

BUSINESS CORPORATION ACT (EXCERPT)

Act 284 of 1972

CHAPTER 5

DIRECTORS AND OFFICERS

450.1501 Management of corporation; qualifications of director.

Sec. 501. The business and affairs of a corporation shall be managed by or under the direction of its board, except as otherwise provided in this act or in its articles of incorporation. A director need not be a shareholder of the corporation unless the articles or bylaws so require. The articles or bylaws may prescribe qualifications for directors.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1982, Act 407, Eff. Jan. 1, 1983.

450.1505 Number, election, and term of directors; resignation; designation, compensation, and expenses of independent director; communication of independent director with shareholders.

Sec. 505. (1) The board shall consist of 1 or more members. The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the articles of incorporation fix the number.

(2) The first board of directors shall hold office until the first annual meeting of shareholders. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the succeeding annual meeting, except in case of the classification of directors as permitted by this act. A director shall hold office for the term for which he or she is elected and until his or her successor is elected and qualified, or until his or her resignation or removal. A director may resign by written notice to the corporation. The resignation is effective upon its receipt by the corporation or a later time as set forth in the notice of resignation.

(3) The shareholders or board may designate 1 or more directors as an independent director. Any director so designated shall be entitled to reasonable compensation in addition to compensation paid to directors generally, as determined by the board or shareholders, and reimbursement for expenses reasonably related to service as an independent director. An independent director may communicate with shareholders at the corporation's expense, as part of a communication or report sent by the corporation to shareholders. An independent director shall not have any greater duties or liabilities than any other director.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1506 Division of directors into classes; terms of directors in first, second, or third class; election.

Sec. 506. (1) The articles of incorporation or a bylaw adopted by the shareholders or incorporators may provide that in lieu of annual election of all directors the directors be divided into 2 or 3 classes, each to be as nearly equal in number as possible. The term of office of directors in the first class shall expire at the first annual meeting of shareholders after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class, if any, shall expire at the third annual meeting after their election. At each annual meeting after such classification, a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the second succeeding annual meeting if there are 2 classes, or until the third succeeding annual meeting if there are 3 classes.

(2) A corporation having more than 1 class or series of shares may provide in its articles for election of 1 or more directors by shareholders of a class or series, to the exclusion of other shareholders.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1511 Removal of directors by shareholders.

Sec. 511. (1) The shareholders may remove 1 or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause. The vote for removal shall be by a majority of shares entitled to vote at an election of directors except that the articles may require a higher vote for removal without cause. This section shall not invalidate any bylaw adopted before the effective date of the act which added this sentence insofar as the bylaw applies to removal without cause.

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no 1 of the directors may be removed if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which he or she is a part.

(3) If holders of a class or series of stock or of bonds are entitled by the articles to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares of that class or series of stock or the holders of those bonds.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1514 Removal of director by court.

Sec. 514. (1) The circuit court of the county in which the principal place of business or registered office of the corporation is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least 10% of the outstanding shares of any class if the court finds that the director engaged in fraudulent, illegal, or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, and removal is in the best interest of the corporation.

(2) The court that removes a director may bar him or her from serving as a director of the corporation for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1), they shall make the corporation a party defendant.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1515 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to vacancy on board of directors.

450.1515a Filling vacancy in board.

Sec. 515a. (1) Unless otherwise limited by the articles of incorporation, if a vacancy, including a vacancy resulting from an increase in the number of directors, occurs in a board, the vacancy may be filled as follows:

(a) The shareholders may fill the vacancy.

(b) The board may fill the vacancy.

(c) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(2) Unless otherwise provided in the articles, if the holders of any class or classes of stock or series are entitled to elect 1 or more directors to the exclusion of other shareholders, vacancies of that class or classes or series may be filled only by 1 of the following:

(a) By a majority of the directors elected by the holders of that class or classes or series then in office, whether or not those directors constitute a quorum of the board.

(b) By the holders of shares of that class or classes of shares, or series.

(3) Unless otherwise limited by the articles or bylaws, in the case of a corporation the directors of which are divided into classes, any director chosen to fill a vacancy shall hold office until the next election of the class for which the director shall have been chosen, and until his or her successor is elected and qualified.

(4) If because of death, resignation, or other cause, a corporation has no directors in office, an officer, a shareholder, a personal representative, administrator, trustee, or guardian of a shareholder, or other fiduciary entrusted with like responsibility for the person or estate of a shareholder, may call a special meeting of shareholders in accordance with the articles or the bylaws.

(5) A vacancy that will occur at a specific date, by reason of a resignation effective at a later date under section 505 or otherwise, may be filled before the vacancy occurs but the newly elected or appointed director may not take office until the vacancy occurs.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.

450.1521 Regular or special meetings of board.

Sec. 521. (1) Regular or special meetings of a board may be held either in or outside this state.

(2) A regular meeting may be held with or without notice as prescribed in the bylaws. A special meeting shall be held upon notice as prescribed in the bylaws. A director's attendance at or participation in a meeting waives any required notice to him or her of the meeting unless he or she at the beginning of the meeting, or upon his or her arrival, objects to the meeting or the transacting of business at the meeting and does not thereafter vote for or assent to any action taken at the meeting. Unless required by the bylaws, neither the business to be transacted at, nor the purpose of, a regular or special meeting need be specified in the notice or waiver of notice of the meeting.

(3) Unless otherwise restricted by the articles of incorporation or bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or other means of remote communication through which all persons participating in the meeting can communicate with the other participants. Participation in a meeting pursuant to this subsection constitutes presence in

person at the meeting.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001.

450.1523 Quorum; majority vote as constituting action of board.

Sec. 523. (1) A majority of the members of the board then in office, or of the members of a committee of the board, constitutes a quorum for transaction of business, unless the articles of incorporation or bylaws, or in the case of a committee, the board resolution establishing the committee, provide for a larger or smaller number. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee, unless the vote of a larger number is required by this act, the articles, or the bylaws, or in the case of a committee, the board resolution establishing the committee.

(2) Amendment of the bylaws by the board requires the vote of not less than a majority of the members of the board then in office.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1525 Consent to action of board without meeting.

Sec. 525. (1) Unless prohibited by the articles of incorporation or bylaws, action required or permitted to be taken under authorization voted at a meeting of the board or a committee of the board, may be taken without a meeting if, before or after the action, all members of the board then in office or of the committee consent to the action in writing or by electronic transmission.

(2) A consent under this section shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

(3) An individual may direct that a consent to an action of the board or committee will take effect at a future time. All of the following apply for purposes of this subsection:

(a) The individual may provide the direction through an agent or in some other manner.

(b) Subject to subdivision (c), the individual shall select a specific date on which the consent takes effect that is not more than 60 days after the date he or she provides the direction.

(c) The individual may direct that the consent will take effect at the time a specified future event occurs rather than on a specific date under subdivision (b), if that event will occur not more than 60 days after the date he or she provides the direction.

(d) The consent shall only take effect if the individual is a director at the future time specified in the direction. An individual is not required to be a director at the time the consent is executed or evidence of the direction is provided to the corporation for the consent to take effect.

(e) Unless otherwise provided in the direction, a direction is revocable at any time before the consent becomes effective.

(f) For the purposes of this section, if evidence of a direction under this subsection is provided to the corporation and is not revoked, the future time established in the direction is considered the time the consent takes effect.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2018, Act 85, Eff. June 24, 2018.

450.1527 Committees; designation by board; membership; absence or disqualification of member; terms.

Sec. 527. (1) Unless otherwise provided in the articles of incorporation or bylaws, the board may designate 1 or more committees, each committee to consist of 1 or more of the directors of the corporation. The board may designate 1 or more directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. The bylaws may provide that in the absence or disqualification of a member of a committee, the members thereof present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the board to act at the meeting in place of such an absent or disqualified member.

(2) A committee, and each member thereof, shall serve at the pleasure of the board.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1528 Committees; powers and authority; limitations; subcommittees.

Sec. 528. (1) A committee designated under section 527, to the extent provided in a resolution of the board or in the bylaws, may exercise all powers and authority of the board in the management of the business and affairs of the corporation. A committee does not have power or authority to do any of the following:

(a) Amend the articles of incorporation, except that a committee may prescribe the relative rights and preferences of the shares of a series under section 302(3).

- (b) Adopt an agreement of merger, conversion, or share exchange.
- (c) Recommend to shareholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets.
- (d) Recommend to shareholders a dissolution of the corporation or a revocation of a dissolution.
- (e) Amend the bylaws of the corporation.
- (f) Fill vacancies in the board.
- (2) Unless a resolution of the board, the articles of incorporation, or the bylaws expressly provide the power or authority, a committee does not have the power or authority to declare a distribution or dividend or to authorize the issuance of shares.
- (3) Unless otherwise provided in a resolution of the board, the articles of incorporation, or the bylaws, a committee may create 1 or more subcommittees. Each subcommittee shall consist of 1 or more members of the committee. The committee may delegate all or part of its power or authority to a subcommittee.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2006, Act 65, Imd. Eff. Mar. 20, 2006;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1529 Submission of matter to shareholder vote.

Sec. 529. A corporation may agree by contract to submit a matter to a vote of its shareholders even if, after initially approving the matter, the board of directors later determines that it no longer recommends the matter or recommends against approval of the matter by the shareholders.

History: Add. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1531 Officers of corporation; election or appointment; holding 2 or more offices; authority and duties.

Sec. 531. (1) The officers of a corporation shall consist of a president, secretary, treasurer, and, if desired, a chairman of the board, 1 or more vice-presidents, and such other officers as may be prescribed by the bylaws or determined by the board. Unless otherwise provided in the articles of incorporation or bylaws, the officers shall be elected or appointed by the board.

(2) Two or more offices may be held by the same person but an officer shall not execute, acknowledge or verify an instrument in more than 1 capacity if the instrument is required by law or the articles or bylaws to be executed, acknowledged or verified by 2 or more officers.

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

(4) An officer, as between himself and 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.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1535 Removal or resignation of officers; contract rights.

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 may be removed, with or without cause, only by vote of the shareholders, but his authority to act as an officer may be suspended by the board for cause.

(2) The removal of an officer shall be without prejudice to his contract rights, 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.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1541 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to discharge of duties by director or officer.

450.1541a Director or officer; manner of discharging duties; reliance on information, opinions, reports, or statements; action against director or officer; limitations.

Sec. 541a. (1) A director or officer shall discharge his or her duties as a director or officer including his or her duties as a member of a committee in the following manner:

- (a) In good faith.
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
- (c) In a manner he or she reasonably believes to be in the best interests of the corporation.

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

(a) One or more directors, officers, or employees of the corporation, or of a business organization under joint control or common control, whom the director or officer reasonably believes to be reliable and competent in the matters presented.

(b) Legal counsel, public accountants, engineers, or other persons as to matters the director or officer reasonably believes are within the person's professional or expert competence.

(c) A committee of the board of which he or she is not a member if the director or officer reasonably believes the committee merits confidence.

(3) A director or officer is not entitled to rely on the information set forth in subsection (2) if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) unwarranted.

(4) 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.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1545 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to contracts or transactions involving interested directors or officers.

450.1545a Interest of director or officer in transaction; compensation of directors.

Sec. 545a. (1) A transaction in which a director or officer is determined to have an interest shall not, because of the interest, be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, if the person interested in the transaction establishes any of the following:

(a) The transaction was fair to the corporation at the time entered into.

(b) The material facts of the transaction and the director's or officer's interest were disclosed or known to the board, a committee of the board, or the independent director or directors, and the board, committee, or independent director or directors authorized, approved, or ratified the transaction.

(c) The material facts of the transaction and the director's or officer's interest were disclosed or known to the shareholders entitled to vote and they authorized, approved, or ratified the transaction.

(2) For purposes of subsection (1)(b), a transaction is authorized, approved, or ratified if it received the affirmative vote of the majority of the directors on the board or the committee who had no interest in the transaction, though less than a quorum, or all independent directors who had no interest in the transaction. The presence of, or a vote cast by, a director with an interest in the transaction does not affect the validity of the action taken under subsection (1)(b).

(3) For purposes of subsection (1)(c), a transaction is authorized, approved, or ratified if it received the majority of votes cast by the holders of shares who did not have an interest in the transaction. A majority of the shares held by shareholders who did not have an interest in the transaction constitutes a quorum for the purpose of taking action under subsection (1)(c).

(4) Satisfying the requirements of subsection (1) does not preclude other claims relating to a transaction in which a director or officer is determined to have an interest. Those claims shall be evaluated under principles of law applicable to a transaction in which a director or officer does not have an interest.

(5) The board, by affirmative vote of a majority of directors in office and irrespective of any personal interest of any of them, may establish reasonable compensation of directors for services to the corporation as directors or officers, but approval of the shareholders is required if the articles of incorporation, bylaws, or another provision of this act requires that approval. Transactions pertaining to the compensation of directors for services to the corporation as directors or officers shall not be enjoined, set aside, or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation unless it is shown that the compensation was unreasonable at the time established.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1546 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to validity of contract involving interested directors or officers.

450.1548 Loan, guaranty, or assistance by corporation to director, officer, or employee.

Sec. 548. (1) A corporation may lend money to, guarantee an obligation of, or otherwise assist an officer or employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or subsidiary, if, in the judgment of the board, the loan, guaranty, or assistance may reasonably be expected to benefit the corporation, or is pursuant to a plan authorizing loans, guaranties, or assistance that the board has reasonably determined will benefit the corporation.

(2) The loan, guaranty, or assistance may be with or without interest and may be unsecured or secured in a manner as the board approves, including a pledge of shares of stock of the corporation.

(3) A loan under this section to an officer or employee to purchase shares of the corporation or a subsidiary may be made at any rate of interest not exceeding the rate of interest allowed under Act No. 259 of the Public Acts of 1968, being sections 438.41 to 438.42 of the Michigan Compiled Laws.

(4) This section does not deny, limit, or restrict the powers of guaranty or warranty of a corporation at common law or under any statute.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1996, Act 113, Imd. Eff. Mar. 6, 1996.

450.1551 Liability of directors for corporate actions; liability of shareholders accepting or receiving share dividend or distribution.

Sec. 551. (1) Directors who vote for, or concur in, any of the following corporate actions are jointly and severally liable to the corporation for the benefit of its creditors or shareholders, to the extent of any legally recoverable injury suffered by its creditors or shareholders as a result of the action but not to exceed the difference between the amount paid or distributed and the amount that lawfully could have been paid or distributed:

(a) Declaration of a share dividend or distribution to shareholders contrary to this act or contrary to any restriction in the articles of incorporation.

(b) Distribution to shareholders during or after dissolution of the corporation without paying or providing for debts, obligations, and liabilities of the corporation as required by section 855a.

(c) Making a loan to a director, officer, or employee of the corporation or of a subsidiary of the corporation contrary to this act.

(2) A director is not liable under this section if he or she has complied with section 541a.

(3) A shareholder who accepts or receives a share dividend or distribution with knowledge of facts indicating it is contrary to this act, or any restriction in the articles of incorporation, is liable to the corporation for the amount accepted or received in excess of the shareholder's share of the amount that lawfully could have been distributed.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1552 Rights of director against whom claim is successfully asserted under MCL 450.1551.

Sec. 552. (1) A director against whom a claim is successfully asserted under section 551 is entitled to contribution from the other directors who voted for, or concurred in, the action upon which the claim is asserted.

(2) A director against whom a claim is successfully asserted under section 551 is entitled, to the extent of the amounts paid by him or her to the corporation as a result of the claims, to all of the following:

(a) Upon payment to the corporation of any amount of an improper share dividend or distribution, to be subrogated to the rights of the corporation against shareholders who received the share dividend or distribution in proportion to the amounts received by them respectively.

(b) Upon payment to the corporation of any amount of the purchase price of an improper purchase of shares to have the corporation rescind the purchase and recover for his or her benefit, but at his or her expense, the amount of the purchase price from any seller who sold the shares with knowledge of facts indicating that the purchase of shares by the corporation was not authorized by this act, or to have the corporation assign to the director the shares and any claim against the seller.

(c) Upon payment to the corporation of the claim of a creditor because of a violation of subdivision (1)(b) of section 551, to be subrogated to the rights of the corporation against shareholders who received an improper distribution of assets.

(d) Upon payment to the corporation of the amount of a loan made improperly to a director, officer, or employee, to be subrogated to the rights of the corporation against a director, officer, or employee who received the improper loan.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1553 Presumption of concurrence by director in corporation action; effect of dissent.

Sec. 553. A director who is present at a meeting of the board, or a committee thereof of which he is a member, at which action on a corporate matter referred to in section 551 is taken is presumed to have concurred in that action unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to the action with the person acting as secretary of the meeting before or promptly after the adjournment thereof. The right to dissent does not apply to a director who voted in favor of the action. A director who is absent from a meeting of the board, or a committee thereof of which he is a member, at which any such action is taken is presumed to have concurred in the action unless he files his dissent with the secretary of the corporation within a reasonable time after he has knowledge of the action.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1554 Action against director or shareholder; limitation.

Sec. 554. An action against a director or shareholder for recovery upon a liability imposed by section 551 shall be commenced within 3 years after the cause of action accrues. An action under section 552 shall be commenced within 3 years after payment by the director to the corporation.

History: 1972, Act 284, Eff. Jan. 1, 1973.

450.1561 Indemnification of certain persons generally.

Sec. 561. A corporation has the power to indemnify a person who was or is a party or is threatened to be made a party to a 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 he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding, if the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of an action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the corporation or its shareholders, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987.

450.1562 Additional provisions for indemnification of certain persons.

Sec. 562. A corporation has the power to indemnify a person who was or is a party 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 he or she is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including attorneys' fees, and amounts paid in settlement actually and reasonably 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. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the corporation except to the extent authorized in section 564c.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989.

450.1563 Indemnification against actual and reasonable expenses.

Sec. 563. To the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of an action, suit, or proceeding referred to in section 561 or 562, or in defense of a claim, issue, or matter in the action, suit, or proceeding, the corporation shall indemnify him or her against actual and reasonable expenses, including attorneys' fees, incurred by him or her in connection with the action, suit, or proceeding and an action, suit, or proceeding brought to enforce the mandatory indemnification provided in this section.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 2001,

450.1564 Repealed. 1989, Act 121, Eff. Oct. 1, 1989.

Compiler's note: The repealed section pertained to payment of defense expenses in advance.

450.1564a Indemnification under MCL 450.1561, MCL 450.1562, or MCL 450.1563; determination and evaluation; designation of committee or selection of independent legal counsel; partial indemnification; payment authorization; indemnification for expenses and liabilities.

Sec. 564a. (1) Except as otherwise provided in subsection (5), an indemnification under section 561 or 562, unless ordered by the court or required under section 563, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in sections 561 and 562 and upon an evaluation of the reasonableness of expenses and amounts paid in settlement. This determination and evaluation shall be made in any of the following ways:

(a) By a majority vote of a quorum of the board consisting of directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(b) If a quorum cannot be obtained under subdivision (a), by majority vote of a committee duly designated by the board and consisting solely of 2 or more directors not at the time parties or threatened to be made parties to the action, suit, or proceeding.

(c) In a written opinion by independent legal counsel selected in 1 of the following ways:

(i) By the board or its committee in the manner prescribed in subdivision (a) or (b).

(ii) If a quorum of the board cannot be obtained under subdivision (a) and a committee cannot be designated under subdivision (b), by the board.

(d) By all independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(e) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted.

(2) In the designation of a committee under subsection (1)(b) or in the selection of independent legal counsel under subsection (1)(c)(ii), all directors may participate.

(3) If a person is entitled to indemnification under section 561 or 562 for a portion of expenses, including reasonable attorneys' fees, judgments, penalties, fines, and amounts paid in settlement, but not for the total amount, the corporation may indemnify the person for the portion of the expenses, judgments, penalties, fines, or amounts paid in settlement for which the person is entitled to be indemnified.

(4) An authorization of payment of indemnification under this section shall be made in any of the following ways:

(a) By the board in 1 of the following ways:

(i) If there are 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all directors who are not parties or threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(ii) By a majority of the members of a committee of 2 or more directors who are not parties or threatened to be made parties to the action, suit, or proceeding.

(iii) If the corporation has 1 or more independent directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by a majority vote of all independent directors who are not parties or are threatened to be made parties, a majority of whom shall constitute a quorum for this purpose.

(iv) If there are no independent directors and less than 2 directors who are not parties or threatened to be made parties to the action, suit, or proceeding, by the vote necessary for action by the board in accordance with section 523, in which authorization all directors may participate.

(b) By the shareholders, but shares held by directors, officers, employees, or agents who are parties or threatened to be made parties to the action, suit, or proceeding may not be voted on the authorization.

(5) To the extent that the articles of incorporation include a provision eliminating or limiting the liability of a director pursuant to section 209(1)(c), a corporation may indemnify a director for the expenses and liabilities described in this subsection without a determination that the director has met the standard of conduct set forth in sections 561 and 562, but no indemnification may be made except to the extent authorized in section 564c if the director received a financial benefit to which he or she was not entitled, intentionally inflicted harm on the corporation or its shareholders, violated section 551, or intentionally committed a criminal act. In connection with an action or suit by or in the right of the corporation described in section 562, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably

incurred. In connection with an action, suit, or proceeding other than an action, suit, or proceeding by or in the right of the corporation, as described in section 561, indemnification under this subsection may be for expenses, including attorneys' fees, actually and reasonably incurred, and for judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009.

450.1564b Payment or reimbursement of party in advance of final disposition of proceeding; undertaking as unlimited general obligation; evaluation of reasonableness; advancement of expenses.

Sec. 564b. (1) A corporation may pay or reimburse the reasonable expenses incurred by a director, officer, employee, or agent of the corporation, or by a person that is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other profit or nonprofit enterprise, that is a party or threatened to be made a party to an action, suit, or proceeding in advance of final disposition of the proceeding if the person furnishes the corporation a written undertaking, executed personally or on the person's behalf, to repay the advance if it is ultimately determined that the person did not meet the applicable standard of conduct, if any, required by this act for the indemnification of a person under the circumstances.

(2) An undertaking required under subsection (1) must be an unlimited general obligation of the person but may be unsecured and may be accepted without reference to the financial ability of the person to make repayment.

(3) A corporation shall make an evaluation of reasonableness under this section in the manner specified in section 564a(1) for an evaluation of reasonableness of expenses, and shall make an authorization in the manner specified in section 564a(4) unless an advance is mandatory. A corporation may make an authorization of advances with respect to a proceeding and a determination of reasonableness of advances or selection of a method for determining reasonableness in a single action or resolution covering an entire proceeding. However, unless the action or resolution provides otherwise, the authorizing or determining authority may subsequently terminate or amend the authorization or determination with respect to advances not yet made.

(4) A provision in the articles of incorporation or bylaws, a resolution of the board or shareholders, or an agreement making indemnification mandatory shall also make the advancement of expenses mandatory unless the provision, resolution, or agreement specifically provides otherwise.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997;—Am. 2001, Act 57, Imd. Eff. July 23, 2001;—Am. 2008, Act 402, Imd. Eff. Jan. 6, 2009;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1564c Application for indemnification to court; determination.

Sec. 564c. A director, officer, employee, or agent of the corporation who is a party or threatened to be made a party to an action, suit, or 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 it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in sections 561 and 562 or was adjudged liable as described in section 562, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

History: Add. 1989, Act 121, Eff. Oct. 1, 1989.

450.1565 Limitation on total amount of expenses advanced or indemnified; duration of indemnification; elimination or impairment.

Sec. 565. (1) The indemnification or advancement of expenses provided under sections 561 to 564c is not exclusive of other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation, bylaws, or a contractual agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking indemnification or advancement of expenses.

(2) The indemnification provided under this section and sections 561 to 564c continues as to a person that ceases to be a director, officer, employee, or agent and inures to the benefit of the heirs, personal representatives, and administrators of the person if the person is an individual.

(3) A corporation shall not eliminate or impair a right to indemnification or to advancement of expenses established in a provision of the articles of incorporation or the bylaws by amending that provision after the

occurrence of the act or omission that is the subject of the formal or informal civil, criminal, administrative, or investigative action, suit, or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of that act or omission explicitly authorizes that elimination or impairment after that act or omission occurs.

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1567 Liability insurance.

Sec. 567. (1) A corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have power to indemnify him or her against liability under sections 561 to 565.

(2) If the articles of incorporation include a provision eliminating or limiting the liability of a director pursuant to section 209(1)(c), insurance on behalf of a director under subsection (1) may be purchased from an insurer owned by the corporation, but insurance purchased from that insurer may insure a director against monetary liability to the corporation or its shareholders only to the extent to which the corporation could indemnify the director under section 564a(5).

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1997, Act 118, Imd. Eff. Oct. 24, 1997.

450.1569 "Corporation" defined for purposes of MCL 450.1561 to 450.1567; "business organization" defined.

Sec. 569. (1) For purposes of sections 561 to 567, "corporation" includes all constituent corporations absorbed in a consolidation or merger, any corporation converted into another business organization, and the resulting or surviving corporation or other business organization, so that a person that is or was a director, officer, employee, or agent of the constituent corporation or is or was serving at the request of the constituent corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, limited liability company, joint venture, trust, or other business organization in the same position under this section with respect to the resulting or surviving corporation or other business organization as if that person had served the resulting or surviving corporation or other business organization in the same capacity.

(2) As used in this section, "business organization" means that term as defined in section 736(1).

History: 1972, Act 284, Eff. Jan. 1, 1973;—Am. 1987, Act 1, Eff. Mar. 1, 1987;—Am. 2012, Act 569, Imd. Eff. Jan. 2, 2013.

450.1571 Definitions.

Sec. 571. For the purposes of sections 561 to 567:

(a) "Fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan.

(b) "Other enterprises" shall include employee benefit plans.

(c) "Serving at the request of the corporation" shall include any service as a director, officer, employee, or agent of the corporation which imposes duties on, or involves services by, the director, officer, employee, or agent with respect to an employee benefit plan, its participants, or its beneficiaries.

(d) A person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be considered to have acted in a manner "not opposed to the best interests of the corporation or its shareholders" as referred to in sections 561 and 562.

History: Add. 1982, Act 407, Eff. Jan. 1, 1983;—Am. 1989, Act 121, Eff. Oct. 1, 1989;—Am. 1993, Act 91, Eff. Oct. 1, 1993.