



LAWS OF ALASKA

1970

Source

HB 780

Chapter No.

176

AN ACT

Relating to the indemnification of corporate officers, directors, employees and agents for certain liability.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 10.05 is amended by adding a new section to read:

Sec. 10.05.010. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE. (a) A corporation may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to a criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) A corporation may indemnify a person who was or

is a party or is threatened to be made a party to a threatened, pending or completed action by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorney fees) actually and reasonably incurred by him in connection with the defense or settlement of the action if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation. However, no indemnification may be made in respect of any claim, issue or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation except to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability, in view of all the circumstances of the case the person is fairly and reasonably entitled to indemnity for the expenses which the court considers proper.

(c) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of an action or proceeding referred to in (a) or (b) of this section, or in defense of any claim, issue or matter in such an action or proceeding, he shall be indemnified against expenses (including attorney fees) actually and reasonably incurred by him in connection with it.

(d) Indemnification under (a) or (b) of this section (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set out in (a) and (b) of this section. This determination shall be made

(1) by the board of directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceeding, or

(2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or

(3) by the stockholders.

(e) Expenses incurred in defending a civil or criminal action or proceeding may be paid by the corporation in advance of the final disposition of the action or proceeding as authorized by the board of directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay the amount unless it is ultimately determined that he is entitled to be indemnified by the corporation as authorized in this section.

(f) The indemnification provided by this section is

not exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding the office, and continues as to a person who has ceased to be a director, officer, employee or agent, and inures to the benefit of the heirs, executors and administrators of such a person.

(g) A corporation may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such a capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against the liability under the provisions of this section.

* Sec. 2. AS 10.05.009(15) is repealed.