

# SENATE BILL No. 532

July 27, 1989, Introduced by Senators POSTHUMUS, SHINKLE and NICHOLS and referred to the Committee on Commerce and Technology.

A bill to amend sections 108, 110, 123, and 209 of Act No. 162 of the Public Acts of 1982, entitled "Nonprofit corporation act," sections 108, 110, and 209 as amended by Act No. 170 of the Public Acts of 1987, being sections 450.2108, 450.2110, 450.2123, and 450.2209 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 108, 110, 123, and 209 of Act No. 162  
2 of the Public Acts of 1982, sections 108, 110, and 209 as amended  
3 by Act No. 170 of the Public Acts of 1987, being sections  
4 450.2108, 450.2110, 450.2123, and 450.2209 of the Michigan  
5 Compiled Laws, are amended to read as 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) "Nonprofit corporation" means ~~either of the following:~~

2 ~~(a) A~~ A corporation incorporated to carry out any lawful  
3 purpose or purposes not involving pecuniary profit or gain for  
4 its directors, officers, shareholders, or members.

5 ~~(b) A corporation which has been designated as a tax exempt~~  
6 ~~organization under section 501(c)(3) of the internal revenue code~~  
7 ~~or is eligible to apply for such a designation.~~

8 (3) "Person" means an individual, a partnership, a domestic  
9 or foreign corporation or domestic or foreign business corpora-  
10 tion, or any other association, corporation, trust, or legal  
11 entity.

12 (4) "Predecessor act" means an act or part of an act  
13 repealed by this act; or an act or part of an act repealed by an  
14 act which this act repeals.

15 Sec. 110. (1) "Treasury shares" means shares which have  
16 been issued, have been subsequently acquired by a corporation,  
17 and have not been canceled. Treasury shares are issued shares,  
18 but not outstanding shares.

19 (2) "Volunteer director" means a director who does not  
20 receive anything of SUBSTANTIAL MONETARY value from the corpora-  
21 tion for serving as a director other than reasonable per diem  
22 compensation and reimbursement for actual, reasonable, and neces-  
23 sary expenses incurred by a director in his or her capacity as a  
24 director.

25 Sec. 123. (1) Unless otherwise provided in, ~~or~~ AND TO THE  
26 EXTENT NOT inconsistent with, the act under which a corporation  
27 is or has been formed, this act applies to a corporation which is

1 or has been organized under an act other than this act AND not  
2 repealed by this act.

3 (2) A corporation covered by subsection (1) includes, but is  
4 not limited to, a cooperative corporation classified as a non-  
5 profit corporation pursuant to section 98 of Act No. 327 of the  
6 Public Acts of ~~1941~~ 1931, as amended, being section 450.98 of  
7 the Michigan Compiled Laws; a secret society or lodge; a trustee  
8 corporation holding property for charitable, religious, benevo-  
9 lent, educational, or other public benefit purposes; a church  
10 trustee corporation; an educational corporation which is orga-  
11 nized as a trustee corporation; or a nonprofit corporation, an  
12 ecclesiastical corporation, and a public building corporation.

13 (3) This act does not apply to insurance, surety, credit  
14 unions, savings and loan associations, fraternal benefit socie-  
15 ties, railroad, bridge, and tunnel companies, union depot com-  
16 panies, and banking corporations.

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  
20 state, for management of the business and conduct of the affairs  
21 of the corporation, or creating, defining, limiting, or regulat-  
22 ing the powers of the corporation, its directors, members, and  
23 shareholders, or a class of shareholders or members.

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

26 (c) A provision that a volunteer director is not personally  
27 liable to the corporation or its shareholders or members for

1 monetary damages for a breach of the director's fiduciary duty  
2 ~~— However, the~~ ARISING UNDER THIS ACT, THE UNIFORM MANAGEMENT  
3 OF INSTITUTIONAL FUNDS ACT, ACT NO. 157 OF THE PUBLIC ACTS OF  
4 1976, BEING SECTIONS 451.1201 TO 451.1210 OF THE MICHIGAN  
5 COMPILED LAWS, OR OTHER APPLICABLE LAW. THE provision shall not  
6 eliminate or limit the liability of a director for any of the  
7 following:

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

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

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

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

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

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

17 (d) For a ~~nonprofit~~ TAX EXEMPT corporation ~~as defined in~~  
18 ~~section 108(2)(b)~~ DESCRIBED IN SECTION 501(c)(3) OF THE INTERNAL  
19 REVENUE CODE, a provision that the corporation assumes all  
20 liability to any person other than the corporation, its share-  
21 holders, or its members for all acts or omissions of a volunteer  
22 director occurring on or after January 1, 1988 INCURRED IN THE  
23 GOOD FAITH PERFORMANCE OF THE VOLUNTEER DIRECTOR'S DUTIES.