

## NONPROFIT CORPORATION ACT (EXCERPT)

### Act 162 of 1982

#### CHAPTER 5

#### **450.2501 Board of directors; management of business and affairs of corporation; qualifications; powers.**

Sec. 501. (1) The business and affairs of a corporation shall be managed by or under the direction of its board, except as otherwise provided in this act or in its articles of incorporation. A director is not required to be a shareholder or member of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation 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, 2009 PA 87, MCL 451.921 to 451.931, has the powers granted under both that act and this act. In the event of an inconsistency between the 2 acts, the uniform prudent management of institutional funds act, 2009 PA 87, MCL 451.921 to 451.931, controls.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2009, Act 88, Imd. Eff. Sept. 10, 2009;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2501a Board of directors; minimum age; requirements.**

Sec. 501a. (1) A corporation organized for purposes described in section 501(c)(3) of the internal revenue code of 1986 may include 1 or more directors on its board who are 16 or 17 years of age as long as that number does not exceed 1/2 the total number of directors required for a quorum for the transaction of business.

(2) If a corporation described in subsection (1) may have more than 1 director who is 16 or 17 years of age, the corporation shall state in its articles of incorporation the number of directors who may be 16 or 17 years of age.

**History:** Add. 1998, Act 444, Imd. Eff. Dec. 30, 1998.

#### **450.2505 Board; number, term, election or appointment, and resignation of directors.**

Sec. 505. (1) The bylaws shall fix the number of directors or establish the manner for fixing the number, unless the articles of incorporation fix the number, subject to the following:

(a) The board of a private foundation and board of a corporation formed to provide care to a dentally underserved population under section 16625 of the public health code, 1978 PA 368, MCL 333.16625, shall consist of 1 or more directors.

(b) The board of a corporation that is not described in subdivision (a) shall consist of 3 or more directors.

(2) The articles of incorporation or a bylaw adopted by the shareholders, members, or incorporators of a corporation that is organized on a stock or membership basis may specify the term of office and the manner of election or appointment of directors. If the articles of incorporation or bylaws do not specify the term of office or manner of election or appointment of directors, the first board of directors shall hold office until the first annual meeting of shareholders or members. At the first annual meeting of shareholders or members and at each subsequent annual meeting the shareholders or members shall elect directors to hold office until the succeeding annual meeting, except as provided in section 506.

(3) The articles of incorporation or a bylaw of a corporation that is organized on a directorship basis shall specify the term of office and the manner of election or appointment of directors.

(4) A director shall hold office for the term for which he or she is elected or appointed and until his or her successor is elected or appointed and qualified, or until his or her resignation or removal. A director may resign by written notice to the corporation. A resignation of a director is effective when it is received by the corporation or at a later time if a later time is stated in the notice of resignation.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 222, Imd. Eff. July 16, 2008;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2506 Dividing directors up to 5 classes; election or appointment; term; expiration.**

Sec. 506. (1) The articles of incorporation or a bylaw adopted by the shareholders, members, or incorporators of a corporation that is organized on a stock or membership basis may provide that in lieu of annual election of all directors the directors are divided into up to 5 classes, each of which is as nearly equal in number as possible, and elected or appointed for the terms and in the manner as specified in the articles of incorporation or bylaws. If the articles of incorporation or the bylaws do not specify the term of office for the classes of directors, the term of office of directors in the first class shall expire at the first annual meeting of shareholders or members after their election, and that of each succeeding class shall expire at the next annual

meeting after their election corresponding with the number of their class. At each annual meeting after classes are established, the shareholders or members shall elect a number of directors equal to the number of the class whose term expires at the time of the meeting to hold office until the next annual meeting corresponding with the number of their class.

(2) A corporation that has more than 1 class of shares or membership may provide in its articles of incorporation or a bylaw adopted by each class of shareholders or members for the election of 1 or more directors by shareholders or members of a class, to the exclusion of other shareholders or members.

(3) The articles of incorporation or bylaws of a corporation that is organized on a directorship basis may provide that the directors are divided into up to 5 classes, elected or appointed for the terms and in the manner as specified in the articles of incorporation or bylaws.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2511 Removal of director; vote.**

Sec. 511. (1) The shareholders or members of a corporation that is organized on a stock or membership basis may remove 1 or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause. A vote of a majority of the shares or members entitled to vote at an election of directors is required for removal, except that the articles of incorporation may require a higher vote for removal without cause. This subsection does not invalidate any bylaw adopted before the effective date of the amendatory act that added this sentence to the extent that the bylaw applies to removal without cause.

(2) The directors of a corporation that is organized on a directorship basis may remove 1 or more directors with cause. The vote of a majority of the directors then in office is required for a removal under this subsection. If authorized in the articles of incorporation or bylaws, a director of a corporation that is organized on a directorship basis who is appointed or elected by a person or persons other than the board of directors of the corporation may also be removed, with or without cause, by the person or persons that appointed or elected that director.

(3) If a corporation has cumulative voting, and less than the entire board is to be removed, no 1 of the directors may be removed if the votes cast against his or her removal are sufficient to elect him or her if cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he or she is a part.

(4) If holders of a class of stock or of bonds or members of a class are entitled under the articles of incorporation or a bylaw adopted under section 506(2) to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class of stock, the holders of those bonds, or the members of that class.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2514 Removal of director by circuit court.**

Sec. 514. (1) The circuit court for the county in which the principal place of business or registered office of a corporation is located may remove a director of the corporation from office in a proceeding commenced by the corporation, by its shareholders holding at least 10% of the outstanding shares of any class, or by 10% of the members if the court finds that the director engaged in fraudulent, illegal, or dishonest conduct or gross abuse of authority or discretion with respect to the corporation, and removal is in the best interest of the corporation.

(2) A court that removes a director under this section may bar him or her from serving as a director of the corporation for a period prescribed by the court.

(3) If shareholders or members commence a proceeding under subsection (1), they shall make the corporation a party defendant.

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

#### **450.2515 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to filling of vacancies on board of directors.

#### **450.2515a Vacancy.**

Sec. 515a. (1) Unless otherwise limited in the articles of incorporation or bylaws, if a vacancy, including a vacancy resulting from an increase in the number of directors, occurs on a board, the corporation may fill the vacancy in any of the following manners:

(a) The shareholders of a corporation that is organized on a stock basis or the members of a corporation that is organized on a membership basis may fill the vacancy.

(b) The board may fill the vacancy.

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless otherwise provided in the articles of incorporation or bylaws, if the holders of any class or classes of stock or the members of any class or classes are entitled to elect 1 or more directors to the exclusion of other shareholders or members, vacancies of that class or classes may be filled only by 1 of the following:

(a) By a majority of the directors elected by the holders of that class or classes of stock or the members of that class or classes then in office, whether or not those directors constitute a quorum of the board.

(b) By the holders of shares of that class or classes of shares or the members of that class or classes.

(3) Unless otherwise limited in the articles of incorporation or bylaws, if a corporation's directors are divided into classes, any director chosen to fill a vacancy shall hold office until the next election of the class for which the director was chosen, and until his or her successor is elected and qualified.

(4) If because of death, resignation, or other cause, a corporation has no directors in office, an officer, a shareholder, a member of a corporation that is organized on a membership basis, a personal representative, administrator, trustee, or guardian of a shareholder or member, or other fiduciary entrusted with the same responsibility for the person or estate of a shareholder or member, may call a special meeting of shareholders or members in accordance with the articles or the bylaws.

(5) A corporation may fill a vacancy that will occur at a specific date, by reason of a resignation that is effective at a later date under section 505 or otherwise, before the vacancy occurs, but a director who is elected or appointed under this subsection may not take office until the vacancy occurs.

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

#### **450.2521 Regular or special meetings of board; location; notice; attendance or participation as waiver of notice; participation by means of conference telephone or other remote communication.**

Sec. 521. (1) A board may hold regular or special meetings of the board either in or outside of this state.

(2) A board may hold a regular meeting with or without notice as prescribed in the bylaws. A board may hold a special meeting after giving notice as prescribed in the bylaws. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or when he or she arrives, objects to the meeting or the transacting of business at the meeting and after objecting does not vote for or assent to any action taken at the meeting. Unless required under the bylaws, notice or a waiver of notice of a meeting does not have to specify the business to be transacted or the purpose of, the regular or special meeting.

(3) Unless otherwise restricted in the articles of incorporation or bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or other means of remote communication if all individuals who are participating in the meeting can communicate with the other participants. Participation in a meeting under this subsection constitutes attendance in person at the meeting.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2523 Quorum; vote constituting action of board or committee; amendment of bylaws.**

Sec. 523. (1) A majority of the members of a board who are then in office, or of the members of a committee of the board, constitutes a quorum for the transaction of business, unless the articles of incorporation or bylaws, or in the case of a committee, the board resolution that establishes the committee, provide for a larger or smaller number. However, a quorum of the board may not be less than 1/3 of the members of the board who are then in office and a quorum of an executive committee acting on behalf of the board under section 527 may not be less than 1/3 of members of the executive committee. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee, unless the vote of a larger number is required under this act, the articles of incorporation, or the bylaws, or in the case of a committee, the board resolution that establishes the committee.

(2) Amendment of the bylaws by a board requires the vote of not less than a majority of the members of the board then in office, unless the articles of incorporation or bylaws provide for a larger number.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2525 Taking action without meeting; consent.**

Sec. 525. Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission. The written consents shall be filed with the minutes of the

proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 9, Imd. Eff. Feb. 29, 2008.

**450.2527 Designation of committees; membership; alternates; absent or disqualified member; providing for election or appointment of committees in articles or bylaws.**

Sec. 527. (1) Unless otherwise provided in the articles of incorporation or bylaws, the board may designate 1 or more executive committees, each executive committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of an executive committee, who may replace an absent or disqualified member at a meeting of the executive committee. The bylaws may provide that in the absence or disqualification of a member of an executive committee, the members present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in place of the absent or disqualified member.

(2) An executive committee designated under subsection (1) and each member of an executive committee serves at the pleasure of the board.

(3) The articles of incorporation or bylaws may provide for the election or appointment of 1 or more executive committees that consist of 1 or more shareholders or members, 1 or more directors, or a combination of shareholders or members and directors.

(4) Unless otherwise prohibited in the articles of incorporation or bylaws, the board or an individual or individuals designated in the bylaws or by the board may appoint 1 or more committees that are not executive committees to assist in the conduct of its affairs and may provide for the creation of 1 or more subcommittees of any committee appointed under this subsection. The bylaws, or a resolution that establishes the committee and is approved by the board in the absence of a bylaw provision, shall state the purposes of the committees appointed under this subsection, the terms and qualifications of committee members, and the ways in which members of the committees are selected and removed. The board or authorized individuals may designate 1 or more individuals as alternate members of a committee appointed under this subsection who may replace an absent or disqualified committee member in a meeting of the committee. Some or all of the members of a committee appointed under this subsection may be individuals who are directors, officers, members, or shareholders of the corporation and some or all of the members of a committee appointed under this subsection may be individuals who are not directors, officers, members, or shareholders of the corporation, as provided in the bylaws or in the action or resolution or resolutions of the board that establish the committee. A committee that is appointed under this subsection is not an executive committee and may not execute the power or authority of the board in the management of the business and affairs of the corporation, but may perform under the direction of the board those functions described in the bylaws or determined from time to time by the board.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2528 Executive committee designated under MCL 450.2527(1) or (3); powers and authority; subcommittees.**

Sec. 528. (1) An executive committee that is designated under section 527(1) or (3), to the extent provided in the resolution of the board, in the articles of incorporation, or in the bylaws, may exercise any or all powers and authority of the board in management of the business and affairs of the corporation. An executive committee does not have power or authority to do any of the following:

- (a) Amend the articles of incorporation.
- (b) Adopt an agreement of merger or conversion.
- (c) Recommend to shareholders or members the sale, lease, or exchange of all or substantially all of the corporation's property and assets.
- (d) Recommend to shareholders or members a dissolution of the corporation or a revocation of a dissolution.
- (e) Amend the bylaws of the corporation.
- (f) Fill vacancies in the board.
- (g) Fix compensation of the directors for serving on the board or on a committee.
- (h) Cancel shares or terminate memberships.

(2) Unless the resolution, articles of incorporation, or bylaws expressly provide the power or authority, an executive committee does not have power or authority to declare a distribution authorized under section 301 or to authorize the issuance of shares or memberships.

(3) Unless otherwise provided in the resolution, articles of incorporation, or bylaws, an executive committee may create 1 or more subcommittees. Each subcommittee shall consist of 1 or more members of

the committee. An executive committee or the board may delegate to a subcommittee any or all of the powers and authority of the committee.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2529 Submitting matter to vote.**

Sec. 529. A corporation may agree to submit a matter to a vote of its shareholders or members even if, after approving the matter, the board of directors later determines that it no longer recommends the matter or recommends against approval of the matter by the shareholders or members.

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

#### **450.2531 Officers of corporation; membership; election or appointment; individual holding 2 or more offices; term of office; authority and duties.**

Sec. 531. (1) The officers of a corporation shall consist of a president, secretary, treasurer, and, if desired, a chairperson of the board, 1 or more vice presidents, and any other officers as prescribed in the bylaws or determined by the board. Unless otherwise provided in the articles of incorporation or bylaws, the board shall elect or appoint the officers.

(2) One individual may hold 2 or more offices, but an officer shall not execute, acknowledge, or verify an instrument in more than 1 capacity if the instrument is required by law or the articles of incorporation or bylaws to be executed, acknowledged, or verified by 2 or more officers.

(3) An officer shall hold office for the term for which he or she is elected or appointed and until his or her successor is elected or appointed and qualified, or until his or her resignation or removal.

(4) An officer, as between himself or herself, other officers, and the corporation, has the authority and shall perform the duties in the management of the corporation provided in the bylaws, or determined in accordance with a resolution or resolutions of the board that is not inconsistent with the bylaws.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2535 Removal of officer; suspension of authority to act; contract rights; resignation of officer; notice.**

Sec. 535. (1) An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders or members may be removed, with or without cause, only by vote of the shareholders or members. The authority of the officer to act as an officer may be suspended by the board for cause.

(2) The removal of an officer shall be without prejudice to the contract rights of the officer, if any. The election or appointment of an officer does not of itself create contract rights.

(3) An officer may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or at a subsequent time specified in the notice of resignation.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2541 Director or officer; discharge of duties; manner; reliance on certain information; compliance; liability; claim for monetary damages for breach of volunteer director's duty; commencement of action.**

Sec. 541. (1) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:

(a) In good faith.

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In a manner he or she reasonably believes is in the best interests of the corporation.

(2) In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

(a) One or more directors, officers, or employees of the corporation, or of a domestic or foreign corporation or a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented.

(b) Legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence.

(c) A committee of the board of which he or she is not a member if the director or officer reasonably believes that the committee merits confidence.

(3) A director or officer is not entitled to rely on the information described in subsection (2) if he or she



has knowledge concerning the matter in question that makes reliance otherwise permitted under subsection (2) unwarranted.

(4) A director or officer of a corporation that is subject to the uniform prudent management of institutional funds act, 2009 PA 87, MCL 451.921 to 451.931, is considered to be in compliance with this section if he or she complies with the uniform prudent management of institutional funds act, 2009 PA 87, MCL 451.921 to 451.931, in the administration of the powers specified in that act.

(5) If the corporation's articles of incorporation contain a provision authorized under section 209(1)(c), a 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.

(6) If the corporation's articles of incorporation contain a provision authorized under section 209(1)(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. However, that claim may be brought or maintained against the corporation, and the corporation is liable for any breach of the volunteer director's duty.

(7) An action against a director or officer for failure to perform the duties imposed under 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.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 2009, Act 88, Imd. Eff. Sept. 10, 2009;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2545 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to transaction between corporation and directors or officers, or between corporation and corporation or business corporation, firm, or association in which directors or officers have interest.

#### **450.2545a Transaction in which director or officer has interest.**

Sec. 545a. (1) A transaction in which a director or officer is determined to have an interest shall not be enjoined, set aside, or give rise to an award of damages or other sanctions because of the interest, in a proceeding by a shareholder, a member, or a director of a corporation that is organized on a directorship basis or by or in the right of the corporation, if the person interested in the transaction establishes any of the following:

(a) The transaction was fair to the corporation at the time it was entered into.

(b) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board or an executive committee of the board and the board or executive committee authorized, approved, or ratified the transaction.

(c) The material facts of the transaction and the director's or officer's interest were disclosed or known to the shareholders or members who are entitled to vote and they authorized, approved, or ratified the transaction.

(2) For purposes of subsection (1)(b), a transaction is authorized, approved, or ratified if it received the affirmative vote of the majority of the directors on the board or the executive committee who did not have an interest in the transaction, though less than a quorum. The presence of, or a vote cast by, a director with an interest in the transaction does not affect the validity of an action taken under subsection (1)(b).

(3) For purposes of subsection (1)(c), a transaction is authorized, approved, or ratified if it received the majority of votes that were cast by the holders of shares or members that did not have an interest in the transaction. A majority of the votes held by shareholders or members that did not have an interest in the transaction constitutes a quorum for the purpose of taking action under subsection (1)(c).

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a director or officer is determined to have an interest. Those claims shall be evaluated under principles applicable to a transaction in which a director or officer does not have an interest.

(5) Unless the compensation is prohibited by the articles of incorporation or the bylaws, the board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may, subject to any limitations in the articles of incorporation or bylaws, establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders or members is required if the articles of incorporation, bylaws, or other provisions of this act require that approval. Transactions pertaining to the compensation of directors for services to the corporation as directors or officers shall not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or member or by or in the right of the corporation unless it is shown that the compensation was unreasonable at the time it was established or exceeded amounts permitted under the

articles of incorporation or bylaws.

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

#### **450.2546 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to establishing validity of contract described in MCL 450.2545.

#### **450.2548 Loan, guaranty, or assistance by corporation for officer or employee.**

Sec. 548. (1) Unless otherwise prohibited by law or prohibited in the articles of incorporation or bylaws, a corporation may lend money to, guarantee an obligation of, or otherwise assist an officer or employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or subsidiary, if in the judgment of the board, the loan, guaranty, or assistance is reasonably expected to benefit the corporation, or the loan, guaranty, or assistance is provided under a plan authorizing loans, guaranties, or assistance that the board has reasonably determined will benefit the corporation.

(2) A loan, guaranty, or assistance described in subsection (1) may be with or without interest, and may be unsecured, or secured in a manner that the board approves, including a pledge of shares of stock of a corporation that is organized on a stock basis or pledge of a membership in a corporation that is organized on a membership basis.

(3) This section does not deny, limit, or restrict the powers of guaranty or warranty of a corporation at common law or under any statute.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2008, Act 222, Imd. Eff. July 16, 2008;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2551 Liability of directors for certain corporate actions; liability of shareholder or member accepting or receiving distribution contrary to act.**

Sec. 551. (1) Directors who vote for or concur in any of the following corporate actions are jointly and severally liable to the corporation for its benefit or for the benefit of its creditors, shareholders, or members, for any legally recoverable injury suffered by the corporation or those creditors, shareholders, or members as a result of the action in an amount that does not exceed the difference between the amount paid or distributed and the amount that lawfully could have been paid or distributed:

(a) Declaring a share dividend or distribution to shareholders or members that is contrary to this act or contrary to any restriction in the articles of incorporation or bylaws.

(b) Making a distribution to shareholders or members during or after dissolution of the corporation without paying or providing for debts, obligations, and liabilities of the corporation as required under section 855.

(c) Making a loan to a director, officer, or employee of the corporation or a subsidiary of the corporation that is contrary to this act.

(2) A director is not liable under this section if he or she complies with section 541.

(3) A shareholder or member that accepts or receives a share dividend or distribution with knowledge of facts that indicate that it is contrary to this act, or any restriction in the articles of incorporation or bylaws, is liable to the corporation in the amount accepted or received in excess of the shareholder's or member's share of the amount that the corporation could lawfully distribute.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2552 Rights of director against whom claim successfully asserted under MCL 450.2551.**

Sec. 552. (1) A director against whom a claim is successfully asserted under section 551 is entitled to contribution from the other directors who voted for, or concurred in, the action on which the claim is asserted.

(2) A director against whom a claim is successfully asserted under section 551 is entitled, to the extent of the amounts paid by him or her to the corporation as a result of the claims, to all of the following:

(a) If the director pays the corporation any amount of an improper share dividend or distribution, to be subrogated to the rights of the corporation against shareholders or members that received the share dividend or distribution in proportion to the amounts received by them.

(b) If the director pays the corporation any amount of the purchase price of an improper purchase of shares or memberships, to have the corporation rescind the purchase and recover for his or her benefit, but at his or her expense, the amount of the purchase price from any seller that sold the shares or memberships with knowledge of facts indicating that the purchase of shares or memberships by the corporation was not authorized by this act, or to have the corporation assign to the director any claim against the seller and, if consistent with its articles of incorporation and bylaws, the shares or memberships.

(c) If the director pays the corporation the claim of a creditor because of a violation of section 551(1)(b), to be subrogated to the rights of the corporation against shareholders or members that received an improper

distribution of assets.

(d) If the director pays the corporation the amount of a loan made improperly to a director, officer, or employee, to be subrogated to the rights of the corporation against the director, officer, or employee who received the improper loan.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2553 Presence or absence of director at meeting at which action under MCL 450.2551 taken; presumption; dissent.**

Sec. 553. (1) If a director is present at a meeting of the board, or an executive committee of which he or she is a member, and action on a corporate matter described in section 551 is taken at that meeting, the director is presumed to concur in that action unless his or her dissent is entered in the minutes of the meeting or unless he or she files his or her written dissent to the action with the individual who is acting as secretary of the meeting before or promptly after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action.

(2) If a director who is absent from a meeting of the board, or an executive committee of which he or she is a member, and action on a corporate matter described in section 551 is taken at that meeting, the director is presumed to concur in the action unless he or she files his or her dissent with the secretary of the corporation within a reasonable time after he or she has knowledge of the action.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2554 Commencement of action under MCL 450.2551 or 450.2552.**

Sec. 554. An action against a director, shareholder, or member for recovery upon a liability imposed by section 551 shall be commenced within 3 years after the cause of action accrues. An action under section 552 shall be commenced within 3 years after payment by the director to the corporation.

**History:** 1982, Act 162, Eff. Jan. 1, 1983.

#### **450.2556 Volunteer's acts or omissions; claim for monetary damages.**

Sec. 556. If the corporation's articles of incorporation contain a provision authorized under section 209(e), then a claim for monetary damages for a volunteer director, volunteer officer, or other volunteer's acts or omissions shall not be brought or maintained against a volunteer director, volunteer officer, or other volunteer. The claim shall be brought and maintained against the corporation.

**History:** Add. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 1996, Act 457, Imd. Eff. Dec. 23, 1996.

**Compiler's note:** In the first sentence of this section, "section 209(e)" evidently should read "section 209(1)(e)."

#### **450.2561 Indemnification of director, officer, partner, trustee, employee, nondirector volunteer, or agent in connection with action, suit, or proceeding; conditions; presumption.**

Sec. 561. Unless otherwise provided by law or the articles of incorporation or bylaws of the corporation, a corporation has the power to indemnify a person that was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, for expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe that the conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner that the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2562 Indemnification against expenses of director, officer, partner, trustee, employee,**



**nondirector volunteer, or agent in connection with action or suit by or in right of corporation; conditions; limitations.**

Sec. 562. Unless otherwise provided by law or in the articles of incorporation or bylaws of the corporation, a corporation has the power to indemnify a person that was or is a party or is threatened to be made a party to a threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, business corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, for expenses, including attorneys' fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders or members. A corporation shall not indemnify a person for a claim, issue, or matter in which the person is found liable to the corporation except to the extent authorized under section 564c.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2563 Indemnification for expenses of director, officer, or nondirector volunteer successful in defense of action, suit, or proceeding referred to in MCL 450.2561 or 450.2562.**

Sec. 563. Unless otherwise provided by law or under the articles of incorporation or bylaws of the corporation, to the extent that a director, officer, or nondirector volunteer of a corporation is successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 561 or 562, or in defense of a claim, issue, or matter in the action, suit, or proceeding, or has established that the corporation is required to assume the person's liabilities under section 209(1)(d) or (e), the corporation shall indemnify the person for actual and reasonable expenses, including attorneys' fees, incurred in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this section.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

**450.2564 Repealed. 2014, Act 557, Imd. Eff. Jan. 15, 2015.**

**Compiler's note:** The repealed section pertained to advance payment by corporation of expenses incurred in defending action, suit, or proceeding described in MCL 450.2561 or 450.2562.

**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.

#### **450.2564b Expenses incurred by director, officer, employee, nondirector volunteer, or agent; reimbursement; agreement; advances.**

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, nondirector volunteer, or agent of the corporation or a person that is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another domestic corporation, foreign corporation, domestic business corporation, foreign business corporation, partnership, limited liability company, joint venture, trust, or other enterprise, whether for profit or not, that is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written agreement, executed personally or on the person's behalf, to repay the advance if it is ultimately determined that the person did not meet the standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) An agreement required under subsection (1) must be an unlimited general obligation of the director, officer, employee, nondirector volunteer, or agent, but may be unsecured. A corporation may accept an agreement that is required under subsection (1) without reference to the financial ability of the person to make repayment.

(3) A corporation shall evaluate the reasonableness of advances under this section in the manner described in section 564a(1) for evaluating the reasonableness of expenses, and make an authorization in the manner described in section 564a(4) unless an advance is mandatory. A corporation may authorize advances with respect to a proceeding and determine the reasonableness of advances or approve a method for determining the reasonableness of advances in a single resolution covering the entire proceeding. However, unless the action or resolution provides otherwise, an authorizing or determining authority of the corporation may subsequently terminate or amend the authorization or determination with respect to advances that are not yet

made.

(4) A provision in the articles of incorporation or bylaws, a resolution of the board or shareholders or members, or an agreement that makes indemnification mandatory shall also make the advancement of expenses mandatory unless the provision, resolution, or agreement specifically provides otherwise.

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

#### **450.2564c Indemnification of director, officer, employee, nondirector volunteer, or agent; application to court; determination.**

Sec. 564c. A director, officer, employee, nondirector volunteer, or agent of the corporation that is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court that is conducting the proceeding or to another court of competent jurisdiction. After receiving an application, the court after giving any notice it considers necessary may order indemnification if it determines that all of the following are met:

(a) Indemnification is not prohibited under section 497(a) and is consistent with other applicable law and with any restrictions in the articles of incorporation or the bylaws.

(b) The person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the person met the applicable standard of conduct set forth in section 561 or 562 or was adjudged liable as described in section 562. However, if the person is found liable, indemnification is limited to reasonable expenses incurred by the person.

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

#### **450.2565 Indemnification or advance of expenses not exclusive of other rights; limitation; continuation; amended provision.**

Sec. 565. (1) An indemnification or advance of expenses provided under sections 561 to 564c is not exclusive of other rights to which a person seeking indemnification or advance of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person that is seeking indemnification or advance of expenses.

(2) Indemnification under sections 561 to 565 continues for a person that ceases to be a director, officer, employee, nondirector volunteer, or agent and inures to the benefit of the heirs, personal representatives, and administrators of the person.

(3) A right of indemnification or to advancement of expenses under a provision of the articles of incorporation or the bylaws is not eliminated or impaired by an amendment to the provision after the occurrence of the act or omission that is the subject of the formal or informal, administrative or investigative action, suit, or proceeding for which indemnification or advancement of expenses is sought unless the provision in effect at the time of the act or omission explicitly authorizes that elimination or impairment after the action or omission has occurred.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2567 Purchase and maintenance of insurance on behalf of director, officer, employee, nondirector volunteer, or agent.**

Sec. 567. (1) A corporation may purchase and maintain insurance on behalf of any person that is or was a director, officer, employee, nondirector volunteer, or agent of the corporation, or that is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, foreign or domestic business corporation, limited liability company, partnership, joint venture, trust, or other enterprise for profit or nonprofit against any liability asserted against the person and incurred by the person in that capacity or arising out of the person's status as such, whether or not the corporation has the power to indemnify the person against liability under sections 561 to 565.

(2) If the articles of incorporation include a provision that eliminates or limits the liability of a director under section 209(1)(c), the corporation may purchase insurance on behalf of a director under subsection (1) from an insurer owned by the corporation, but insurance purchased from that insurer may insure a director against monetary liability to the corporation or its shareholders or members only to the extent to which the corporation could indemnify the director under section 564a(5).

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2569 Scope of "corporation" for purposes of MCL 450.2561 to 450.2567.**

Sec. 569. For purposes of sections 561 to 567, "corporation" includes all constituent corporations absorbed in a consolidation or merger, any corporation converted into another business entity, and the resulting or surviving foreign or domestic corporation, foreign or domestic business corporation or other business entity, so that a person that is or was a director, officer, employee, nondirector volunteer, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, nondirector volunteer, or agent of another foreign or domestic corporation, foreign or domestic business corporation, partnership, limited liability company, joint venture, trust, or other profit or nonprofit enterprise shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation or business corporation as the person would if the person had served the resulting or surviving corporation, business corporation, or other business entity in the same capacity.

**History:** 1982, Act 162, Eff. Jan. 1, 1983;—Am. 1987, Act 170, Eff. Jan. 1, 1988;—Am. 1993, Act 129, Imd. Eff. July 22, 1993;—Am. 2014, Act 557, Imd. Eff. Jan. 15, 2015.

#### **450.2571 Definitions.**

Sec. 571. As used in sections 561 to 567:

- (a) "Fines" includes any excise taxes assessed on a person with respect to an employee benefit plan.
- (b) "Other enterprises" includes employee benefit plans.
- (c) "Serving at the request of the corporation" includes any service as a director, officer, employee, nondirector volunteer, or agent of the corporation that imposes duties on, or involves services by, the director, officer, employee, nondirector volunteer, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.
- (d) A person that acted in good faith and in a manner the person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan is considered to have acted in a manner "not opposed to the best interests of the corporation or its shareholders or members" as referred to in sections 561 and 562.

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