

West's Arkansas Code Annotated
Title 4. Business and Commercial Law
Subtitle 3. Corporations and Associations (Chapters 25 to 40) (Refs & Annos)
Chapter 33. The Arkansas Nonprofit Corporation Act of 1993
Subchapter 8. Directors and Officers
Part E. Indemnification

A.C.A. § 4-33-850

§ 4-33-850. Definitions

Currentness

In this part:

- (1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.
- (3) "Expenses" include counsel fees.
- (4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding.
- (5) "Official capacity" means: (i) when used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in § 4-33-856, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.
- (6) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.
- (7) "Proceeding" means any threatened, pending, or completed action, suit or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

Credits

Acts of 1993, Act 1147, § 850.

Notes of Decisions (4)

A.C.A. § 4-33-850, AR ST § 4-33-850

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A.C.A. § 4-33-851

§ 4-33-851. Requirements

Currentness

(a) Except as provided in subsection (d) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

(1) conducted himself or herself in good faith; and

(2) reasonably believed:

(i) in the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and

(ii) in all other cases, that his or her conduct was at least not opposed to its best interests; and

(3) in the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subsection (a)(2)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) in connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

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Acts of 1993, Act 1147, § 851.

A.C.A. § 4-33-851, AR ST § 4-33-851

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A.C.A. § 4-33-852

§ 4-33-852. Required indemnification; directors

Currentness

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

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Acts of 1993, Act 1147, § 852.

A.C.A. § 4-33-852, AR ST § 4-33-852

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A.C.A. § 4-33-853

§ 4-33-853. Expenses

Currentness

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) the director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in § 4-33-851;

(2) the director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(b) The undertaking required by subsection (a)(2) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in § 4-33-855.

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Acts of 1993, Act 1147, § 853.

A.C.A. § 4-33-853, AR ST § 4-33-853
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A.C.A. § 4-33-854

§ 4-33-854. Court orders

Currentness

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification in the amount it considers proper if it determines:

(1) the director is entitled to mandatory indemnification under § 4-33-852, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in § 4-33-851(a) or was adjudged liable as described in § 4-33-851(d), but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

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Acts of 1993, Act 1147, § 854.

A.C.A. § 4-33-854, AR ST § 4-33-854
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A.C.A. § 4-33-855

§ 4-33-855. Restrictions

Currentness

(a) A corporation may not indemnify a director under § 4-33-851 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standards of conduct set forth in § 4-33-851.

(b) The determination shall be made:

(1) by the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) if a quorum cannot be obtained under subdivision (b)(1) of this section, by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate), consisting solely of two (2) or more directors not at the time parties to the proceeding;

(3) by special legal counsel:

(i) selected by the board of directors or its committee in the manner prescribed in subdivision (b)(1) or (b)(2) of this section; or

(ii) if a quorum of the board cannot be obtained under subdivision (b)(1) of this section and a committee cannot be designated under subdivision (b)(2) of this section, selected by majority vote of the full board (in which selection directors who are parties may participate); or

(4) by the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding may not vote on the determination.

(c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (b)(3) of this section to select counsel.

(d) A director of a public benefit corporation may not be indemnified until twenty (20) days after the effective date of written

notice to the Attorney General of the proposed indemnification.

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Acts of 1993, Act 1147, § 855.

A.C.A. § 4-33-855, AR ST § 4-33-855

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A.C.A. § 4-33-856

§ 4-33-856. Officers; employees; agents

Currentness

Unless limited by a corporation's articles of incorporation:

- (1) an officer of the corporation who is not a director is entitled to mandatory indemnification under § 4-33-852, and is entitled to apply for court-ordered indemnification under § 4-33-854 in each case, to the same extent as a director;
- (2) the corporation may indemnify and advance expenses under this part to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and
- (3) a corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

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Acts of 1993, Act 1147, § 856.

A.C.A. § 4-33-856, AR ST § 4-33-856
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A.C.A. § 4-33-857

§ 4-33-857. Insurance

Currentness

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under § 4-33-851 or § 4-33-852.

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Acts of 1993, Act 1147, § 857.

A.C.A. § 4-33-857, AR ST § 4-33-857
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A.C.A. § 4-33-858

§ 4-33-858. Conflicting provisions; witness expenses

Currentness

(a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this part. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.

(b) This part does not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

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Acts of 1993, Act 1147, § 858.

A.C.A. § 4-33-858, AR ST § 4-33-858
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