

**Senate Bill 414 as passed by the Senate  
First Analysis (6-3-97)**

**Sponsor: Sen. Michael J. Bouchard**  
**Senate Committee: Financial Services**  
**House Committee: Commerce**

***THE APPARENT PROBLEM:***

The Business Corporation Act, among other things, specifies the powers and duties of corporate shareholders and directors, provides for the distribution of corporate shares, and details the conditions for mergers and dissolutions. It was extensively revised in 1989 and additional changes were made in 1993. Proposals for further modernization of the act have been developed by a committee of the Business Law Section of the State Bar of Michigan. According to testimony from a representative of that committee, some of the changes address the special needs of small corporations whose operations do not neatly fit the current act, others would adopt provisions regarding directors' liability from a national model act, and others would deal with mergers between corporations and other kinds of legal entities by adopting provisions similar to those in the act governing limited liability companies.

***THE CONTENT OF THE BILL:***

The bill would amend the Business Corporation Act to make a number of revisions. Among other things, the bill would:

-- Allow shareholders of certain corporations to contract among themselves without restrictions under the act. An agreement of this kind would cease to be effective if, generally speaking, shares of the corporation were listed or sold on a stock exchange. Such an agreement could eliminate the board of directors or restrict a board's powers; allow distributions not in proportion to ownership of shares, if creditors were protected; govern voting power and permit weighted voting and director proxies; and permit the transfer to shareholders or others the power to manage the corporation's affairs, including the resolution of issues over which directors or shareholders were deadlocked. The agreement would have to be set forth in the articles of incorporation or bylaws approved by all who were shareholders at the time of the agreement or in a written agreement signed by all shareholders. The existence of the agreement would have to be noted conspicuously on the face or back of share certificates or on required information statements.

-- Revise the act's provisions regarding limits on directors' liability. The bill would allow the articles of incorporation to include a provision eliminating or limiting a director's liability to the corporation or its shareholders for money damages for any action taken or any failure to take any action as a director. This would not apply, however, to the amount of financial benefit received by a director to which he or she was not entitled; the intentional infliction of harm on the corporation or its shareholders; a violation of the act's provision regarding the distribution of dividends; or an intentional criminal act.

-- Specify procedures for other types of business organizations, such as limited liability companies and limited partnerships, to combine with a corporation.

-- Specify the methods by which a shareholder could authorize another to act as proxy.

-- Repeal a section of the act, commonly referred to as the "greenmail" provision, which prohibits a corporation from purchasing, directly or indirectly, any of its shares that are listed on a national securities exchange from any person who holds three percent or more of its shares, unless certain specified conditions apply.

MCL 450.1132 et al.

***FISCAL IMPLICATIONS:***

The Senate Fiscal Agency reports that the bill would have no fiscal impact on state or local government. (SFA analysis dated 5-20-97)

***ARGUMENTS:***

***For:***

The bill updates the Business Corporation Act, based on recommendations from the State Bar of Michigan. It would provide additional flexibility for small corporations; clarify the act's provisions addressing limits on directors' liability; provide a process for mergers between corporations and other legal entities,

such as limited liability companies; and modernize proxy provisions, among other things.

***POSITIONS:***

The Chairman of the Business Corporation Act Revision Committee of the Business Law Section of the State Bar of Michigan testified in support of the bill. (5-28-97)

Analyst: C. Couch

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■ 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.