

§852. Permissible indemnification

1. Standards of conduct. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because that individual is a director of the corporation against liability incurred in the proceeding if:

A. The following criteria are met:

(1) The individual's conduct was in good faith;

(2) The individual reasonably believed:

(a) In the case of conduct in the individual's official capacity, that the individual's conduct was in the best interests of the corporation; and

(b) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful; or [PL 2003, c. 344, Pt. B, §68 (AMD).]

B. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the corporation's articles of incorporation as authorized by section 202, subsection 2, paragraph E. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
[PL 2003, c. 344, Pt. B, §68 (AMD).]

2. Employee benefit plan. The conduct of a director with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection 1, paragraph A, subparagraph (2), division (b).
[PL 2003, c. 344, Pt. B, §68 (AMD).]

3. Termination of proceeding. The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent is not of itself determinative that the director did not meet the relevant standard of conduct described in this section.
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

4. Limits. Unless ordered by a court under section 855, subsection 1, paragraph C, a corporation may not indemnify one of the corporation's directors:

A. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
[PL 2003, c. 344, Pt. B, §68 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B68 (AMD).

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