

607.0832 Director conflicts of interest.

(1) As used in this section, the following terms and definitions apply:

(a) A director is “indirectly” a party to a transaction if that director has a material financial interest in or is a director, officer, member, manager, or partner of a person, other than the corporation, who is a party to the transaction.

(b) A director has an “indirect material financial interest” if a spouse or other family member has a material financial interest in the transaction, other than having an indirect interest as a shareholder of the corporation, or if the transaction is with an entity, other than the corporation, which has a material financial interest in the transaction and controls, or is controlled by, the director or another person specified in this subsection.

(c) “Fair to the corporation” means that the transaction, as a whole, is beneficial to the corporation and its shareholders, taking into appropriate account whether it is:

1. Fair in terms of the director’s dealings with the corporation in connection with that transaction; and

2. Comparable to what might have been obtainable in an arm’s length transaction.

(d) “Material financial interest” means a financial interest in the transaction that would reasonably be expected to impair the objectivity of the director’s judgment when participating in the action on the authorization of the transaction.

(2) If the requirements of this section have been satisfied, a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation’s directors have a material financial interest or other material interest, is not void or voidable because of that relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such transaction, or because his or her or their votes are counted for such purpose.

(3) If a transaction is fair to the corporation at the time it is authorized, approved, effectuated, or ratified, the fact that a director of the corporation is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, or has a direct or indirect material financial interest or other material interest in the transaction, other than having an indirect interest as a result of being a shareholder of the corporation, is not grounds for equitable relief and does not give rise to an award of damages or other sanctions.

(4)(a) In a proceeding challenging the validity of a transaction described in subsection (3), the person challenging the validity has the burden of proving the lack of fairness of the transaction if:

1. The material facts of the transaction and the director’s interest in the transaction were disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the transaction and the transaction was authorized, approved or ratified by a

vote of a majority of the disinterested directors even if the disinterested directors constitute less than a quorum of the board or the committee; however, the transaction cannot be authorized, approved, or ratified under this subsection solely by a single director; or

2. The material facts of the transaction and the director's interest in the transaction were disclosed or known to the shareholders who voted upon such transaction and the transaction was authorized, approved, or ratified by a majority of the votes cast by disinterested shareholders or by the written consent of disinterested shareholders representing a majority of the votes that could be cast by all disinterested shareholders. Shares owned by or voted under the control of a director who has a relationship or interest in the transaction described in subsection (2) shall not be considered shares owned by a disinterested shareholder and thus may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under this subsection (4)(a)2. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this act. A majority of the shares, whether or not present, that are 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.

(b) If neither of the conditions provided in paragraph (a) has been satisfied, the person defending or asserting the validity of a transaction described in subsection (3) has the burden of proving its fairness in a proceeding challenging the validity of the transaction.

(5) The presence of or a vote cast by a director with an interest in the transaction does not affect the validity of an action taken under paragraph (4)(a) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (4), but the presence or vote of the director may be counted for purposes of determining whether the transaction is approved under other sections of this act.

(6) In addition to other grounds for challenge, a party challenging the validity of the transaction is not precluded from asserting and proving that a particular director or shareholder was not disinterested on grounds of financial or other interest for purposes of the vote on, consent to, or approval of the transaction.

(7) Where directors' action under this section does not otherwise satisfy a quorum or voting requirement applicable to the authorization of the transaction by directors as required by the articles of incorporation, the bylaws, this act or any other provision of law, an action to satisfy those authorization requirements, whether as part of the same action or by way of another action, must be taken by the board of directors or a committee in order to authorize the transaction. In such action, the vote or consent of directors who are not disinterested may be counted.

(8) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by shareholders as required by the articles of incorporation, the bylaws, this act or any other provision of law, an action to satisfy those authorization requirements, whether as part of the same action or by way of another action, must be taken by the shareholders in order to authorize the transaction. In such action, the vote or consent of shareholders who are not disinterested shareholders may be counted.