)). The bill modifies the definition of "fraud," "fraudulent acts," "fraudulent practices," or "fraudulent transactions" in existing law by including within the meaning of those designated terms any act, practice, transaction, or course of business relating to the *purchase* of securities that is fraudulent or that has operated or would operate as a *fraud upon the seller* (sec. 1707.01(J)).

The bill defines "purchase" for purposes of the Ohio Securities Law in the following manner (sec. 1707.01(MM)(1) and (2)) (see **COMMENT 2**):

(1) It has the full meaning of "purchase" as applied by or accepted in courts of law or equity.

(2) It includes every acquisition of, or attempt to acquire, a security or an interest in a security.

(3) It includes a contract to purchase, an exchange, an attempt to purchase, an option to purchase, a solicitation of a purchase, a solicitation of an offer to sell, a subscription, or an offer to purchase, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(4) It means any act by which a purchase is made.

The bill specifies that any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase (sec. 1707.01(MM)(3)).

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## COMMENT

1. The Ohio Securities Law generally defines "sale" in the following manner (sec. 1707.01(C)(1) and (2)):

(1) It has the full meaning of "sale" as applied by or accepted in courts of law or equity.

(2) It includes every disposition, or attempt to dispose, of a security or of an interest in a security.

(3) It includes a contract to sell, an exchange, an attempt to sell, an option of sale, a solicitation of a sale, a solicitation of an offer to buy, a subscription, or an offer to sell, directly or indirectly, by agent, circular, pamphlet, advertisement, or otherwise.

(4) "Sell" means any act by which a sale is made.

Under the Ohio Securities Law, any security given with, or as a bonus on account of, any purchase of securities is conclusively presumed to constitute a part of the subject of that purchase and has been "sold." "Sale" by an owner, pledgee, or mortgagee, or by a person acting in a representative capacity, includes sale on behalf of that party by an agent, including a licensed dealer or salesman. (Sec. 1707.01(C)(5) and (6).)

2. The bill's proposed definition of "purchase" in the Securities Law is a counterpart of that Law's existing general definition of "sale" as described in COMMENT 1.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-99	p. 85
Reported, H. Civil & Commercial Law	03-09-99	p. 270

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