

BUSINESS CORPORATION ACT (EXCERPT)

Act 284 of 1972

CHAPTER 7A

450.1775 Meanings of words and phrases; inconsistent provisions.

Sec. 775. (1) For purposes of this chapter, the words and phrases in sections 776, 777, 778, and 779 have the meanings ascribed to them in those sections.

(2) To the extent that the provisions of this chapter alter voting rights or are otherwise inconsistent with other provisions of this act, the provisions of this chapter shall control.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1776 Definitions; A, B.

Sec. 776. (1) "Affiliate" or "affiliated person" means a person that 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 a 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 that meets any of the following:

(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 is not considered the beneficial owner of voting shares that 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 is not considered the beneficial owner of voting shares if the person's right to vote the shares under 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 that 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, conversion, consolidation, or share exchange of the corporation or any subsidiary that alters the contract rights of the shares as expressly set forth in the articles of incorporation or that 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, that is, or after the merger, conversion, consolidation, or share exchange would be, an affiliate of an interested shareholder that was an interested shareholder before 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 that 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, conversion, consolidation, or share exchange of the corporation with any of its subsidiaries that 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 that is directly or indirectly owned by any interested shareholder or any affiliate of any interested shareholder.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1777 Definitions; C, D.

Sec. 777. (1) "Common stock" means any stock other than preferred or preference stock.

(2) "Control", "controlling", "controlled by", or "under common control with" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. The beneficial ownership of 10% or more of the voting shares of a corporation shall create a presumption of control.

(3) "Determination date" means the date on which an interested shareholder first became an interested shareholder.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1778 Definitions; E to S.

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) Whether acquired before or after the effective date of the 2017 amendatory act that amended this subdivision, voting shares that meet any of the following are not considered to be beneficially owned by a person, unless the corporation determines otherwise by a resolution of the board adopted before the person acquired those voting shares:

(i) Are acquired by the person from the corporation.

(ii) Are acquired by the person in a public offering by or on behalf of the corporation.

(iii) In a transaction described in section 703a(3), are acquired by the person in an offer described in section 703a(3).

(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 a listing is not available under subparagraphs (i) to (iii), 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.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2013, Act 123, Imd. Eff. Oct. 1, 2013;—Am. 2018, Act 85, Eff. June 24, 2018.

450.1779 Definitions; V.

Sec. 779. (1) "Valuation date" means:

(a) In a business combination voted upon by shareholders, the day prior to the date of the shareholders vote or the day which is 20 calendar days prior to the consummation of the business combination, whichever is later.

(b) In a business combination not voted upon by shareholders, the date of the consummation of the business combination.

(2) "Voting shares" means those shares of a corporation entitled to vote generally in the election of directors.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1780 Advisory statement and approval.

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.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989.

450.1781 Conditions for inapplicability of vote to business combination; inapplicability of certain provisions.

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, and appropriately adjusted to account for any stock dividend, stock split, combination, or similar recapitalization affecting the shares, 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 before 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 is 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, and appropriately adjusted to account for any stock dividend, stock split, combination, or similar recapitalization affecting the shares, paid by the interested shareholder for any shares of the class of stock

acquired by it within the 2-year period immediately preceding 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 before the consummation of a business combination, all of the following conditions are met:

(i) Any full periodic dividends, whether or not cumulative, on any outstanding preferred stock of the corporation are declared and paid at the regular date for those payments.

(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, is not reduced, and the annual rate of dividends is 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 becomes an interested shareholder, the interested shareholder does not receive 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 does not become the beneficial owner of any additional shares of the corporation except as part of the transaction that resulted in the interested shareholder becoming an interested shareholder or by virtue of proportionate stock splits or stock dividends.

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

(2) Subparagraphs (i) and (ii) of subsection (1)(d) do 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 those subparagraphs and the interested shareholder, within 10 days after any act or failure to act inconsistent with those subparagraphs, notifies the board of directors of the corporation in writing that the interested shareholder disapproves of the act or failure to act and requests in good faith that the board of directors rectify the act or failure to act.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1782 Applicability of MCL 450.1780; resolution.

Sec. 782. (1) Whether or not a business combination is authorized or consummated in whole or in part after the effective date of this chapter or after the interested shareholder became an interested shareholder, the requirements of section 780 shall not apply to business combinations that specifically, generally, or generally by types, as to specifically identified or unidentified existing or future interested shareholders or their affiliates, have been approved or exempted from the requirements of section 780 by resolution of the board of directors of the corporation pursuant to either of the following:

(a) Not later than 4 months after the effective date of this chapter or an earlier date as may be irrevocably established by resolution of the board of directors.

(b) If involving transactions with a particular interested shareholder or its existing or future affiliates, at any time prior to the time that the interested shareholder first became an interested shareholder.

(2) Unless by its terms a resolution adopted under this section is made irrevocable, the resolution may be altered or repealed by the board of directors, but this action shall not affect any business combinations that have been consummated, or which are the subject of an existing agreement entered into, prior to the alteration or repeal.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1783 Applicability of MCL 450.1780; interested shareholder; resolution; election.

Sec. 783. (1) Unless the articles or bylaws of a corporation specifically provide otherwise, the requirements

of section 780 shall not apply to business combinations of a corporation that on the effective date of this chapter had an existing interested shareholder, whether the business combination is with the existing shareholder, with any other person that becomes an interested shareholder after the effective date of this chapter, or a present or future affiliate of an existing interested shareholder. However, at any time after the effective date of this chapter, the board of directors of the corporation may elect by resolution to be subject, in whole or in part, as to specifically identified or unidentified interested shareholders, to the requirements of section 780.

(2) The articles or bylaws of a corporation may provide that if the board of directors adopts a resolution under subsection (1), the resolution shall be subject to approval of the shareholders in the manner and by the vote specified in the articles or bylaws.

(3) An election under this section may be added to but may not be altered or repealed except by an amendment to the articles of incorporation which was adopted by a vote of shareholders pursuant to the requirements of section 784(1)(b).

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984.

450.1784 Business corporations exempt from requirements of MCL 450.1780.

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

(a) A corporation that does not have a class of voting stock registered with the Securities and Exchange Commission pursuant to section 12 of the securities exchange act of 1934, 15 USC 78l.

(b) A corporation whose original articles of incorporation contain a provision or whose shareholders adopt an amendment to the articles of the corporation after May 29, 1984 by a vote of at least 90% of the votes of each class of stock entitled to be cast by the shareholders of the corporation and at least 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, that expressly elects not to be governed by this chapter.

(c) An investment company that is registered under the investment company act of 1940, 15 USC 80a-1 to 80a-64.

History: Add. 1984, Act 115, Imd. Eff. May 29, 1984;—Am. 1989, Act 31, Imd. Eff. May 24, 1989;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013;—Am. 2018, Act 85, Eff. June 24, 2018.