

# PUBLICATION

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## Five Changes to the Tennessee Nonprofit Corporation Act That You Need to Know

January 14, 2015

The following are five important changes to the Tennessee Nonprofit Corporation Act (the Act) which became effective January 1, 2015:

1. **Affirmative Disclosure Requirement to Report Up the Chain of Command**: An affirmative duty now exists for: (i) directors to disclose all information that the director knows is relevant to the board's decisions; (ii) officers to inform supervisors or the board of all information that such officer knows is material to the supervisors or board; and (iii) officers to inform supervisors or the board about material violations of the law that have occurred or are likely to occur. It remains to be seen how broadly the affirmative duty will be interpreted and whether such a duty will discourage volunteer directors from serving on nonprofit boards. For the time being, however, nonprofit corporations should consider updating their boards and officers about these and other duties under the Act.
2. **Director Indemnification**: Charters and bylaws may permit director indemnification for any act (or failure to act) except: (i) receipt of a financial benefit to which the director is not entitled; (ii) intentional infliction of harm; (iii) approval of an unlawful distribution; and (iv) intentional violation of a criminal law. A charter of a mutual benefit corporation may eliminate or limit the liability of a director for any act (or failure to act) except for the items listed in (i) – (iv) in the previous sentence. Additionally, the Act affirms that indemnification is available for committee members who are not directors, employees, agents and volunteers of the nonprofit.  
Those serving as directors, officers, employees or volunteers would be well advised to review their nonprofit's governing documents with their advisor to ensure that the protections available under the Act exist in their governing documents.
3. **45-Day Notice Period**: A public benefit corporation must provide written notice to the Tennessee Attorney General at least 45 days prior to the sale, lease, merger or exchange of all or substantially all of its assets. The time period was previously only 20 days.
4. **Director Reliance and Fiduciary Duty**: Directors may rely on competent volunteers in fulfilling their fiduciary duties. Similarly, directors of religious organizations may rely on religious authorities in fulfilling their fiduciary duties.
5. **Entity Conversions, Membership Exchanges, Mergers and Asset Sales**: The Act modernizes and incorporates many of the concepts and definitions located in the Tennessee Business Corporation Act related to entity conversions, membership (share) exchanges, mergers and asset sales.

There are various other revisions to the Tennessee Nonprofit Corporation Act in addition to those briefly summarized above. Should you wish to discuss any of these revisions to the Act, please contact any one of the attorneys in the Firm's Tax Group.