

§859. Variation by corporate action; application of subchapter

1. Undertakings to indemnify. 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 852 or advance funds to pay for or reimburse expenses in accordance with section 854. Such an obligatory provision is deemed to satisfy the requirements for authorization referred to in sections 854, subsection 3 and 856, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law is deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

[PL 2003, c. 344, Pt. B, §68 (AMD).]

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

[PL 2011, c. 274, §34 (NEW).]

2. Predecessors. A provision pursuant to subsection 1 may 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. A provision for indemnification or an advance for expenses in the corporation's articles of incorporation or bylaws or a resolution of the corporation's 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, is governed by section 1107, subsection 1, paragraph D.

[PL 2003, c. 344, Pt. B, §68 (AMD).]

3. Limits. Subject to subsection 1-A, a corporation may, by a provision in its articles of incorporation, limit the right to indemnification or to an advance for expenses created by or pursuant to this subchapter.

[PL 2011, c. 274, §35 (AMD).]

4. Witness expenses. This subchapter 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 to the proceeding.

[PL 2003, c. 344, Pt. B, §68 (AMD).]

5. Insurance. This subchapter does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

[PL 2003, c. 344, Pt. B, §68 (AMD).]

SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §B68 (AMD). PL 2011, c. 274, §§34, 35 (AMD).

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