

BUSINESS CORPORATION ACT AMENDMENTS

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House Bill 5315

Sponsor: Rep. James Marleau

House Bill 5316

Sponsor: Rep. Lorence Wenke

House Bill 5317

Sponsor: Rep. Bill Huizenga

House Bill 5318

Sponsor: Rep. Leslie Mortimer

House Bill 5319

Sponsor: Rep. Tonya Schuitmaker

House Bill 5320

Sponsor: Rep. Kevin Elsenheimer

House Bill 5321

Sponsor: Rep. Judy Emmons

House Bill 5322

Sponsor: Rep. David Law

House Bill 5323

Sponsor: Rep. Steve Tobocman

Committee: Commerce

Complete to 11-7-05

A SUMMARY OF HOUSE BILLS 5315-5323- AS INTRODUCED 10-18-05

Each of the bills would amend a different section of the Business Corporation Act (MCL 450.1101 et seq.). The following is a description of changes to the act that the bills appear to be making.

House Bill 5315 would rewrite and re-arrange the provision that requires a foreign (out-of-state) corporation to comply with Sections 1021 (dealing with amended applications) and 1035 (the filing of required information) in order to merge with or enter into a share exchange with a domestic (in-state) corporation.

House Bill 5316 would amend a section addressing the dissolving of companies to say that the dissolution depends, among other things, on proof that shareholders who have entered into *an agreement authorized by Section 488* are unable to agree on material matters respecting management of the corporation's affairs or are divided in voting power so as to be unable to elect successor directors. The reference to the Section 488 agreement replaces a reference to the shareholders acting under the corporation's articles of incorporation. Section 488 allows shareholders to enter into agreements to exercise the corporate powers or the management of the business, even to the extent of eliminating the board of directors or restricting their powers.

House Bill 5317 would amend a section that allows for amendments to the articles of incorporation. Some amendments can be made by the board without shareholder action; others require shareholder approval. The bill would amend language dealing with shareholder approval to say that: "Other amendments of the articles of incorporation, except

as otherwise provided in this act, shall be proposed by the board and approved by the shareholders as provided in this section. The board may condition its submission of the amendment to the shareholders on any basis." The underlined portions are the new language.

House Bill 5318 would amend a section dealing with committees of a corporation created by the board to specify that a committee could create one or more subcommittees and delegate all or part of its power or authority to a subcommittee, unless prohibited by a resolution of the board, the articles of incorporation, or the bylaws.

House Bill 5319 would specify that when a shareholder abstains from voting or submits a ballot marked "abstain," that does not count as a vote cast (unless the articles provide otherwise). This affects a section that requires actions to be authorized by "a majority of votes cast." House Bill 5320 would make a similar amendment to a section that deals with voting by a class or series of shares. The two bills are tie-barred.

House Bill 5321 addresses cases where a corporation is required or desires to provide a written notice, report, statement, or communication to shareholders sharing a common address. The bill would allow them to do so if all of the following requirements were met: 1) the corporation addresses the writing to shareholders as a group, individually, or in any other form to which there are no shareholder objections; 2) the corporation gives at least 60 days notice to the shareholders sharing the common address; 3) there are no written objections from any shareholder with the common address. If there is an objection, the corporation would have to begin providing separate copies to those who have objected within 30 days of receiving the objection.

House Bill 5322 addresses when documents filed with the relevant state administrator become effective. The bill specifies that "when endorsed by the administrator, a document becomes effective as of the date of receipt, unless a subsequent effective date, not later than 90 days after the date of delivery, is set forth in the document." This rewrites the existing provision that says the document is effective when it is endorsed.

House Bill 5323 would amend the definition in the act of "willfully unfair and oppressive conduct" to specify that such conduct could include *the termination of employment or limitations on employment benefits to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder*. Under the act, for example, a shareholder can bring an action in the circuit court of the county in which the principal place of business or registered office of the corporation is located to establish that the acts of the directors or those in control of the corporation are illegal, fraudulent, or *willfully unfair and oppressive* to the corporation or to the shareholder

FISCAL IMPACT:

There is no fiscal impact on the State of Michigan or its local units of government.

Legislative Analyst: Chris Couch
Fiscal Analyst: Richard Child

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.