



Ohio Revised Code Section 1729.031 Indemnification.

Effective: September 3, 2004

Legislation: House Bill 288 - 125th General Assembly

(A)(1) Subject to divisions (A)(2) and (3) of this section, an association may indemnify or agree to indemnify any person that was or is a party, or is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceeding, other than an action or suit by or in the right of the association, because the person is or was a director, officer, employee, agent, or volunteer of the association or is or was serving at the request of the association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise. The indemnification described in division (A)(1) of this section shall be for expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit, or proceeding described in division (A)(1) of this section.

(2) With respect to any noncriminal action or proceeding, the indemnification described in division (A)(1) of this section shall be made if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association as described in division (D) of section 1729.23 of the Revised Code.

(3) With respect to any criminal action or proceeding, the indemnification described in division (A)(1) of this section shall be made if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association as described in division (D) of section 1729.23 of the Revised Code, and the person had no reasonable cause to believe the conduct was unlawful.

(4) For purposes of divisions (A)(2) and (3) of this section, the termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or a plea of nolo contendere or its equivalent does not create, of itself, a presumption that the person did not act in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association or that the person had reasonable cause to believe that the conduct was unlawful.



(B)(1) Subject to division (B)(2) of this section and provided the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association, an association may indemnify or agree to indemnify any person that was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the association to procure a judgment in its favor, because the person is or was a director, officer, employee, agent, or volunteer of the association or is or was serving at the request of the association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise. The indemnification described in division (B)(1) of this section shall be for expenses, including attorney's fees, actually and reasonably incurred by the person in connection with the defense or settlement of an action or suit described in division (B)(1) of this section.

(2) If a person is adjudged to be liable for negligence or misconduct in the performance of a duty to the association, the indemnification described in division (B)(1) of this section shall be made for any claim, issue, or matter only to the extent that the court of common pleas or the court in which the action or suit was brought determines, upon application, that despite the adjudication of liability and in view of all the circumstances of the case, the person fairly and reasonably is entitled to indemnity for expenses that the court of common pleas or court in which the action or suit was brought considers proper.

(C) Notwithstanding division (A) or (B) of this section, to the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding described in division (A) or (B) of this section, the person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred in connection with that action, suit, or proceeding.

(D) Unless ordered by a court or division (C) of this section applies, the association shall make any indemnification under division (A) or (B) of this section only as authorized in the specific case, upon a determination that indemnification of the person is proper in the circumstances because the person has met the applicable standard of conduct set forth in division (A) or (B) of this section. This determination shall be made in any of the following manners:

(1) By a majority vote of a quorum consisting of directors of the indemnifying association that were not and are not parties to or threatened with the action, suit, or proceeding described in division (A)



or (B) of this section;

(2) Whether or not a quorum as described in division (D)(1) of this section is obtainable, and if a majority of a quorum of disinterested directors so directs, in a written opinion by independent legal counsel other than an attorney or a firm of attorneys associated with that attorney, that within the past five years has been retained by or has performed services for the association or has performed services for any person to be indemnified;

(3) By the members.

(E)(1) The association shall pay the expenses, including attorney's fees, incurred by the person in defending the action, suit, or proceeding described in division (A) or (B) of this section, unless either of the following applies:

(a) At the time of a person's act or omission that is the subject of an action, suit, or proceeding described in division (A) or (B) of this section, the articles or bylaws of the association state, by specific reference to divisions (A) and (B) of this section, that division (A) and (B) of this section do not apply to the association.

(b) The only liability asserted against a person in an action, suit, or proceeding described in division (A) or (B) of this section is pursuant to section 1729.25 of the Revised Code.

(2) Upon receipt of a request from a person, the association may pay expenses, including attorney's fees, incurred by a person in defending any action, suit, or proceeding described in division (A) or (B) of this section as the expenses are incurred in advance of the final disposition of the action, suit, or proceeding, if the board authorizes this payment in the specific case and upon receipt of an undertaking by or on behalf of the person to repay the amount if it ultimately is determined that the person is not entitled to be indemnified by the association.

(F) Both of the following apply to the indemnification authorized by this section:

(1) It is not exclusive of and is in addition to any other rights granted to a person seeking indemnification pursuant to the articles or bylaws of the association, any agreement, a vote of



members or disinterested directors of the association, or otherwise, for action taken in the person's official capacity and action taken in another capacity while holding their office or position.

(2) It continues as to a person that has ceased to be a director, officer, employee, member, manager, agent, or volunteer and inures to the benefit of the heirs, executors, and administrators of that person.

(G) As used in this section, "association" includes all constituent associations and entities in a consolidation or merger and the new or surviving association or entity. Any person that is or was a director, officer, employee, agent, or volunteer of a constituent association or is or was serving at the request of a constituent association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise stands in the same position under this section with respect to the new or surviving association or entity as the person would if the person had served the new or surviving association or entity in the same capacity.

(H)(1) An association may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit, or self-insurance, for or on behalf of any person that is or was a director, officer, employee, agent, or volunteer of the association or is or was serving at the request of the association as a trustee, director, officer, employee, member, manager, agent, or volunteer of another association, entity, partnership, joint venture, trust, or other enterprise. The insurance or similar protection described in division (H)(1) of this section shall be against any liability asserted against the person and incurred by the person in any such capacity, whether or not the association would have the power to indemnify the person against that liability under this section.

(2) Insurance described in division (H)(1) of this section may be purchased from or maintained with a person in which the association has a financial interest.