

Act No. 123  
Public Acts of 2013  
Approved by the Governor  
October 1, 2013  
Filed with the Secretary of State  
October 1, 2013  
EFFECTIVE DATE: October 1, 2013

**STATE OF MICHIGAN  
97TH LEGISLATURE  
REGULAR SESSION OF 2013**

Introduced by Senators Pappageorge, Nofs and Marleau

# **ENROLLED SENATE BILL No. 357**

AN ACT to amend 1972 PA 284, 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," by amending section 778 (MCL 450.1778), as amended by 1993 PA 91.

*The People of the State of Michigan enact:*

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 that is convertible, with or without consideration, into an equity security, or any warrant or other security that carries 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 person without being bound to do so.

(2) Subject to subsection (3), "interested shareholder" means any person, other than the corporation or any subsidiary, 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 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) Both of the following apply for the purpose of determining whether a person is an interested shareholder under subsection (2)(a) or (b):

(a) The number of shares of voting shares considered to be outstanding includes all voting shares that are owned by the person except for those shares that are issuable under any agreement, arrangement, or understanding, or 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.

(4) "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 that is listed on any of the following:

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

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

(iii) If not listed under subparagraph (i) or (ii), the principal United States security exchange registered under the securities exchange act of 1934, 15 USC 78a to 78pp.

(iv) If not listed under 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 under subparagraphs (i) to (iv), 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.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved .....

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Governor