

Act No. 88  
Public Acts of 2009  
Approved by the Governor  
September 10, 2009  
Filed with the Secretary of State  
September 10, 2009  
EFFECTIVE DATE: September 10, 2009

**STATE OF MICHIGAN  
95TH LEGISLATURE  
REGULAR SESSION OF 2009**

Introduced by Senator Kuipers

# **ENROLLED SENATE BILL No. 412**

AN ACT to amend 1982 PA 162, entitled "An act to revise, consolidate, and classify the laws relating to the organization and regulation of certain nonprofit corporations; to prescribe their duties, rights, powers, immunities, and liabilities; to provide for the authorization of foreign nonprofit corporations within this state; to impose certain duties on certain state departments; to prescribe fees; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts," by amending sections 124, 261, 501, and 541 (MCL 450.2124, 450.2261, 450.2501, and 450.2541), section 124 as amended by 2002 PA 33 and section 541 as amended by 1987 PA 170.

*The People of the State of Michigan enact:*

Sec. 124. (1) This act does not modify the requirements of the following:

- (a) The supervision of trustees for charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.
- (b) 1965 PA 169, MCL 450.251 to 450.253.
- (c) The charitable organizations and solicitations act, 1975 PA 169, MCL 400.271 to 400.294.
- (d) The uniform prudent management of institutional funds act.
- (e) The career development and distance learning act, 2002 PA 36, MCL 390.1571 to 390.1579.

(2) A corporation subject to 1 or more of the acts listed in subsection (1) shall comply with those acts and shall comply with this act. If there is any inconsistency between those acts and this act, those acts shall control.

Sec. 261. (1) A corporation, subject to any limitation provided in this act, in any other statute of this state, in its articles of incorporation, or otherwise by law, has the power in furtherance of its corporate purposes to do any of the following:

- (a) Have perpetual duration.
- (b) Sue and be sued in all courts and participate in actions and proceedings judicial, administrative, arbitral, or otherwise, in the same manner as a natural person.

(c) Have a corporate seal, and alter the seal, and use it by causing it or a facsimile to be affixed, impressed, or reproduced in any other manner.

(d) Adopt, amend, or repeal bylaws, including emergency bylaws, relating to the purposes of the corporation, the conduct of its affairs, its rights and powers, and the rights and powers of its shareholders, members, directors, or officers.

(e) Elect or appoint officers, employees, and other agents of the corporation, prescribe their duties, fix their compensation and the compensation of directors, and indemnify corporate directors, officers, employees, and agents.

(f) Purchase, receive, take by grant, gift, devise, bequest, or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use, and otherwise deal in and with, real or personal property, or an interest in real or personal property, wherever situated, either absolutely or in trust and without limitation as to amount or value.

(g) Sell, convey, lease, exchange, transfer, or otherwise dispose of, or mortgage or pledge, or create a security interest in, any of its property, or an interest in the property, wherever situated.

(h) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, use, and otherwise deal in and with, bonds and other obligations, shares or other securities or interests or memberships issued by others, whether engaged in similar or different business, governmental, or other activities, including banking corporations or trust companies. A corporation organized or conducting affairs in this state under this act shall not guarantee or become surety upon a bond or other undertaking securing the deposit of public money.

(i) Make contracts, give guarantees, and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property or an interest in the property, wherever situated.

(j) Lend money, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested.

(k) Make donations for public welfare or for community fund, hospital, charitable, educational, scientific, civic, or similar purposes, and in time of war or other national emergency in aid of war or other national emergency.

(l) Pay pensions, establish and carry out pension, savings, thrift, and other retirement, incentive, and benefit plans, trusts and provisions for any of its directors, officers, and employees.

(m) Purchase, receive, take, otherwise acquire, own, hold, sell, lend, exchange, transfer, otherwise dispose of, pledge, use, and otherwise deal in and with its own shares, bonds, and other securities.

(n) Participate with others in any corporation, business corporation, partnership, limited partnership, joint venture, or other association of any kind, or participate with others in any transaction, undertaking, or agreement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

(o) Cease its corporate activities and dissolve.

(p) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this act in any jurisdiction within or without the United States, and, in the case of a corporation the purpose or purposes of which require the transaction of business, the receipt and payment of money, the care and custody of property, and other incidental business matters, transact such business, receive, collect, and disburse such money, and engage in such other incidental business matters as are naturally or properly within the scope of its articles.

(q) Have and exercise all powers necessary or convenient to effect any purpose for which the corporation is formed.

(2) A corporation subject to the uniform prudent management of institutional funds act has all powers granted under both this act and that act. However, in the event of an inconsistency between the 2 acts, the uniform prudent management of institutional funds act controls.

(3) The corporate existence of all corporations incorporated before January 1, 1983, without capital stock, for religious, benevolent, social, or fraternal purposes, shall be considered to be in perpetuity. A limitation or term fixed in the articles or in the law under which the corporation originally incorporated is not effective unless the corporation affirmatively waived its right to perpetual existence after September 18, 1931, by fixing a definite term of existence by amendment to its articles.

(4) Any nonprofit power corporation that is authorized to furnish electric service may construct, maintain, and operate its lines along, over, across, or under any public places, streets, and highways, and across or under the waters in this state, with all necessary erections and fixtures. A nonprofit power corporation may exercise the power of eminent domain, in the manner provided by the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75. As a condition to the exercise of any of these powers, nonprofit corporations are subject to the jurisdiction of the Michigan public service commission pursuant to 1909 PA 106, MCL 460.551 to 460.559, 1919 PA 419, MCL 460.54 to 460.62, and 1939 PA 3, MCL 460.1 to 460.11.

Sec. 501. (1) The business and affairs of a corporation shall be managed by its board, except as otherwise provided in this act. A director need not be a shareholder or member of the corporation unless the articles or bylaws so require. The articles or bylaws may prescribe qualifications for directors.

(2) The board of a corporation that is subject to the uniform prudent management of institutional funds act has the powers granted under both that act and this act. However, in the event of an inconsistency between the 2 acts, the uniform prudent management of institutional funds act controls.

Sec. 541. (1) A director or an officer shall discharge the duties of that position in good faith and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging the duties, a director or an officer, when acting in good faith, may rely upon the opinion of counsel for the corporation, upon the report of an independent appraiser selected with reasonable care by the board, or upon financial statements of the corporation represented to the director or officer as correct by the president or the officer of the corporation who has charge of its books or account, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the corporation.

(2) A director or officer of a corporation subject to the uniform prudent management of institutional funds act, shall be considered to be in compliance with this section if the director or officer complies with the uniform prudent management of institutional funds act in the administration of the powers specified in that act.

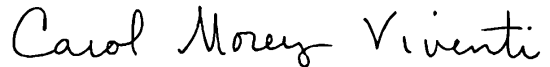
(3) If the corporation's articles of incorporation contain a provision authorized under section 209(c), a volunteer director of the corporation is only personally liable for monetary damages for a breach of fiduciary duty as a director to the corporation, its shareholders, or its members to the extent set forth in the provision.

(4) If the corporation's articles of incorporation contain a provision authorized under section 209(d), a claim for monetary damages for a breach of a volunteer director's duty to any person other than the corporation, its shareholders, or its members shall not be brought or maintained against the volunteer director. The claim shall be brought or maintained instead against the corporation, which shall be liable for any breach of the volunteer director's duty.

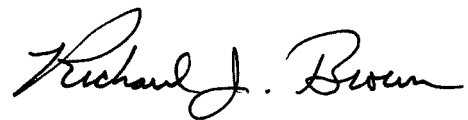
(5) An action against a director or officer for failure to perform the duties imposed by this section shall be commenced within 3 years after the cause of action has accrued, or within 2 years after the time when the cause of action is discovered, or should reasonably have been discovered, by the complainant, whichever occurs first.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 411 of the 95th Legislature is enacted into law.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

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Governor

**Compiler's note:** Senate Bill No. 411, referred to in enacting section 1, was filed with the Secretary of State September 10, 2009, and became 2009 PA 87, Imd. Eff. Sept. 10, 2009.