

HOUSE BILL No. 4665

April 16, 1991, Introduced by Reps. Bankes, Gire, Law, Harder, Walberg, Pitoniak, London, Brackenridge and Dolan and referred to the Committee on Corporations and Finance.

A bill to amend sections 108 and 209 of Act No. 162 of the Public Acts of 1982, entitled "Nonprofit corporation act," as amended by Act No. 39 of the Public Acts of 1990, being sections 450.2108 and 450.2209 of the Michigan Compiled Laws; and to add section 556.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 108 and 209 of Act No. 162 of the
2 Public Acts of 1982, as amended by Act No. 39 of the Public Acts
3 of 1990, being sections 450.2108 and 450.2209 of the Michigan
4 Compiled Laws, are amended and section 556 is added to read as
5 follows:

6 Sec. 108. (1) "Member" means a person having a membership
7 in a corporation in accordance with the provisions of its
8 articles of incorporation or bylaws.

1 (2) "NONDIRECTOR VOLUNTEER" MEANS AN INDIVIDUAL, OTHER THAN
 2 A VOLUNTEER DIRECTOR, PERFORMING SERVICES FOR A NONPROFIT CORPO-
 3 RATION WHO DOES NOT RECEIVE COMPENSATION OR ANY OTHER TYPE OF
 4 CONSIDERATION FOR THE SERVICES OTHER THAN REIMBURSEMENT FOR
 5 EXPENSES ACTUALLY INCURRED.

6 (3) ~~(2)~~ "Nonprofit corporation" means a corporation incor-
 7 porated to carry out any lawful purpose or purposes not involving
 8 pecuniary profit or gain for its directors, officers, sharehold-
 9 ers, or members.

10 (4) ~~(3)~~ "Person" means an individual, ~~a~~ partnership, ~~a~~
 11 ~~domestic or foreign corporation or domestic or foreign business~~
 12 ~~corporation, or any other~~ association, ~~corporation, trust,~~ or
 13 ANY OTHER legal entity.

14 (5) ~~(4)~~ "Predecessor act" means an act or part of an act
 15 repealed by this act, ~~or~~ or an act or part of an act repealed by
 16 an act ~~which~~ THAT this act repeals.

17 Sec. 209. The articles of incorporation may contain any
 18 provision not inconsistent with any of the following:

19 (a) A provision of this act or another statute of this state
 20 ~~, for~~ REGARDING THE management of ~~the business and conduct of~~
 21 ~~the affairs of the~~ A corporation ~~,~~ or creating, defining, lim-
 22 iting, or regulating the powers of the corporation, its direc-
 23 tors, members, ~~and~~ OR shareholders, or a class of shareholders
 24 or members.

25 (b) A provision that IS REQUIRED OR PERMITTED under this act
 26 ~~is required or permitted~~ to be ~~set forth~~ INCLUDED in the
 27 bylaws.

1 (c) A provision that ELIMINATES THE PERSONAL LIABILITY OF a
2 volunteer director ~~is not personally liable~~ to the corporation,
3 ~~or~~ its shareholders, or ITS members for monetary damages for a
4 breach of the director's fiduciary duty ~~. The provision shall~~
5 ~~not eliminate or limit~~ LIMITS the liability of a director for
6 any of the following:

7 (i) A breach of the director's duty of loyalty to the corpo-
8 ration or its shareholders or members.

9 (ii) Acts or omissions not in good faith or that involve
10 intentional misconduct or a knowing violation of law.

11 (iii) A violation of section 551(1).

12 (iv) A transaction from which the director derived an
13 improper personal benefit.

14 (v) An act or omission occurring before January 1, 1988.

15 (vi) An act or omission that is grossly negligent.

16 (d) For a tax exempt corporation ~~described in~~ UNDER sec-
17 tion 501(c)(3) of the internal revenue code, a provision that the
18 corporation assumes all liability to any person other than the
19 corporation, its shareholders, or its members for all acts or
20 omissions of a volunteer director occurring on or after
21 January 1, 1988 incurred in the good faith performance of the
22 volunteer director's duties.

23 (E) A PROVISION THAT A NONPROFIT CORPORATION ASSUMES THE
24 LIABILITY FOR ALL ACTS OR OMISSIONS OF A NONDIRECTOR VOLUNTEER
25 OCCURRING ON OR AFTER JANUARY 1, 1993 IF ALL OF THE FOLLOWING ARE
26 MET:

1 (i) THE VOLUNTEER WAS ACTING OR REASONABLY BELIEVED HE OR
2 SHE WAS ACTING WITHIN THE SCOPE OF HIS OR HER AUTHORITY.

3 (ii) THE VOLUNTEER WAS ACTING IN GOOD FAITH.

4 (iii) THE VOLUNTEER'S CONDUCT DID NOT AMOUNT TO GROSS NEGLIGENCE OR
5 WILLFUL AND WANTON MISCONDUCT.

6 (iv) THE VOLUNTEER'S CONDUCT WAS NOT AN INTENTIONAL TORT.

7 (v) THE VOLUNTEER'S CONDUCT WAS NOT A TORT ARISING OUT OF
8 THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR VEHICLE FOR WHICH
9 TORT LIABILITY MAY BE IMPOSED AS PROVIDED IN SECTION 3135 OF THE
10 INSURANCE CODE OF 1956, ACT NO. 218 OF THE PUBLIC ACTS OF 1956,
11 BEING SECTION 500.3135 OF THE MICHIGAN COMPILED LAWS.

12 SEC. 556. IF THE CORPORATION'S ARTICLES OF INCORPORATION
13 CONTAIN A PROVISION AUTHORIZED UNDER SECTION 209(E), THEN A CLAIM
14 FOR MONETARY DAMAGES FOR A NONDIRECTOR VOLUNTEER'S ACTS OR OMISSIONS
15 SHALL NOT BE BROUGHT OR MAINTAINED AGAINST A NONDIRECTOR
16 VOLUNTEER. THE CLAIM SHALL BE BROUGHT AND MAINTAINED AGAINST THE
17 CORPORATION.