

490.870 Business opportunities.

1. If a director or officer pursues or takes advantage of a business opportunity directly, or indirectly through or on behalf of another person, that action shall not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, officer, or other person, in a proceeding by or in the right of the corporation on the ground that the opportunity should have first been offered to the corporation, if any of the following apply:

a. Before the director, officer, or other person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and any of the following apply:

(1) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the same procedures as are set forth in [section 490.862](#).

(2) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in [section 490.863](#), in either case as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making required disclosure as defined in [section 490.860](#), the director or officer shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity known to the director or officer.

b. The duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted, and where required, made effective by action of qualified directors, in accordance with [section 490.202, subsection 2](#), paragraph "f".

2. In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in [subsection 1](#), paragraph "a", subparagraph (1) or (2), before pursuing or taking advantage of the opportunity shall not create an implication that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

[2008 Acts, ch 1015, §3](#); [2013 Acts, ch 31, §44, 82](#); [2021 Acts, ch 165, §123, 230](#)

Referred to in [§490.143](#), [490.831](#), [491.16A](#)

2021 amendment effective January 1, 2022; 2021 Acts, ch 165, §230

Section stricken and rewritten