

**502.321A Special definitions.**

For the purposes of this article, unless the context otherwise requires:

1. “Associate” means a person acting jointly or in concert with another for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of a target company.

2. “Beneficial owner” includes, but is not limited to, any person who directly or indirectly, through any contract, arrangement, understanding, or relationship, has or shares the power to vote or direct the voting of a security or has or shares the power to dispose of or otherwise direct the disposition of the security. A person is the beneficial owner of securities beneficially owned by any relative or spouse or relative of the spouse residing in the home of the person, any trust or estate in which the person owns ten percent or more of the total beneficial interest or serves as trustee or executor, any corporation or entity in which the person owns ten percent or more of the equity, and any affiliate or associate of the person.

3. “Beneficial ownership” includes, but is not limited to, the right, exercisable within sixty days, to acquire securities through the exercise of options, warrants, or rights or the conversion of convertible securities. The securities subject to these options, warrants, rights, or conversion privileges held by a person are outstanding for the purpose of computing the percentage of outstanding securities of the class owned by the person, but are not outstanding for the purpose of computing the percentage of the class owned by any other person.

4. “Equity security” means any stock or similar security and includes any of the following:

a. Any security convertible, with or without consideration, into a stock or similar security.

b. Any warrant or right to subscribe to or purchase a stock or similar security.

c. Any security carrying a warrant or right to subscribe to or purchase a stock or similar security.

d. Any other security which the administrator deems to be of a similar nature and considers necessary or appropriate, according to rules prescribed by the administrator for the public interest and protection of investors, to be treated as an equity security.

5. “Offeree” means the beneficial owner, who is a resident of this state, of equity securities when an offeror offers to acquire in connection with a takeover offer.

6. “Offeror” means a person who makes or in any manner participates in making a takeover offer. It does not include a supervised financial institution or broker-dealer loaning funds to an offeror in the ordinary course of its business, or any supervised financial institution, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror, and who does not otherwise participate in the takeover offer.

7. “Principal place of business” means the executive office of a target company from which the officers, partners, or managers of the target company direct, control, and coordinate the activities of the target company.

8. a. “Takeover offer” means the offer to acquire any equity securities of a target company from a resident of this state pursuant to a tender offer or request or invitation for tenders, if after the acquisition of all securities acquired pursuant to the offer any of the following are true:

(1) The offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

(2) The beneficial ownership by the offeror of any class of the outstanding equity securities of the target company would be increased by more than five percent. However, this subparagraph does not apply if after the acquisition of all securities acquired pursuant to the offer, the offeror would not be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding equity securities of the target company.

b. “Takeover offer” does not include any of the following:

(1) An offer in connection with the acquisition of a security which, together with all other acquisitions by the offeror of securities of the same class of equity securities of the target company, would not result in the offeror having acquired more than two percent of this class of securities during the preceding twelve-month period.

(2) An offer by the target company to acquire its own equity securities if such offer is subject to section 13(e) of the Securities Exchange Act of 1934.

(3) An offer in which the target company is an insurance company or insurance holding company subject to regulation by the commissioner of insurance, a financial institution subject to regulation by the superintendent of banking or the superintendent of savings and loan associations, or a public utility subject to regulation by the utilities division of the department of commerce.

9. “*Target company*” means an issuer of publicly traded equity securities that has at least twenty percent of its equity securities beneficially held by residents of this state and has substantial assets in this state. For the purposes of this chapter, an equity security is publicly traded if a trading market exists for the security. A trading market exists if the security is traded on a national securities exchange, whether or not registered pursuant to the Securities Exchange Act of 1934, or on the over-the-counter market.

2004 Acts, ch 1161, §17, 68