

State of South Dakota

EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

447Q0384

SENATE JUDICIARY ENGROSSED NO. **SB 96** 2/3/2009

Introduced by: Senators Gillespie, Ahlers, Bartling, Dempster, Hanson (Gary), Maher, and Turbak Berry and Representatives Cutler, Boomgarden, Burg, Engels, Hunt, Juhnke, Nygaard, Peters, and Vanneman

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the indemnification
2 of employees, officers, and agents of rural electric cooperatives.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-21-21.2 be amended to read as follows:

5 47-21-21.2. Except as otherwise provided in § 47-21-21.3, a ~~rural electric~~ cooperative may
6 indemnify a director, officer, agent, or employee who is a party to a proceeding by reason of
7 being a director, officer, agent, or employee against liability incurred in the proceeding if the
8 director, officer, agent, or employee:

9 (1) Acted in good faith; and

10 (2) Reasonably believed:

11 (a) In the case of conduct in an official capacity, that the conduct was in the best
12 interests of the cooperative; and

13 (b) In all other cases, that the conduct was at least not opposed to the best interests
14 of the cooperative; and



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

A ~~rural electric~~ cooperative may also, except as provided in § 47-21-21.3, indemnify a director, officer, agent, or employee who is a party to a proceeding against liability incurred in the proceeding if the director, officer, agent, or employee engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation.

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

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

Section 2. That § 47-21-21.3 be amended to read as follows:

47-21-21.3. Unless otherwise ordered by a court, a ~~rural electric~~ cooperative may not indemnify a director, officer, agent, or employee:

(1) In connection with a proceeding by or in the right of the cooperative, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director, officer, agent, or employee has met the relevant standard of conduct pursuant to § 47-21-21.2; or

(2) In connection with any proceeding with respect to conduct for which the director, officer, agent, or employee was adjudged liable on the basis that the director, officer, agent, or employee received a financial benefit to which the director, officer, agent,

1 or employee was not entitled, whether or not involving action in the ~~director's~~ official
2 capacity of the director, officer, agent, or employee.

3 Section 3. That § 47-21-21.4 be amended to read as follows:

4 47-21-21.4. A ~~rural electric~~ cooperative shall indemnify a director, officer, agent, or
5 employee who was wholly successful, on the merits or otherwise, in the defense of any
6 proceeding to which the director, officer, agent, or employee was a party by reason of being a
7 director, officer, agent, or employee of the cooperative, against reasonable expenses incurred
8 in connection with the proceeding.

9 Section 4. That § 47-17-21 be amended to read as follows:

10 47-17-21. Except as otherwise provided in § 47-17-22, a cooperative may indemnify a
11 director, officer, agent, or employee who is a party to a proceeding by reason of being a director,
12 officer, agent, or employee, against liability incurred in the proceeding if the director, officer,
13 agent, or employee:

14 (1) Acted in good faith; and

15 (2) Reasonably believed:

16 (a) In the case of conduct in an official capacity, that the conduct was in the best
17 interests of the cooperative; and

18 (b) In all other cases, that the conduct was at least not opposed to the best interests
19 of the cooperative; and

20 (3) In the case of any criminal proceeding, had no reasonable cause to believe the
21 conduct was unlawful.

22 A cooperative may also, except as provided in § 47-17-22, indemnify a director, officer,
23 agent, or employee who is a party to a proceeding against liability incurred in the proceeding
24 if the director, officer, agent, or employee engaged in conduct for which broader indemnification

1 has been made permissible or obligatory under a provision of the articles of incorporation.

2 ~~A director's~~ The conduct of a director, officer, agent, or employee with respect to an
3 employee benefit plan for a purpose the director, officer, agent, or employee reasonably believed
4 to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that
5 satisfies the requirement of subsection (2)(b).

6 The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
7 plea of nolo contendere or its equivalent, is not, of itself, determinative that the director, officer,
8 agent, or employee did not meet the relevant standard of conduct described in this section.

9 Section 5. That § 47-17-22 be amended to read as follows:

10 47-17-22. Unless otherwise ordered by a court, a cooperative may not indemnify a director,
11 officer, agent, or employee:

12 (1) In connection with a proceeding by or in the right of the cooperative, except for
13 reasonable expenses incurred in connection with the proceeding if it is determined
14 that the director, officer, agent, or employee has met the relevant standard of conduct
15 pursuant to § 47-17-21; or

16 (2) In connection with any proceeding with respect to conduct for which the director,
17 officer, agent, or employee was adjudged liable on the basis that the director, officer,
18 agent, or employee received a financial benefit to which the director, officer, agent,
19 or employee was not entitled, whether or not involving action in the ~~director's~~ official
20 capacity of the director, officer, agent, or employee.

21 Section 6. That § 47-17-23 be amended to read as follows:

22 47-17-23. A cooperative shall indemnify a director, officer, agent, or employee who was
23 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the
24 director, officer, agent, or employee was a party by reason of being a director, officer, agent, or

- 1 employee of the cooperative, against reasonable expenses incurred in connection with the
- 2 proceeding.