

1 AN ACT concerning corporations.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Business Corporation Act of 1983 is amended
5 by changing Section 8.75 as follows:

6 (805 ILCS 5/8.75) (from Ch. 32, par. 8.75)

7 Sec. 8.75. Indemnification of officers, directors,
8 employees and agents; insurance.

9 (a) A corporation may indemnify any person who was or is a
10 party, or is threatened to be made a party to any threatened,
11 pending or completed action, suit or proceeding, whether civil,
12 criminal, administrative or investigative (other than an
13 action by or in the right of the corporation) by reason of the
14 fact that he or she is or was a director, officer, employee or
15 agent of the corporation, or who is or was serving at the
16 request of the corporation as a director, officer, employee or
17 agent of another corporation, partnership, joint venture,
18 trust or other enterprise, against expenses (including
19 attorneys' fees), judgments, fines and amounts paid in
20 settlement actually and reasonably incurred by such person in
21 connection with such action, suit or proceeding, if such person
22 acted in good faith and in a manner he or she reasonably
23 believed to be in, or not opposed to the best interests of the

1 corporation, and, with respect to any criminal action or
2 proceeding, had no reasonable cause to believe his or her
3 conduct was unlawful. The termination of any action, suit or
4 proceeding by judgment, order, settlement, conviction, or upon
5 a plea of nolo contendere or its equivalent, shall not, of
6 itself, create a presumption that the person did not act in
7 good faith and in a manner which he or she reasonably believed
8 to be in or not opposed to the best interests of the
9 corporation or, with respect to any criminal action or
10 proceeding, that the person had reasonable cause to believe
11 that his or her conduct was unlawful.

12 (b) A corporation may indemnify any person who was or is a
13 party, or is threatened to be made a party to any threatened,
14 pending or completed action or suit by or in the right of the
15 corporation to procure a judgment in its favor by reason of the
16 fact that such person is or was a director, officer, employee
17 or agent of the corporation, or is or was serving at the
18 request of the corporation as a director, officer, employee or
19 agent of another corporation, partnership, joint venture,
20 trust or other enterprise, against expenses (including
21 attorneys' fees) actually and reasonably incurred by such
22 person in connection with the defense or settlement of such
23 action or suit, if such person acted in good faith and in a
24 manner he or she reasonably believed to be in, or not opposed
25 to, the best interests of the corporation, provided that no
26 indemnification shall be made with respect to any claim, issue,

1 or matter as to which such person has been adjudged to have
2 been liable to the corporation, unless, and only to the extent
3 that the court in which such action or suit was brought shall
4 determine upon application that, despite the adjudication of
5 liability, but in view of all the circumstances of the case,
6 such person is fairly and reasonably entitled to indemnity for
7 such expenses as the court shall deem proper.

8 (c) To the extent that a present or former director,
9 officer or employee of a corporation has been successful, on
10 the merits or otherwise, in the defense of any action, suit or
11 proceeding referred to in subsections (a) and (b), or in
12 defense of any claim, issue or matter therein, such person
13 shall be indemnified against expenses (including attorneys'
14 fees) actually and reasonably incurred by such person in
15 connection therewith, if the person acted in good faith and in
16 a manner he or she reasonably believed to be in, or not opposed
17 to, the best interests of the corporation.

18 (d) Any indemnification under subsections (a), ~~and (b)~~, or
19 (c) (unless ordered by a court) shall be made by the
20 corporation only as authorized in the specific case, upon a
21 determination that indemnification of the present or former
22 director, officer, employee or agent is proper in the
23 circumstances because he or she has met the applicable standard
24 of conduct set forth in subsections (a), (b), or (c) ~~(b)~~. Such
25 determination shall be made with respect to a person who is a
26 director or officer of the corporation at the time of the

1 determination: (1) by the majority vote of the directors who
2 are not parties to such action, suit or proceeding, even though
3 less than a quorum, (2) by a committee of such ~~the~~ directors
4 ~~who are not parties to such action, suit, or proceeding,~~ even
5 though less than a quorum, designated by a majority vote of
6 such ~~the~~ directors, (3) if there are no such directors, or if
7 such ~~the~~ directors so direct, by independent legal counsel in a
8 written opinion, or (4) by the shareholders.

9 (e) Expenses (including attorney's fees) incurred by an
10 officer or director of the corporation in defending a civil or
11 criminal action, suit or proceeding may be paid by the
12 corporation in advance of the final disposition of such action,
13 suit or proceeding upon receipt of an undertaking by or on
14 behalf of such ~~the~~ director or officer to repay such amount if
15 it shall ultimately be determined that such person is not
16 entitled to be indemnified by the corporation as authorized in
17 this Section. Such expenses (including attorney's fees)
18 incurred by former directors and officers or other employees
19 and agents of the corporation or by persons serving at the
20 request of the corporation as directors, officers, employees or
21 agents of another corporation, partnership, joint venture,
22 trust or other enterprise may be so paid on such terms and
23 conditions, if any, as the corporation deems appropriate.

24 (f) The indemnification and advancement of expenses
25 provided by or granted under the other subsections of this
26 Section shall not be deemed exclusive of any other rights to

1 which those seeking indemnification or advancement of expenses
2 may be entitled under any by-law, agreement, vote of
3 shareholders or disinterested directors, or otherwise, both as
4 to action in his or her official capacity and as to action in
5 another capacity while holding such office. A right to
6 indemnification or to advancement of expenses arising under a
7 provision of the articles of incorporation or a by-law shall
8 not be eliminated or impaired by an amendment to such provision
9 after the occurrence of the act or omission that is the subject
10 of the civil, criminal, administrative or investigative
11 action, suit or proceeding for which indemnification or
12 advancement of expenses is sought, unless the provision in
13 effect at the time of such act or omission explicitly
14 authorizes such elimination or impairment after such act or
15 omission has occurred.

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

1 (h) If a corporation indemnifies or advances expenses to a
2 director or officer under subsection (b) of this Section, the
3 corporation shall report the indemnification or advance in
4 writing to the shareholders with or before the notice of the
5 next shareholders meeting.

6 (i) For purposes of this Section, references to "the
7 corporation" shall include, in addition to the surviving
8 corporation, any merging corporation (including any
9 corporation having merged with a merging corporation) absorbed
10 in a merger which, if its separate existence had continued,
11 would have had the power and authority to indemnify its
12 directors, officers, and employees or agents, so that any
13 person who was a director, officer, employee or agent of such
14 merging corporation, or was serving at the request of such
15 merging corporation as a director, officer, employee or agent
16 of another corporation, partnership, joint venture, trust or
17 other enterprise, shall stand in the same position under the
18 provisions of this Section with respect to the surviving
19 corporation as such person would have with respect to such
20 merging corporation if its separate existence had continued.

21 (j) For purposes of this Section, references to "other
22 enterprises" shall include employee benefit plans; references
23 to "fines" shall include any excise taxes assessed on a person
24 with respect to an employee benefit plan; and references to
25 "serving at the request of the corporation" shall include any
26 service as a director, officer, employee or agent of the

1 corporation which imposes duties on, or involves services by
2 such director, officer, employee, or agent with respect to an
3 employee benefit plan, its participants, or beneficiaries. A
4 person who acted in good faith and in a manner he or she
5 reasonably believed to be in the best interests of the
6 participants and beneficiaries of an employee benefit plan
7 shall be deemed to have acted in a manner "not opposed to the
8 best interest of the corporation" as referred to in this
9 Section.

10 (k) The indemnification and advancement of expenses
11 provided by or granted under this Section shall, unless
12 otherwise provided when authorized or ratified, continue as to
13 a person who has ceased to be a director, officer, employee, or
14 agent and shall inure to the benefit of the heirs, executors,
15 and administrators of that person.

16 (l) The changes to this Section made by this amendatory Act
17 of the 92nd General Assembly apply only to actions commenced on
18 or after the effective date of this amendatory Act of the 92nd
19 General Assembly.

20 (Source: P.A. 94-889, eff. 1-1-07.)

21 Section 10. The General Not For Profit Corporation Act of
22 1986 is amended by changing Section 108.75 as follows:

23 (805 ILCS 105/108.75) (from Ch. 32, par. 108.75)

24 Sec. 108.75. Indemnification of officers, directors,

1 employees and agents; insurance.

2 (a) A corporation may indemnify any person who was or is a
3 party, or is threatened to be made a party to any threatened,
4 pending or completed action, suit or proceeding, whether civil,
5 criminal, administrative or investigative (other than an
6 action by or in the right of the corporation) by reason of the
7 fact that he or she is or was a director, officer, employee or
8 agent of the corporation, or who is or was serving at the
9 request of the corporation as a director, officer, employee or
10 agent of another corporation, partnership, joint venture,
11 trust or other enterprise, against expenses (including
12 attorneys' fees), judgments, fines and amounts paid in
13 settlement actually and reasonably incurred by such person in
14 connection with such action, suit or proceeding, if such person
15 acted in good faith and in a manner he or she reasonably
16 believed to be in, or not opposed to, the best interests of the
17 corporation, and, with respect to any criminal action or
18 proceeding, had no reasonable cause to believe his or her
19 conduct was unlawful. The termination of any action, suit or
20 proceeding by judgment, order, settlement, conviction, or upon
21 a plea of nolo contendere or its equivalent, shall not, of
22 itself, create a presumption that the person did not act in
23 good faith and in a manner which he or she reasonably believed
24 to be in or not opposed to the best interests of the
25 corporation or, with respect to any criminal action or
26 proceeding, that the person had reasonable cause to believe

1 that his or her conduct was unlawful.

2 (b) A corporation may indemnify any person who was or is a
3 party, or is threatened to be made a party to any threatened,
4 pending or completed action or suit by or in the right of the
5 corporation to procure a judgment in its favor by reason of the
6 fact that such person is or was a director, officer, employee
7 or agent of the corporation, or is or was serving at the
8 request of the corporation as a director, officer, employee or
9 agent of another corporation, partnership, joint venture,
10 trust or other enterprise, against expenses (including
11 attorneys' fees) actually and reasonably incurred by such
12 person in connection with the defense or settlement of such
13 action or suit, if such person acted in good faith and in a
14 manner he or she reasonably believed to be in, or not opposed
15 to, the best interests of the corporation, provided that no
16 indemnification shall be made in respect of any claim, issue or
17 matter as to which such person shall have been adjudged to be
18 liable for negligence or misconduct in the performance of his
19 or her duty to the corporation, unless, and only to the extent
20 that the court in which such action or suit was brought shall
21 determine upon application that, despite the adjudication of
22 liability, but in view of all the circumstances of the case,
23 such person is fairly and reasonably entitled to indemnity for
24 such expenses as the court shall deem proper.

25 (c) To the extent that a present or former director,
26 officer or employee of a corporation has been successful, on

1 the merits or otherwise, in the defense of any action, suit or
2 proceeding referred to in subsections (a) and (b), or in
3 defense of any claim, issue or matter therein, such person
4 shall be indemnified against expenses (including attorneys'
5 fees) actually and reasonably incurred by such person in
6 connection therewith, if that person acted in good faith and in
7 a manner he or she reasonably believed to be in, or not opposed
8 to, the best interests of the corporation.

9 (d) Any indemnification under subsections (a), ~~and (b)~~, or
10 (c) (unless ordered by a court) shall be made by the
11 corporation only as authorized in the specific case, upon a
12 determination that indemnification of the present or former
13 director, officer, employee or agent is proper in the
14 circumstances because he or she has met the applicable standard
15 of conduct set forth in subsections (a), (b), or (c) ~~(b)~~. Such
16 determination shall be made with respect to a person who is a
17 director or officer of the corporation at the time of the
18 determination: (1) by the majority vote of the directors who
19 are not parties to such action, suit or proceeding, even though
20 less than a quorum, (2) by a committee of such ~~the~~ directors
21 ~~designated by a majority vote of the directors~~, even though
22 ~~through~~ less than a quorum, designated by a majority vote of
23 such directors, (3) if there are no such directors, or if such
24 ~~the~~ directors so direct, by independent legal counsel in a
25 written opinion, or (4) by the members entitled to vote, if
26 any.

1 (e) Expenses (including attorney's fees) incurred by an
2 officer or director of the corporation in defending a civil or
3 criminal action, suit or proceeding may be paid by the
4 corporation in advance of the final disposition of such action,
5 suit or proceeding, as authorized by the board of directors in
6 the specific case, upon receipt of an undertaking by or on
7 behalf of such ~~the~~ director or officer to repay such amount,
8 unless it shall ultimately be determined that such person is
9 entitled to be indemnified by the corporation as authorized in
10 this Section. Such expenses (including attorney's fees)
11 incurred by former directors and officers or other employees
12 and agents of the corporation or by persons serving at the
13 request of the corporation as directors, officers, employees or
14 agents of another corporation, partnership, joint venture,
15 trust or other enterprise may be so paid on such terms and
16 conditions, if any, as the corporation deems appropriate.

17 (f) The indemnification and advancement of expenses
18 provided by or granted under the other subsections of this ~~the~~
19 Section shall not be deemed exclusive of any other rights to
20 which those seeking indemnification or advancement of expenses
21 may be entitled under any by-law ~~bylaw~~, agreement, vote of
22 members or disinterested directors, or otherwise, both as to
23 action in his or her official capacity and as to action in
24 another capacity while holding such office, ~~and shall continue~~
25 ~~as to a person who has ceased to be a director, officer,~~
26 ~~employee or agent, and shall inure to the benefit of the heirs,~~

1 ~~executors and administrators of such a person.~~ A right to
2 indemnification or to advancement of expenses arising under a
3 provision of the articles of incorporation or a by-law shall
4 not be eliminated or impaired by an amendment to such provision
5 after the occurrence of the act or omission that is the subject
6 of the civil, criminal, administrative or investigative
7 action, suit or proceeding for which indemnification or
8 advancement of expenses is sought, unless the provision in
9 effect at the time of such act or omission explicitly
10 authorizes such elimination or impairment after such act or
11 omission has occurred.

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

23 (h) In the case of a corporation with members entitled to
24 vote, if a corporation indemnifies or advances expenses under
25 subsection (b) of this Section to a director or officer, the
26 corporation shall report the indemnification or advance in

1 writing to the members entitled to vote with or before the
2 notice of the next meeting of the members entitled to vote.

3 (i) For purposes of this Section, references to "the
4 corporation" shall include, in addition to the surviving
5 corporation, any merging corporation (including any
6 corporation having merged with a merging corporation) absorbed
7 in a merger which, if its separate existence had continued,
8 would have had the power and authority to indemnify its
9 directors, officers, employees or agents, so that any person
10 who was a director, officer, employee or agent of such merging
11 corporation, or was serving at the request of such merging
12 corporation as a director, officer, employee or agent of
13 another corporation, partnership, joint venture, trust or
14 other enterprise, shall stand in the same position under the
15 provisions of this Section with respect to the surviving
16 corporation as such person would have with respect to such
17 merging corporation if its separate existence had continued.

18 (j) For purposes of this Section, references to "other
19 enterprises" shall include employee benefit plans; references
20 to "fines" shall include any excise taxes assessed on a person
21 with respect to an employee benefit plan; and references to
22 "serving at the request of the corporation" shall include any
23 service as a director, officer, employee or agent of the
24 corporation which imposes duties on, or involves services by
25 such director, officer, employee, or agent with respect to an
26 employee benefit plan, its participants, or beneficiaries. A

1 person who acted in good faith and in a manner he or she
2 reasonably believed to be in the best interests of the
3 participants and beneficiaries of an employee benefit plan
4 shall be deemed to have acted in a manner "not opposed to the
5 best interests of the corporation" as referred to in this
6 Section.

7 (k) The indemnification and advancement of expenses
8 provided by or granted under this Section shall, unless
9 otherwise provided when authorized or ratified, continue as to
10 a person who has ceased to be a director, officer, employee, or
11 agent and shall inure to the benefit of the heirs, executors
12 and administrators of that person.

13 (l) ~~(k)~~ The changes to this Section made by this amendatory
14 Act of the 92nd General Assembly apply only to actions
15 commenced on or after the effective date of this amendatory Act
16 of the 92nd General Assembly.

17 (Source: P.A. 92-33, eff. 7-1-01.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.