

490.831 Standards of liability for directors.

1. A director shall not be liable to the corporation or its shareholders for any decision as director to take or not to take action, or any failure to take any action, unless the party asserting liability in a proceeding establishes both of the following:

a. That any of the following apply:

(1) No defense interposed by the director based on any of the following precludes liability:

(a) A provision in the articles of incorporation authorized by [section 490.202, subsection 2](#), paragraph “d”.

(b) The protection afforded by [section 490.861](#) for action taken in compliance with [section 490.862](#) or [490.863](#).

(c) The protection afforded by [section 490.870](#).

(2) The protection afforded by [section 490.870](#) does not preclude liability.

b. That the challenged conduct consisted or was the result of one of the following:

(1) Action not in good faith.

(2) A decision that satisfies one of the following:

(a) That the director did not reasonably believe to be in the best interests of the corporation.

(b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances.

(3) A lack of objectivity due to the director’s familial, financial, or business relationship with, or a lack of independence due to the director’s domination or control by, another person having a material interest in the challenged conduct, which also meets both of the following criteria:

(a) Which relationship or which domination or control could reasonably be expected to have affected the director’s judgment respecting the challenged conduct in a manner adverse to the corporation.

(b) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation.

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making, or causing to be made, appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need for such oversight, attention, or inquiry.

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director’s duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

2. a. A party seeking to hold the director liable for money damages shall also have the burden of establishing both of the following:

(1) That harm to the corporation or its shareholders has been suffered.

(2) The harm suffered was proximately caused by the director’s challenged conduct.

b. A party seeking to hold the director liable for other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances.

c. A party seeking to hold the director liable for other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. [This section](#) shall not do any of the following:

a. In any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under [section 490.861, subsection 2](#), paragraph “c”, alter the burden of proving the fact or lack of fairness otherwise applicable.

b. Alter the fact or lack of liability of a director under another section of [this chapter](#), such as the provisions governing the consequences of an unlawful distribution under [section 490.833](#) or a transactional interest under [section 490.861](#).

c. Affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

89 Acts, ch 288, §90; 2002 Acts, ch 1154, §38, 125; 2003 Acts, ch 44, §83; 2008 Acts, ch 1015, §2; 2009 Acts, ch 133, §164; 2013 Acts, ch 31, §29, 30, 82

Referred to in §490.842, §491.16A