

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 357

A bill to amend 1972 PA 284, entitled
"Business corporation act,"
by amending section 778 (MCL 450.1778), as amended by 1993 PA 91.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

5 (b) Any security **THAT IS** convertible, with or without
6 consideration, into an equity security, or any warrant or other
7 security ~~carrying~~**THAT CARRIES** any right to subscribe to or
8 purchase an equity security.

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

(2) ~~"Interested~~ **SUBJECT TO SUBSECTION (3), "INTERESTED**
 shareholder" means any person, other than the corporation or any
 subsidiary, ~~who is either:~~ **THAT IS EITHER OF THE FOLLOWING:**

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

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

(3) ~~(c) For~~ **BOTH OF THE FOLLOWING APPLY FOR** the purpose of
 determining whether a person is an interested shareholder ~~pursuant~~
~~to subdivision (a)~~ **UNDER SUBSECTION (2) (A) or (b):** ~~the~~

(A) THE number of shares of voting shares considered to be
 outstanding ~~shall include~~ **INCLUDES** all voting shares **THAT ARE** owned
 by the person except for those shares ~~which may be~~ **THAT ARE**
 issuable ~~pursuant to~~ **UNDER** any agreement, arrangement, or
 understanding, or ~~upon~~ **ON THE** exercise of conversion rights,
 warrants or options, or otherwise.

(B) VOTING SHARES ACQUIRED BY THE PERSON FROM THE CORPORATION
OR ACQUIRED IN A PUBLIC OFFERING BY OR ON BEHALF OF THE
CORPORATION, WHETHER ACQUIRED BEFORE OR AFTER THE EFFECTIVE DATE OF
THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION, ARE NOT CONSIDERED
TO BE OUTSTANDING OR BENEFICIALLY OWNED BY THAT PERSON, UNLESS THE
CORPORATION DETERMINES OTHERWISE BY A RESOLUTION OF THE BOARD
ADOPTED BEFORE THE PERSON ACQUIRED THOSE VOTING SHARES.

1 (4) ~~(3)~~—"Market value" means either of the following:

2 (a) With respect to shares, the highest closing sale price
3 during the 30-day period immediately preceding the date in question
4 of a share ~~as~~ **THAT IS** listed on **ANY OF THE FOLLOWING:**

5 (i) The composite tape for New York stock exchange-listed
6 securities.

7 (ii) If not listed ~~pursuant to~~ **UNDER** subparagraph (i), the New
8 York stock exchange.

9 (iii) If not listed ~~pursuant to~~ **UNDER** subparagraph (i) or (ii),
10 the principal United States security exchange registered under the
11 securities exchange act of 1934, ~~48 Stat. 881-15~~ **USC 78A TO 78PP.**

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

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

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

24 (5) ~~(4)~~—"Subsidiary" means a legal entity of which a majority
25 of the voting shares ~~is~~ **ARE** owned, directly or indirectly, by
26 another person.