

**§718. Director or officer conflict of interest**

**1. Conflict-of-interest transaction.** A conflict-of-interest transaction is a transaction in which a director or officer of a corporation has a direct or indirect financial interest. For the purposes of this section, a director or officer has an indirect interest in a transaction if:

A. Another entity in which the director or officer has a material interest or in which the director or officer is a general partner is a party to the transaction; or [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

B. Another entity of which the director or officer is a director, officer or trustee is a party to the transaction. [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]  
[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**2. Transaction not voidable or grounds for liability.** A conflict-of-interest transaction is not voidable or grounds for imposing liability on a director or officer of a corporation if the transaction was fair at the time it was entered into or is approved as provided in subsection 3 or 4.  
[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**3. Public benefit corporation; approval.** A transaction in which a director or officer of a public benefit corporation has a conflict of interest may be approved before or after consummation of the transaction as follows.

A. The board of directors of a public benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. The transaction may be approved only if it is fair and equitable to the corporation as of the date the transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

B. If the board of a public benefit corporation so requests, a transaction under this section may be approved by the Attorney General or by the Superior Court in an action in which the Attorney General is joined as a party. If the board is unable to make a decision regarding a transaction, one or more directors or officers may request approval of the Attorney General or the court in accordance with this subsection. The transaction may be approved only if it is fair and equitable to the corporation as of the date the transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]  
[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**4. Mutual benefit corporation; approval.** A transaction in which a director or officer of a mutual benefit corporation has a conflict of interest may be approved by the directors or the members of the corporation before or after consummation of the transaction as follows.

A. The board of directors of a mutual benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

B. The members of a mutual benefit corporation may authorize, approve or ratify a transaction under this section if in accordance with subsection 6 the material facts of the transaction and the director's or officer's interest are disclosed or known to the members. [PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]  
[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**5. Approval by directors of public benefit or mutual benefit corporation.** For purposes of subsections 3 and 4, a conflict-of-interest transaction is approved if it receives the affirmative vote of a majority of the directors on the board of directors of the corporation or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction may not be approved under this subsection by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to approve the transaction, a quorum is present for the purpose of taking action under this section.

[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**6. Approval by members of mutual benefit corporation.** For purposes of subsection 4, paragraph B, a conflict-of-interest transaction is approved by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director or officer who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection 1, paragraph A may not be counted in a vote of members to determine whether to approve a conflict-of-interest transaction under subsection 4, paragraph B. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**7. Additional requirements.** The articles of incorporation, the bylaws or a resolution of the board of directors of a corporation may impose additional requirements on conflict-of-interest transactions under this section.

[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**8. Attorney General action to void transaction.** If the Attorney General has reasonable grounds to believe that a public benefit corporation has engaged in a conflict-of-interest transaction and that the transaction was neither fair nor properly approved pursuant to the procedures and standards set forth in subsection 3 or 4, the Attorney General may bring an action in Superior Court in Kennebec County to void the transaction. At least 10 days before bringing such an action, the Attorney General shall send written notice to the board of directors of the corporation of the intent to bring the action. The Attorney General may proceed without such notice if necessary to prevent immediate irreparable harm to the public.

[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

**9. Authority to fix compensation.** Except to the extent that the articles of incorporation or bylaws otherwise provide, the board of directors of a corporation or the executive committee of the board of directors, without regard to this section, has authority to fix the compensation of directors for their services as directors or officers or in any other capacity.

[PL 2001, c. 550, Pt. C, §18 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

## SECTION HISTORY

PL 2001, c. 550, §C18 (NEW). PL 2001, c. 550, §C29 (AFF).

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