

490.858 Variation by corporate action — application of part.

1. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 490.851 or advance funds to pay for or reimburse expenses in accordance with section 490.853. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section 490.853, subsection 3, and in section 490.855, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 490.853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. A right of indemnification or to advances for expenses created by this division or under subsection 1 and in effect at the time of an act or omission shall not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection 1, the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

3. Any provision pursuant to subsection 1 shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section 490.1106, subsection 1, paragraph “c”.

4. Subject to subsection 2, a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this part.

5. This part does not limit a corporation’s power to pay or reimburse expenses incurred by a director or an officer in connection with the director’s or officer’s appearance as a witness in a proceeding at a time when the director or officer is not a party.

6. This part does not limit a corporation’s power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

89 Acts, ch 288, §106; 2002 Acts, ch 1154, §52, 125; 2013 Acts, ch 31, §38, 39, 82

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

[T] 2013 amendments adding subsection 2 and amending former subsection 3 take effect January 1, 2014; 2013 Acts, ch 31, §82

[T] NEW subsection 2 and former subsection 2 renumbered as 3

[T] Former subsection 3 amended and renumbered as 4

[T] Former subsections 4 and 5 renumbered as 5 and 6