

**NONPROFIT CORPORATION ACT (EXCERPT)**  
**Act 162 of 1982**

**450.2564a Indemnification of director, officer, employee, nondirector volunteer, or agent under MCL 450.2561 or 450.2562; authorization; basis; determination; evaluation; designation of committee or selection of legal counsel; indemnification for portion of expenses; payment; indemnification of director for expenses and liabilities.**

Sec. 564a. (1) Except as otherwise provided in subsection (5), unless ordered by the court, a corporation shall indemnify a director, officer, employee, nondirector volunteer, or agent under section 561 or 562, only if authorized in the specific case based on a determination that indemnification of the director, officer, employee, nondirector volunteer, or agent is proper in the circumstances because that person has met the applicable standard of conduct set forth in sections 561 and 562 and based on an evaluation that the expenses and amounts paid in settlement are reasonable. A corporation shall make a determination and evaluation under this subsection in 1 of the following ways:

(a) By a majority vote of a quorum of the board that consists of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If the board is unable to obtain a quorum under subdivision (a), by majority vote of a committee that is duly designated by the board and that consists solely of 2 or more directors who are not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) By independent legal counsel in a written opinion. The corporation must select counsel to prepare the opinion in 1 of the following ways:

(i) By the board or a committee of directors in the manner described in subdivision (a) or (b).

(ii) If the board is unable to obtain a quorum under subdivision (a) and the board is unable to designate a committee under subdivision (b), by the board.

(d) By the shareholders or members, but shares or memberships held by directors, officers, employees, nondirector volunteers, or agents that are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(2) All directors may participate in designating a committee under subsection (1)(b) or in selecting independent legal counsel under subsection (1)(c)(ii).

(3) If a person is entitled to indemnification under section 561 or 562 for a portion of expenses, including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

(4) A corporation shall authorize payment of indemnification under this section in any of the following ways:

(a) By the board in 1 of the following ways:

(i) If there are 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all directors who are not parties or threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(ii) By a majority of the members of a committee of 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(iii) If there are fewer than 2 directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by the vote necessary for action by the board under section 523. All directors may participate in authorization under this subparagraph.

(b) By the shareholders or members, but shares or memberships held by directors, officers, employees, nondirector volunteers, or agents that are parties or threatened to be made parties to the action, suit, or proceeding may not be voted on the authorization.

(5) To the extent that the articles of incorporation eliminate or limit the liability of a director under section 209(1)(c), a corporation may indemnify a director for the expenses and liabilities described in this subsection without a determination that the director has met the standard of conduct set forth in sections 561 and 562, but shall not indemnify the director for obligations imposed under section 497(a) or, except to the extent authorized in section 564c, if the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders or members, violated section 551, or intentionally committed a criminal act. In connection with an action or suit by or in the right of the corporation described in section 562, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred. In connection with an action, suit, or proceeding other than an action, suit, or proceeding by or in the right of the corporation, described in section 561, a corporation may indemnify a director under this subsection for expenses, including attorneys' fees, actually and reasonably

incurred, and for judgments, penalties, fines, and amounts paid in settlement that are actually and reasonably incurred.

**History:** Add. 2014, Act 557, Imd. Eff. Jan. 15, 2015.