

HOUSE BILL No. 5523

February 6, 2018, Introduced by Reps. Kahle, Sheppard, LaFave, Bellino, Theis and Miller
and referred to the Committee on Insurance.

A bill to amend 1982 PA 162, entitled
"Nonprofit corporation act,"
by amending section 209 (MCL 450.2209), as amended by 2014 PA 557.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 209. (1) The articles of incorporation may contain any
2 provision that is not inconsistent with this act and not expressly
3 prohibited by any other statute of this state, including, but not
4 limited to, any of the following:

5 (a) A provision for management of the business and conduct of
6 the affairs of the corporation, or creating, defining, limiting, or
7 regulating the powers of the corporation, its directors, officers,
8 members, or shareholders, or a class of directors, shareholders, or

1 members.

2 (b) A provision that under this act is required or permitted
3 to be set forth in the bylaws.

4 (c) A provision that eliminates or limits a director's or
5 volunteer officer's liability to the corporation, its shareholders,
6 or its members for money damages for any action taken or any
7 failure to take any action as a director or volunteer officer,
8 except liability for any of the following:

9 (i) The amount of a financial benefit received by a director
10 or volunteer officer to which he or she is not entitled.

11 (ii) Intentional infliction of harm on the corporation, its
12 shareholders, or members.

13 (iii) A violation of section 551.

14 (iv) An intentional criminal act.

15 (v) A liability imposed under section 497(a).

16 (d) For a corporation whose purposes, structures, and
17 activities are exclusively those described in section 501(c)(3) of
18 the internal revenue code of 1986, 26 USC 501, a provision that the
19 corporation assumes all liability to any person other than the
20 corporation, its shareholders, or its members for all acts or
21 omissions of a volunteer director occurring on or after January 1,
22 1988 incurred in the good faith performance of the volunteer
23 director's duties.

24 (e) A provision that the corporation assumes the liability for
25 all acts or omissions of a volunteer director, volunteer officer,
26 or other volunteer occurring on or after the effective date of the
27 provision that grants limited liability if all of the following are

1 ~~not~~ **APPLY:**

2 (i) The volunteer was acting or reasonably believed he or she
3 was acting within the scope of his or her authority.

4 (ii) The volunteer was acting in good faith.

5 (iii) The volunteer's conduct did not amount to gross
6 negligence or willful and wanton misconduct.

7 (iv) The volunteer's conduct was not an intentional tort.

8 (v) The volunteer's conduct was not a tort arising out of the
9 ownership, maintenance, or use of a motor vehicle. ~~for which tort~~
10 ~~liability may be imposed under section 3135 of the insurance code~~
11 ~~of 1956, 1956 PA 218, MCL 500.3135.~~

12 (f) A provision that reserves to 1 or more members,
13 shareholders, or other persons all or part of the authority to
14 exercise the corporate powers or to manage the business and affairs
15 of the corporation, including the resolution of any issue about
16 which there exists a deadlock among directors, shareholders, or
17 members. A provision authorized under this subsection that limits
18 the discretion or powers of the board relieves the directors of,
19 and imposes on the person or persons in which the discretion or
20 powers are vested, liability for acts or omissions imposed by law
21 on directors to the extent that the discretion or powers of the
22 directors are limited by the provision. The person or persons in
23 which the discretion or powers are vested are treated as a director
24 or directors for the purposes of any limitation or assumption of
25 liability under this section and, except as otherwise provided in
26 the articles of incorporation or bylaws, have the same rights and
27 obligations with respect to indemnification as a director or

1 directors.

2 (2) If the articles of incorporation contain a provision that
3 eliminates the liability of a volunteer director or volunteer
4 officer that was filed before ~~the effective date of the amendatory~~
5 ~~act that added this subsection,~~ **JANUARY 15, 2015**, that provision is
6 considered to eliminate the liability of a director or volunteer
7 officer under subsection (1)(c).

8 Enacting section 1. This amendatory act takes effect January
9 1, 2020.

10 Enacting section 2. This amendatory act does not take effect
11 unless Senate Bill No. ____ or House Bill No. 5517 (request no.
12 04146'17) of the 99th Legislature is enacted into law.