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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 532 (as reported with amendment)

Sponsor: Senator Dick Posthumus

Committee: Commerce and Technology

Date Completed: 10-19-89

RATIONALE

Public Act 170 of 1987 amended the Nonprofit Corporation Act to allow corporations to limit the personal liability of directors, and to broaden the authority of corporations to indemnify directors and officers for claims made against them. The Nonprofit Corporation Subsection of the State Bar Corporations, Finance, and Business Law Section, now has recommended several "cleanup" amendments to establish a standard of care that would limit the circumstances under which directors and officers could be free of liability to their corporation, clarify the amount that an individual may receive as compensation and still be considered a volunteer director, and remove ambiguity regarding which corporations are covered by the Act.

CONTENT

The bill would amend the Nonprofit Corporation Act to revise provisions relating to the liability of a volunteer director. Under the Act, the articles of incorporation of a tax-exempt nonprofit corporation may provide that the corporation assumes all liability to any person other than the corporation, its shareholders, or its members, for all acts or omissions of a volunteer director occurring on or after January 1, 1988. The bill would refer to all such acts or omissions "incurred in the good faith performance of the volunteer director's duties".

The Act defines "volunteer director" as a director who does not receive anything of value

from the corporation for serving as a director other than per diem compensation and reimbursement of expenses. The bill would refer to receiving anything of "more than nominal" value.

The bill also would move the reference to 501(c)(3) corporations (nonprofit corporations that are generally tax-exempt under the Internal Revenue Code). Currently, the reference to these corporations is in the Act's definition section; the bill would refer to them, instead, in the provision that allows a corporation to assume all liability to any other person for the acts or omissions of a volunteer director.

MCL 450.2108 et al.

FISCAL IMPACT

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

ARGUMENTS**Supporting Argument**

Public Act 170 was 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. The proposed amendments would further that Act's goal of ensuring the willingness of qualified individuals to serve voluntarily on the board of a nonprofit

corporation. By establishing a good faith standard of care in order for a director to be relieved of personal liability, the bill would preclude corporations from assuming the liability of a director for actions that have no relationship to the corporation's function or that are actually malicious--which some corporations apparently believe they are authorized to do.

By providing that a volunteer director could not receive anything of "more than nominal" value, the bill would remove the Act's current ambiguity and ensure that directors could receive such honoraria as pins, gavels, and meals without jeopardizing their volunteer status.

In addition, by moving the reference to 501(c)(3) corporations out of the Act's definition section, the bill would eliminate the ambiguity as to which statute regulates these corporations when they are organized under a different law.

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