

MEMORANDUM

To: The Detroit Annual Conference of the United Methodist Church - File

From: Renard J. Kolasa, Esq.
Couzens, Lansky, Fealk, Ellis, Roeder & Lazar, P.C.

Re: Amending Articles of Incorporation to Limit Personal Liability of Volunteers

Date: February 5, 2002

Our Churches and Conference corporations may want to consider amending their respective Articles of Incorporation to include the following items:

1. Eliminating personal liability of a volunteer director or officer for breach of duty if the statutory requirements are met, as permitted by Michigan Compiled Laws Annotated ("MCLA") §450.2209(c).
2. Assuming liability to outside persons for acts or omissions of volunteers incurred in good faith if the statutory requirements are met, as permitted by MCLA §450.2209(d).
3. Assuming all liability for acts or omissions of volunteers if the statutory requirements are met, as permitted by MCLA §450.2209(e).

Attached is a blank amendment to Articles of Incorporation that could be used by individual entities. The wording of the proposed amendment should not be changed even though it may seem repetitious, because the statutory provisions are different and the wording used is necessary to cover all three statutes. Such amendments would require approval by an annual church conference. A copy of the statute is attached.

Also attached is a copy of MCLA §450.2561, which authorizes corporations to indemnify certain persons for litigation exposure. This is even broader than the proposed amendment noted above. Whether to grant indemnification under Section 450.2561 would need to be analyzed on a case by case basis.

MICHIGAN DEPARTMENT OF CONSUMER & INDUSTRY SERVICES										
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CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION

For use by Ecclesiastical Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 327, Public Acts of 1931, the undersigned person(s) execute the following Certificate:

1. The present name of the corporation is:	
2. The identification number assigned by the Bureau is:	

3. Article _____ of the Articles of Incorporation is hereby amended to read as follows: (Any article being amended is required to be set forth in its entirety.)

4. The necessary number of members as required by statute voted in favor of the amendment at a meeting held on the _____ day of _____

5. The following is a copy of the Call for the Meeting:

(The call notifying the members of the meeting should be copied here, using the wording as it appeared in the church bulletin, paper, notice, or as it was announced from the pulpit. Minutes of the meeting are not required.)

6. The number of members present as such meeting: _____

7. The number of members voting in favor of the amendment: _____

Signed this _____ day of _____, _____ by the person(s) controlling the temporal affairs:

(Signature)

(Type or Print Name)

(Signature)

(Type or Print Name)

(Signature)

(Type or Print Name)

(Signature)

(Type or Print Name)

All signatures must be notarized. Attach separate notarizations if necessary.

State of _____



ss.

County of _____

Subscribed and sworn to before me this _____ day of _____, _____.

by _____

(All persons signing must appear before the notary. List names here.)

(Signature of Notary)

(Type or Print Name of Notary)

Notary Public for _____ County,

State of _____

(Notary Seal)

My Commission expires _____

Name of person or organization remitting fees:

Preparer's name and business telephone number:

INFORMATION AND INSTRUCTIONS

1. This form may be used to draft your Certificate of Amendment to the Articles of Incorporation. A document required or permitted to be filed under the act cannot be filed unless it contains the minimum information required by the act. The format provided contains only the minimal information required to make the document fileable and may not meet your needs. This is a legal document and agency staff cannot provide legal advice.
2. Submit one original of this document. Upon filing, the document will be added to the records of the Bureau of Commercial Services. The original will be returned to your registered office address, unless you enter a different address in the box on the front of this document.

Since the document will be maintained on electronic format, it is important that the filing be legible. Documents with poor black and white contrast, or otherwise illegible, will be rejected.
3. This document is to be used pursuant to section 182 of Act 327, P.A. of 1931, for the purpose of amending the Articles of Incorporation of an ecclesiastical corporation.
4. Item 2 - Enter the identification number previously assigned by the Bureau. If this number is unknown, leave it blank.
5. The Articles of an ecclesiastical corporation can be amended by the affirmative vote of a majority of the members entitled to vote thereon that are present at a meeting of the members of the corporation called for that purpose pursuant to the bylaws. If a different majority is required by the rules of discipline or by the church policy in any particular case, that requirement controls.
6. Item 5 - The notice given to members that a meeting is scheduled at which adoption of the amendment will be considered. The wording should be as it appeared in the church bulletin, paper, notice, or as announced from the pulpit. The notice must be to the entire membership of the church, not just the Board of Directors or other selected group.
7. Item 6 - Must be completed to reflect the number of members present at the meeting. This must be members of the corporation, not just members of the board of directors or other select group.
8. This Certificate must be signed in ink by the person or persons controlling the temporal affairs of the corporation. All parties signing the certificates are required to appear before a notary. Under each signature, please type or print that person's name and title.
9. **NONREFUNDABLE FEE:** Make remittance payable to the State of Michigan. Include corporation name and identification number on check or money order **\$ 10.00**

To submit by mail:

Michigan Department of Consumer & Industry Services
Bureau of Commercial Services - Corporation Division
7150 Harris Drive, P.O. Box 30054
Lansing, MI 48909

To submit in person:

6546 Mercantile Way
Lansing, MI
Telephone: (517) 241-6400

Fees may be paid by VISA or Mastercard when delivered in person to our office.

MICH-ELF (Michigan Electronic Filing System):

First Time Users: Call (517) 241-6420, or visit our website at <http://www.cis.state.mi.us/bcs/corp/>
Customer with MICH-ELF Filer Account: Send document to (517) 241-9845

The Department of Consumer & Industry Services will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability or political beliefs. If you need help with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

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OUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.

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WWW.COUZENS.COM

October 27, 1999

Rev. Jeffrey D. Regan
Conference Council Director
Detroit Annual Conference of the
United Methodist Church
21700 Northwestern Hwy.
Suite 1200
Southfield, MI 48075-4917

Re: Amendments to Articles of Incorporation

Dear Jeff:

Enclosed is a copy of the following:

1. The statute (M.C.L.A. §450.2209(c)) that authorizes provisions in the Articles of Incorporation of churches, our Conference corporations and other non-profit organizations to eliminate personal liability of a volunteer director or officer for breach of duty if the statutory requirements are met.
2. The statute (M.C.L.A. §450.2209(d)) that authorizes provisions to have the entity assume liability to outside persons for acts or omissions of volunteers incurred in good faith if the statutory requirements are met.
3. The statute (M.C.L.A. §450.2209(e)) that authorizes provisions to have the entity assume all liability for acts or omissions of volunteers if the statutory requirements are met.

I recommend that all of our Churches consider amending their Articles of Incorporation to include these items. Enclosed is a highlighted blank Amendment to the Articles of Incorporation that

COUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.

Rev. Jeffrey D. Regan
October 27, 1999
Page 2

can be reproduced and completed by individual entities. Although the wording of the proposed addition seems repetitious, the statutory provisions are different and the wording used was needed to cover all three statutes. Indirectly, filing such amendments will confirm whether a particular Church has been incorporated or not.

Discussion of the suggested amendment could be considered at annual Church conferences. If properly approved, the amendment should be signed by the chair of the trustees and administrative council, then submitted to the State of Michigan at the address shown on the form, with a check in the amount of \$10.00.

I have also enclosed a copy of M.C.L.A. §450.2561, which authorizes corporations to indemnify certain persons for litigation exposure. This is broader than the provisions noted above. I recommend that indemnification be decided on a case by case basis and not be automatically granted in all cases when permitted by that statute. Thus, the proposed amendment wording does not include a grant of indemnification under §450.2561.

Please call me if we need to discuss this further.

Very truly yours,

COUZENS, LANSKY, FEALK, ELLIS,
ROEDER & LAZAR, P.C.

RENARD J. KOLASA

RJK/mv
Enclosure

O:\MG\rjk\regajele.rma

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES - CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU		
Date Received		(FOR BUREAU USE ONLY) This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.
Name		
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City	State	Zip Code
EFFECTIVE DATE:		

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CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION
For use by Ecclesiastical Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 327, Public Acts of 1931, the undersigned person(s) execute the following Certificate:

1.	The present name of the corporation is: _____
2.	The identification number assigned by the Bureau is: _____
3.	Article _____ of the Articles of Incorporation is hereby amended to read as follows: (Any article being amended is required to be set forth in its entirety.) See attached Article _____.
4.	The necessary number of members as required by statute voted in favor of the amendment at a meeting held on the _____ day of _____, 19__.
5.	The following is a copy of the Call for the Meeting: (The call notifying the members of the meeting should be copied here, using the wording as it appeared in the church bulletin, paper, notice, or as it was announced from the pulpit. Minutes of the meeting are not required.)

6. The number of members present at such meeting: _____

7. The number of members voting in favor of the amendment: _____

Signed this _____ day of _____, 19__ by the person(s) controlling the temporal affairs:

(Signature)

(Type or Print Name)

(Signature)

(Type or Print Name)

(Signature)

(Type or Print Name)

(Signature)

(Type or Print Name)

signatures must be notarized. Attach separate notarizations if necessary.

State of _____)

County of _____) SS.

Subscribed and sworn to before me this _____ day of _____, 19__,

by _____

(All persons signing must appear before the notary. List names here.)

(Signature of Notary)

(Type or Print Name of Notary)

Notary Public for _____ County,

State of _____.

My commission expires _____

(Notary Seal)

Preparer's Name _____

Business telephone number: () _____

INFORMATION AND INSTRUCTIONS

1. The amendment cannot be filed until this form, or a comparable document, is submitted.
2. Submit one original of this document. Upon filing, the document will be added to the records of the Corporation, Securities and Land Development Bureau. The original will be returned to your registered office address, unless you enter a different address in the box on the front of this document.

Since this document will be maintained on optical disk media, it is important that the filing be legible. Documents with poor black and white contrast, or otherwise illegible, will be rejected.
3. This Certificate is to be used pursuant to section 182 of Act 182 of Act 327, P.A. of 1931, for the purpose of amending the Articles of Incorporation of an ecclesiastical corporation.
4. Item 2 - Enter the identification number previously assigned by the Bureau. If this number is unknown, leave it blank.
5. The Articles of an ecclesiastical corporation can be amended by the affirmative vote of a majority of the members entitled to vote thereon that are present at a meeting of the members of the corporation called for that purpose pursuant to the bylaws. If a different majority is required by the rules of discipline or by the church policy in any particular case, that requirement controls.
6. Item 5 - The notice given to members that a meeting is scheduled at which adoption of the amendment will be considered. The wording should be as it appeared in the church bulletin, paper, notice, or as announced from the pulpit. The notice must be to the entire membership of the church, not just the Board of Directors or other select group.
7. Item 6 - Must be completed to reflect the number of members present at the meeting. This must be members of the corporation, not just members of the board of directors or other select group.
8. This Certificate must be signed in ink by the person or persons controlling the temporal affairs of the corporation. All parties signing the certificate are required to appear before a notary. Under each signature, please type or print that person's name and title.
9. **NONREFUNDABLE FEE:** Make remittance payable to the State of Michigan. Include corporation name and identification number on check or money order. **\$10.00**

<p>To submit by mail:</p> <p>Michigan Department of Consumer & Industry Services Corporation, Securities & Land Development Bureau Corporation Division 7150 Harris Drive P.O. Box 30054 Lansing, Michigan 48909</p>	<p>To submit in person:</p> <p>6546 Mercantile Way Lansing, MI 48911 Telephone: (517) 334-6302</p> <p>Fees may be paid by VISA or Mastercard when delivered in person to our office.</p>
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To submit electronically: (517) 334-8048
 *To use this service complete a MICH-ELF application to provide your VISA or Mastercard number. Include your assigned Filer number on your transmission. To obtain an application for a filer number, contact (517) 334-6327 or visit our WEB site at <http://www.cis.state.mi.us/corp/>.

A volunteer director or officer of the Corporation shall not be personally liable to the Corporation, its shareholders or members for monetary damages for breach of the director's or officer's fiduciary duty, except for liability:

1) For any breach of the volunteer director's or officer's duty of loyalty to the Corporation, its shareholders or its members;

2) For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

3) For a violation of Section 551(1) of the Michigan Non-Profit Corporation Act;

4) For any transaction from which the volunteer director or officer derived an improper personal benefit;

5) For any acts or omissions occurring before the date of filing of this document; and

6) For any acts or omissions that are grossly negligent.

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 after the date of filing this document incurred in the good faith performance of the volunteer director's duties.

The Corporation assumes the liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer occurring after the date of filing this document if the following are met:

1) The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.

2) The volunteer was acting in good faith.

3) The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.

4) The volunteer's conduct was not an intentional tort.

5) The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being M.C.L.A. §500.3135.

If the Michigan Non-Profit Corporation Act is hereafter amended to authorize the further elimination or limitation of the liability of directors, officers, members, employees, volunteers or agents of non-profit corporations, then the liability of a director, officer, member, employee, volunteer or agent of the Corporation (in addition to the elimination and limitation of personal liability contained in this ARTICLE) shall be eliminated or limited to the fullest extent permitted by the Michigan Non-Profit Corporation Act as so amended, except to the extent such elimination and limitation of liability is inconsistent with the status of the Corporation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law).

No amendment or repeal of this ARTICLE shall apply to or have any effect on the liability or alleged liability of any director, officer, member, employee, volunteer or agent of the Corporation for or with respect to any acts or omissions of such director, officer, member, employee, volunteer or agent occurring prior to the effective date of any such amendment or repeal.

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450.177. Educational corporations; inspection by state board of education; annual report

Sec. 177. SAME; INSPECTION BY STATE BOARD OF EDUCATION; ANNUAL REPORT. Every such educational corporation shall be visited and inspected by the state board of education, in person or through visitors or inspectors appointed by them, at least once every 3 years. Said state board of education shall at the time of visitation ascertain and publish information upon all matters pertaining to the condition, management, instruction and practices of such corporations, and shall file a copy of their report with the Michigan corporation and securities commission. Upon evidence that the property is at any time less than is required by law, or that any such educational corporation is not otherwise complying with the provisions of this act, they shall serve notice on such corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by them, they may institute proceedings at law for the dissolution of such corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the state board of education, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

Historical and Statutory Notes

Source:

P.A.1931, No. 327, § 177, Eff. Sept. 18.
 P.A.1939, No. 162, Eff. Sept. 29.
 C.L.1948, § 450.177.
 C.L.1970, § 450.177.

C.L.1871, §§ 3139, 3142.
 How. §§ 4378, 4381.
 P.A.1885, No. 99.
 P.A.1893, No. 103.
 C.L.1897, §§ 8145, 8148.
 P.A.1911, No. 231, § 9.
 C.L.1915, §§ 10647, 10650, 10666.
 P.A.1921, No. 84, Pt. IV, c. II, § 8.
 C.L.1929, § 10108.

Prior Laws:

P.A.1855, No. 39, §§ 6, 9.
 C.L.1857, §§ 1775, 1778.

Library References

Schools ⇐4.
 WESTLAW Topic No. 345.

C.J.S. Schools and School Districts § 6.
 M.L.P. Education § 5.

Notes of Decisions

Ownership 1

1. Ownership

While, under provisions of this section, State Board of Education may inspect and publish

its findings upon all matters pertaining to condition, management, instruction and practices of educational corporations whose ownership has been subject to transfer, Legislature has not empowered it to regulate changes in ownership of educational corporations. Op.Atty. Gen.1983, No. 6185, p. 188.

450.178. Ecclesiastical corporations; incorporation; purpose

Sec. 178. ECCLESIASTICAL CORPORATIONS. Any number of persons, not less than 3, may incorporate for the purpose of establishing any church organization for the purpose of teaching and spreading their religious beliefs and principles. Every such corporation shall be a non-profit corporation and

subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided. The term "church" and/or "church organization" used in this act shall be construed to include any church, denominational unit, or church society as the term is commonly used and understood but shall not apply to such organizations as Sunday schools, Epworth Leagues, Young People's Unions, Bible classes and similar societies organized by and affiliated with the parent churches. Whenever any number of churches or other corporations organized for religious purposes desire to unite in a central organization for the accomplishment of any common purpose they may incorporate such organization by severally adopting, at meetings specially called for the purpose, resolutions expressing their desire to become members of such corporation; and by filing duly attested copies of such resolutions together with a copy of the articles of such corporation, as provided for the filing of articles in section 5 of this act.¹ The corporations formed under this section are hereinafter called ecclesiastical corporations.

¹ Section 450.5 (repealed; see, now, §§ 450.1131, 450.1221).

Historical and Statutory Notes

Source:

P.A.1931, No. 327, § 178, Eff. Sept. 18.
C.L.1948, § 450.178.
C.L.1970, § 450.178.

P.A.1897, No. 94.

P.A.1897, No. 209, § 1.

C.L.1897, § 8297.

C.L.1915, § 10889.

Prior Laws:

P.A.1891, No. 132.

P.A.1895, No. 110.

P.A.1921, No. 84, Pt. I, c. I, § 5; Pt. IV, c. III,
§ 1.

C.L.1929, §§ 9947, 10109.

Cross References

Baptist churches, see § 458.101 et seq.
Baptist convention, see § 458.151 et seq.
Christian Reformed churches, see § 458.421 et seq.
Church trustee corporations, election of trustees, see § 450.159.
Congregational churches, see § 458.301 et seq.
Eastern Orthodox faith, recognition, see § 600.1412.
Evangelical churches, see § 458.451 et seq.
Free Methodist churches, see § 458.81 et seq.
Methodist churches, see § 458.11 et seq.
Methodist Episcopal churches, see § 458.21 et seq.
Methodist Protestant churches, see § 458.61 et seq.
Presbyterian churches, see § 458.201.
Protestant Episcopal churches, see § 458.251 et seq.
Reformed Protestant Dutch churches, see § 458.401 et seq.
Roman Catholic Bishops, see § 458.1 et seq.
United Missionary churches, see § 458.521 et seq.
Wesleyan Methodist churches, see § 458.41 et seq.

Law Review Commentaries

Classes of American religious corporations.
Carl Zollmann, 13 Mich.L.Rev. 566 (1915).

Library References

Religious Societies ⇐4.
WESTLAW Topic No. 332.

C.J.S. Religious Societies §§ 4 to 10.
M.L.P. Religious Societies § 1.

Notes of Decisions

Foreign religious associations 3
Power to sue 2
Validity of prior law 1

Const. Art. 4, § 24) providing that no law shall embrace more than one subject, which shall be expressed in its title. *Graham v. Fleming* (1898) 74 N.W. 729, 116 Mich. 571.

1. Validity of prior law

P.A.1897, No. 209, entitled "An act to revise, amend and consolidate the laws for the incorporation of ecclesiastical bodies," providing (§ 1) that it shall be lawful for any five or more persons of full age to become incorporated as a church, religious society, Sunday school, or other society for the purpose of diffusing moral or religious knowledge, and (§ 10) that all churches, religious societies, Sunday schools, or other societies for the purpose of diffusing moral or religious knowledge, thereafter incorporated, should be incorporated under such act,—at least, in so far as "churches" are affected thereby, was not in conflict with Const.1850, Art. 4, § 20 (see, now,

2. Power to sue

Christian Reformed Church has power to sue. Holwerda v. Hoeksema (1925) 206 N.W. 564, 232 Mich. 648.

3. Foreign religious associations

The receipt of money under a will, and the institution of legal proceedings to recover it, were not to be regarded as the exercise of corporate franchises, such as were forbidden by P.A.1855, No. 145 to any but domestic corporations; foreign religious corporations, therefore, were entitled to recover bequests made in their favor by a testator in this state. *In re Ticknor's Estate* (1864) 13 Mich. 44.

450.179. Ecclesiastical corporations; articles of incorporation

Sec. 179. SAME; ARTICLES OF INCORPORATION. The articles of any such ecclesiastical corporation shall be executed by the incorporators and shall follow the form prescribed in this section, and contain such further statements as may be appropriate to each such corporation, as the law may direct or as the incorporators may deem necessary or advisable. Such form shall run as follows:

"We, the undersigned, desiring to become incorporated under the provisions of Act No. of the Public Acts of 1931 (namely, this act) do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is "The church" (or other name which clearly indicates a religious society or association);

Second, The location of said church or society shall be in the of county of and state of Michigan;

Third, The time for which said corporation shall be created shall be

Fourth, The members of said church or society shall worship and labor together according to the discipline, rules and usages of the church in the United States of America (or other jurisdiction as the case may be), as from time to time authorized and declared by the (here insert the name of the higher ecclesiastical body or bodies, if any, authorized to determine such question);

Fifth, And succeeding articles, if any (containing in brief and concise language, such other and further declarations or statements pertaining to such corporation, as may be deemed necessary or advisable by the incorporators, or as may be hereinafter prescribed).

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of, County of and state of Michigan, this day of, 19....

(Residences)

(Signatures)

(Acknowledgments.)

(Consent if any required.)

(Certificates, if any.)"

Historical and Statutory Notes

Source:	C.L.1897, § 8299.
P.A.1931, No. 327, § 179, Eff. Sept. 18.	C.L.1915, § 10891.
C.L.1948, § 450.179.	P.A.1919, No. 312.
C.L.1970, § 450.179.	P.A.1921, No. 84, Pt. IV, c. III, § 2.
Prior Laws:	C.L.1929, § 10110.
P.A.1897, No. 209, § 3.	

Cross References

Corporate term, see §§ 450.1202, 450.1261.

Library References

Religious Societies ⇐4.
WESTLAW Topic No. 332.
C.J.S. Religious Societies §§ 4 to 10.

Notes of Decisions

Power to incorporate 1

1. Power to incorporate

The members of a church have authority to incorporate as an ecclesiastical body with power to make by-laws governing election of church officials and prescribing their duties. Holt v. Trone (1954) 67 N.W.2d 125, 341 Mich. 169.

The choice of trustees to hold property at a meeting of the members of a religious society was not enough to effect a statutory incorporation. Allen v. Duffy (1880) 4 N.W. 427, 43 Mich. 1, 38 Am.Rep. 159.

Presbyterian Church which had not been reincorporated after expiration of original charter could reincorporate under P.A.1909, No. 265, §§ 1, 12, or it could incorporate as an ecclesiastical corporation under the General Corporation Act. Op.Atty.Gen.1928-30, p. 287.

450.180. Ecclesiastical corporations; execution and contents of articles; receivership; unclaimed property

Sec. 180. SAME; EXECUTION AND CONTENTS OF ARTICLES; RECEIVERSHIP; UNCLAIMED PROPERTY TO ESCHEAT TO STATE. Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in section 5 of this act.¹ Such articles may contain, among other things, specified in section 179 of this act,²

(2) A director or officer of a corporation subject to the uniform management of institutional funds act, Act No. 157 of the Public Acts of 1976, being sections 451.1201 to 451.1210 of the Michigan Compiled Laws, shall be considered in compliance with this section when the director or officer complies with section 7 of Act No. 157 of the Public Acts of 1976¹ in the administration of the powers specified in that section.

(3) If the corporation's articles of incorporation contain a provision authorized under section 209(c),² then a volunteer director of the corporation shall only be 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),³ then 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 a volunteer director. Such a claim shall be brought or maintained instead against the corporation, which corporation shall be liable for the 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.

P.A.1982, No. 162, § 541, Eff. Jan. 1, 1983. Amended by P.A.1987, No. 170, § 1, Eff. Jan. 1, 1988.

¹ Section 451.1207.

² Section 450.2209(c).

³ Section 450.2209(d).

Historical and Statutory Notes

The 1987 amendment, in subsec. (1), in the second sentence substituted "as correct" for "to be correct", inserted "as" before "stated", and deleted "such" preceding "accountants"; in subsec. (2), formed the second sentence by substituting "to the uniform management of institutional funds act. Act No. 157" for "to Act No. 157", in the second sentence substituted "considered" for "deemed"; inserted subsecs. (3) and (4); redesignated former subsec. (3) as subsec. (5); and, in subsec. (5), substituted "the complainant whichever occurs first" for "a person complaining thereof, whichever sooner occurs".

For effective date provisions of P.A.1987, No. 170, see the Historical and Statutory Notes following § 450.2108.

Prior Laws:

P.A.1857, No. 128, § 6.
 C.L.1857, § 1849.
 C.L.1871, § 3214.
 P.A.1885, No. 3, § 15.
 How. §§ 4463o, 4469.
 C.L.1897, §§ 8240, 8255.
 P.A.1913, No. 245, § 9.
 C.L.1915, §§ 10773, 10785, 10799.
 P.A.1921, No. 84, Pt. III, c. I, § 11.
 C.L.1929, § 10056.
 P.A.1931, No. 327, § 126.
 C.L.1948, § 450.126.
 C.L.1970, § 450.126.
 C.L.1979, § 450.126.

(3) An officer elected or appointed as herein provided shall hold office for the term for which the officer is elected or appointed and until a successor is elected or appointed and qualified, or until the resignation or removal of the officer.

(4) An officer, as between that officer, other officers, and the corporation, has such authority and shall perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.

P.A.1982, No. 162, § 531, Eff. Jan. 1, 1983.

Library References

Corporations ¶251 et seq.
WESTLAW Topic No. 101.
C.J.S. Corporations § 609.

450.2535. Removal of officer; resignation

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.

P.A.1982, No. 162, § 535, Eff. Jan. 1, 1983.

Library References

Corporations ¶294.
WESTLAW Topic No. 101.
C.J.S. Corporations § 738.

450.2541. Discharge of duties; liability; action for failure to perform duties

Sec. 541. (1) A director or an officer shall discharge the duties of that position in good faith and with that degree of diligence, care, and skill which 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 having 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.

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to the extent not inconsistent with, the act is act applies to a corporation which is or his act and not repealed by this act. des, but is not limited to, a cooperative rsuant to section 98 of Act No. 327 of the 0.98 of the Michigan Compiled Laws; a olding property for charitable, religious, rposes; a church trustee corporation; an stee corporation; or a nonprofit corpora- ing corporation.

, credit unions, savings and loan associa- nd tunnel companies, union depot compa-

90.

atory Notes

ed" preceding "not repealed"; and, in subsec. substituted "1931" for "1941".

l to be filed under this act shall be filed by ge" with the fees and accompanying sta. y conforms to the requirements of the word "filed" with the administrator's and shall file and index the document or a ds media act¹ in the administrator's office. document to the administrator's office, the the endorsement on the document. The * * * or, at the administrator's discretion, report to the person who submitted the the filing date on the true copy or original. to corporations shall be open to reasonable y, at the discretion of the administrator, be he form of reproductions pursuant to the reproductions of documents filed under this ds media act and may destroy the originals

ndorsed unless a subsequent effective time, f delivery, is set forth in the document.

92.

tutory Notes

nd "reproduction" for "microfilm or other repro- uced copy", and inserted "pursuant to the records media act", in the third sentence substituted "en-

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dorsement" for "indorsement", in the fourth sen- tence deleted "of the document other than an annual report," following "true copy", and substi- tuted "original of a document other than an annual report" for "original," formed the fifth sentence from the former fourth sentence by substituting ". The administrator shall mark the" for "showing its", and in the fifth sentence added "on the true copy or original", in the seventh sentence substi- tuted "the form of reproductions pursuant to the records media act" for "microfilm or other repro- duced form", and in the eighth sentence substitut- ed "reproductions of" for "copies of all", "pursuant to the records media act" for "by microfilm or other process", and "reproduced" for "copied";

and, in subsec. (2), substituted "endorsed" for "in- dorsed", deleted "is set forth in the document which shall" preceding "not", and "be" following "not", and added "is set forth in the document".

P.A.1992, No. 198, § 2, provides:

"This amendatory act shall not take effect unless House Bill No. 4438 of the 86th Legislature is enacted into law."

House Bill No. 4438, was enacted as P.A.1992, No. 116, and was approved and filed June 26, 1992.

P.A.1992, No. 198, was ordered to take immedi- ate effect, and was approved and filed October 5, 1992.

CHAPTER 2. INCORPORATION

450.2209. Articles of incorporation; contents

Sec. 209. The articles of incorporation may contain any provision consistent with any of the following:

(a) A provision * * * regarding the management of the corporation or creating, defining, limiting, or regulating the powers of the corporation, its directors, officers, members, or shareholders, or a class of shareholders or members.

(b) A provision that is required or permitted under this act to be included in the bylaws of the corporation.

(c) A provision that eliminates the personal liability of a volunteer director or volunteer officer to the corporation, its shareholders, or its members for monetary damages for a breach of the director's or officer's fiduciary duty. The provision does not eliminate or limit the liability of a director or officer for any of the following:

(i) A breach of the director's or officer's duty of loyalty to the corporation, * * * its shareholders, or its members.

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

(iii) A violation of section 551(1).¹

(iv) A transaction from which the director or officer derived an improper personal benefit.

(v) An act or omission occurring before the effective date of the provision granting limited liability.

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

(d) For a tax exempt corporation under section 501(c)(3) of the internal revenue code,² a provision 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 incurred in the good faith performance of the volunteer director's duties.

(e) A provision that a nonprofit corporation assumes the liability for all acts or omissions of a volunteer director, volunteer officer, or other volunteer occurring on or after the effective date of the provision granting limited liability if all of the following are met:

(i) The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.

(ii) The volunteer was acting in good faith.

(iii) The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.

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(iv) The volunteer's conduct was not an intentional tort.

(v) The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being section 500.3135 of the Michigan Compiled Laws.

Amended by P.A.1990, No. 39, § 1, Imd. Eff. March 29, 1990; P.A.1993, No. 129, § 1, Imd. Eff. July 22, 1993; P.A.1996, No. 397, § 1, Imd. Eff. Oct. 9, 1996.

¹ Section 450.2551(1).

² 26 U.S.C.A. § 501(c)(3).

Historical and Statutory Notes

1990 Legislation

The 1990 amendment, in subd. (c), in the second sentence deleted "However," preceding "The provision"; and, in subd. (d), substituted "tax exempt" for "nonprofit" and "described in section 501(c)(3) of the internal revenue code" for "as defined in section 108(2)(b)", and added "incurred in the good faith performance of the volunteer director's duties".

1993 Legislation

The 1993 amendment rewrote subds. (a) and (b), which prior thereto read:

"(a) A provision of this act or another statute of this state, for management of the business and conduct of the affairs of the corporation, or creating, defining, limiting, or regulating the powers of the corporation, its directors, members, and shareholders, or a class of shareholders or members.

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

The 1993 amendment, also, in subd. (c), in the introductory paragraph, in the first sentence substituted "eliminates the personal liability of a volunteer director" for "a volunteer director is not personally liable" and a comma for "or" following

"corporation", and inserted "its" preceding "members"; in subd. (c)(v), substituted "the effective date of the provision" for "January 1, 1988"; in subd. (d), substituted "under" for "described in"; and added subd. (e).

1996 Legislation

The 1996 amendment, in the introductory paragraph, substituted "consistent" for "not inconsistent"; in subd. (a), deleted "of this act or another statute of this state" following "provision", substituted "the corporation or" for "a corporation or", and inserted "officers,"; in subd. (b), added "of the corporation"; in subd. (c), in the introductory paragraph, in the first sentence inserted "or volunteer officer" and "or officer's", and in the second sentence substituted "does" for "shall", and inserted "or officer"; in subd. (c)(i), inserted "or officer's", and substituted "corporation, its shareholders, or its members" for "corporation or its shareholders, or members"; in subd. (c)(iv), inserted "or officer"; in subd. (c)(v), added "granting limited liability"; and, in subd. (e), in the introductory paragraph, substituted "volunteer director, volunteer officer, or other" for "nondirector", and inserted "granting limited liability".

450.2262. Sick and death benefits corporations; reserves for payment of claims; certificate of obligation

Sec. 262. (1) An association or society, not otherwise provided for here or by other statute, incorporated before January 1, 1983, and now existing, whose purpose is to provide for the relief of distressed members, visitation of the sick, and the payment of a voluntary sick benefit to or for members not exceeding \$2,000.00 on account of any 1 member, or the buying and selling of products for its members without direct pecuniary profit to the association or its members may operate as a corporation subject to this act. The ladies Lutheran benevolent federation of Michigan, now incorporated as a nonprofit corporation, may pay death benefits in an amount not exceeding \$500.00 to any 1 person. The metropolitan club of America, inc., national spirit, and the ladies auxiliary of the metropolitan clubs of America, national spirit, which are incorporated as nonprofit corporations, may pay death benefits in an amount not to exceed \$1,000.00 to any 1 person. The Venetian club of mutual aid, incorporated as a nonprofit corporation, may pay death and sick benefits in an amount not to exceed \$10,000.00 to any 1 person. The Warren firemen's benevolent association may pay death and sick benefits in an amount not to exceed \$20,000.00 to any 1 person. The Lansing firemen's benefit association may pay death and sick benefits in an amount not to exceed \$2,000.00 to any 1 person. The Sanilac county police and firemen's fund may pay death and sick benefits in an amount not to exceed \$3,000.00 to any 1 person. The Italian-American brotherhood society may pay death and sick benefits in an amount not to exceed \$3,000.00 to any 1 person. The Italian-American fraternal club of Dearborn may pay

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death and sick licensed beverage \$5,000.00 to any Westland fire not to exceed \$ and police officer any 1 person. amount not to order of eagles \$350.00, but no any 1 person.

(2) The entire providing for the \$1,000.00 to 1 person estimated in the whether report to provide for shall be computed after due notice and the character members and the reserves shall investment of a

(3) An entity benefits to its written evidence conspicuously following state Michigan insurance

Amended by P.A. 1997.

1991 Legislation

The 1991 amendment substituted "er statute" for "\$2,000.00" for "stated" "that" for

450.2556. Volunteer

Sec. 556. If section 209(e),¹ or other volunteer director, volunteer against the corp

P.A.1982, No. 16; P.A.1996, No. 457.

¹ Section 450.22

Change

Historical and Statutory Notes

1996 Legislation

The 1996 amendment, in the first sentence substituted "volunteer director, volunteer officer, or other" for "nondirector" in two places.

50.2561. Indemnification; actions other than those by or in the right of the corporation

Sec. 561. Unless otherwise provided by law or its articles of incorporation or bylaws, a corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to any 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 profit, against 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 any criminal action or proceeding, if the person had no reasonable cause to believe that conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the person did not act in good faith and in a manner which 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.

Amended by P.A.1993, No. 129, § 1, Imd. Eff. July 22, 1993.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, in the first sentence inserted "nondirector volunteer," twice.

50.2562. Indemnification; action by or in the right of the corporation; expenses

Sec. 562. Unless otherwise provided by law or its articles of incorporation or bylaws, a corporation has the power to indemnify a person who was or is a party to 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 against expenses, including actual and reasonable attorneys' fees, and amounts paid in settlement 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. However, indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the corporation unless only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for expenses which the court considers proper.

Amended by P.A.1993, No. 129, § 1, Imd. Eff. July 22, 1993.

Changes in text indicated by underline; asterisks * * * indicate deletion

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, in the first sentence inserted "nondirector volunteer," twice.

450.2563. Indemnification; actual expenses re termination

Sec. 563. (1) Unless otherwise provided by law to the extent that a director, officer, employee, or agent of a corporation has been successful on the merits of a proceeding referred to in section 561 or 562¹ or in an action, suit, or proceeding, the successful party including actual and reasonable attorneys' fees, in any action, suit, or proceeding, shall be entitled to the indemnification provided in this subsection.

(2) An indemnification under section 561 or 562 by the corporation only as authorized in the indemnification of the director, officer, employee, or agent of the corporation because the person has met the requirements of sections 561 and 562. This determination shall be made by:

(a) By a majority vote of a quorum of the board of directors or a majority of the parties to the action, suit, or proceeding.

(b) If the quorum described in subdivision (a) is not met, by a committee of directors who are not parties to the action, suit, or proceeding, consisting of less than 2 disinterested directors.

(c) By independent legal counsel in a written opinion.

(d) By the shareholders or members.

(3) If a person is entitled to indemnification under this section for expenses including attorneys' fees, judgments, penalties, and amounts paid in settlement but not for the total amount thereof, the corporation shall reimburse the person for its proportion of the expenses, judgments, penalties, and amounts paid in settlement if the person is entitled to be indemnified.

Amended by P.A.1993, No. 129, § 1, Imd. Eff. July 22, 1993.

¹ Section 450.2561 or 450.2562.

Historical and Statutory Notes

1993 Legislation

The 1993 amendment, in subsec. (1) and in the first sentence of the introductory paragraph of subsec. (2), inserted "nondirector volunteer."

450.2564. Indemnification; advance payment

Sec. 564. Expenses incurred in defending a person described in section 561 or 562¹ may be paid in advance of the disposition of the action, suit, or proceeding upon the written agreement of the director, officer, employee, or agent of the corporation, if the person has ultimately determined that the person is not entitled to indemnification. The undertaking shall be by unlimited general obligation promissory note. Advances are made but need not be secured.

Amended by P.A.1993, No. 129, § 1, Imd. Eff. July 22, 1993.

¹ Section 450.2561 or 450.2562.

Changes in text indicated by underline

... tort.
 arising out of the ownership, maintenance, or
 may be imposed as provided in section 3135 of
 Public Acts of 1956, being section 500.3135 of

29, 1990; P.A.1993, No. 129, § 1, Imd. Eff. July 22,

Statutory Notes

"corporation", and inserted "its" preceding "mem-
 bers"; in subd. (c)(v), substituted "the effective
 date of the provision" for "January 1, 1988"; in
 subd. (d), substituted "under" for "described in";
 and added subd. (e).

1996 Legislation

The 1996 amendment, in the introductory para-
 graph, substituted "consistent" for "not inconsis-
 tent"; in subd. (a), deleted "of this act or another
 statute of this state" following "provision", substi-
 tuted "the corporation or" for "a corporation or",
 and inserted "officers"; in subd. (b), added "of the
 corporation"; in subd. (c), in the introductory para-
 graph, in the first sentence inserted "or volunteer
 officer" and "or officer's", and in the second sen-
 tence substituted "does" for "shall", and inserted
 "or officer"; in subd. (c)(i), inserted "or officer's",
 and substituted "corporation, its shareholders, or
 its members" for "corporation or its shareholders,
 or members"; in subd. (c)(iv), inserted "or officer";
 in subd. (c)(v), added "granting limited liability";
 in subd. (e), in the introductory paragraph,
 substituted "volunteer director, volunteer officer,
 or other" for "nondirector", and inserted "granting
 limited liability".

tions; reserves for payment of claims; certifi-

not otherwise provided for here or by other
 3, and now existing, whose purpose is to provide
 ion of the sick, and the payment of a voluntary
 ig \$2,000.00 on account of any 1 member, or the
 embers without direct pecuniary profit to the
 s a corporation subject to this act. The ladies
 n, now incorporated as a nonprofit corporation,
 not exceeding \$500.00 to any 1 person. The
 spirit, and the ladies auxiliary of the metropolitan
 incorporated as nonprofit corporations, may pay
 \$1,000.00 to any 1 person. The Venetian club of
 rporation, may pay death and sick benefits in an
 1 person. The Warren firemen's benevolent
 s in an amount not to exceed \$20,000.00 to any 1
 ociation may pay death and sick benefits in an
 son. The Sanilac county police and firemen's fund
 unt not to exceed \$3,000.00 to any 1 person. The
 pay death and sick benefits in an amount not to
 lian-American fraternal club of Dearborn may pay

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death and sick benefits in an amount not to exceed \$500.00 to any 1 person. The Michigan
 licensed beverage association may pay death and sick benefits in an amount not to exceed
 \$5,000.00 to any 1 person who is a licensee of the Michigan liquor control commission. The
 Westland fire fighters' benevolent association may pay death and sick benefits in an amount
 not to exceed \$7,500.00 to any 1 person. The Livonia benevolent association for fire fighters
 and police officers may pay death and sick benefits in an amount not to exceed \$5,000.00 to
 any 1 person. The Midland fire fighters' benefit fund may pay death and sick benefits in an
 amount not to exceed \$10,000.00 to any 1 person. The incorporated branches of the fraternal
 order of eagles within this state may pay death benefits of \$350.00 or sickness benefits of
 \$350.00, but not a combination of death and sickness benefits that would exceed \$500.00 to
 any 1 person.

(2) The entities specified in this section and organized before January 1, 1983, and
 providing for the payment of death or sick benefits under this section in an amount exceeding
 \$1,000.00 to 1 person shall by January 1, 1980, establish and maintain reserves in an amount
 estimated in the aggregate to provide for the payment of all losses and claims incurred,
 whether reported or unreported, which are unpaid and for which the entity may be liable and
 to provide for the expense of adjustment or settlement of losses and claims. The reserves
 shall be computed in accordance with rules promulgated by the commissioner of insurance
 after due notice and hearing, upon reasonable consideration of the ascertained experience
 and the character of such kinds of business for the purpose of adequately protecting the
 members and securing the solvency of the corporations. The funds of the entities securing
 the reserves shall be invested only in securities permitted by the laws of this state for the
 investment of assets of life insurance companies.

(3) An entity specified in this section that obligates itself to the payment of death and sick
 benefits to its members shall not make, issue, or deliver in this state a certificate or other
 written evidence of the obligation unless the certificate or other written evidence has
 conspicuously printed on the first page in boldface type not smaller than 10 point the
 following statement: This organization does not operate under the supervision of the
 Michigan insurance bureau.

Amended by P.A.1991, No. 37, § 1, Imd. Eff. June 10, 1991; P.A.1996, No. 533, § 1, Imd. Eff. Jan. 13
 1997.

Historical and Statutory Notes

1991 Legislation

The 1991 amendment, in subsec. (1), in the first
 sentence substituted "provided for here or by oth-
 er statute" for "provided for by statute" and
 "\$2,000.00" for "\$500.00"; and, in subsec. (3), sub-
 stituted "that" for "which".

1996 Legislation

The 1996 amendment, in subsec. (1), in the fifth
 sentence substituted "\$20,000.00" for "\$14,000.00"

CHAPTER 5. MANAGEMENT

**450.2556. Volunteer director or officer's acts or omissions; claims for monetary dam-
 ages**

Sec. 556. If the corporation's articles of incorporation contain a provision authorized under
 section 209(e),¹ 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.

P.A.1982, No. 162, § 556, added by P.A.1993, No. 129, § 1, Imd. Eff. July 22, 1993. Amended by
 P.A.1996, No. 457, § 1, Imd. Eff. Dec. 23, 1996.

¹ Section 450.2209.

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