



Ohio Revised Code

Section 1745.43 Indemnification; advancement of expenses.

Effective: May 22, 2012

Legislation: House Bill 267 - 129th General Assembly

(A) An unincorporated nonprofit association may indemnify or agree to indemnify any person who 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 by or in the right of the association, by reason of the fact that the person is or was a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, or is or was serving at the request of the association as a director, officer, employee, member, manager, agent, or volunteer of any other entity, against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with that action, suit, or proceeding, 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, and, with respect to any criminal action or proceeding if the person had no reasonable cause to believe the person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall 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, and, with respect to any criminal action or proceeding, a presumption that the person had reasonable cause to believe that the person's conduct was unlawful.

(B) An unincorporated nonprofit association may indemnify or agree to indemnify any person who 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 by reason of the fact that the person is or was a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, or is or was serving at the request of the association as a director, officer, employee, member, manager, agent, or volunteer of any other entity, against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with the defense or settlement of that action or suit 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, except that no indemnification shall be made with



respect to any of the following:

(1) Any claim, issue, or matter as to which the person is adjudged to be liable for negligence or misconduct in the performance of the person's duty to the unincorporated nonprofit association unless and 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 but in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses that the court of common pleas or that other court considers proper;

(2) Any action or suit in which liability is asserted against a manager and that liability is asserted only pursuant to section 1745.56 of the Revised Code.

(C) To the extent that a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in division (A) or (B) of this section, or in defense of any claim, issue, or matter in the action, suit, or proceeding, that person shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by the person in connection with that action, suit, or proceeding.

(D)(1) Unless ordered by a court and subject to division (C) of this section, any indemnification under division (A) or (B) of this section shall be made by the unincorporated nonprofit association only as authorized in the specific case upon a determination that indemnification of the manager, officer, employee, member, agent, or volunteer of the association or the person acting in any other representative capacity, however denominated, 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. That determination shall be made in any of the following manners:

(a) By a majority vote of a quorum consisting of managers of the indemnifying unincorporated nonprofit association who were not and are not parties to or threatened with the action, suit, or proceeding referred to in division (A) or (B) of this section;

(b) Whether or not a quorum as described in division (D)(1)(a) of this section is obtainable, and if a majority of a quorum of disinterested managers so directs, in a written opinion by independent legal



counsel other than an attorney, or a firm having associated with an attorney, who has been retained by or has performed services for the association or any person to be indemnified within the past five years;

(c) By the members;

(d) By the court of common pleas or the court in which the action, suit, or proceeding referred to in division (A) or (B) of this section was brought.

(2) If an action or suit by or in the right of the unincorporated nonprofit association is involved, any determination made by the disinterested managers under division (D)(1)(a) of this section or by independent legal counsel under division (D)(1)(b) of this section shall be communicated promptly to the person who threatened or brought the action or suit under division (B) of this section, and, within ten days after receipt of that notification, the person shall have the right to petition the court of common pleas or the court in which the action or suit was brought to review the reasonableness of that determination.

(E)(1)(a) Unless at the time of a manager's or volunteer's act or omission that is the subject of an action, suit, or proceeding referred to in division (A) or (B) of this section the governing principles of the unincorporated nonprofit association stated, by specific reference to division (E)(1)(a) of this section, that its provisions do not apply to the association, unless the only liability asserted against a manager in an action, suit, or proceeding referred to in division (A) or (B) of this section is pursuant to section 1745.56 of the Revised Code, or unless division (E)(1)(b) of this section applies, the expenses, including attorney's fees, incurred by the manager or volunteer in defending the action, suit, or proceeding shall be paid by the unincorporated nonprofit association. Upon the request of the manager or volunteer and in accordance with division (E)(2) of this section, those expenses shall be paid as they are incurred, in advance of the final disposition of the action, suit, or proceeding.

(b) Notwithstanding division (E)(1)(a) of this section, the expenses incurred by a manager or volunteer in defending an action, suit, or proceeding referred to in division (A) or (B) of this section, including attorney's fees, shall not be paid by the unincorporated nonprofit association upon the final disposition of the action, suit, or proceeding, or, if paid in advance of the final disposition



of the action, suit, or proceeding, shall be repaid to the association by the manager or volunteer, if it is proved, by clear and convincing evidence, in a court with jurisdiction that the act or omission of the manager or volunteer was one undertaken with a deliberate intent to cause injury to the association or was one undertaken with a reckless disregard for the best interests of the association.

(2) Expenses, including attorney's fees, incurred by a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, in defending any action, suit, or proceeding referred to in division (A) or (B) of this section may be paid by the unincorporated nonprofit association as they are incurred, in advance of the final disposition of the action, suit, or proceeding, as authorized by the managers in the specific case, upon receipt of an undertaking by or on behalf of the manager, officer, employee, member, agent, volunteer, or person acting in any other representative capacity to repay the amount if it ultimately is determined that the person is not entitled to be indemnified by the association.

(F) The indemnification authorized by this section is not exclusive of, and shall be in addition to, any other rights granted to those seeking indemnification pursuant to the governing principles, any agreement, a vote of the members or disinterested managers, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions, shall continue as to a person who has ceased to be a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, and shall inure to the benefit of the heirs, executors, and administrators of that person.

(G) An unincorporated nonprofit 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 who is or was a manager, officer, employee, member, agent, or volunteer of the association or a person acting in any other representative capacity, however denominated, or is or was serving at the request of the association as a director, manager, officer, employee, member, agent, or volunteer of any other entity, against any liability asserted against the person and incurred by the person in that capacity, or arising out of the person's status as such, whether or not the association would have the power to indemnify the person against that liability under this section. Insurance may be so purchased from or so maintained with a person in which the association has a financial interest.



(H) The authority of an unincorporated nonprofit association to indemnify persons pursuant to division (A) or (B) of this section does not limit the payment of expenses as they are incurred, in advance of the final disposition of an action, suit, or proceeding, pursuant to division (E) of this section or the payment of indemnification, insurance, or other protection that may be provided pursuant to division (F) or (G) of this section. Divisions (A) and (B) of this section do not create any obligation to repay or return payments made by the association pursuant to division (E), (F), or (G) of this section.

(I) As used in this section, "unincorporated nonprofit association" includes all constituent entities in a consolidation or merger, and the new or surviving entity, so that any person who is or was a manager, officer, employee, member, agent, or volunteer of a constituent entity or a person acting in any other representative capacity, however denominated, or is or was serving at the request of a constituent entity as a director, officer, employee, member, manager, agent, or volunteer of any other entity, shall stand in the same position under this section with respect to the new or surviving entity as the person would if the person had served the new or surviving entity in the same capacity.