



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 142 (as enrolled)
 Senate Bill 143 (as enrolled)
 Sponsor: Senator Glenn D. Steil
 Senate Committee: Financial Services
 House Committee: Commerce

PUBLIC ACT 84 of 1996
PUBLIC ACT 196 of 1996

Date Completed: 1-16-97

RATIONALE

Michigan's Nonprofit Corporation Act and Business Corporation Act both require corporations based or operating in Michigan to file an annual report and pay a filing fee, which is \$10 for nonprofit corporations and \$15 for business corporations. The Acts require the annual reports to include identifying information and had required certain financial information as well. The Department of Consumer and Industry Services collects all of the required information and makes it available to the public via a 900- telephone number. Some people felt that it was inappropriate for the State to collect and disseminate information relating to a corporation's finances; they believed that this was a governmental intrusion on business activity and imposed an unnecessary cost upon corporations.

- The date of incorporation, term of corporate existence, if other than perpetual, and, if a foreign corporation, the date when authorized to conduct affairs in Michigan.
- The act under which the corporation was incorporated or reincorporated.
- The amount of the corporation's authorized capital stock, if any, and number of shares of each class authorized.
- The value of the property owned by the corporation at the time of the report's filing.
- What, if any, distribution of funds had been made to any members or shareholders during the year covered by the report.
- A statement of the aggregate amount of any loans, advances, overdrafts, or withdrawals and repayments made to or by officers, directors, members, or shareholders of the corporation other than in the ordinary and usual course of business and on the ordinary and usual terms of payment and security.
- Other information as the administrator reasonably required.

CONTENT

Senate Bills 142 and 143 amended the Nonprofit Corporation Act and the Business Corporation Act, respectively, to revise the information required to be included in a corporation's annual report, and specify that a report does not have to be filed by a nonprofit corporation during the year of incorporation.

The bill retained the requirement that an annual report contain all of the following:

Senate Bill 142

The Nonprofit Corporation Act requires that each domestic corporation and each foreign corporation authorized to conduct affairs in Michigan file a report with the administrator (the Director of the Department of Consumer and Industry Services) on or before October 1 of each year. The bill deleted all of the following from the list of information required to be included in a nonprofit corporation's annual report:

- The corporation's name
- The name of the corporation's resident agent and address of its registered office in Michigan.
- The names and addresses of the corporation's officers and directors.
- The purposes of the corporation.
- The nature and kind of business in which the corporation has engaged during the year covered by the report.

In addition, under the bill, an annual report does not have to be filed in the year of incorporation or authorization by a corporation that was formed or authorized to do business on or after January 1 and before October 1 of that year. If there are no changes in the information provided in the last filed report, the corporation must certify that no changes in the required information have occurred. The certification must be on a report provided by the administrator and filed by October 1.

The bill also deleted a requirement that an annual report be open to reasonable inspection by the public promptly after filing by the corporation.

Senate Bill 143

The Business Corporation Act requires that each domestic corporation and each foreign corporation file a report with the administrator no later than May 15 of each year. A report is not required to be filed in the year of incorporation or authorization by a corporation formed or authorized to do business on or after January 1 and before May 16 of that year.

The bill deleted all of the following from the list of information required to be included in a corporation's annual report:

- The state and date of incorporation; term of corporate existence, if other than perpetual; and, if a foreign corporation, the date when authorized to transact business in Michigan.
- The total number of authorized shares.
- The nature and book value of the property owned and used by the corporation listed separately as to property within and outside of Michigan.
- A complete and detailed statement of the corporation's assets and liabilities as shown by its books, at the close of business on December 31 or upon the date of the close of its latest fiscal year.
- Other information as the administrator reasonably required.

The bill retained the requirement that an annual report contain all of the following:

- The corporation's name.
- The name of the corporation's resident agent and address of its registered office in Michigan.

- The names and addresses of the corporation's president, secretary, treasurer, and directors.
- The general nature and kind of business in which the corporation is engaged.
- For each foreign corporation authorized to transact business in Michigan, the most recent percentage used in computing the tax required by the Single Business Tax Act.

The bill also deleted a requirement that an annual report be open to reasonable inspection by the public promptly after filing by the corporation.

The bill was tie-barred to House Bill 4512 (Public Act 197 of 1996), which amended the Act to specify that if there are no changes in the information provided in the last filed report, the corporation may file a report that certifies to the administrator that no changes in the required information have occurred. The report must be on a form approved by the administrator and filed by May 15. The House bill also requires a foreign corporation to report the total number of authorized shares.

MCL 450.2911 & 450.2915 (S.B. 142)
450.1911 & 450.1915 (S.B. 143)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The mandate that corporations file with the State an annual report that required them to reveal specific financial information for public consumption was intrusive, costly, and unnecessary. Financial information is proprietary and should not have to be handed over to the State for public disclosure. This practice gave competitors an advantage, especially if they did not operate in Michigan and, consequently, did not have to reveal the same information, because they could determine a Michigan-based business's financial condition simply by calling the Department. Although the annual filing fee is a small amount, preparing the document for reporting to the State could involve unnecessary accounting and bookkeeping costs, especially for small businesses and nonprofit corporations.

The bills will alleviate some of the burden on businesses and lessen their competitive disadvantage by deleting requirements that their annual reports include financially sensitive information. At the same time, by continuing to require that an annual report include identifying information, the bills will ensure that the officers behind a corporate entity still can be easily identified and located. For out-of-state corporations, the Business Corporation Act also continues to require information necessary for determining a business's tax liability under the Single Business Tax Act.

Response: Corporations are creations of the State and incorporation offers certain legal and financial benefits to an organization. The public has a right to oversee the activities of these entities. Asking corporations to report certain financial information was not an unreasonable requirement, given the benefits of incorporation.

Opposing Argument

Allowing citizens access to corporate information is good public policy. The practice of requiring corporate reports dates back to the late 1800s, when government increased efforts to oversee the practices of businesses in order to preclude monopolistic trusts. In addition, government collection and dissemination of information in corporate reports serves a beneficial purpose. A company that offered a contract on a bidding process, for instance, could easily inquire about a bidder's financial status and history. The corporate report supplied an objective, third-party source for this type of information that was readily available. Further, according to testimony before the Senate Financial Services Committee, businesses nationwide that include balance sheet information in their corporate reports tend to obtain better trade and credit terms in business transactions.

Response: The kind of information that one company needs to know about another before entering into a business agreement can be obtained from commercial entities such as credit reporting agencies. Government should not be involved in making information about one business available to another.

Opposing Argument

Although the bills address some of the most objectionable aspects of filing annual corporate reports, this legislation does not go far enough. The reporting requirement and filing fee should be eliminated entirely. Not only are small businesses burdened by the fee and the cost of preparing the

reports, but the revenue gained by the State from the fee is simply a tax on businesses.

Response: Even if the financial information is no longer required, the identifying information in the annual reports is useful for legal purposes. The report provides a readily available source to identify a corporation's officers and directors for the purpose of service of process against a corporation.

Legislative Analyst: P. Affholter
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FISCAL IMPACT

The bills will not have a fiscal impact on the Department of Consumer and Industry Services or on other agencies of State government. No mandated costs will be imposed on local governmental units.

Fiscal Analyst: M. Tyszkiewicz

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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.