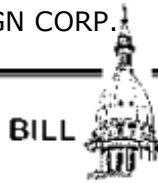




Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



## BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 5315 (as passed by the House)

Sponsor: Representative James Marleau

House Committee: Commerce

Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 2-21-06

### **CONTENT**

**The bill would amend the Business Corporation Act to provide that, when one or more foreign corporations merged or entered into a share exchange with one or more domestic corporations, each foreign corporation would have to comply with Section 1021 (amended applications) or 1035 (the filing of information upon dissolution, termination, merger, or consolidation), if it applied. Currently, only a foreign corporation that owns at least 90% of a domestic subsidiary corporation and is merging the subsidiary must comply with those sections, if they apply.**

Under the Act, one or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if the following apply:

- In a merger, the merger is permitted by the law of the state or country under whose law the foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger.
- In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated.
- Each domestic corporation complies with the applicable provisions of Sections 701 through 713 of the Act (which govern mergers and share exchanges).

Under the bill, one or more foreign corporations could merge or enter into a share exchange with one or more domestic corporations if all of the provisions that applied to the merger or exchange were met. The bill also provides that each foreign corporation authorized to transact business in this State would have to comply with Section 1021 or 1035, as applicable.

Under the Act, if the parent corporation in a merger conducted pursuant to Section 711 (dealing with the merger of a parent and subsidiary corporation) is a foreign corporation, it must comply, notwithstanding the provisions of the laws of its jurisdiction of incorporation, with all of the following:

- Section 711(2) with respect to notice to shareholders of a domestic subsidiary corporation that is a party to the merger.
- Section 712 with respect to the certificate of merger.
- The applicable provisions of Section 1021 or 1035 if the foreign corporation is authorized to transact business in this State.



The bill would delete the requirement that the parent corporation comply with the applicable provisions of Section 1021 or 1035.

(Under Section 711, a domestic corporation owning at least 90% of the outstanding shares of each class of another domestic corporation may merge with it, or merge itself and any subsidiary corporation, without approval of the shareholders; the board of the parent corporation must approve a plan of merger. Under Section 711(2), if the parent corporation owns less than 100% of the outstanding shares of any constituent subsidiary corporation, the parent corporation must mail the plan of merger to each minority shareholder of the subsidiary.

Section 712 provides for the execution of a certificate of merger after a plan of merger is adopted under Section 711.

Section 1021 requires a foreign corporation to file an amended application if it changes its corporate name or enlarges, limits, or otherwise affects the information set forth in its application for certificate of authority to transact business in this State. If a foreign corporation is the survivor of a merger, it must file a certificate issued by the jurisdiction of its incorporation attesting to the merger, as well as file an amended application if the previous provision applies. In addition, a foreign corporation must file an amended application and pay an additional franchise fee if it increases the number of authorized shares attributable to this State.

Under Section 1035, when a foreign corporation dissolves, or its authority or existence is otherwise terminated or canceled in its jurisdiction of incorporation, or it is merged into or consolidated with another corporation, it must file information required to determine and assess any unpaid fees, and file either a certificate from the jurisdiction of incorporation evidencing the occurrence of the event, or a copy of a court order or judgment directing the corporation's dissolution or termination or the cancellation of its authority.)

MCL 450.1735

Legislative Analyst: J.P. Finet

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

S0506\5315sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.