

Act No. 31
Public Act of 1989
May 24, 1989
Filed by the Secretary of State
May 24, 1989

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Reps. Bennett, Stacey, Alley, Bankes, Randall, Niederstadt, Middaugh, Profit, Wartner,
Griffin and Clack

ENROLLED HOUSE BILL No. 4548

AN ACT to amend sections 776, 778, 780, 781, and 784 of Act No. 284 of the Public Acts of 1972, entitled "An act to provide for the organization and regulation of corporations; to prescribe their duties, rights, powers, immunities and liabilities; to provide for the authorization of foreign corporations within this state; to prescribe the functions of the administrator of this act; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," as added by Act No. 115 of the Public Acts of 1984, being sections 450.1776, 450.1778, 450.1780, 450.1781, and 450.1784 of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 776, 778, 780, 781, and 784 of Act No. 284 of the Public Acts of 1972, as added by Act No. 115 of the Public Acts of 1984, being sections 450.1776, 450.1778, 450.1780, 450.1781, and 450.1784 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 776. (1) "Affiliate" or "affiliated person" means a person who directly, or indirectly through 1 or more intermediaries, controls, is controlled by, or is under common control with a specified person.

(2) "Announcement date" means the first general public announcement or the first communication generally to shareholders of the corporation, whichever is earlier, of the proposal or intention to make a proposal concerning a business combination.

(3) "Associate", when used to indicate a relationship with any person, means any 1 of the following:

(a) Any corporation or organization, other than the corporation or a subsidiary of the corporation, in which the person is an officer, director, or partner, or is, directly or indirectly, the beneficial owner of 10% or more of any class of equity securities.

(b) Any trust or other estate in which the person has a beneficial interest of 10% or more or as to which the person serves as trustee or in a similar fiduciary capacity in connection with the trust or estate.

(c) Any relative or spouse of the person, or any relative of the spouse, who has the same home as the person or who is a director or officer of the corporation or any of its affiliates.

(4) "Beneficial owner", when used with respect to any voting stock, means a person who:

(a) Individually or with any of its affiliates or associates, beneficially owns voting stock, directly or indirectly.

(b) Individually or with any of its affiliates or associates, has any 1 of the following:

(i) The right to acquire voting shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person shall not be considered the beneficial owner of voting shares which are tendered pursuant to a tender or exchange offer made by the person, or an affiliate or associate of the person, until the tendered voting shares are accepted for purchase or exchange.

(ii) The right to vote voting shares pursuant to any agreement, arrangement, or understanding. A person shall not be considered the beneficial owner of voting shares if the person's right to vote the shares pursuant to

this subparagraph arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation to 10 or more persons.

(iii) Except as provided in subparagraph (ii), any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of voting shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the voting shares.

(5) "Business combination" means any 1 or more of the following:

(a) Any merger, consolidation, or share exchange of the corporation or any subsidiary which alters the contract rights of the shares as expressly set forth in the articles of incorporation or which changes or converts, in whole or in part, the outstanding shares of the corporation with either:

(i) Any interested shareholder.

(ii) Any other corporation, whether or not itself an interested shareholder, which is, or after the merger, consolidation, or share exchange would be, an affiliate of an interested shareholder that was an interested shareholder prior to the transaction.

(b) Any sale, lease, transfer, or other disposition, except in the usual and regular course of business, in 1 transaction or a series of transactions in any 12-month period, to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, of any assets of the corporation or any subsidiary having, measured at the time the transaction or transactions are approved by the board of directors of the corporation, an aggregate book value as of the end of the corporation's most recently ended fiscal quarter of 10% or more of its net worth.

(c) The issuance or transfer by the corporation, or any subsidiary, in 1 transaction or a series of transactions, of any equity securities of the corporation or any subsidiary which have an aggregate market value of 5% or more of the total market value of the outstanding shares of the corporation to any interested shareholder or any affiliate of any interested shareholder, other than the corporation or any of its subsidiaries, except pursuant to the exercise of warrants or rights to purchase securities offered pro rata to all holders of the corporation's voting shares or any other method affording substantially proportionate treatment to the holders of voting shares.

(d) The adoption of any plan or proposal for the liquidation or dissolution of the corporation in which anything other than cash will be received by an interested shareholder or any affiliate of any interested shareholder.

(e) Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger, consolidation, or share exchange of the corporation with any of its subsidiaries which has the effect, directly or indirectly, in 1 transaction or a series of transactions, of increasing by 5% or more of the total number of outstanding shares, the proportionate amount of the outstanding shares of any class of equity securities of the corporation or any subsidiary which is directly or indirectly owned by any interested shareholder or any affiliate of any interested shareholder.

Sec. 778. (1) "Equity security" means any 1 of the following:

(a) Any stock or similar security, certificate of interest, or participation in any profit sharing agreement, voting trust certificate, or voting share.

(b) Any security convertible, with or without consideration, into an equity security, or any warrant or other security carrying any right to subscribe to or purchase an equity security.

(c) Any put, call, straddle, or other option or privilege of buying an equity security from or selling an equity security to another without being bound to do so.

(2) "Interested shareholder" means any person, other than the corporation or any subsidiary, who is either:

(a) The beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting share of the corporation.

(b) An affiliate of the corporation and at any time within the 2-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 10% or more of the voting power of the then outstanding voting share of the corporation.

(c) For the purpose of determining whether a person is an interested shareholder pursuant to subdivision (a) or (b), the number of shares of voting shares considered to be outstanding shall include all voting shares owned by the person except for those shares which may be issuable pursuant to any agreement, arrangement, or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(3) "Market value" means either of the following:

(a) With respect to shares, the highest closing sale price during the 30-day period immediately preceding the date in question of a share as listed on:

(i) The composite tape for New York stock exchange—listed securities.

(ii) If not listed pursuant to subparagraph (i), the New York stock exchange.

(iii) If not listed pursuant to subparagraph (i) or (ii), the principal United States security exchange registered under the securities exchange act of 1934, 48 Stat. 881.

(iv) If not listed pursuant to subparagraph (i), (ii), or (iii), the highest closing bid quotation during the 30-day period preceding the date in question as listed on the national association of securities dealers, inc. automated quotations system or any other system then in use.

(v) If a listing is not available pursuant to subparagraphs (i) to (iv), then, the fair market value of the shares, on the date in question, as determined in good faith by the corporation's board of directors.

(b) With respect to property other than cash or shares, the fair market value of the property on the date in question, as determined in good faith by the corporation's board of directors.

(4) "Subsidiary" means a legal entity of which a majority of the voting shares is owned, directly or indirectly, by another person.

Sec. 780. In addition to any vote otherwise required by law or the articles of the corporation, a business combination shall require an advisory statement from the board of directors and approval by an affirmative vote of both of the following:

(a) Not less than 90% of the votes of each class of stock entitled to be cast by the shareholders of the corporation.

(b) Not less than 2/3 of the votes of each class of stock entitled to be cast by the shareholders of the corporation other than voting shares beneficially owned by the interested shareholder who is, or whose affiliate is, a party to the business combination or an affiliate or associate of the interested shareholder.

Sec. 781. (1) The vote required by section 780 shall not apply to a business combination if each of the following conditions are met:

(a) The aggregate amount of the cash and the market value as of the valuation date of consideration other than cash to be received per share by holders of common stock in the business combination is at least equal to the highest of the following:

(i) The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of common stock of the same class or series acquired by the interested shareholder within the 2-year period immediately prior to the announcement date of the proposal of the business combination, or in the transaction in which the shareholder became an interested shareholder, whichever is higher.

(ii) The market value per share of common stock of the same class or series on the announcement date or on the determination date, whichever is higher.

(b) The aggregate amount of the cash and the market value as of the valuation date for consideration other than cash to be received per share by holders of shares of any class or series of outstanding stock other than common stock shall be at least equal to the highest of the following, whether or not the interested shareholder has previously acquired any shares of a particular class or series of stock:

(i) The highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of the class of stock acquired by it within the 2-year period immediately prior to the announcement date of the proposal of the business combination, or in the transaction in which it became an interested shareholder, whichever is higher.

(ii) The highest preferential amount per share to which the holders of shares of the class of stock are entitled in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the corporation.

(iii) The market value per share of the class of stock on the announcement date or on the determination date, whichever is higher.

(c) The consideration to be received by holders of any class or series of outstanding stock shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series of stock. If the interested shareholder has paid for shares of any class of stock with varying forms of consideration, the form of consideration for the class of stock shall be either cash or the form used to acquire the largest number of shares of the class or series of stock previously acquired by the interested shareholder.

(d) After the interested shareholder has become an interested shareholder and prior to the consummation of a business combination, all of the following conditions have been met:

(i) Any full periodic dividends, whether or not cumulative, on any outstanding preferred stock of the corporation shall have been declared and paid at the regular date therefor.

(ii) The annual rate of dividends paid on any class or series of stock of the corporation that is not preferred stock, except as necessary to reflect any subdivision of the stock, shall not have been reduced, and the annual

rate of dividends shall have increased as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or any similar transaction which has the effect of reducing the number of outstanding shares of the stock.

(iii) After the interested shareholder has become an interested shareholder, the interested shareholder may not have received the benefit, directly or indirectly, except proportionately as a shareholder, of any loans, advances, guarantees, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation or any of its subsidiaries, whether in anticipation of or in connection with the business combination or otherwise.

(iv) The interested shareholder did not become the beneficial owner of any additional shares of the corporation except as part of the transaction which resulted in the interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.

(v) There has been 5 years between the date of becoming an interested shareholder and the date the business combination is consummated.

(2) The provisions of subsection (1)(d)(i) and (ii) shall not apply if an interested shareholder or an affiliate or associate of the interested shareholder did not vote as a director of the corporation in a manner inconsistent with subparagraphs (i) and (ii) and the interested shareholder, within 10 days after any act or failure to act inconsistent with subparagraphs (i) and (ii), notifies the board of directors of the corporation in writing that the interested shareholder disapproves thereof and requests in good faith that the board of directors rectify the act or failure to act.

Sec. 784. (1) Unless a corporation's articles of incorporation provide otherwise, the requirements of section 780 shall not apply to any business combination of any of the following:

(a) A corporation having fewer than 100 beneficial owners of its stock.

(b) A corporation whose original articles of incorporation contain a provision or whose shareholders adopt an amendment to the articles of the corporation after the effective date of this chapter by a vote of not less than 90% of the votes of each class of stock entitled to be cast by the shareholders of the corporation and not less than 2/3 of the votes of each class of stock entitled to be cast by the shareholders of the corporation other than voting shares beneficially owned by interested shareholders of the corporation, expressly electing not to be governed by this chapter.

(c) An investment company registered under the investment company act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(2) For purposes of subsection (1)(a), all shareholders of a corporation who have executed an agreement to which the corporation is an executing party governing the purchase and sale of shares of the corporation or a voting trust agreement governing shares of the corporation shall be considered a single beneficial owner of the stock covered by the agreement.

This act is ordered to take immediate effect.

.....
Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.. ..

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Governor.

