

Fact Sheet

H.B. 78 Modernization of the Ohio General Corporations Law [Expanding Corporate Power: Reducing Citizen Protections]

Background

H.B. 78 is proposed legislation in the Ohio General Assembly which would reduce the ability of citizens and our elected representatives to control corporate actions. Promoted in the name of mere “modernization” and “updating antiquated laws,” H.B. 78 is the first major set of changes to Ohio’s corporate laws since 1955. This sweeping bill relaxes the overall rules governing what Ohio-chartered corporations can do, at the expense of citizens, consumers and shareholders. It is a further step toward letting corporations define their own limitations and away from democratic control by the people.

The bill’s major sponsor is the Corporations Committee of the Ohio State Bar Association, made up of corporate attorneys from across the state. Many of the bill’s provisions come from the State of Delaware, which for many decades has been the safe refuge for corporations that seek to define themselves, rather than be held accountable by citizens and public officials.

By the 1930s, US judges, laws and regulatory agencies had granted expansive rights and powers to corporations. But a big problem remained for corporate directors. Still on the books were many state corporation laws, constitutional amendments and legal precedents which citizens over decades had used to control corporations. State laws and state constitutions like those in Ohio still extended to citizens and their elected officials legal rights to set criteria for corporate existence, to grant and revoke charters, to hold managers, directors and stockholders liable and accountable for their corporations’ abuses, to safeguard minority stockholders and to govern the internal structure of corporations. HB 78 is Ohio’s version of a national effort to gut these remaining laws.

Stealth Attack

HB 78 is stealth legislation. It has received no media attention statewide. And it is no wonder. Sponsors painted H.B. 78 as a “dull, straight-forward piece of legislation ... not likely to generate widespread interest.” If you weren’t a corporate attorney, you probably had no idea this legislation was being written and certainly no idea what impact it would have. It passed the Ohio House of Representatives 94-1. There had been no testimony in opposition to it until one citizen from Akron spoke against it in a Senate Committee. It is now scheduled to be voted on in the Ohio Senate next Tuesday or Wednesday.

This is a Corporate Law. Why are citizens concerned about it.

In today’s world, corporations impact virtually every aspect of our lives. Their increasing ability to govern and shape public policies necessitate that Ohio citizens and lawmakers be given a full opportunity to learn and discuss this bill’s provisions and implications.

SINCE CORPORATIONS AND THEIR ATTORNEYS ALWAYS REACT TO PROPOSED ENVIRONMENTAL LAWS, LABOR LAWS AND CONSUMER LAWS, IT’S TIME THAT WE THE PEOPLE OF OHIO AND OUR PUBLIC OFFICIALS REACT TO PROPOSED CORPORATE LAWS.

WHAT’S WRONG WITH H.B. 78?

1. HB 78 would give corporations a choice of whether they will or will not disclose their purpose(s) at the time of incorporation.

This provision violates a fundamental principle held by those who founded Ohio -- that virtually every aspect of a corporation had to be rigidly defined. The public and our elected representatives need to know what corporations intend to do -- what product or service they wish to produce or provide. What are corporate leaders afraid of? Why don’t they want to state what it is they intend to produce or provide?

2. HB 78 would provide corporations the option of holding important meetings outside Ohio.

The intention of our forebears was to keep corporations rooted in the place of their incorporation. This enabled the public and the legislature to keep a close watch over what they had chartered or created.

Permitting corporate officers to meet anywhere they want reduces public accountability. Such a law would increase the temptation for corporate leaders in the midst of a labor controversy, environmental dispute, shareholder battle to hold important meetings, including its annual meeting, in a place as far away and inconvenient as possible. It is hard to imagine how this provision increases corporate accountability. If passed, we may see many Ohio-based companies mired in controversy holding meetings in Juneau, Alaska or, given the transnational nature of many Ohio-chartered corporations, in Europe, Asia, Africa or South America.

3. HB 78 would allow the names of the founders of a new corporation to be kept secret in Ohio.

This is a serious problem since many out-of-state corporations quietly come into town, set up a dummy subsidiary, often with a name not obviously related to the parent, and commence as the "developer" to quietly negotiate for corporate welfare benefits such as tax abatements and infrastructure improvements, ink the deal with local officials, then assign all the newly-won benefits to the parent firm.

In addition, for the first 90 days after incorporating, the undisclosed incorporators get to draft very pro-director, pro-upper management bylaws and put them into effect, without any possible obstruction or opposition by even the initial shareholders! That is to say, the company is incorporated and the secret founders set up all manner of compensation plans for themselves or their families, etc., and various restrictions on how or whether shareholders can challenge corporate decision-making. Then and only then can shareholders draft and require a vote on provisions. This is rather like founding a country, dictating the constitution and forcing it on the public.

4. HB 78 would grant immunity from personal liability to a shareholder or subscriber to a corporation's shares for any debts, obligations, or liabilities of the corporation.

Under present Ohio law, if a corporate director votes for an impermissible loan, dividend payment, or other monetary gratuity for someone, he or she can be held personally liable -- meaning they have to pay it back out of their own pockets. The new law completely repeals this rather automatic liability. Directors under H.B. 78 would be "immunized" from personal liability for any such "indiscretion" so long as they prove that they subjectively believed that they weren't acting against the interests of the shareholders.

These provisions about "impermissible" expenditure recall the savings and loan crisis this country faced in the 1980's, when the taxpayers had to fork over more than \$350,000,000,000 to cover "impermissible" loans made "indiscreetly" by many corporate directors from S&L reserves.

PLEASE CONTACT YOUR STATE SENATOR [call 1-800-282-0253 for the direct number to your Senator] AND URGE HIM/HER TO VOTE AGAINST HB 78. THE ONLY VOICES WHO HAVE BEEN HEARD SO FAR HAVE BEEN CORPORATE AGENTS. THIS IS STEALTH LEGISLATION AND FURTHER THREATENS PUBLIC CONTROL OVER CORPORATIONS.

The Ohio Committee on Corporations, Law and Democracy

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