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BILL ANALYSIS

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Senate Bill 849 (as reported with amendment)**Sponsor: Senator Norman D. Shinkle****Committee: Commerce and Technology****Date Completed: 5-16-88****RATIONALE**

Within the past year or two, a number of measures have been proposed, and some enacted, to limit the personal liability of members of boards of directors and to expand the ability of corporations or associations to indemnify directors and officers for claims made against them. Public Acts 1 and 170 of 1987, in particular, enacted these changes in regard to for-profit and nonprofit corporations, respectively, and Senate Bills 39 and 643 would do the same for financial institutions. Some people believe that directors of charitable institutions should be similarly protected, to assure the institutions' continued ability to find and keep competent board members.

CONTENT

The bill would amend the Uniform Management of Institutional Funds Act, which establishes guidelines for the management and use of investments held by eleemosynary (charitable) institutions and funds, to allow such an institution to relieve its board members of liability to the institution, and to allow tax-exempt institutions to assume liability of board members toward other persons.

Under the bill, an institution's articles of incorporation or other organizational document could contain any provision that was not inconsistent with any of the following:

- A provision of the Act or another State statute, for managing the business and conducting the affairs of the institution, or creating, defining, limiting, or regulating the powers of the institution.
- A provision that a member of the governing board was not personally liable to the institution for monetary damages for a breach of the member's fiduciary duty arising under the Act or other applicable law. This provision would not eliminate or limit the liability of a member of the governing board for any of the following: a breach of the member's duty of loyalty to the institution; acts or omissions not in good faith or that involved intentional misconduct or a knowing violation of law; a violation of the Act's provisions on the standard of care and considerations of a board and persons with delegated or contracted authority (MCL 451.1207); a transaction from which the member derived an improper personal benefit; an act or omission that occurred before July 1, 1988; and an act or omission that was grossly negligent.
- A provision that a charitable institution, as described in Section 501(c)(3) of the Federal Internal Revenue Code, assumed all liability to any person, other than the institution, for all acts or omissions of a member of the governing board that occurred on or after January 1, 1988, which were incurred in the good faith performance of the member's duties.

The bill would take effect July 1, 1988.

Proposed MCL 451.1207a

FISCAL IMPACT

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

ARGUMENTS**Supporting Argument**

Public Acts 1 and 170 of 1987 were passed in the wake of corporate takeovers, reorganizations, and mergers that required directors to act rapidly with little time to deliberate, and consequently heightened the exposure of these individuals to liability suits. While charitable institutions may not be subject to this type of takeover activity, they too need to find and retain qualified directors. These persons may be reluctant to serve on boards, however, if they fear exposure to liability claims. As a result, the quality of an institution's governance may be impaired by its inability to recruit competent people. The bill would address these concerns by allowing charitable institutions to relieve their board members of the threat of personal liability.

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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.

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