

**SUBSTITUTE FOR  
HOUSE BILL NO. 4580**

A bill to amend 1982 PA 162, entitled  
"Nonprofit corporation act,"  
by amending sections 271 and 601 (MCL 450.2271 and 450.2601) and  
by adding section 301a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 271. An act of a corporation and a transfer of real or  
2 personal property to or by a corporation, THAT IS otherwise  
3 lawful, is not invalid because the corporation was without capac-  
4 ity or power to do the act or make or receive the transfer of  
5 property. However the lack of capacity or power may be asserted  
6 IN ANY OF THE FOLLOWING SITUATIONS:

7       (a) By a shareholder or member, or by a director who has not  
8 authorized or consented to the act or transfer, in an action  
9 against the corporation to enjoin the doing of an act or the  
10 transfer of real or personal property by or to the corporation.

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1 (b) In an action by or in the right of the corporation to  
2 procure a judgment in its favor against an incumbent or former  
3 officer or director of the corporation for loss or damage due to  
4 an unauthorized act by that person.

5 (c) In an action or special proceeding by the attorney gen-  
6 eral to dissolve the corporation, ~~or~~ to enjoin it from ~~the~~  
7 conducting ~~of~~ unauthorized affairs, OR TO ENFORCE COMPLIANCE  
8 WITH SECTION 301A.

9 SEC. 301A. (1) AS USED IN THIS SECTION:

10 (A) "CREDIT ARRANGEMENT" MEANS THE CREATION AND EXERCISE OF  
11 RIGHTS AND REMEDIES PROVIDED BY LAW OR GRANTED BY A NONPROFIT  
12 RESEARCH INSTITUTE OR BY ANY PREDECESSOR OF A NONPROFIT RESEARCH  
13 INSTITUTE IN GOOD FAITH TO OR FOR THE BENEFIT OF A LENDER, BOND-  
14 HOLDER, PAYOR FOR SERVICES PROVIDED BY THE NONPROFIT RESEARCH  
15 INSTITUTE, GOVERNMENTAL TAXING OR REGULATORY AUTHORITY, OR ANY  
16 OTHER CREDITOR OR CLAIMANT. CREDIT ARRANGEMENT INCLUDES ANY  
17 RIGHTS AND REMEDIES ARISING UNDER ANY NOTE, MORTGAGE, SECURITY  
18 AGREEMENT, DEED OF TRUST, LAND CONTRACT, CONVEYANCE FOR THE BENE-  
19 FIT OF CREDITORS, JUDGMENT, COURT ORDER, OR STATUTORY OR JUDGMENT  
20 LIEN. CREDIT ARRANGEMENT ALSO INCLUDES ANY CONVEYANCE TO OR BY A  
21 RECEIVER OR TRUSTEE IN BANKRUPTCY.

22 (B) "NONPROFIT RESEARCH INSTITUTE" MEANS A CORPORATION THAT  
23 IS DESCRIBED IN AND QUALIFIED UNDER SECTION 501(c)(3) OF THE  
24 INTERNAL REVENUE CODE OF 1986 AND IS ORGANIZED AND OPERATED FOR  
25 THE PRINCIPAL PURPOSE OF ENGAGING IN SCIENTIFIC RESEARCH.  
26 NONPROFIT RESEARCH INSTITUTE DOES NOT INCLUDE ANY OF THE  
27 FOLLOWING:

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1       (i) A CORPORATION THAT IS A HOSPITAL, SCHOOL, COLLEGE, OR  
2 UNIVERSITY.

3       (ii) A CORPORATION THAT PROVIDES HEALTH SERVICES DIRECTLY OR  
4 THROUGH A SUBSIDIARY CORPORATION OR AFFILIATE CORPORATION.

5       (C) "SIGNIFICANT CORPORATE ASSET" MEANS AN ASSET OF A NON-  
6 PROFIT RESEARCH INSTITUTE THAT IS LOCATED IN THIS STATE USED TO  
7 CARRY OUT THE NONPROFIT RESEARCH INSTITUTE'S PURPOSES AND THAT  
8 HAS AN AGGREGATE FAIR MARKET VALUE THAT IS BOTH GREATER THAN  
9 \$100,000.00 AND IS MORE THAN 25% OF THE AGGREGATE FAIR MARKET  
10 VALUE OF ALL ASSETS OF THE NONPROFIT RESEARCH INSTITUTE.

11 SIGNIFICANT CORPORATE ASSETS MAY INCLUDE, BUT ARE NOT LIMITED TO,  
12 REAL PROPERTY, TANGIBLE PERSONAL PROPERTY, INTANGIBLE PERSONAL  
13 PROPERTY, AND INTELLECTUAL PROPERTY. ASSETS HELD FOR THE PRODUC-  
14 TION OF INCOME OR FOR OTHER INVESTMENT PURPOSES, THAT ARE NOT  
15 DIRECTLY USED IN CARRYING OUT A NONPROFIT RESEARCH INSTITUTE'S  
16 PURPOSES, ARE NOT SIGNIFICANT CORPORATE ASSETS.

17       (D) "SIGNIFICANT CORPORATE TRANSFER" MEANS 1 OR MORE OF THE  
18 FOLLOWING:

19       (i) A MERGER OR CONSOLIDATION OF A NONPROFIT RESEARCH INSTI-  
20 TUTE UNDER WHICH A BUSINESS CORPORATION, FOREIGN BUSINESS CORPO-  
21 RATION, OR OTHER PERSON THAT IS NOT ORGANIZED AND OPERATED EXCLU-  
22 SIVELY FOR CHARITABLE PURPOSES IS THE SURVIVOR.

23       (ii) A TRANSACTION, OTHER THAN A CREDIT ARRANGEMENT OR THE  
24 GRANTING OF A LICENSE TO USE PATENTS, COPYRIGHTS, OR OTHER INTEL-  
25 LECTUAL PROPERTY, INVOLVING A SALE, DISTRIBUTION, TRANSFER, OR  
26 CONVEYANCE OF A SIGNIFICANT CORPORATE ASSET TO A BUSINESS  
27 CORPORATION, FOREIGN BUSINESS CORPORATION, OR OTHER PERSON THAT

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1 IS NOT ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE  
2 PURPOSES.

3       (iii) AN AMENDMENT TO OR RESTATEMENT OF THE ARTICLES OF  
4 INCORPORATION OF A NONPROFIT RESEARCH INSTITUTE OR OTHER ACTION  
5 BY A NONPROFIT RESEARCH INSTITUTE OR ITS MEMBERS OR SHAREHOLDERS  
6 CAUSING THE NONPROFIT RESEARCH INSTITUTE TO CEASE TO BE A  
7 CORPORATION.

8       (2) ALL OF THE FOLLOWING APPLY TO A SIGNIFICANT CORPORATE  
9 TRANSFER:

10       (A) AT LEAST 60 DAYS BEFORE A SIGNIFICANT CORPORATE TRANS-  
11 FER, A NONPROFIT RESEARCH INSTITUTE SHALL PROVIDE WRITTEN NOTICE  
12 OF THE SIGNIFICANT CORPORATE TRANSFER TO THE ATTORNEY GENERAL.  
13 THE NOTICE SHALL DESCRIBE THE SIGNIFICANT CORPORATE TRANSFER AND  
14 SHALL SET FORTH THE MATERIAL TERMS OF THE SIGNIFICANT CORPORATE  
15 TRANSFER, INCLUDING THE SALE PRICE, IF ANY, AND THE NAMES AND  
16 ADDRESSES OF ALL PARTIES TO THE TRANSACTION.

17       (B) WITHIN 30 DAYS AFTER RECEIPT OF A NOTICE UNDER  
18 SUBDIVISION (A), THE ATTORNEY GENERAL MAY REQUEST AND THE NON-  
19 PROFIT RESEARCH INSTITUTE SHALL FURNISH ANY ADDITIONAL INFORMA-  
20 TION THAT THE ATTORNEY GENERAL REASONABLY DETERMINES TO BE NECES-  
21 SARY TO DETERMINE IF THE PROPOSED SIGNIFICANT CORPORATE TRANSFER  
22 CONFORMS WITH SUBSECTION (3), INCLUDING, BUT NOT LIMITED TO, ANY  
23 OF THE FOLLOWING:

24       (i) COPIES OF ANY AGREEMENTS, PROPOSED AGREEMENTS, OR  
25 RELATED DOCUMENTS TO BE USED IN CONNECTION WITH THE TRANSACTION.

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1           (ii) COPIES OF ANY APPRAISALS OR FAIRNESS OPINIONS OBTAINED  
2 BY THE NONPROFIT RESEARCH INSTITUTE IN CONNECTION WITH THE  
3 TRANSACTION.

4           (iii) FINANCIAL STATEMENTS OF AND OTHER INFORMATION ABOUT  
5 THE NONPROFIT RESEARCH INSTITUTE AND ANY OTHER PARTY TO THE  
6 TRANSACTION.

7           (C) IN THE COURSE OF THE REVIEW UNDER SUBSECTION (3), THE  
8 ATTORNEY GENERAL SHALL HOLD A PUBLIC HEARING IN A COUNTY IN WHICH  
9 THE NONPROFIT RESEARCH INSTITUTE THAT IS SEEKING TO ENTER INTO A  
10 SIGNIFICANT CORPORATE TRANSFER DOES BUSINESS. THE ATTORNEY GEN-  
11 ERAL SHALL CONDUCT THE PUBLIC HEARING IN THE MANNER PROVIDED FOR  
12 A PUBLIC HEARING BEFORE THE PROMULGATION OF RULES UNDER THE  
13 ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO  
14 24.328.

15           (3) THE ATTORNEY GENERAL SHALL REVIEW A SIGNIFICANT CORPO-  
16 RATE TRANSFER TO DETERMINE IF APPROPRIATE STEPS HAVE BEEN TAKEN  
17 TO SAFEGUARD THE VALUE OF THE NONPROFIT RESEARCH INSTITUTE'S  
18 ASSETS AND TO ENSURE THAT ANY NET PROCEEDS OF THE SIGNIFICANT  
19 CORPORATE TRANSFER ARE USED IN FURTHERANCE OF THE CORPORATE PUR-  
20 POSES OF THE NONPROFIT RESEARCH INSTITUTE. IN REVIEWING A SIG-  
21 NIFICANT CORPORATE TRANSFER, THE ATTORNEY GENERAL SHALL CONSIDER  
22 ALL OF THE FOLLOWING:

23           (A) WHETHER THE PROPOSED SIGNIFICANT CORPORATE TRANSFER  
24 WOULD VIOLATE THIS ACT OR ANY OTHER LAW OF THIS STATE.

25           (B) WHETHER THE BOARD AND OFFICERS OF THE NONPROFIT RESEARCH  
26 INSTITUTE EXERCISED DUE CARE IN DECIDING TO ENTER INTO THE  
27 SIGNIFICANT CORPORATE TRANSFER, IN SELECTING ANY BUYER OR OTHER

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1 PARTY TO THE TRANSACTION, AND IN NEGOTIATING THE TERMS OF THE  
2 SIGNIFICANT CORPORATE TRANSFER.

3 (C) THE NONPROFIT RESEARCH INSTITUTE'S BOARD'S PROCEDURES IN  
4 MAKING THE DECISION TO ENTER INTO THE SIGNIFICANT CORPORATE  
5 TRANSFER, INCLUDING WHETHER APPROPRIATE EXPERT ASSISTANCE WAS  
6 USED.

7 (D) WHETHER ANY CONFLICT OF INTEREST WAS AVOIDED OR APPRO-  
8 PRIATELY ADDRESSED, INCLUDING, BUT NOT LIMITED TO, A CONFLICT OF  
9 INTEREST INVOLVING BOARD MEMBERS, OFFICERS, OTHER KEY EXECUTIVES,  
10 LEGAL COUNSEL, OR EXPERTS RETAINED BY THE NONPROFIT RESEARCH  
11 INSTITUTE OR BY OTHER PARTIES TO THE SIGNIFICANT CORPORATE  
12 TRANSFER.

13 (E) WHETHER THE NONPROFIT RESEARCH INSTITUTE WILL RECEIVE  
14 FAIR MARKET VALUE FOR ANY ASSETS TRANSFERRED IN CONNECTION WITH A  
15 SIGNIFICANT CORPORATE TRANSFER.

16 (F) IF A SIGNIFICANT CORPORATE TRANSFER IS FINANCED IN WHOLE  
17 OR IN PART BY THE NONPROFIT RESEARCH INSTITUTE, WHETHER THE NON-  
18 PROFIT RESEARCH INSTITUTE'S ASSETS ARE PLACED AT UNREASONABLE  
19 RISK.

20 (G) WHETHER ANY NET PROCEEDS OF THE SIGNIFICANT CORPORATE  
21 TRANSFER WILL BE USED IN A MANNER CONSISTENT WITH THE NONPROFIT  
22 RESEARCH INSTITUTE'S CORPORATE PURPOSES AND WHETHER ANY NET PRO-  
23 CEEDS WILL BE CONTROLLED AS CHARITABLE ASSETS INDEPENDENT OF ANY  
24 PARTY TO THE SIGNIFICANT CORPORATE TRANSFER THAT IS NOT ORGANIZED  
25 AND OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES.

26 (H) IF A PERSON ORGANIZED AND OPERATED EXCLUSIVELY FOR  
27 CHARITABLE PURPOSES IS ESTABLISHED TO RECEIVE ANY NET PROCEEDS OF

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1 A SIGNIFICANT CORPORATE TRANSFER, WHETHER THAT CHARITABLE PERSON  
2 WILL BE BROADLY BASED IN THE COMMUNITY SERVED BY THE NONPROFIT  
3 RESEARCH INSTITUTE AND WHETHER THE GOVERNING STRUCTURE OF THAT  
4 CHARITABLE PERSON WILL BE REPRESENTATIVE OF THAT COMMUNITY.

5 (4) THE ATTORNEY GENERAL MAY EMPLOY 1 OR MORE EXPERTS TO  
6 ASSIST IN DETERMINING IF THE PROPOSED SIGNIFICANT CORPORATE  
7 TRANSFER IS CONSISTENT WITH THE STANDARDS SET FORTH IN  
8 SUBSECTION (3) AND WITH OTHER APPLICABLE LAW, AT THE REASONABLE  
9 EXPENSE OF THE NONPROFIT RESEARCH INSTITUTE OR THE BUSINESS COR-  
10 PORATION, FOREIGN BUSINESS CORPORATION, OR OTHER PERSON THAT IS  
11 NOT ORGANIZED AND OPERATED EXCLUSIVELY FOR CHARITABLE PURPOSES,  
12 AT THE OPTION OF THE ATTORNEY GENERAL.

13 (5) IF THE ATTORNEY GENERAL DETERMINES UNDER SUBSECTION (3)  
14 THAT APPROPRIATE STEPS HAVE NOT BEEN TAKEN TO SAFEGUARD THE VALUE  
15 OF THE NONPROFIT RESEARCH INSTITUTE'S ASSETS AND TO ENSURE THAT  
16 ANY NET PROCEEDS OF THE SIGNIFICANT CORPORATE TRANSFER ARE USED  
17 IN FURTHERANCE OF THE NONPROFIT RESEARCH INSTITUTE'S CORPORATE  
18 PURPOSES, THE ATTORNEY GENERAL MAY, BEFORE OR AFTER THE SIGNIFI-  
19 CANT CORPORATE TRANSFER, INSTITUTE AN ACTION UNDER THIS SECTION  
20 OR UNDER OTHER APPLICABLE LAW TO SAFEGUARD THE VALUE OF THE NON-  
21 PROFIT RESEARCH INSTITUTE'S ASSETS OR TO ENSURE THAT ANY NET PRO-  
22 CEEDS OF THE SIGNIFICANT CORPORATE TRANSFER ARE USED IN FURTHER-  
23 ANCE OF THE NONPROFIT RESEARCH INSTITUTE'S CORPORATE PURPOSES.  
24 THE ATTORNEY GENERAL MAY INSTITUTE ANY ACTION UNDER THIS SECTION  
25 IN THE RIGHT OF THE NONPROFIT RESEARCH INSTITUTE AGAINST DIREC-  
26 TORS, OFFICERS, OR OTHER PERSONS HOLDING OR RECEIVING ASSETS OF  
27 THE NONPROFIT RESEARCH INSTITUTE THAT THE NONPROFIT RESEARCH

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1 INSTITUTE OR A MEMBER, SHAREHOLDER, OR DIRECTOR OF THE NONPROFIT  
2 RESEARCH INSTITUTE COULD MAINTAIN. EXCEPT FOR COSTS OR EXPENSES  
3 AWARDED TO THE ATTORNEY GENERAL, ANY DAMAGES AWARDED OR PROPERTY  
4 RECOVERED IN AN ACTION BROUGHT UNDER THIS SECTION ARE THE PROP-  
5 ERTY OF THE NONPROFIT RESEARCH INSTITUTE OR A SUCCESSOR CORPORA-  
6 TION DESIGNATED BY THE COURT.

7 (6) NOTICE TO THE ATTORNEY GENERAL UNDER SUBSECTION (2)(A)  
8 AND ANY ADDITIONAL DOCUMENTS SUBMITTED TO THE ATTORNEY GENERAL  
9 UNDER SUBSECTION (2)(B) ARE PUBLIC RECORDS SUBJECT TO THE FREEDOM  
10 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

11 (7) THE ATTORNEY GENERAL MAY MAKE ADDITIONAL RULES AND REGU-  
12 LATIONS NECESSARY FOR THE ADMINISTRATION OF THIS SECTION.

13 (8) THIS SECTION APPLIES TO SIGNIFICANT CORPORATE TRANSFERS  
14 THAT OCCUR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT  
15 ADDED THIS SECTION.

16 Sec. 601. (1) ~~A~~ SUBJECT TO SECTION 301A, A corporation  
17 may amend its articles of incorporation if the amendment contains  
18 ~~only such provisions as might~~ PROVISIONS THAT MAY lawfully be  
19 contained in original articles of incorporation filed at the time  
20 ~~of making~~ the amendment IS MADE.

21 (2) Subject to ~~section 301(5)~~ SECTIONS 301(5) AND 301A, a  
22 corporation may amend its articles of incorporation to become a  
23 business corporation by adopting restated articles of incorpora-  
24 tion in accordance with section 641 which shall ~~so~~ amend the  
25 articles OF INCORPORATION SO that ~~they shall~~ THE ARTICLES OF  
26 INCORPORATION contain only ~~such~~ THE provisions ~~as might~~ THAT  
27 MAY be lawfully contained in original articles of incorporation

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1 of a business corporation. ~~organized under Act No. 284 of the~~  
2 ~~Public Acts of 1972, as amended, being sections 450.1101 to~~  
3 ~~450.2099 of the Michigan Compiled Laws.~~