

AN ACT

ENTITLED, An Act to provide certain provisions concerning the indemnification of the directors of cooperatives.

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

Section 1. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as follows:

Except as otherwise provided in section 2 of this Act, a rural electric cooperative may indemnify a director who is a party to a proceeding by reason of being a director, against liability incurred in the proceeding if the director:

- (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 rural electric cooperative may also, except as provided in section 2 of this Act, indemnify a director who is a party to a proceeding against liability incurred in the proceeding if the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation.

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 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 did not meet the relevant standard of conduct described in this section.

Section 2. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as follows:

Unless otherwise ordered by a court, a rural electric cooperative may not indemnify a director:

- (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 has met the relevant standard of conduct pursuant to section 1 of this Act; or
- (2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

Section 3. That chapter 47-21 be amended by adding thereto a NEW SECTION to read as follows:

A rural electric cooperative 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 by reason of being a director of the cooperative, against reasonable expenses incurred in connection with the proceeding.

Section 4. That chapter 47-17 be amended by adding thereto a NEW SECTION to read as follows:

Except as otherwise provided in section 5 of this Act, a cooperative may indemnify a director who is a party to a proceeding by reason of being a director, against liability incurred in the proceeding if the director:

- (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 section 5, indemnify a director who is a party to a proceeding against liability incurred in the proceeding if the director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation.

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 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 did not meet the relevant standard of conduct described in this section.

Section 5. That chapter 47-17 be amended by adding thereto a NEW SECTION to read as follows:

Unless otherwise ordered by a court, a cooperative may not indemnify a director:

(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 has met the relevant standard of conduct pursuant to section 4 of this Act; or

(2) In connection with any proceeding with respect to conduct for which the director was

adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

Section 6. That chapter 47-17 be amended by adding thereto a NEW SECTION to read as follows:

A cooperative 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 by reason of being a director of the cooperative, against reasonable expenses incurred in connection with the proceeding.

Section 7. That § 47-21-21.1 be repealed.

Section 8. That § 47-17-19 be repealed.

An Act to provide certain provisions concerning the indemnification of the directors of cooperatives.

I certify that the attached Act
originated in the

HOUSE as Bill No. 1252

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1252

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