

Introduced: 3/10/70
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 780

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

*Legislative
Corporate Dept*

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the indemnification of corporate
7 officers, directors, employees and agents for certain
8 liability."

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

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

11 Sec. 10.05, 010. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES
12 AND AGENTS; INSURANCE. (a) A corporation may indemnify a person who
13 was or is a party or is threatened to be made a party to a threatened,
14 pending or completed action or proceeding, whether civil, criminal,
15 administrative or investigative (other than an action by or in the
16 right of the corporation) by reason of the fact that he is or was a
17 director, officer, employee or agent of the corporation, or is or was
18 serving at the request of the corporation as a director, officer,
19 employee or agent of another corporation, partnership, joint venture,
20 trust or other enterprise, against expenses (including attorney fees),
21 judgments, fines and amounts paid in settlement actually and reasonably
22 incurred by him in connection with the action or proceeding if he
23 acted in good faith and in a manner he reasonably believed to be in or
24 not opposed to the best interests of the corporation, and, with respect
25 to a criminal action or proceeding, had no reasonable cause to believe
26 his conduct was unlawful. The termination of an action or proceeding
27 by judgment, order, settlement, conviction, or upon a plea of nolo
28 contendere or its equivalent, does not, of itself, create a presumption
29 that the person did not act in good faith and in a manner which he

1 reasonably believed to be in or not opposed to the best interests of
2 the corporation, and, with respect to a criminal action or proceeding,
3 had reasonable cause to believe that his conduct was unlawful.

4 (b) A corporation may indemnify a person who was or is a party
5 or is threatened to be made a party to a threatened, pending or com-
6 pleted action by or in the right of the corporation to procure a judg-
7 ment in its favor by reason of the fact that he is or was a director,
8 officer, employee or agent of the corporation, or is or was serving
9 at the request of the corporation as a director, officer, employee or
10 agent of another corporation, partnership, joint venture, trust or
11 other enterprise against expenses (including attorney fees) actually
12 and reasonably incurred by him in connection with the defense or settle-
13 ment of the action if he acted in good faith and in a manner he reason-
14 ably believed to be in or not opposed to the best interests of the
15 corporation. However, no indemnification may be made in respect of
16 any claim, issue or matter as to which the person has been adjudged to
17 be liable for negligence or misconduct in the performance of his duty
18 to the corporation except to the extent that the court in which the
19 action was brought determines upon application that, despite the adjudi-
20 cation of liability, in view of all the circumstances of the case the
21 person is fairly and reasonably entitled to indemnity for the expenses
22 which the court considers proper.

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

29 (d) Indemnification under (a) or (b) of this section (unless

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

6 (1) by the board of directors by a majority vote of a quorum
7 consisting of directors who were not parties to the action or proceed-
8 ing, or

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

12 (3) by the stockholders.

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

20 (f) The indemnification provided by this section is not exclusive
21 of any other rights to which those seeking indemnification may be
22 entitled under any bylaw, agreement, vote of stockholders or disinter-
23 ested directors or otherwise, both as to action in his official capacity
24 and as to action in another capacity while holding the office, and
25 continues as to a person who has ceased to be a director, officer, em-
26 ployee or agent, and inures to the benefit of the heirs, executors and
27 administrators of such a person.

28 (g) A corporation may purchase and maintain insurance on behalf
29 of a person who is or was a director, officer, employee or agent of

1 the corporation, or is or was serving at the request of the corporation
2 as a director, officer, employee or agent of another corporation, part-
3 nership, joint venture, trust or other enterprise against any liability
4 asserted against him and incurred by him in such a capacity, or arising
5 out of his status as such, whether or not the corporation would have
6 the power to indemnify him against the liability under the provisions
7 of this section.

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