

Corporations—Directors and Officers—Civil Liability—N.J. Stat. Ann. §§ 14A:2-7, :3-5, :6-14, 17:9A-3, :9A-8.2, :9A-197.1, :9A-250, :12B-38.1, :12B-250.1, :18-57 (West Supp. 1989).

On February 4, 1989, the New Jersey Legislature revised statutes pertaining to the civil liability of directors and officers of corporations and mutual insurers.¹ The act took effect immediately upon passage.²

The Act removes the requirement that the certificate of incorporation set forth the par value of shares to be issued.³ It also changes the provision that corporate existence begin on the date of filing or at such later time, not to exceed 30 days from the date of filing, allowing instead a later time, not to exceed 90 days from the date of filing.⁴

The Act permits certificates of incorporation to shield officers from personal liability to the corporation or its shareholders for breach of duty to the corporation to the same extent that directors may have previously been shielded.⁵ It also defines acts and omissions in breach of a person's duty of loyalty as those which that person "knows or believes to be contrary to the best interests of the corporation or its shareholders in connection with a matter in which [the person] has a material conflict of interest."⁶ Similar provisions are made for officers of banks,⁷ capital stock savings banks,⁸ savings banks,⁹ associations¹⁰ and capital stock associations.¹¹

The Act extends provisions for indemnification of directors, officers and employees of the corporation to include those serving at its request in employee benefit plans.¹² It includes excise

¹ N.J. STAT. ANN. §§ 14A:2-7, :3-5, :6-14, 17:9A-3, :9A-8.2, :9A-197.1, :9A-250, :12B-38.1, :12B-250.1, :18-57 (West Supp. 1989).

² *Id.* § 14A:2-7.

³ *Id.* § 14A:2-7(1)(c).

⁴ *Id.* § 14A:2-7(2).

⁵ *Id.* § 14A:2-7(3).

⁶ *Id.*

⁷ *Id.* § 17:9A-3(10).

⁸ *Id.* § 17:9A-8.2(i).

⁹ *Id.* § 17:9A-197.1.

¹⁰ *Id.* § 17:12B-38.1.

¹¹ *Id.* § 17:12B-250.1.

¹² *Id.* § 14A:3-5(1)(f).

taxes assessed for employee benefit plans as fines under its definition of liabilities.¹³ It defines service at the request of the corporation as any service with respect to an employee benefit plan where the person reasonably believed he acted in the interest of the participants and beneficiaries of the plan and not adverse to the best interests of the corporation.¹⁴ Moreover, the right to indemnification extends to liabilities and expenses incurred in any proceedings in the right of or by the corporation.¹⁵ Again, similar provisions are made for corporate agents of banks.¹⁶

Directors and members of committees designated by the board are shielded from liability when they rely in good faith upon written reports submitted by committees of the board.¹⁷ They may also consider both the long-term and the short term interests of the corporation and its shareholders in taking action involving changes or potential changes in the control of the corporation.¹⁸

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¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* § 14A:3-5(8).

¹⁶ *Id.* § 17:9A-250(H).

¹⁷ *Id.* § 14A:6-14(2)(d).

¹⁸ *Id.* § 14A:6-14(4).