

## AN ACT

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

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

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

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

- (1) Acted in good faith; and
- (2) Reasonably believed:
  - (a) In the case of conduct in an official capacity, that the conduct was in the best interests of the cooperative; and
  - (b) In all other cases, that the conduct was at least not opposed to the best interests of the cooperative; and
- (3) In the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.

A 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.

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 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, or employee was not entitled, whether or not involving action in the official capacity of the director, officer, agent, or employee.

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

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

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

47-17-21. Except as otherwise provided in § 47-17-22, a cooperative may indemnify a director, officer, agent, or employee who is a party to a proceeding by reason of being a director, officer,

agent, or employee, against liability incurred in the proceeding if the director, officer, agent, or employee:

- (1) Acted in good faith; and
- (2) Reasonably believed:
  - (a) In the case of conduct in an official capacity, that the conduct was in the best interests of the cooperative; and
  - (b) In all other cases, that the conduct was at least not opposed to the best interests of the cooperative; and
- (3) In the case of any criminal proceeding, had no reasonable cause to believe the conduct was unlawful.

A cooperative may also, except as provided in § 47-17-22, 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.

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).

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

47-17-22. Unless otherwise ordered by a court, a 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 § 47-17-21; 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, or employee was not entitled, whether or not involving action in the official capacity of the director, officer, agent, or employee.

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

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

An Act to revise certain provisions concerning the indemnification of employees, officers, and agents of rural electric cooperatives.

=====

I certify that the attached Act  
originated in the

SENATE as Bill No. 96

\_\_\_\_\_  
Secretary of the Senate  
=====

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 96  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

=====

Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
=====

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
=====

STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_ , 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State