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Ohio Revised Code

Section 1701.641 Fiduciary duties of officers.

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Legislation: Senate Bill 181 - 131st General Assembly

(A) Unless the articles, the regulations, or a written agreement with an officer establishes additional fiduciary duties, the only fiduciary duties of an officer are the duties to the corporation set forth in division (B) of this section.

(B) An officer shall perform the officer's duties to the corporation in good faith, in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances. In performing an officer's duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by any of the following:

(1) One or more directors, officers, or employees of the corporation who the officer reasonably believes are reliable and competent in the matters prepared or presented;

(2) Counsel, public accountants, or other persons as to matters that the officer reasonably believes are within the person's professional or expert competence.

(C) For purposes of this section, both of the following apply:

(1) In any action brought against an officer, the officer shall not be found to have violated the officer's duties under division (B) of this section unless it is proved by clear and convincing evidence that the officer has not acted in good faith, in a manner the officer reasonably believes to be in or not opposed to the best interests of the corporation, or with the care that an ordinarily prudent person in a like position would use under similar circumstances.

(2) An officer shall not be considered to be acting in good faith if the officer has knowledge concerning the matter in question that would cause reliance on information, opinions, reports, or statements that are prepared or presented by any of the persons described in division (B)(1) or (2) of this section to be unwarranted.

(D) An officer shall be liable in damages for a violation of the officer's duties under division (B) of this section only if it is proved by clear and convincing evidence in a court of competent jurisdiction that the officer's action or failure to act involved an act or omission undertaken with deliberate intent to cause injury to the corporation or undertaken with reckless disregard for the best interests of the corporation. This division does not apply if, and only to the extent

that, at the time of an officer's act or omission that is the subject of the complaint, either of the following is true:

(1) The articles or the regulations of the corporation state by specific reference to division (D) of this section that the provisions of this division do not apply to the corporation.

(2) A written agreement between the officer and the corporation states by specific reference to division (D) of this section that the provisions of this division do not apply to the officer.

(E) Nothing in this section affects the duties of an officer who acts in any capacity other than the officer's capacity as an officer. Nothing in this section affects any contractual obligations of an officer to the corporation.