



## Ohio Revised Code

Section 1705.32 [Repealed Effective 2/11/2022 - See R.C. 1706.83]

Indemnifying manager, officer, employee, or agent.

Effective: July 1, 1994

Legislation: Senate Bill 74

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(A) A limited liability company may indemnify or agree to indemnify any person who was or is a party, or who 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 company, because he is or was a manager, member, partner, officer, employee, or agent of the company or is or was serving at the request of the company as a manager, director, trustee, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise. The company may indemnify or agree to indemnify a person in that position against expenses, including attorney's fees, judgments, fines, and amounts paid in settlement that actually and reasonably were incurred by him in connection with the action, suit, 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 company and, in connection with any criminal action or proceeding, had no reasonable cause to believe his 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 does not create of itself a presumption that the person did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the company and, in connection with any criminal action or proceeding, a presumption that he had reasonable cause to believe that his conduct was unlawful.

(B) A limited liability company may indemnify or agree to indemnify any person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the company to procure a judgment in its favor, because he is or was a manager, officer, employee, or agent of the company or is or was serving at the request of the company as a manager, member, partner, director, trustee, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise. The company may indemnify or agree to indemnify a person in that position against expenses, including attorney's fees, that were actually and reasonably incurred by him in connection with the defense or settlement of the action or suit 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 company, except that an indemnification shall not be made in respect of any claim, issue, or matter as to which the person is adjudged to be liable for negligence or misconduct in the performance of his duty to the company 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 indemnification for expenses that the court considers proper.

(C) To the extent that a manager, officer, employee, or agent of a limited liability company 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 has been successful in defense of any claim, issue, or matter in an action, suit, or proceeding referred to in those divisions, he shall be indemnified against expenses, including attorney's fees, that were actually and reasonably incurred by him in connection with the 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 limited liability company only as authorized in the specific case, upon a determination that indemnification of the manager, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in division (A) or (B) of this section. The determination shall be made in any of the following ways:

(a) By a majority vote of a quorum consisting of managers of the indemnifying company who were not and are not parties to or threatened to be made parties to 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 vote 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 it an attorney, who has been retained by or who has performed services for the company 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) 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 promptly communicated to the person who threatened or brought an action or suit by or in the right of the limited liability company under division (B) of this section. Within ten days after receipt of that notification, the person has 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 the determination.

(E) The indemnification authorized by this section is not exclusive of and shall be in addition to any other rights granted to those seeking indemnification under the operating agreement, any other agreement, a vote of members or disinterested managers of the limited liability company, or otherwise, both as to action in their official capacities and as to action in another capacity while holding their offices or positions. The indemnification shall continue as to a person who has ceased to be a manager, officer, employee, or agent of the company and shall inure to the benefit of his heirs, executors, and administrators.

(F) A limited liability company 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, member, partner, officer, employee, or agent of the company or who is or was serving at the request of the company as a manager, director, trustee, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise. The insurance or similar protection purchased or maintained for those persons may be for any liability asserted against them and incurred by them in any capacity described in this division or for any liability arising out of their status as described in this division, whether or not the company would have the power to indemnify them against that liability under this section. Insurance may be so purchased from or so maintained with a person in which the company has a financial interest.

(G) The authority of a limited liability company 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, or the payment of indemnification, insurance, or other



protection that may be provided pursuant to division (E) or (F) of this section. Divisions (A) and (B) of this section do not create any obligation to repay or return payments made by the company pursuant to division (E) or (F) of this section.

(H) As used in this section, "limited liability company" includes all constituent limited liability companies in a consolidation or merger and the new or surviving entity. Any person who is or was a manager, officer, employee, or agent of a constituent limited liability company or who is or was a manager, officer, employee, or agent of a constituent limited liability company as a manager, director, trustee, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise stands in the same position under this section with respect to the new or surviving entity as he would if he had served the new or surviving entity in the same capacity.