

History. Acts 1993, No. 1147, § 824.

4-33-825. Committees of the board.

(a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one (1) or more committees of the board and appoint members of the board to serve on them. Each committee shall have two (2) or more directors, who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) a majority of a quorum of the directors when the action is taken; or

(2) the number of directors required by the articles or bylaws to take action under § 4-33-824.

(c) Sections 4-33-820 — 4-33-824, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, apply to committees of the board and their members as well.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under § 4-33-801.

(e) A committee of the board may not, however:

(1) authorize distributions;

(2) approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of the corporation's assets;

(3) elect, appoint or remove directors or fill vacancies on the board or on any of its committees; or

(4) adopt, amend or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in § 4-33-830.

History. Acts 1993, No. 1147, § 825.

4-33-826 — 4-33-829. [Reserved.]

Part C — Standards of Conduct

4-33-830. General standards for directors.

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(1) in good faith;

(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) in a manner the director reasonably believes to be in the best interests of the corporation.

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

(1) one (1) or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) a committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence; or

(4) in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

History. Acts 1993, No. 1147, § 830.

4-33-831. Director conflict of interest.

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if any of the following is true:

(1) the transaction was fair to the corporation at the time it was entered into;

(2) the material facts of the transaction and the director's interest were disclosed or known to the board of directors and the board authorized, approved, or ratified the transaction; or

(3) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(b) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction or (2) another entity of which the director is a director, officer, or trustee is a party to the transaction.

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(c) For purposes of subsection (a)(2) of this section a conflict of interest transaction is authorized, approved, or ratified, if it receives the affirmative vote of a majority of the directors on the board, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by less than a majority of the entire board of directors.

(d) For purposes of subsection (a)(3) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (b)(1) of this section, may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection (a)(3) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(e) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

History. Acts 1993, No. 1147, § 831.

4-33-832. Loans to or guaranties for directors and officers.

(a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

History. Acts 1993, No. 1147, § 832.

4-33-833. Liability for unlawful distributions.

(a) Unless a director complies with the applicable standards of conduct described in § 4-33-830, a director who votes for or assents to a distribution made in violation of this chapter is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this chapter.

(b) A director held liable for an unlawful distribution under subsection (a) of this section is entitled to contribution:

(1) from every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in § 4-33-830; and

(2) from each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of this chapter.

REPRODUCED FROM THE ORIGINAL ACTS

History. Acts 1993, No. 1147, § 833.

4-33-834 — 4-33-839. [Reserved.]

Part D — Officers

4-33-840. Required officers.

(a) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer and such other officers as are appointed by the board.

(b) The bylaws or the board shall delegate to one (1) of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

(c) The same individual may simultaneously hold more than one (1) office in a corporation.

History. Acts 1993, No. 1147, § 840.

4-33-841. [Reserved.]

4-33-842. Standards of conduct for officers.

(a) An officer with discretionary authority shall discharge his or her duties under that authority:

- (1) in good faith;
- (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (3) in a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.

(b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one (1) or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;

(2) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(3) in the case of religious corporations, religious authorities and ministers, priests, rabbis or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

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History. Acts 1993, No. 1147, § 842.

4-33-843. Resignation and removal of officers.

(a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

(b) A board may remove any officer at any time with or without cause.

History. Acts 1993, No. 1147, § 843.

4-33-844. Contract rights of officers.

(a) The appointment of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

History. Acts 1993, No. 1147, § 844.

4-33-845. Officers' authority to execute documents.

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two (2) officers in Category 1 below or by one (1) officer in Category 1 below and one (1) officer in Category 2 below.

Category 1 — The presiding officer of the board and the president.

Category 2 — A vice president, the secretary, treasurer and executive director.

History. Acts 1993, No. 1147, § 845.

4-33-846 — 4-33-849. [Reserved.]

Part E — Indemnification

4-33-850. Part definitions.

In this part:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.

(5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in § 4-33-856, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

History. Acts 1993, No. 1147, § 850.

4-33-851. Authority to indemnify.

(a) Except as provided in subsection (d) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

(1) conducted himself or herself in good faith; and

(2) reasonably believed:

(i) in the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and

(ii) in all other cases, that his or her conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the

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participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

History. Acts 1993, No. 1147, § 851.

4-33-852. Mandatory indemnification.

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

History. Acts 1993, No. 1147, § 852.

4-33-853. Advance for expenses.

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in § 4-33-851;

(2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(b) The undertaking required by subsection (a)(2) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in § 4-33-855.

History. Acts 1993, No. 1147, § 853.

4-33-854. Court-ordered indemnification.

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines:

(1) the director is entitled to mandatory indemnification under § 4-33-852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in § 4-33-851(a) or was adjudged liable as described in § 4-33-851(d), but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

History. Acts 1993, No. 1147, § 854.

4-33-855. Determination and authorization of indemnification.

(a) A corporation may not indemnify a director under § 4-33-851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standards of conduct set forth in § 4-33-851.

(b) The determination shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subdivision (b)(1) of this section, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subdivision (b)(1) or (b)(2) of this section; or

(ii) if a quorum of the board cannot be obtained under subdivision (b)(1) of this section and a committee cannot be designated under subdivision (b)(2) of this section, selected by majority vote of the full board (in which selection directors who are parties may participate); or

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(4) by the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) of this section to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty (20) days after the effective date of written notice to the Attorney General of the proposed indemnification.

History. Acts 1993, No. 1147, § 855.

4-33-856. Indemnification of officers, employees and agents.

Unless limited by a corporation's articles of incorporation:

(1) an officer of the corporation who is not a director is entitled to mandatory indemnification under § 4-33-852, and is entitled to apply for court-ordered indemnification under § 4-33-854 in each case, to the same extent as a director;

(2) the corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

History. Acts 1993, No. 1147, § 856.

4-33-857. Insurance.

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under § 4-33-851 or § 4-33-852.

History. Acts 1993, No. 1147, § 857.

4-33-858. Application of part.

(a) A provision treating a corporation's indemnification or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this part. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

History. Acts 1993, No. 1147, § 858.

SUBCHAPTER 9

[Reserved]

SUBCHAPTER 10 — AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS**SECTION.****Part A — Articles of Incorporation**

- 4-33-1001. Authority to amend.
 4-33-1002. Amendment by directors.
 4-33-1003. Amendment by directors and members.
 4-33-1004. Class voting by members on amendments.
 4-33-1005. Articles of amendment.
 4-33-1006. Restated articles of incorporation.
 4-33-1007. Amendment pursuant to judicial reorganization.
 4-33-1008. Effect of amendment and restatement.
 4-33-1009 — 4-33-1019. [Reserved.]

Part A — Articles of Incorporation**4-33-1001. Authority to amend.**

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

History. Acts 1993, No. 1147, § 1001.

SECTION.**Part B — Bylaws**

- 4-33-1020. Amendment by directors.
 4-33-1021. Amendment by directors and members.
 4-33-1022. Class voting by members on amendments.
 4-33-1023 — 4-33-1029. [Reserved.]

Part C — Articles of Incorporation and Bylaws

- 4-33-1030. Approval by third persons.
 4-33-1031. Amendment terminating members or redeeming or cancelling memberships.

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