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BILL



ANALYSIS

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Senate Bill 357 (as introduced 5-9-13)
Sponsor: Senator John Pappageorge
Committee: Banking and Financial Institutions

Date Completed: 5-16-13

CONTENT

The bill would amend Chapter 7A of the Business Corporation Act to expand the factors for determining whether a person is an interested shareholder in a corporation, for purposes of a shareholder vote on a business combination.

Chapter 7A prescribes requirements for business combinations. Generally, a business combination is a corporate merger, conversion, or consolidation, a transfer outside the normal course of business of corporate assets valued at 10% or more of the corporation's net worth, an issuance or transfer of equity securities of 5% or more of the total market value of the corporation's outstanding shares, or the adoption of plan for corporate liquidation or dissolution.

A business combination typically requires an advisory statement from the board, and approval by a vote of at least 90% of the entitled voting shares, as well as at least two-thirds of the entitled voting shares other than voting shares owned by an interested shareholder, or an affiliate, who is a party to the business combination. However, if certain conditions are met, the Act does not require a vote. The conditions are based on several factors, including share price, market value, interested shareholder interest in the corporation, and timing and duration of shareholder interest in light of the business combination.

Under Chapter 7A, an "interested shareholder" is a person who either is the beneficial owner of at least 10% of the voting power of the outstanding voting shares of a corporation, or is an affiliate of the corporation who, at any time within the preceding two-year period, was the beneficial owner of at least 10% of the voting power of the then-outstanding voting shares of the corporation at the time.

To determine if a person is an interested shareholder, the Act provides a standard to calculate voting shares. The number of a person's shares that are considered to be outstanding includes all voting shares owned by that person, except shares that are issuable.

The bill would add a second requirement for determining whether a person is an interested shareholder. Voting shares that a person acquired, either from the corporation or in a public offering by or on behalf of the corporation, would be considered outstanding or beneficially owned by that person unless the board of the corporation determined otherwise in a resolution adopted before the person acquired the shares. This provision would apply

regardless of whether a person acquired the voting shares before or after the effective date of the bill.

MCL 450.1778

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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