

## CHAPTER 1240

## BUSINESS CORPORATIONS

## S. F. 292

AN ACT relating to indemnification of officers, directors, employees, and agents of business corporations.

*Be It Enacted by the General Assembly of the State of Iowa:*

1 SECTION 1. Section two (2) of chapter three hundred sixty-three  
2 (363), Acts of the Sixty-second General Assembly, is repealed.

1 SEC. 2. Section four hundred ninety-six A point four (496A.4),  
2 Code 1966, is amended by adding the following new subsection:

3 "To make indemnification to the following extent and under the  
4 following circumstances:

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

26 b. To indemnify any person who was or is a party or is threatened  
27 to be made a party to any threatened, pending, or completed action  
28 or suit by or in the right of the corporation to procure a judgment  
29 in its favor by reason of the fact that he is or was a director, officer,  
30 employee, or agent of the corporation, or is or was serving at the  
31 request of the corporation as a director, officer, employee, or agent  
32 of another corporation, partnership, joint venture, trust, or another  
33 enterprise against expenses (including attorneys' fees) actually and  
34 reasonably incurred by him in connection with the defense or settle-  
35 ment of such action or suit if he acted in good faith and in a manner  
36 he reasonably believed to be in or not opposed to the best interests  
37 of the corporation and except that no indemnification shall be made  
38 in respect of any claim, issue, or matter as to which such person shall  
39 have been adjudged to be liable for negligence or misconduct in the  
40 performance of his duty to the corporation unless and only to the  
41 extent that the court in which such action or suit was brought shall  
42 determine upon application that, despite the adjudication of liability

43 but in view of all circumstances of the case, such person is fairly and  
44 reasonably entitled to indemnity for such expenses which such court  
45 shall deem proper.

46 *c.* To the extent that a director, officer, employee, or agent of a  
47 corporation has been successful on the merits or otherwise in defense  
48 of any action, suit, or proceeding referred to in paragraphs "*a*" and  
49 "*b*", or in defense of any claim, issue, or matter therein, he shall be  
50 indemnified against expenses (including attorneys' fees) actually and  
51 reasonably incurred by him in connection therewith.

52 *d.* Any indemnification under paragraphs "*a*" and "*b*" (unless  
53 ordered by a court) shall be made by the corporation only as author-  
54 ized in the specific case upon a determination that the indemnification  
55 of the director, officer, employee, or agent is proper in the circum-  
56 stances because he has met the applicable standard of conduct set  
57 forth in paragraphs "*a*" and "*b*". Such determination shall be made  
58 (1) by the board of directors by a majority vote of a quorum consist-  
59 ing of directors who were not parties to such action, suit, or proceed-  
60 ing, or (2) if such a quorum is not obtainable, or, even if obtainable,  
61 a quorum of disinterested directors so directs, by independent legal  
62 counsel in a written opinion, or (3) by the shareholders.

63 *e.* Expenses incurred in defending a civil or criminal action, suit,  
64 or proceeding may be paid by the corporation in advance of the final  
65 disposition of such action, suit, or proceeding as authorized in the  
66 manner provided in paragraph "*d*" upon receipt of an undertaking  
67 by or on behalf of the director, officer, employee, or agent to repay  
68 such amount unless it shall ultimately be determined that he is en-  
69 titled to be indemnified by the corporation as authorized in this  
70 section.

71 *f.* The indemnification provided by this section shall not be deemed  
72 exclusive of any other rights to which those indemnified may be en-  
73 titled under any bylaw, agreement, vote of shareholders or disinter-  
74 ested directors, or otherwise, both as to action in his official capacity  
75 and as to action in another capacity while holding such office, and  
76 shall continue as to a person who has ceased to be a director, officer,  
77 employee, or agent and shall inure to the benefit of the heirs, execu-  
78 tors, and administrators of such a person.

79 *g.* A corporation shall have power to purchase and maintain insur-  
80 ance on behalf of any person who is or was a director, officer, em-  
81 ployee, or agent of the corporation, or is or was serving at the request  
82 of the corporation as a director, officer, employee, or agent of another  
83 corporation, partnership, joint venture, trust, or other enterprise  
84 against any liability asserted against him and incurred by him in any  
85 such capacity or arising out of his status as such, whether or not the  
86 corporation would have the power to indemnify him against such  
87 liability under the provisions of this section.

Approved January 20, 1970.