

**490.853 Advance for expenses.**

1. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers all of the following to the corporation:

a. A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in section 490.851 has been met by the director or that the proceeding involved conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section 490.202, subsection 2, paragraph "d".

b. A signed written undertaking of the director to repay any funds advanced if the director is not entitled to mandatory indemnification under section 490.852 and it is ultimately determined under section 490.854 or 490.855 that the director has not met the relevant standard of conduct described in section 490.851.

2. The undertaking required by subsection 1, paragraph "b", must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorizations under this section shall be made according to any of the following:

a. By the board of directors as follows:

(1) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee of two or more qualified directors appointed by such a vote.

(2) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with section 490.824, subsection 3, in which authorization directors who are not qualified directors may participate.

b. By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director shall not be voted on the authorization.

89 Acts, ch 288, §101; 2002 Acts, ch 1154, §47, 125; 2002 Acts, ch 1175, §89; 2013 Acts, ch 31, §36, 82

Referred to in §490.143, 490.854, 490.858, 491.3, 491.16, 497.34, 498.36, 499.59A, 508C.16, 524.801

[T] 2013 amendment to this section takes effect January 1, 2014; 2013 Acts, ch 31, §82

[T] Section amended