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BILL ANALYSIS

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Senate Bill 442 (as introduced 6-8-17)
Sponsor: Senator Mike Kowall
Committee: Commerce

Date Completed: 10-17-17

CONTENT

The bill would amend the Business Corporation Act to do the following:

- **Allow the Administrator to maintain records and files in their original form or in the form of reproductions under the Records Reproduction Act.**
- **Specify that if the Administrator were required under the Act to give notice to a corporation, he or she could electronically transmit the notice to the corporation's resident agent in the manner authorized by the corporation.**
- **Specify that if the shares of a corporation were to be designated and issued in one or more classes or series, the articles of incorporation would have to include a statement of authority vested in the board to that effect.**
- **Modify various provisions relating to shareholders of professional corporations.**
- **Modify provisions relating to the designation of shares of corporate stock into one or more classes or series.**
- **Allow a person to execute a shareholder consent that directed that it would take effect at a future time, provided certain conditions were met.**
- **Allow an individual to execute a consent that directed that it would take effect at a future time, provided certain conditions were met.**
- **Specify that approval of a plan of merger or share exchange by the shareholders of a corporation would not be required if certain requirements were met.**
- **Allow the Administrator to electronically transmit notification of pending dissolution, notice of a reporting requirement violation, or a certificate of revocation to a corporation's resident agent.**

The bill would take effect 90 days after enactment.

(The Administrator is the Director of the Department of Licensing and Regulatory Affairs or of any other agency or department authorized by law to administer the Act, or his or her designated representative.)

Return of Required Documents & Copies of Records

A document required or permitted to be filed under the Act must be submitted by delivery of the document to the Administrator together with required fees and documents. If a submitted document conforms to the Act's requirements, the Administrator must endorse upon it the word "filed" and file and index the document or a copy in his or her office. The Administrator must return a copy of a filed document, other than an annual report, or, at his or her discretion, the original, to the person who submitted it for filing. The bill would remove the language exempting return of an annual report.

The Administrator's records and files relating to domestic and foreign corporations must be open to reasonable inspection by the public. The Administrator may maintain records or files either in their original form or in photostatic, micrographic, photographic, optical disc media, or other reproduced form. Under the bill, the Administrator could maintain records or files in their original form, as currently allowed, or make copies and maintain them in the form of reproductions pursuant to the Records Reproduction Act, and could destroy the originals of the reproduced documents. The bill also would eliminate references to photostatic, micrographic, photographic, optical disc media, or other reproduced form, and allow the Administrator to make copies of any documents filed under the Act pursuant to the Records Reproduction Act.

Notice to Resident Agent

If a notice or communication is required or permitted under the Business Corporation Act to be given by mail, it must be mailed, except as otherwise provided, to the person to which it is directed at the address designated by the person for that purpose or, if none is designated, at the person's last known address. The notice or communication is given when deposited, with postage prepaid, in a United States Postal Service post office or official depository.

Under the bill, if the Administrator were required under the Act to give notice to a corporation, he or she could electronically transmit the notice to the corporation's resident agent in the manner authorized by the corporation.

(A resident agent appointed by a corporation is an agent of the corporation on which any process, notice, or demand required or permitted by law to be served upon the corporation may be served.)

Notice of Failure to File

If the Administrator fails to promptly file a document, other than an annual report, submitted for filing under the Act, he or she must within 10 days after receiving a written request to file the document from the person that submitted it, give written notice of the refusal to file the document to that person, specifying the reasons for the refusal. If the document was not originally submitted by electronic transmission, the Administrator may not give the written notice by electronic transmission. The bill would refer to failure where the Act refers to "refusal", and would eliminate the provision relating to a document not originally submitted by electronic transmission.

Under the bill, the Administrator could give this written notice by posting it on the Department website; by sending it by mail to the address provided by the person that submitted the document; or, if the person had provided the Administrator with an e-mail address, by sending the notice to that e-mail address.

Articles of Incorporation: Division of Shares

A corporation's articles of incorporation must contain information specified in the Act, including all of the following:

-- The name of the corporation.
-- The purposes for which the corporation is formed.
-- The aggregate number of shares that the corporation has authority to issue.
-- The designation of each class and series, the number of shares in each class and series, and a statement of the relative rights, preferences, and limitations of the shares of each class and series.

If any class of shares is to be divided into series, the articles also must include a statement of any authority vested in the board to divide the class of shares into series, and to determine or change for any series its designation, number of shares, relative rights, preferences, and limitations. Under the bill, instead, if the shares were to be designated and issued in one or more classes or series, the articles of incorporation would have to include a statement of authority vested in the board to that effect, and to determine or change for any class or series its designation, number of shares, relative rights, preferences, and limitations.

Electronic Notification: Assumed Name

Except as provided by Section 212 of the Act, a domestic or foreign corporation is permitted to transact business under any assumed name or names other than its corporate name by filing a certificate that states the true name of the corporation and the assumed name under which the business is to be transacted. A certificate of assumed name is effective for a period that expires on December 31 of the fifth full calendar year following the year in which it was filed. The Administrator must notify the corporation of the impending expiration of the certificate of assumed name at least 90 days before the five-year period expires. Under the bill, the Administrator could transmit the notice to the corporation's resident agent electronically, if authorized by the corporation.

(Section 212 specifies requirements for the name of a domestic or foreign corporation subject to the Act.)

Professional Corporations

Under the Act, except as otherwise provided, one or more licensed persons may form a professional corporation. "Licensed person" means an individual who is duly licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or agency of this State or another jurisdiction. The term includes an entity if all of its owners are licensed persons. Each shareholder of a professional corporation must be a licensed person in one or more of the professional services provided by the corporation. "Professional service" means a type of personal service to the public that requires the provider to obtain a license or other legal authorization as a condition precedent to providing that service.

Under the bill, "licensed person" would include an entity if either of the following were met: a) all of its owners were licensed persons (as is currently the case), or b) the entity itself was licensed or otherwise legally authorized to practice a professional service by a court, department, board, commission, or agency of this State or another jurisdiction.

Except as otherwise permitted under Section 284(5) or 288(2) of the Act, the bill would require each shareholder of a professional corporation to be one of the following: a) a licensed person in one or more the professional services provided by the professional corporation, or b) an entity that was directly or beneficially owned only by persons that were licensed persons in one or more of the professional services provided by the corporation.

(Section 284(5) allows a professional corporation organized under the Act to engage in the practice of public accounting if more than 50% of the equity and voting rights of the corporation are held directly or beneficially by individuals licensed or authorized to engage in the practice of public accounting. Section 288(2) specifies to whom shares of a professional corporation may be sold or transferred.)

The Act provides that if an officer, shareholder, agent, or employee of a professional corporation becomes legally disqualified to provide the services provided by the corporation, or accepts employment that under existing law restricts or limits his or her authority to

continue providing those services, he or she must sever within a reasonable period all employment with and financial interests in the professional corporation.

Under the bill, instead, a person that was any of the following would be required, within a reasonable period, to sever all employment with and all direct and indirect financial interests in a professional corporation:

-- An individual who was an officer, shareholder, agent, or employee of a professional corporation and who became legally disqualified with the result that the individual was not licensed in at least one of the professional services provided by the corporation.
-- An individual who was an officer, shareholder, agent, or employee of a professional corporation, who accepted employment that restricted or limited his or her authority to continue providing professional services and who was no longer authorized to provide at least one of the professional services provided by the corporation without restrictions or limitations.
-- An owner of an entity that was a shareholder of a professional corporation and that became legally disqualified with the result that the person was not a licensed person in at least one of the professional services provided by the corporation.
-- An entity that was a shareholder of a professional corporation; that was itself licensed to provide one or more professional services; and that became legally disqualified with the result that it was not a licensed person in at least one of the professional services provided by the corporation.

If a person described above regained status as a licensed person in one or more of the services provided by the professional corporation, or regained the legal ability to provide one or more of the professional services provided by the professional corporation, as applicable, within 90 days of the event that caused the loss of that status, the person would not have to sever employment with and financial interests in the corporation.

The Act prohibits a professional corporation from issuing any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to provide the same specific professional services as those for which the professional corporation was incorporated. Under the bill, instead, a professional corporation could not issue any of its capital stock to anyone other than a person that was eligible to be a shareholder of the professional corporation. The same restriction would apply to a shareholder entering into a voting trust agreement or other type of agreement that vested another person with the authority to vote any or all of his or her stock.

Capital Structure

A corporation is permitted to issue the number of shares authorized in its articles of incorporation. The shares may be all of one class or may be divided into two or more classes. If provided for in the articles of incorporation, a class of shares may be issued in one or more series. If the articles authorize the board of directors, to the extent that the articles have not established classes or series of shares and variations in the relative rights and preferences among them, the board may divide any class into series and establish the relative rights and preferences of those series. Under the bill, if authorized by the articles of incorporation, the board could, by resolution, designate shares as one or more classes or designate a class into one or more series. If the resolution were adopted, the corporation would have to file a certificate that contained the resolution with the Administrator (as currently required). As currently provided, the certificate would be considered an amendment to the articles of incorporation when filed.

Unless otherwise provided by the articles of incorporation, the board may adopt and file an amendment of the articles of incorporation eliminating a series of shares if there are no

outstanding shares of the series or other rights, options, or warrants issued that could require issuing shares of the series. The bill, instead, would permit the board, by resolution, to eliminate a class or series of shares or amend or alter the relative rights and preferences or designations of a class or series, subject to the same restrictions. If the board adopted such a resolution, the corporation would have to file a certificate that contained the resolution with the Administrator. When filed, the certificate would be considered an amendment to the articles of incorporation and would have the effect of eliminating or amending all matters included in the articles concerning the affected class or series of stock.

The filing of a certificate as described above or the filing of restated articles of incorporation would not prohibit the board of directors from subsequently adopting a resolution.

Shareholder Meeting & Actions

Unless otherwise restricted by the articles of incorporation or bylaws, a shareholder may participate in a meeting of shareholders by a conference telephone or by other means of remote communication through which all people participating in the meeting may communicate with the other participants. Under the bill, a shareholder could participate in a meeting of shareholders by a conference telephone or by other means of remote communication if all of the following were met: a) the use of the means of remote communication was authorized by the board of directors in its sole discretion; b) the means of remote communication met the requirements applicable to participation and voting of shareholders and proxyholders not physically present at the meeting; and c) all participants were advised of the means of remote communication (as currently required).

The Act specifies that the articles of incorporation may provide that any action required or permitted by the Act to be taken at an annual or special meeting of the shareholders may be taken without a meeting, without prior notice, and without a vote if consents in writing, setting forth the action to be taken, are signed by the holders of outstanding shares that have at least the minimum number of votes that would be necessary to authorize or take the action at a meeting.

Under the bill, a person could execute a shareholder consent that directed that the consent would take effect at a future time. All of the following would apply for this purpose:

-- The person could provide the direction through an agent or in some other manner.
-- The person would have to select a specific date on which the consent would take effect that was not more than 60 days after the date the person provided the direction.
-- The person could direct that the consent would take effect at the time a specified future event occurred rather than on a specific date if that event would occur not more than 60 days after the date the person provided the direction.
-- Unless otherwise provided in the direction, a direction would be revocable at any time before the consent became effective.
-- If evidence of a direction were provided to the corporation and were not revoked, the future time established in the direction would be considered the time the consent took effect and would be considered the date of signature of the consent.

Also, the consent would take effect only if the person were a shareholder on the record date applicable to the consent. A person would not have to be a shareholder at the time the consent was executed or evidence of the direction was provided to the corporation for the consent to take effect.

Director; Consents

Unless prohibited by the articles of incorporation or bylaws, action required or permitted to

be taken under authorization voted at a meeting of the board of directors or a committee of the board, may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. Such a consent must be filed with the minutes of the proceedings of the board or committee.

Under the bill, an individual could direct that a consent to an action of the board or committee would take effect at a future time. All of the conditions described above regarding shareholder consent would apply.

Also, the consent would take effect only if the individual were a director at the future time specified in the direction. An individual would not have to be a director at the time the consent was executed or evidence of the direction was provided to the corporation for the consent to take effect.

Plan of Merger or Share Exchange

The Act permits two or more domestic corporations to merge into one of the corporations under a plan of merger approved as prescribed by the Act. The board of directors of each corporation proposing to participate in a merger must adopt a plan of merger setting forth certain information. A corporation also may acquire all of the outstanding shares of one or more classes or series of another corporation under a plan of share exchange.

A plan of merger or share exchange adopted by the board of each constituent corporation, except as otherwise provided, must be submitted for approval at a meeting of the shareholders. In addition to complying with other requirements, the board must recommend the plan of merger or share exchange to the shareholders, unless Section 529 applies (i.e., the matter is submitted to a shareholder vote even though the board no long recommends the merger) or the board determines that because of other circumstances it should make no recommendation. The bill would require the board to either recommend the merger or make no recommendation as currently required, or, if an offer to purchase described by the bill were made, recommend that shareholders tender their shares to the offeror in response to the offer. The board would have to communicate the basis for any of its decisions, as currently required.

Approval of Plan of Merger or Share Exchange Not Required

Section 703a provides for shareholder approval of a plan of merger or share exchange (as discussed above). The bill would add Section 703a(3) to specify that, unless the articles of incorporation provided otherwise, approval of a plan of merger or share exchange by the shareholders of a corporation that had a class of voting stock registered with the Securities and Exchange Commission (SEC) under Section 12 of the Securities Exchange Act (which prescribes the requirements for registration of securities with the SEC) immediately before the execution of a plan of merger or share exchange would not be required if all requirements described below were met.

The plan of merger or share exchange would have to expressly permit or require the merger or share exchange to be effected under the bill, and expressly provide that, if the merger or share exchange were to be effected, it would be effected as soon as practicable after shares were transferred, purchased, or otherwise agreed to be transferred.

Another party to the merger or exchange, or a parent of another party to the merger or exchange, would have to make an offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that would be entitled to vote on the merger or share exchange, except that the offer could exclude

shares owned at the commencement of the offer by the corporation, the offeror, or a parent of the offeror or by any wholly owned subsidiary of the corporation, offeror, or parent.

The offer would have to disclose that the plan of merger or share exchange provided that the merger or share exchange would be effected as soon as practicable after the shares were purchased or owned and that the shares of the corporation that were not tendered in response to the offer would be treated as set forth by the bill.

The offer would have to remain open for at least 20 business days or for any other period that was required for tender offers under SEC rules or regulations under the Securities Exchange Act.

The offeror would have to purchase all shares that were properly tendered in response to the offer and not properly withdrawn.

Shares that met any of the following would be collectively entitled to cast at least the minimum number of votes on the merger or share exchange that would be required under the Act and under the articles of incorporation of the corporation for the approval of the merger or share exchange by the shareholders and by any other voting group entitled to vote on the merger or share exchange at a meeting at which all shares entitled to vote were present and voted: purchased by the offeror; otherwise owned by the offeror or its parent or wholly owned subsidiary; or subject to an agreement to be transferred or delivered to the offeror, its parent, or wholly owned subsidiary in exchange for stock or other equity interest.

The offeror or its wholly owned subsidiary would have to merge with or into, or effect a share exchange in which it acquired shares of, the corporation.

Each outstanding share of each class or series of shares of the corporation that the offeror was offering to purchase under the offer, and that was not purchased in accordance with the offer, would have to be converted in the merger into, or into the right to receive, or would have to be exchanged in the share exchange for, or for the right to receive, the same amount and kind of securities or other property to be paid or exchanged in accordance with the offer for each share of that class or series that was tendered in response to the offer, except that shares of the corporation owned by the corporation or owned by the offeror or subject to an agreement to be transferred would not need to be converted or exchanged for consideration.

Shares tendered in response to an offer would be considered "purchased" in accordance with the offer at the earliest time as of which the offeror had irrevocably accepted those shares for payment and a) in the case of shares represented by certificates, the offeror or its designated depository or other agent had physically received the certificates; or b) in the case of shares without certificates, those shares had been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating those shares had been received by the offeror or its depository or agent.

As used in Section 703a(3), "offer" would mean the offer to purchase, on the terms provided in the plan of merger or share exchange, any and all of the outstanding shares of the corporation that would be entitled to vote on the merger or share exchange. "Offeror" would mean a person that makes the offer. "Parent" of an entity would mean a person that owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares of or interests in that entity.

"Wholly owned subsidiary" of a person would mean an entity of or in which that person owns, directly or indirectly, through one or more wholly owned subsidiaries, all of the outstanding shares or interests.

Certificate of Merger or Share Exchange

The Act specifies that after a plan of merger or share exchange is approved, a certificate of merger or share exchange must be executed and filed on behalf of each corporation. The certificate must set forth, among other things, a statement that the plan was approved by the shareholders. Under the bill, if a plan of merger or share exchange were adopted without the vote of the shareholders under Section 703a(3), the certificate would have to include a statement that the plan of merger or share exchange was adopted under Section 703a(3) and that the conditions specified in it had been satisfied.

Conversion of Business Organization into Domestic Corporation

The Act allows a business organization to convert into a domestic corporation if the conversion is permitted by the law that governs the internal affairs of the business organization and the business organization complies with that law in converting. The business organization also must adopt a plan of conversion that includes its name, a description of the ownership interests in the organization, and the terms and conditions of the conversion. The bill would eliminate the requirement for a plan of conversion. If a plan were adopted, it would have to be submitted for approval in the manner required by the law governing the internal affairs of the organization, as currently required.

After the conversion is approved, the business organization must file a certificate of conversion with the Administrator. The certificate must include information similar to that required in the plan of conversion, as well as a statement that the organization has adopted the plan of conversion, that it will furnish a copy of the plan on request to any owner of the organization, and other information. The bill would eliminate the description of ownership interests, the statement that the organization has adopted the plan of conversion, and the statement that the surviving interest will furnish a copy of the plan to any owner of the business organization. The certificate would have to include a statement that the business organization had, in connection with the conversion, complied with the law governing the internal affairs of the business organization.

(A "business organization" is a domestic or foreign limited liability company, limited partnership, general partnership, or any other type of domestic or foreign business enterprise, incorporated or unincorporated, except a domestic corporation. A "domestic corporation" is a corporation formed under the Business Corporation Act, or existing on January 1, 1973, and formed under any other statute of the State for a purpose for which a corporation may be formed under the Act.)

Shareholder Dissent

Under the Act, a shareholder is entitled to dissent from, and obtain payment of the fair value of his, her, or its shares in the event of the consummation of a plan of merger to which the corporation is a party if shareholder approval is required under the Act or the articles of incorporation for the merger, or if the corporation is a subsidiary that is merged with its parent. Under the bill, a shareholder also would be entitled to dissent from, and obtain payment of the fair value of his, her, or its shares in the event of a consummation of a plan of merger to which the corporation was a party if shareholder approval would be required if Section 703a(3) did not apply and the shareholder were a shareholder on the date of the offer made under that section.

A shareholder also has the right to dissent in the event of the consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan. Under the bill, this also would

apply if the shareholder would be entitled to vote on the plan if Section 703a(3) did not apply and the shareholder were a shareholder on the date of the offer under that section.
If a proposed corporation action that creates dissenters' rights is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights. Under the bill, if a corporate action created dissenters' rights as described above, an offer under Section 703a(3) would have to state that shareholders would or could be entitled to assert dissenters' rights under the Act, and be accompanied by a copy of Sections 761 to 774 (which describe dissenters' rights) and the dissenters' rights notice described in Section 766. Also, if a corporate action created dissenters' rights as described by the bill, a shareholder that wished to assert those rights would have to deliver to the corporation before the shares were purchased under the offer written notice of the shareholder's intent to demand payment for his, her, or its shares if the proposed action were taken and could not tender, or cause or permit to be tendered, any shares in response to the offer.

Interested Shareholders

The Act defines "interested shareholder" as any person, other than the corporation or any subsidiary, that is either a) the beneficial owner, directly or indirectly, of 10% or more of the voting power of the outstanding voting shares of the corporation; or b) an affiliate of the corporation and at any time within the two-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.

For the purpose of determining whether a person is an interested shareholder, 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.

Voting shares acquired by the person from the corporation or acquired in a public offering by or on behalf of the corporation are not considered to be outstanding or beneficially owned by that person, unless the corporation determines otherwise by a resolution of the board adopted before the person acquired those voting shares. The bill would modify this provision.

Under the bill, whether acquired before or after its effective date, voting shares that met any of the following would not be considered to be beneficially owned by a person, unless the corporation determined otherwise by a resolution of the board adopted before the person acquired those voting shares: a) were acquired by the person from the corporation; b) were acquired by the person in a public offering by or on behalf of a corporation; or c) in a transaction described in Section 703a(3), were acquired by the person in an offer described in that section.

Market Value

The Act defines "market value", with respect to shares, as 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: a) the composite tape for New York Stock Exchange-listed securities; b) if not listed on the composite tape, the New York Stock Exchange; c) if not listed under a) or b), the principal United States security exchange registered under the Security Exchange Act of 1934; d) if none of the above, the highest closing bid quotation during the 30-day period preceding the date in question as listed on the National Association of Securities Dealers automated quotations system or any other system then in use; or e) if the listing is not available under any of the above situations, the fair market value of the shares on the date in question, as determined in good faith by the corporation's board of directors. The bill would eliminate the provision under which market value is determined by the highest closing bid

quotation as listed on the National Association of Securities Dealers system or another system in use.

Business Combination Advisory Statement

In addition to a vote required by law or the articles of a corporation, a business combination must require an advisory statement from the board of directors and approval by an affirmative vote of both of the following:

-- At least 90% of the votes of each class of stock entitled to be cast by the corporation's shareholders.
-- At least two-thirds 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, or whose affiliate is a party to the business combination or an affiliate or associate of the interested shareholder.

Unless a corporation's articles of incorporation provide otherwise, the advisory statement requirement does not apply to any business combination of, among others, a corporation that does not have a class of voting stock registered with the SEC. The bill would eliminate a provision that, for this purpose, all shareholders of a corporation that have executed an agreement that governs the purchase and sale of the corporation's shares or a voting trust agreement are considered a single beneficial owner of shares covered by the agreement.

(The definition of "business combination" includes a merger, conversion, consolidation, or share exchange of the corporation or any subsidiary that alters the contract rights of the shares as set forth in the articles of incorporation or that changes or converts, in whole or in part, the outstanding shares of the corporation with any interested shareholder or any other corporation 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. The definition also includes other types of transactions involving a sale, lease, transfer, or other disposition to an interested shareholder or its affiliate, other than the corporation or any of its subsidiaries, of assets of the corporation having an aggregate book value of 10% or more of its net worth; the issuance or transfer by the corporation to an interested shareholder or its affiliate, other than the corporation or any of its subsidiaries, of equity securities with an aggregate market value of 5% or more of the corporations' outstanding shares; and a reclassification of securities, or a merger, conversion, consolidation, or share exchange of the corporation with any of its affiliates, that has the effect of increasing total outstanding shares by more than 5%.)

Annual & Other Reports; Revocation of Certificate of Authority

The Business Corporation Act requires a domestic corporation and a foreign corporation subject to Chapter 10 (Foreign Corporations) to file a report with the Administrator by May 15 of each year. If a domestic or foreign corporation neglects or refuses to file a report or pay a fee required by the Act within the time specified, the corporation, in addition to its liability for the fee, is subject to a penalty of $10 for each month or part of a month that it is delinquent, not to exceed $50.

If a domestic corporation neglects or refuses to file any annual report or pay an annual filing fee or a penalty added to the fee for two years from the date on which the annual report or filing fee was due, the corporation must be automatically dissolved 60 days after the two-year period expires. If the corporation is a foreign corporation and it fails to submit the annual report or pay any required fees or penalties for one year, its certificate of authority is subject to revocation under Section 1042. If a domestic or foreign corporation fails to file its report within the time prescribed by the Act, the Administrator must notify the corporation of that fact within 90 days after the report's due date. Under the bill, the Administrator could

electronically transmit notification of pending dissolution or a violation to the corporation's resident agent in the manner authorized by the corporation.
Under the Act, subject to Section 1042 and in addition to any other ground for revocation provided by law, the Administrator may revoke the certificate of authority of a foreign corporation to transact business in the State on any of the grounds specified in the Act, e.g., the corporation fails to maintain a resident agent in the State, or fails to file its annual report or pay an annual filing fee.

Section 1042 provides that the Administrator may revoke a certificate of authority only if he or she has given the foreign corporation at least 90 days' notice that one of the grounds above exists, and that its certificate will be revoked unless the default is cured within 90 days after the notice is mailed and it fails to cure the default within the specified period. The notice must be sent by first class mail to the corporation at its registered office. If the Administrator revokes a certificate of authority, he or she must issue a certificate of revocation and mail a copy to the corporation at its registered office.

Under the bill, notice of default and a copy of a certificate of revocation could be sent electronically to the corporation's registered agent.

Registration of Corporate Name by Foreign Corporation

Any foreign corporation not authorized to transact business in the State and not requiring authorization to transact business may register its name if permitted under the Act. Unless terminated, the registration is generally effective until the close of the calendar year in which the application for registration is filed. The Administrator must notify the corporation of the impending expiration at least 90 days before the registration expires. Under the bill, the administrator could electronically transmit the notification to the corporation's resident agent in the manner authorized by the corporation.

Filing Fees

Under the Act, a person must pay the Administrator the fees that apply to a document when it is delivered for filing. If a domestic or foreign corporation pays fees or penalties by check and the check is dishonored, the fee is unpaid and the Administrator must rescind the filing of all related documents. Under the bill, this also would apply if a payment were made by credit card and a chargeback were successful.

MCL 450.1131 et al. Legislative Analyst: Jeff Mann

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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