

FILED MAR 1 1988

SENATE FILE 2248
BY COMMITTEE ON JUDICIARY
(Appointed by S.C.)

Passed Senate, Date 2/17/88 (p. 22) Passed House, Date 4-11-88 (p. 1684)
Vote: Ayes 41 Nays 0 Vote: Ayes 96 Nays 0
Approved May 6, 1988

A BILL FOR

1 An Act relating to indemnification and the limitation of
2 liability of directors and officers and to the indemnification
3 of a present or former director, officer, employee, member, or
4 volunteer of a cooperative association for certain judgments
5 and expenses.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2248

1 Section 1. Section 491.5, Code Supplement 1987, is amended
2 to read as follows:

3 8. A Any provision ~~which-eliminates~~ eliminating or limits
4 limiting the personal liability of a director to the
5 corporation or its shareholders or members for monetary
6 damages for breach of fiduciary duty as a director, provided
7 that the provision does not eliminate or limit the liability
8 of a director for a any breach of the director's duty of
9 loyalty to the corporation or its shareholders or members, for
10 acts or omissions not in good faith or which involve
11 intentional misconduct or a knowing violation of the law, or
12 for ~~a~~ any transaction from which the director derives an
13 improper personal benefit. A provision in the articles of
14 incorporation shall not eliminate or limit the liability of a
15 director for an any act or omission occurring prior to the
16 date when the provision becomes effective.

17 Sec. 2. Section 496A.4A, subsection 7, Code Supplement
18 1987, is amended to read as follows:

19 7. Except as limited in subsection 2 with respect to
20 proceedings by or in the right of the corporation, the
21 indemnification and advancement of expenses provided by, or
22 granted pursuant to, the other subsections of this section are
23 not exclusive of any other rights to which those seeking
24 indemnification or advancement of expenses are entitled under
25 a provision in the articles of incorporation or bylaws,
26 agreements, vote of shareholders or disinterested directors,
27 or otherwise, both as to action in a person's official
28 capacity and as to action in another capacity while holding
29 the office. However, ~~the-provisions-or-agreements~~
30 indemnification shall not ~~provide-indemnification~~ be provided
31 to a director for a any breach of the director's duty of
32 loyalty to the corporation or its ~~stockholders~~ shareholders,
33 for acts or omissions not in good faith or which involve
34 intentional misconduct or a knowing violation of the law, or
35 for a any transaction from which the director derives an

1 improper personal benefit, ~~or under section 496A.44.~~

2 Sec. 3. Section 496A.49, subsection 13, Code Supplement
3 1987, is amended to read as follows:

4 13. A Any provision which ~~eliminates~~ eliminating or ~~limits~~
5 limiting the personal liability of a director to the
6 corporation or its shareholders for monetary damages for
7 breach of fiduciary duty as a director, provided that the
8 provision shall not eliminate or limit the liability of a
9 director for a any breach of the director's duty of loyalty to
10 the corporation or its ~~stockholders~~ shareholders, for acts or
11 omissions not in good faith or which involve intentional
12 misconduct or a knowing violation of the law, for a any
13 transaction from which the director derives an improper
14 personal benefit, or under section 496A.44. A provision shall
15 not eliminate or limit the liability of a director for ~~an~~ any
16 act or omission occurring prior to the date when the provision
17 in the articles of incorporation becomes effective.

18 Sec. 4. NEW SECTION. 497.34 INDEMNIFICATION.

19 A cooperative association operating under this chapter may
20 indemnify any present or former director, officer, employee,
21 member, or volunteer in the manner and in the instances
22 authorized in section 496A.4A, provided that where section
23 496A.4A provides for action by shareholders the section is
24 applicable to action by voting members of the cooperative
25 association, and where section 496A.4A refers to the corpora-
26 tion organized under chapter 496A the section is applicable to
27 the cooperative association organized under this chapter, and
28 where section 496A.4A refers to the director the section is
29 applicable to a director, officer, employee, member, or
30 volunteer of the cooperative association organized under this
31 chapter.

32 Sec. 5. NEW SECTION. 498.35 INDEMNIFICATION.

33 A cooperative association operating under this chapter may
34 indemnify any present or former director, officer, employee,
35 member, or volunteer in the manner and in the instances

1 authorized in section 496A.4A, provided that where section
2 496A.4A provides for action by shareholders the section is
3 applicable to action by voting members of the cooperative
4 association, and where section 496A.4A refers to the corpora-
5 tion organized under chapter 496A the section is applicable to
6 the cooperative association organized under this chapter, and
7 where section 496A.4A refers to the director the section is
8 applicable to a director, officer, employee, member, or
9 volunteer of the cooperative association organized under this
10 chapter.

11 Sec. 6. NEW SECTION. 499.59A INDEMNIFICATION.

12 A cooperative association operating under this chapter may
13 indemnify any present or former director, officer, employee,
14 member, or volunteer in the manner and in the instances
15 authorized in section 496A.4A, provided that where section
16 496A.4A provides for action by shareholders the section is
17 applicable to action by voting members of the cooperative
18 association, and where section 496A.4A refers to the corpora-
19 tion organized under chapter 496A the section is applicable to
20 the cooperative association organized under this chapter, and
21 where section 496A.4A refers to the director the section is
22 applicable to a director, officer, employee, member, or
23 volunteer of the cooperative association organized under this
24 chapter.

25 Sec. 7. Section 524.302, subsection 10, Code Supplement
26 1987, is amended to read as follows:

27 10. A Any provision which eliminates eliminating or limits
28 limiting the personal liability of a director to the
29 corporation or its shareholders for monetary damages for
30 breach of fiduciary duty as a director, provided that the
31 provision does not eliminate or limit the liability of a
32 director for a any breach of the director's duty of loyalty to
33 the corporation or its stockholders shareholders, for acts or
34 omissions not in good faith or which involve intentional
35 misconduct or a knowing violation of the law, for a any

1 transaction from which the director derives an improper
2 personal benefit, or under subsections 1 and 2 of section
3 524.605. A provision shall not eliminate or limit the
4 liability of a director for an any act or omission occurring
5 prior to the date when the provision in the articles of
6 incorporation becomes effective.

7 Sec. 8. Section 533.1, subsection 8, unnumbered paragraph
8 1, Code Supplement 1987, is amended to read as follows:

9 The original articles or amended articles may contain a
10 provision ~~which eliminates~~ eliminating or ~~limits~~ limiting the
11 personal liability of a director, officer, or employee of the
12 corporation or its shareholders for monetary damages for
13 breach of fiduciary duty as a director, officer, or employee,
14 provided that the provision does not eliminate or limit the
15 liability of a director, officer, or employee for a any breach
16 of the director's, officer's, or employee's duty of loyalty to
17 the corporation or its ~~stockholders~~ shareholders, for acts or
18 omissions not in good faith or which involve intentional
19 misconduct or a knowing violation of the law, or for a any
20 transaction from which the director, officer, or employee
21 derives an improper personal benefit. A provision shall not
22 eliminate or limit the liability of a director, officer, or
23 employee for ~~an~~ any act or omission occurring prior to the
24 date when the provision in the articles of incorporation
25 becomes effective.

26 Sec. 9. Section 534.501, subsection 1, paragraph m, Code
27 Supplement 1987, is amended to read as follows:

28 m. A Any provision which ~~eliminates~~ eliminating or ~~limits~~
29 limiting the personal liability of a director to the
30 corporation or its shareholders or members, for monetary
31 damages for breach of fiduciary duty as a director, provided
32 that the provision does not eliminate or limit the liability
33 of a director for a any breach of the director's duty of
34 loyalty to the association or its ~~stockholders~~ shareholders or
35 members, for ~~an-act~~ acts or ~~omission~~ omissions not in good

1 faith or which ~~involves~~ involve intentional misconduct or a
2 knowing violation of the law, or for a any transaction from
3 which the director derives an improper personal benefit. A
4 provision shall not eliminate or limit the liability of a
5 director for ~~an~~ any act or omission occurring prior to the
6 date when the provision in the articles of incorporation
7 becomes effective.

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EXPLANATION

9 Sections 1 through 3 and 7 through 9 of this bill relate to
10 changes made by Senate File 471 passed during the 1987
11 session. References to "stockholders" have been struck and
12 replaced with "shareholders". The bill provides that a
13 corporation may include a provision in its articles of
14 incorporation eliminating or limiting the liability of a
15 director, officer, or other covered individual, but that the
16 corporation is not required to do so. However, if the
17 corporation decides to create a provision eliminating or
18 limiting liability, the provision must be included in the
19 articles of incorporation. Language is struck which disallows
20 indemnification for expenses of a director or officer when the
21 director or officer is found to be liable to the corporation
22 pursuant to section 496A.44. This section imposes liability
23 on the director or officer for certain acts when the director
24 or officer fails to comply with the required standard for
25 performance of duties.

26 Sections 4 through 6 provide that a cooperative association
27 may indemnify directors, officers, employees, members, and
28 volunteers for judgments, penalties, fines, settlements, and
29 reasonable expenses in the same manner as a for-profit
30 corporation may under section 496A.4A.

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SIMILAR TO SSB 2121 (LSB 8138SC) and

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SSB 2083 (LSB 7788SC)

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SENATE FILE 2248

S-5267

1 Amend Senate File 2248 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Section 1. Section 25A.2, subsection 3, Code
5 Supplement 1987, is amended to read as follows:

6 3. "Employee of the state" includes any one or
7 more officers, agents, or employees of the state or
8 any state agency, including members of the general
9 assembly, and persons acting on behalf of the state or
10 any state agency in any official capacity, temporarily
11 or permanently in the service of the state of Iowa,
12 whether with or without compensation but does not
13 include a contractor doing business with the state.
14 Professional personnel, including physicians,
15 osteopathic physicians and surgeons, osteopathic
16 physicians, optometrists and dentists, who render
17 services to patients and inmates of state institutions
18 under the jurisdiction of the department of human
19 services or the Iowa department of corrections are to
20 be considered employees of the state, whether the
21 personnel are employed on a full-time basis or render
22 services on a part-time basis on a fee schedule or
23 other arrangement. Except as provided in section
24 234.41, persons licensed to provide child foster care
25 pursuant to section 237.4, and who are not otherwise
26 employees of the state, are considered employees of
27 the state for purposes of this chapter only, when
28 acting as a licensee under chapter 237.

29 Sec. 2. NEW SECTION. 217.11 DEPARTMENT TO
30 PROVIDE CERTAIN VOLUNTEER SERVICES -- VOLUNTEER
31 LIABILITY.

32 1. The department of human services may establish
33 volunteer programs designed to enhance the services
34 provided by the department. Roles for volunteers may
35 include but shall not be limited to parent aides,
36 friendly visitors, commodity distributors, clerical
37 assistants, medical transporters, conservators, and
38 guardians. The department shall adopt rules for
39 programs which are established.

40 2. All volunteers registered with the department
41 and in compliance with departmental rules are
42 considered state employees for purposes of chapter
43 25A. However, this section does not except a
44 conservator or guardian from an action brought under
45 sections 658.1 or 658.3. This section does not
46 relieve a guardian or conservator from duties under
47 chapter 633.

48 Sec. 3. NEW SECTION. 357A.22 PERSONAL LIABILITY.

49 Except as otherwise provided in this chapter, a
50 director, officer, employee, or other personnel of the

- 1 board are not liable on the district's debts or
2 obligations and a director, officer, employee, or
3 volunteer of the board is not personally liable in
4 that capacity, for a claim based upon an act or
5 omission of the person performed in the discharge of
6 the person's duties, except for any of the following:
7 1. A breach of the duty of loyalty to the
8 district.
9 2. Acts or omissions not in good faith or which
10 involve intentional misconduct or knowing violation of
11 the law.
12 3. A transaction from which the person derives an
13 improper personal benefit."
14 2. Page 1, line 1, by inserting after the figure
15 "491.5," the following: "subsection 8,".
16 3. Page 2, line 32, by striking the figure
17 "498.35" and inserting the following: "498.36".
18 4. Page 4, line 28, by striking the word "which"
19 and inserting the following: "which".
20 5. Title page, line 1, by striking the word
21 "the".
22 6. Title page, line 2, by striking the words "the
23 indemnification".
24 7. Title page, by striking lines 3 through 5 and
25 inserting the following: "liability of persons who
26 serve rural water districts, volunteer as guardians or
27 conservators, or who provide child foster care."
28 8. By renumbering as necessary.

S-5267

Filed March 8, 1988
(Amended 3/17/88)

BY DONALD V. DOYLE

SENATE FILE 2248

S-5208

- 1 Amend Senate File 2248 as follows:
2 1. Page 4, line 28, by striking the word "which"
3 and inserting the following: "which".

S-5208

Filed March 3, 1988
(Amended 3/17/88)

BY EUGENE FRAISE

SENATE FILE **2248**
BY COMMITTEE ON JUDICIARY
Substituted for S.F. 2248 3/24

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 1988)

- _____ - New Language by the Senate
- * - Language Stricken by the Senate

Passed Senate, Date 4/14/88 (p. 1049) Passed House, Date 4/11/88 (p. 1024)
Vote: Ayes 44 Nays 2 Vote: Ayes 96 Nays 0
Approved May 6, 1988
Repassed House 4/14/88 (p. 1949)
97-0

A BILL FOR

** 1 An Act relating to indemnification and limitation of liability of
2 directors and officers and to liability of persons who serve
3 rural water districts, volunteer as guardians or conservators,
4 or who provide child foster care.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S.F. 2248

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1 Section 1. Section 25A.2, subsection 3, Code Supplement
2 1987, is amended to read as follows:

3 3. "Employee of the state" includes any one or more
4 officers, agents, or employees of the state or any state
5 agency, including members of the general assembly, and persons
6 acting on behalf of the state or any state agency in any
7 official capacity, temporarily or permanently in the service
8 of the state of Iowa, whether with or without compensation but
9 does not include a contractor doing business with the state.
10 Professional personnel, including physicians, osteopathic
11 physicians and surgeons, osteopathic physicians, optometrists
12 and dentists, who render services to patients and inmates of
13 state institutions under the jurisdiction of the department of
14 human services or the Iowa department of corrections are to be
15 considered employees of the state, whether the personnel are
16 employed on a full-time basis or render services on a part-
17 time basis on a fee schedule or other arrangement. Except as
18 provided in section 234.41, persons licensed to provide child
19 foster care pursuant to section 237.4, and who are not
20 otherwise employees of the state, are considered employees of
21 the state for purposes of this chapter only, when acting as a
22 licensee under chapter 237.

23 Sec. 2. NEW SECTION. 217.11 DEPARTMENT TO PROVIDE
24 CERTAIN VOLUNTEER SERVICES -- VOLUNTEER LIABILITY.

25 1. The department of human services may establish
26 volunteer programs designed to enhance the services provided
27 by the department. Roles for volunteers may include but shall
28 not be limited to parent aides, friendly visitors, commodity
29 distributors, clerical assistants, medical transporters,
30 conservators, and guardians. The department shall adopt rules
31 for programs which are established.

32 2. All volunteers registered with the department and in
33 compliance with departmental rules are considered state
34 employees for purposes of chapter 25A. However, this section
35 does not except a conservator or guardian from an action

1 brought under sections 658.1 or 658.3. This section does not
2 relieve a guardian or conservator from duties under chapter
3 633.

4 Sec. 3. NEW SECTION. 357A.22 PERSONAL LIABILITY.

5 Except as otherwise provided in this chapter, a director,
6 officer, employee, or other personnel of the board are not
7 liable on the district's debts or obligations and a director,
8 officer, employee, or volunteer of the board is not personally
9 liable in that capacity, for a claim based upon an act or
10 omission of the person performed in the discharge of the
11 person's duties, except for any of the following:

- 12 1. A breach of the duty of loyalty to the district.
- 13 2. Acts or omissions not in good faith or which involve
14 intentional misconduct or knowing violation of the law.
- 15 3. A transaction from which the person derives an improper
16 personal benefit.

17 Sec. 4. Section 491.5, subsection 8, Code Supplement 1987,
18 is amended to read as follows:

589-19 8. A Any provision which ~~eliminates~~ eliminating or limits
20 limiting the personal liability of a director to the
21 corporation or its shareholders or members for monetary
22 damages for breach of fiduciary duty as a director, provided
23 that the provision does not eliminate or limit the liability
24 of a director for a any breach of the director's duty of
25 loyalty to the corporation or its shareholders or members, for
26 acts or omissions not in good faith or which involve
27 intentional misconduct or a knowing violation of ~~the~~ law, or
28 for a any transaction from which the director derives an
29 improper personal benefit. A provision in the articles of
30 incorporation shall not eliminate or limit the liability of a
31 director for an any act or omission occurring prior to the
32 date when the provision becomes effective.

33 Sec. 5. Section 496A.4A, subsection 7, Code Supplement
34 1987, is amended to read as follows:

35 7. Except as limited in subsection 2 with respect to

1 proceedings by or in the right of the corporation, the
2 indemnification and advancement of expenses provided by, or
3 granted pursuant to, the other subsections of this section are
4 not exclusive of any other rights to which those seeking
5 indemnification or advancement of expenses are entitled under
6 a provision in the articles of incorporation or bylaws,
7 agreements, vote of shareholders or disinterested directors,
8 or otherwise, both as to action in a person's official
9 capacity and as to action in another capacity while holding
10 the office. However, ~~the provisions or agreements~~
11 indemnification shall not ~~provide indemnification~~ be provided
12 to a director for a any breach of the director's duty of
13 loyalty to the corporation or its ~~stockholders~~ shareholders,
14 for acts or omissions not in good faith or which involve
15 intentional misconduct or a knowing violation of the law, or
16 for a any transaction from which the director derives an
17 improper personal benefit, ~~or under section 496A.44.~~

18 Sec. 6. Section 496A.49, subsection 13, Code Supplement
19 1987, is amended to read as follows:

20 13. A Any provision ~~which eliminates~~ eliminating or ~~limits~~
21 limiting the personal liability of a director to the
22 corporation or its shareholders for monetary damages for
23 breach of fiduciary duty as a director, provided that the
24 provision shall not eliminate or limit the liability of a
25 director for a any breach of the director's duty of loyalty to
26 the corporation or its ~~stockholders~~ shareholders, for acts or
27 omissions not in good faith or which involve intentional
28 misconduct or a knowing violation of the law, for a any
29 transaction from which the director derives an improper
30 personal benefit, or under section 496A.44. A provision shall
31 not eliminate or limit the liability of a director for an any
32 act or omission occurring prior to the date when the provision
33 in the articles of incorporation becomes effective.

34 Sec. 7. NEW SECTION. 497.34 INDEMNIFICATION.

35 A cooperative association operating under this chapter may

1 indemnify any present or former director, officer, employee,
2 member, or volunteer in the manner and in the instances
3 authorized in section 496A.4A, provided that where section
4 496A.4A provides for action by shareholders the section is
5 applicable to action by voting members of the cooperative
6 association, and where section 496A.4A refers to the corpora-
7 tion organized under chapter 496A the section is applicable to
8 the cooperative association organized under this chapter, and
9 where section 496A.4A refers to the director the section is
10 applicable to a director, officer, employee, member, or
11 volunteer of the cooperative association organized under this
12 chapter.

13 Sec. 8. NEW SECTION. 498.36 INDEMNIFICATION.

14 A cooperative association operating under this chapter may
15 indemnify any present or former director, officer, employee,
16 member, or volunteer in the manner and in the instances
17 authorized in section 496A.4A, provided that where section
18 496A.4A provides for action by shareholders the section is
19 applicable to action by voting members of the cooperative
20 association, and where section 496A.4A refers to the corpora-
21 tion organized under chapter 496A the section is applicable to
22 the cooperative association organized under this chapter, and
23 where section 496A.4A refers to the director the section is
24 applicable to a director, officer, employee, member, or
25 volunteer of the cooperative association organized under this
26 chapter.

27 Sec. 9. NEW SECTION. 499.59A INDEMNIFICATION.

28 A cooperative association operating under this chapter may
29 indemnify any present or former director, officer, employee,
30 member, or volunteer in the manner and in the instances
31 authorized in section 496A.4A, provided that where section
32 496A.4A provides for action by shareholders the section is
33 applicable to action by voting members of the cooperative
34 association, and where section 496A.4A refers to the corpora-
35 tion organized under chapter 496A the section is applicable to

1 the cooperative association organized under this chapter, and
2 where section 496A.4A refers to the director the section is
3 applicable to a director, officer, employee, member, or
4 volunteer of the cooperative association organized under this
5 chapter.

6 Sec. 10. Section 524.302, subsection 10, Code Supplement
7 1987, is amended to read as follows:

8 10. A Any provision ~~which-eliminates~~ eliminating or ~~limits~~
9 limiting the personal liability of a director to the
10 corporation or its shareholders for monetary damages for
11 breach of fiduciary duty as a director, provided that the
12 provision does not eliminate or limit the liability of a
13 director for a any breach of the director's duty of loyalty to
14 the corporation or its ~~stockholders~~ shareholders, for acts or
15 omissions not in good faith or which involve intentional
16 misconduct or a knowing violation of ~~the~~ law, for a any
17 transaction from which the director derives an improper
18 personal benefit, or under subsections 1 and 2 of section
19 524.605. A provision shall not eliminate or limit the
20 liability of a director for ~~an~~ any act or omission occurring
21 prior to the date when the provision in the articles of
22 incorporation becomes effective.

23 Sec. 11. Section 533.1, subsection 8, unnumbered paragraph
24 1, Code Supplement 1987, is amended to read as follows:

25 The original articles or amended articles may contain a
26 provision ~~which-eliminates~~ eliminating or ~~limits~~ limiting the
27 personal liability of a director, officer, or employee of the
28 corporation or its shareholders for monetary damages for
29 breach of fiduciary duty as a director, officer, or employee,
30 provided that the provision does not eliminate or limit the
31 liability of a director, officer, or employee for a any breach
32 of the director's, officer's, or employee's duty of loyalty to
33 the corporation or its ~~stockholders~~ shareholders, for acts or
34 omissions not in good faith or which involve intentional
35 misconduct or a knowing violation of the law, or for a any

1 transaction from which the director, officer, or employee
2 derives an improper personal benefit. A provision shall not
3 eliminate or limit the liability of a director, officer, or
4 employee for an any act or omission occurring prior to the
5 date when the provision in the articles of incorporation
6 becomes effective.

7 Sec. 12. Section 534.501, subsection 1, paragraph m, Code
8 Supplement 1987, is amended to read as follows:

9 m. A Any provision ~~which eliminates~~ eliminating or ~~limits~~
10 limiting the personal liability of a director to the
11 corporation or its shareholders or members, for monetary
12 damages for breach of fiduciary duty as a director, provided
13 that the provision does not eliminate or limit the liability
14 of a director for a any breach of the director's duty of
15 loyalty to the association or its ~~stockholders~~ shareholders or
16 members, for ~~an-act~~ acts or ~~emission~~ omissions not in good
17 faith or which ~~involves~~ involve intentional misconduct or a
18 knowing violation of ~~the~~ law, or for a any transaction from
19 which the director derives an improper personal benefit. A
20 provision shall not eliminate or limit the liability of a
21 director for an any act or omission occurring prior to the
22 date when the provision in the articles of incorporation
23 becomes effective.

24 SIMILAR TO SSB 2121 (LSB 8138SC) and
25 SSB 2083 (LSB 7788SC)

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SENATE FILE 2248

-6342

1 Amend the amendment, H-5881, to Senate File 2248 as
2 amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 2, by striking line 32 and inserting the
5 following: "pursuant to section 2 of this Act.
6 Sec. _____ INTERIM STUDY OF ISSUES RELATING TO
7 GUARDIANSHIP AND CONSERVATORSHIP. The legislative
8 council shall create an interim study committee during
9 the 1988 interim to study issues relating to
10 guardianship and conservatorship including, but not
11 limited to, the need for reasons for a shortage of,
12 and means to provide for, surrogate decision makers
13 and case management services for clients, patients, or
14 residents of health care facilities, and residents
15 within communities, who are either temporarily or
16 permanently incapacitated in their decision-making
17 ability regarding health care, money management, or
18 independent living, and who have no family, legally
19 appointed decision maker, or other person willing or
20 able to take responsibility for them. The study
21 committee shall submit a report of its findings and
22 recommendations to the legislative council and the
23 Seventy-third General Assembly, 1989 Session."

By JAY of Appanoose

-6342 FILED APRIL 8, 1988

Adopted 4/11 (p. 1683)

SENATE FILE 2248

H-6364

1 Amend Senate File 2248, as amended, passed, and
2 reprinted by the Senate, as follows:

- 3 1. Page 1, by striking lines 1 through 22.
4 2. Renumber as necessary.

By JAY of Appanoose

H-6364 FILED APRIL 11, 1988

ADOPTED (p. 1684)

SENATE FILE 2248

H-5885

1 Amend Senate File 2248, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 22, the
4 following:

5 "Sec. ____ . Section 25A.24, Code Supplement 1987,
6 is amended to read as follows:
7 25A.24 STATE VOLUNTEERS.

8 A person who performs services for the state
9 government or any agency or subdivision of state
10 government and who does not receive compensation is
11 not personally liable for a claim based upon an act or
12 omission of the person performed in the discharge of
13 the person's duties, except for acts or omissions
14 which involve intentional misconduct or knowing
15 violation of the law ~~or for a transaction from which~~
16 ~~the person derives an improper personal benefit.~~ For
17 purposes of this section, "compensation" does not
18 include payments to reimburse a person for expenses."

19 2. Page 2, by striking lines 27 through 29 and
20 inserting the following: "intentional misconduct or a
21 knowing violation of the law ~~or for a transaction~~
22 ~~from which the director derives an improper personal~~
23 benefit. A provision in the articles of".

24 3. Page 5, by inserting after line 5 the
25 following:

26 "Sec. ____ . Section 504.17, Code Supplement 1987,
27 is amended to read as follows:
28 504.17 PERSONAL LIABILITY.

29 Except as otherwise provided in this chapter, a
30 director, officer, employee, or member of the
31 corporation is not liable on the corporation's debts
32 or obligations and a director, officer, member, or
33 other volunteer is not personally liable in that
34 capacity, for a claim based upon an act or omission of
35 the person performed in the discharge of the person's
36 duties, except for a breach of the duty of loyalty to
37 the corporation, for acts or omissions not in good
38 faith or which involve intentional misconduct or
39 knowing violation of the law ~~or for a transaction~~
40 ~~from which the person derives an improper personal~~
41 benefit.

42 Sec. ____ . Section 504A.101, Code Supplement 1987,
43 is amended to read as follows:

44 504A.101 PERSONAL LIABILITY.

45 Except as otherwise provided in this chapter, a
46 director, officer, employee, or member of the
47 corporation is not liable on the corporation's debts
48 nor obligations and a director, officer, member, or
49 other volunteer is not personally liable in that
50 capacity, for a claim based upon an act or omission of

H-5885

Page 2

1 the person performed in the discharge of the person's
2 duties, except for a breach of the duty of loyalty to
3 the corporation, for acts or omissions not in good
4 faith or which involve intentional misconduct or
5 knowing violation of the law, ~~or for a transaction~~
6 ~~from which the person derives an improper personal~~
7 ~~benefit.~~"

8 4. Page 6, by inserting after line 23 the
9 following:

10 "Sec. ____ . Section 613.19, Code Supplement 1987,
11 is amended to read as follows:

12 613.19 PERSONAL LIABILITY.

13 A director, officer, employee, member, trustee, or
14 volunteer, of a nonprofit organization is not liable
15 on the debts or obligations of the nonprofit
16 organization and a director, officer, employee,
17 member, trustee, or volunteer is not personally liable
18 for a claim based upon an act or omission of the
19 person performed in the discharge of the person's
20 duties, except for acts or omissions which involve
21 intentional misconduct or knowing violation of the
22 law, ~~or for a transaction from which the person~~
23 ~~derives an improper personal benefit.~~ For purposes of
24 this section, "nonprofit organization" includes an
25 unincorporated club, association, or other similar
26 entity, however named, if no part of its income or
27 profit is distributed to its members, directors, or
28 officers.

29 Sec. ____ . Section 613A.2, unnumbered paragraph 3,
30 Code Supplement 1987, is amended to read as follows:

31 A person who performs services for a municipality
32 or an agency or subdivision of a municipality and who
33 does not receive compensation is not personally liable
34 for a claim based upon an act or omission of the
35 person performed in the discharge of the person's
36 duties, except for acts or omissions which involve
37 intentional misconduct or knowing violation of the
38 law, ~~or for a transaction from which the person~~
39 ~~derives an improper personal benefit.~~ For purposes of
40 this section, "compensation" does not include payments
41 to reimburse a person for expenses."

42 5. Renumber as necessary.

By CARPENTER of Polk

H-5885 FILED MARCH 24, 1988

Loss 4/11 (p. 1681)

SENATE FILE 2248

H-5881

1 Amend Senate File 2248, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 1, by striking lines 25 through 32 and
4 inserting the following:

5 "1. The department of human services shall
6 establish volunteer programs designed to enhance the
7 services provided by the department. Roles for
8 volunteers may include but shall not be limited to
9 parent aides, friendly visitors, commodity
10 distributors, clerical assistants, and medical
11 transporters. Roles for volunteers shall include
12 conservators and guardians. The department shall
13 adopt rules for programs which are established.

14 2. a. The commissioner shall appoint a
15 coordinator of volunteer services to oversee the
16 provision of services of volunteer conservators and
17 guardians on a volunteer basis to individuals in this
18 state requiring such services. The coordinator, after
19 consulting with personnel assigned to the local office
20 of the department in a county, shall recommend to the
21 commissioner how best to serve the needs of
22 individuals in need of the services of a guardian or
23 conservator. Where possible, the coordinator shall
24 recommend that the services be provided on a
25 multicounty basis.

26 b. Volunteer guardians and conservators under this
27 program have the powers enumerated under chapter 633
28 for guardians and conservators. A volunteer guardian
29 or conservator who wishes to take an action for which
30 court approval is necessary shall apply to the
31 commissioner through the local office for approval of
32 the action. If the commissioner approves the request,
33 the department shall apply to the district court in
34 the county where the individual receiving the services
35 resides for approval of the action.

36 c. Services required under this section shall be
37 available to all residents of this state regardless of
38 financial status. The department shall establish a
39 schedule of fees for these services. The fees
40 collected shall be used to offset the costs of
41 providing the services.

42 The department may waive the fee for any service if
43 the person receiving the service is determined to be
44 indigent. For the purposes of this subsection, the
45 department shall find a person is indigent if the
46 person's annual income and resources do not exceed one
47 hundred fifty percent of the federal poverty level or
48 the person would be unable to pay the fee witho
49 prejudicing the person's financial ability to provide
50 economic necessities for the person or the person's

Page 2

1 dependents.

2 d. The coordinator shall cooperate with the
3 directors of the divisions of the department in
4 providing these services and shall seek out
5 alternative sources for providing the services
6 required under this section.

7 3. All volunteers registered with the department
8 and in".

9 2. Page 6, by inserting after line 23 the
10 following:

11 "Sec. _____. This section and section 2 of this Act,
12 being deemed of immediate importance, are effective
13 upon enactment.

14 Upon the enactment of section 2 of this Act, the
15 commissioner of the department of human services shall
16 immediately appoint a person at each local office of
17 the department to provide the services of a volunteer
18 guardian or conservator. These services shall be
19 provided to all individuals in need of these services
20 without cost until a determination is made by the
21 commissioner on how best to provide these services and
22 a fee schedule has been established pursuant to
23 section 2 of this Act. In no case shall a fee be
24 assessed for any services provided before the
25 commissioner has adopted and implemented a schedule of
26 fees. The person appointed at each local office shall
27 either provide the necessary services or assure the
28 availability of qualified volunteers to provide the
29 services until such time as the coordinator appointed
30 by the commissioner has implemented a plan to provide
31 the services of volunteer conservators and guardians
32 pursuant to section 2 of this Act."

33 3. Title page, line 4, by inserting after the
34 word "care" the following: ", and providing an
35 effective date".

36 4. Renumber as necessary.

By JAY of Appanoose

H-5881 FILED MARCH 24, 1988

Adopted as amended by 6342 4/11 (p. 1685)

SENATE FILE 2248

H-5873

1 Amend Senate File 2248, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 5, by inserting after line 5 the
4 following:

5 "Sec. _____. Section 508C.16, Code Supplement 1987,
6 is amended by adding the following new unnumbered
7 paragraph:

8 NEW UNNUMBERED PARAGRAPH. The provisions of sec-
9 tion 496A.4A shall apply to the association."

10 2. Renumber as necessary.

By JAY of Appanoose

H-5873 FILED MARCH 24, 1988

Adopted 4/11 (p. 1685)

SENATE FILE 2248

H-5875

1 Amend Senate File 2248, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. By striking page 1, line 1, through page 2,
4 line 3.

5 2. Renumber as necessary.

By JAY of Appanoose

H-5875 FILED MARCH 24, 1988

w/s 4/11 (p. 1685)

HOUSE AMENDMENT TO
SENATE FILE 2248

S-5966

1 Amend Senate File 2248, as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 1, by striking lines 1 through 22.

4 2. Page 1, by striking lines 25 through 32 and
5 inserting the following:

6 "1. The department of human services shall
7 establish volunteer programs designed to enhance the
8 services provided by the department. Roles for
9 volunteers may include but shall not be limited to
10 parent aides, friendly visitors, commodity
11 distributors, clerical assistants, and medical
12 transporters. Roles for volunteers shall include
13 conservators and guardians. The department shall
14 adopt rules for programs which are established.

15 2. a. The commissioner shall appoint a
16 coordinator of volunteer services to oversee the
17 provision of services of volunteer conservators and
18 guardians on a volunteer basis to individuals in this
19 state requiring such services. The coordinator, after
20 consulting with personnel assigned to the local office
21 of the department in a county, shall recommend to the
22 commissioner how best to serve the needs of
23 individuals in need of the services of a guardian or
24 conservator. Where possible, the coordinator shall
25 recommend that the services be provided on a
26 multicounty basis.

27 b. Volunteer guardians and conservators under this
28 program have the powers enumerated under chapter 633
29 for guardians and conservators. A volunteer guardian
30 or conservator who wishes to take an action for which
31 court approval is necessary shall apply to the
32 commissioner through the local office for approval of
33 the action. If the commissioner approves the request,
34 the department shall apply to the district court in
35 the county where the individual receiving the services
36 resides for approval of the action.

37 c. Services required under this section shall be
38 available to all residents of this state regardless of
39 financial status. The department shall establish a
40 schedule of fees for these services. The fees
41 collected shall be used to offset the costs of
42 providing the services.

43 The department may waive the fee for any service if
44 the person receiving the service is determined to be
45 indigent. For the purposes of this subsection, the
46 department shall find a person is indigent if the
47 person's annual income and resources do not exceed one
48 hundred fifty percent of the federal poverty level or
49 the person would be unable to pay the fee without
50 prejudicing the person's financial ability to provide

S-5966 Page 2

1 economic necessities for the person or the person's
2 dependents.

3 d. The coordinator shall cooperate with the
4 directors of the divisions of the department in
5 providing these services and shall seek out
6 alternative sources for providing the services
7 required under this section.

8 3. All volunteers registered with the department
9 and in".

10 3. Page 5, by inserting after line 5 the
11 following:

12 "Sec. ____ . Section 508C.16, Code Supplement 1987,
13 is amended by adding the following new unnumbered
14 paragraph:

15 NEW UNNUMBERED PARAGRAPH. The provisions of sec-
16 tion 496A.4A shall apply to the association."

17 4. Page 6, by inserting after line 23 the
18 following:

19 "Sec. ____ . This section and section 2 of this Act,
20 being deemed of immediate importance, are effective
21 upon enactment.

22 Upon the enactment of section 2 of this Act, the
23 commissioner of the department of human services shall
24 immediately appoint a person at each local office of
25 the department to provide the services of a volunteer
26 guardian or conservator. These services shall be
27 provided to all individuals in need of these services
28 without cost until a determination is made by the
29 commissioner on how best to provide these services and
30 a fee schedule has been established pursuant to
31 section 2 of this Act. In no case shall a fee be
32 assessed for any services provided before the
33 commissioner has adopted and implemented a schedule of
34 fees. The person appointed at each local office shall
35 either provide the necessary services or assure the
36 availability of qualified volunteers to provide the
37 services until such time as the coordinator appointed
38 by the commissioner has implemented a plan to provide
39 the services of volunteer conservators and guardians
40 pursuant to section 2 of this Act.

41 Sec. ____ . INTERIM STUDY OF ISSUES RELATING TO
42 GUARDIANSHIP AND CONSERVATORSHIP. The legislative
43 council shall create an interim study committee during
44 the 1988 interim to study issues relating to
45 guardianship and conservatorship including, but not
46 limited to, the need for reasons for a shortage of,
47 and means to provide for, surrogate decision makers
48 and case management services for clients, patients, or
49 residents of health care facilities, and residents
50 within communities, who are either temporarily or

S-5966 Page 3

1 permanently incapacitated in their decision-making
2 ability regarding health care, money management, or
3 independent living, and who have no family, legally
4 appointed decision maker, or other person willing or
5 able to take responsibility for them. The study
6 committee shall submit a report of its findings and
7 recommendations to the legislative council and the
8 Seventy-third General Assembly, 1989 Session."

9 5. Title page, line 4, by inserting after the
10 word "care" the following: ", and providing an
11 effective date".

12 6. By renumbering, relettering, or redesignating
13 and correcting internal references as necessary.

S-5966

Filed April 13, 1988

Adopted as amended by 5483, 5492 4/14 (p. 1547) RECEIVED FROM THE HOUSE

SENATE FILE 2248

S-5983

- 1 Amend the House amendment, S-5966, to Senate File
2 2248, as amended, passed, and reprinted by the Senate,
3 as follows:
4 1. Page 1, by striking lines 20 and 21 and
5 inserting the following: "consulting with personnel
6 assigned to the district of the department, shall
7 recommend to the".
8 2. By striking page 1, line 27 through page 2,
9 line 2.
10 3. Page 2, by striking lines 19 through 40 and
11 inserting the following:
12 "Sec. _____. The commissioner of human services
13 shall appoint a person in each district to recruit and
14 to assist volunteers to serve as guardians and
15 conservators. The person appointed in each district
16 shall attempt to recruit a sufficient number of
17 qualified volunteers in each county to meet local
18 needs for guardian or conservator services."
19 4. Page 3, by striking lines 9 through 11.
20 5. By renumbering as necessary.

S-5983

Filed April 13, 1988

BY DONALD V. DOYLE

*Adopted as amended by S-5983
4/13/88 (p. 542)*

SENATE FILE 2248

S-5992

- 1 Amend amendment S-5983 to House amendment
2 S-5966 to Senate File 2248, as amended, passed,
3 and reprinted by the Senate, as follows:
4 1. Page 1, by inserting after line 18 the
5 following:
6 "_____. Page 3, by inserting after line 8 the
7 following new section:
8 "Sec. _____. The department shall report to
9 the general assembly by January 15, 1989, on the
10 level of demand for guardianship and conservatorship
11 services, whether the resources are available to
12 meet the demand, and resources that are needed to
13 handle unmet demand in the areas of recruitment,
14 training, and monitoring of guardians and
15 conservators.""

S-5992

Filed April 14, 1988

ADOPTED

BY CHARLES BRUNER

(p. 542)

SENATE AMENDMENT TO HOUSE AMENDMENT TO
SENATE FILE 2248

H-6469

1 Amend the House amendment, S-5966, to Senate File
2 2248, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by striking lines 20 and 21 and
5 inserting the following: "consulting with personnel
6 assigned to the district of the department, shall
7 recommend to the".

8 2. By striking page 1, line 27 through page 2,
9 line 2.

10 3. Page 2, by striking lines 19 through 40 and
11 inserting the following:

12 "Sec. ____ . The commissioner of human services
13 shall appoint a person in each district to recruit and
14 to assist volunteers to serve as guardians and
15 conservators. The person appointed in each district
16 shall attempt to recruit a sufficient number of
17 qualified volunteers in each county to meet local
18 needs for guardian or conservator services."

19 4. Page 3, by inserting after line 8 the
20 following new section:

21 "Sec. ____ . The department shall report to the
22 general assembly by January 15, 1989, on the level of
23 demand for guardianship and conservatorship services,
24 whether the resources are available to meet the
25 demand, and resources that are needed to handle unmet
26 demand in the areas of recruitment, training, and
27 monitoring of guardians and conservators."

28 5. Page 3, by striking lines 9 through 11.

29 6. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-6469 FILED APRIL 14, 1988

CONCURRED (p. 1949)

LSB

SSB 2121

Doyle, Ch.
Mann
Drake

SSB 2121

JUDICIARY

JUDICIARY: Doyle, Chair; Mann and Drake

SENATE FILE

new
2248

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL)

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to indemnification and the limitation of
2 liability of directors and officers.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 491.5, Code Supplement 1987, is amended
2 to read as follows:

3 8. A Any provision which ~~eliminates~~ eliminating or ~~limits~~
4 limiting the personal liability of a director to the
5 corporation or its shareholders or members for monetary
6 damages for breach of fiduciary duty as a director, provided
7 that the provision does not eliminate or limit the liability
8 of a director for a any breach of the director's duty of
9 loyalty to the corporation or its shareholders or members, for
10 acts or omissions not in good faith or which involve
11 intentional misconduct or a knowing violation of the law, or
12 for a any transaction from which the director derives an
13 improper personal benefit. A provision in the articles of
14 incorporation shall not eliminate or limit the liability of a
15 director for an any act or omission occurring prior to the
16 date when the provision becomes effective.

17 Sec. 2. Section 496A.4A, subsection 7, Code Supplement
18 1987, is amended to read as follows:

19 7. Except as limited in subsection 2 with respect to
20 proceedings by or in the right of the corporation, the
21 indemnification and advancement of expenses provided by, or
22 granted pursuant to, the other subsections of this section are
23 not exclusive of any other rights to which those seeking
24 indemnification or advancement of expenses are entitled under
25 a provision in the articles of incorporation or bylaws,
26 agreements, vote of shareholders or disinterested directors,
27 or otherwise, both as to action in a person's official
28 capacity and as to action in another capacity while holding
29 the office. However, ~~the-provisions-or-agreements~~
30 indemnification shall not ~~provide-indemnification~~ be provided
31 to a director for a any breach of the director's duty of
32 loyalty to the corporation or its ~~stockholders~~ shareholders,
33 for acts or omissions not in good faith or which involve
34 intentional misconduct or a knowing violation of the law, or
35 for a any transaction from which the director derives an

1 improper personal benefit, ~~or under section 496A.44.~~

2 Sec. 3. Section 496A.49, subsection 13, Code Supplement
3 1987, is amended to read as follows:

4 13. A Any provision which ~~eliminates~~ eliminating or ~~limits~~
5 limiting the personal liability of a director to the
6 corporation or its shareholders for monetary damages for
7 breach of fiduciary duty as a director, provided that the
8 provision shall not eliminate or limit the liability of a
9 director for a any breach of the director's duty of loyalty to
10 the corporation or its ~~stockholders~~ shareholders, for acts or
11 omissions not in good faith or which involve intentional
12 misconduct or a knowing violation of the law, for a any
13 transaction from which the director derives an improper
14 personal benefit, or under section 496A.44. A provision shall
15 not eliminate or limit the liability of a director for an any
16 act or omission occurring prior to the date when the provision
17 in the articles of incorporation becomes effective.

18 Sec. 4. Section 524.302, subsection 10, Code Supplement
19 1987, is amended to read as follows:

20 10. A Any provision which ~~eliminates~~ eliminating or ~~limits~~
21 limiting the personal liability of a director to the
22 corporation or its shareholders for monetary damages for
23 breach of fiduciary duty as a director, provided that the
24 provision does not eliminate or limit the liability of a
25 director for a any breach of the director's duty of loyalty to
26 the corporation or its ~~stockholders~~ shareholders, for acts or
27 omissions not in good faith or which involve intentional
28 misconduct or a knowing violation of the law, for a any
29 transaction from which the director derives an improper
30 personal benefit, or under subsections 1 and 2 of section
31 524.605. A provision shall not eliminate or limit the
32 liability of a director for an any act or omission occurring
33 prior to the date when the provision in the articles of
34 incorporation becomes effective.

35 Sec. 5. Section 533.1, subsection 8, unnumbered paragraph

1 1, Code Supplement 1987, is amended to read as follows:

2 The original articles or amended articles may contain a
3 provision which ~~eliminates~~ eliminating or ~~limits~~ limiting the
4 personal liability of a director, officer, or employee of the
5 corporation or its shareholders for monetary damages for
6 breach of fiduciary duty as a director, officer, or employee,
7 provided that the provision does not eliminate or limit the
8 liability of a director, officer, or employee for a any breach
9 of the director's, officer's, or employee's duty of loyalty to
10 the corporation or its ~~stockholders~~ shareholders, for acts or
11 omissions not in good faith or which involve intentional
12 misconduct or a knowing violation of the law, or for a any
13 transaction from which the director, officer, or employee
14 derives an improper personal benefit. A provision shall not
15 eliminate or limit the liability of a director, officer, or
16 employee for an any act or omission occurring prior to the
17 date when the provision in the articles of incorporation
18 becomes effective.

19 Sec. 6. Section 534.501, subsection 1, paragraph m, Code
20 Supplement 1987, is amended to read as follows:

21 m. A Any provision which ~~eliminates~~ eliminating or ~~limits~~
22 limiting the personal liability of a director to the
23 corporation or its shareholders or members, for monetary
24 damages for breach of fiduciary duty as a director, provided
25 that the provision does not eliminate or limit the liability
26 of a director for a any breach of the director's duty of
27 loyalty to the association or its ~~stockholders~~ shareholders or
28 members, for an ~~act~~ acts or ~~emission~~ omissions not in good
29 faith or which ~~involves~~ involve intentional misconduct or a
30 knowing violation of the law, or for a any transaction from
31 which the director derives an improper personal benefit. A
32 provision shall not eliminate or limit the liability of a
33 director for an any act or omission occurring prior to the
34 date when the provision in the articles of incorporation
35 becomes effective.

EXPLANATION

1
2 This bill relates to changes made by Senate File 471 passed
3 during the 1987 session. References to "stockholders" have
4 been struck and replaced with "shareholders". The bill
5 provides that a corporation may include a provision in its
6 articles of incorporation eliminating or limiting the
7 liability of a director, officer, or other covered individual,
8 but that the corporation is not required to do so. However,
9 if the corporation decides to create a provision eliminating
10 or limiting liability, the provision must be included in the
11 articles of incorporation. Language is struck which disallows
12 indemnification for expenses of a director or officer when the
13 director or officer is found to be liable to the corporation
14 pursuant to section 496A.44. This section imposes liability
15 on the director or officer for certain acts when the director
16 or officer fails to comply with the required standard for
17 performance of duties.

18 COMPANION TO LSB 8139HC

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SENATE FILE 2248

AN ACT
RELATING TO INDEMNIFICATION AND LIMITATION OF LIABILITY OF
DIRECTORS AND OFFICERS AND TO LIABILITY OF PERSONS WHO SERVE
RURAL WATER DISTRICTS, VOLUNTEER AS GUARDIANS OR CONSERVATORS,
OR WHO PROVIDE CHILD FOSTER CARE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 217.11 DEPARTMENT TO PROVIDE
CERTAIN VOLUNTEER SERVICES -- VOLUNTEER LIABILITY.

1. The department of human services shall establish volunteer programs designed to enhance the services provided by the department. Roles for volunteers may include but shall not be limited to parent aides, friendly visitors, commodity distributors, clerical assistants, and medical transporters. Roles for volunteers shall include conservators and guardians. The department shall adopt rules for programs which are established.

2. a. The commissioner shall appoint a coordinator of volunteer services to oversee the provision of services of volunteer conservators and guardians on a volunteer basis to individuals in this state requiring such services. The coordinator, after consulting with personnel assigned to the district of the department, shall recommend to the commissioner how best to serve the needs of individuals in need of the services of a guardian or conservator. Where possible, the coordinator shall recommend that the services be provided on a multicounty basis.

b. The coordinator shall cooperate with the directors of the divisions of the department in providing these services and shall seek out alternative sources for providing the services required under this section.

3. All volunteers registered with the department and in compliance with departmental rules are considered state employees for purposes of chapter 25A. However, this section does not exempt a conservator or guardian from an action brought under section 658.1 or 658.3. This section does not relieve a guardian or conservator from duties under chapter 633.

Sec. 2. NEW SECTION. 357A.22 PERSONAL LIABILITY.

Except as otherwise provided in this chapter, a director, officer, employee, or other personnel of the board are not liable on the district's debts or obligations and a director, officer, employee, or volunteer of the board is not personally liable in that capacity, for a claim based upon an act or omission of the person performed in the discharge of the person's duties, except for any of the following:

1. A breach of the duty of loyalty to the district.
2. Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of the law.
3. A transaction from which the person derives an improper personal benefit.

Sec. 3. Section 491.5, subsection 8, Code Supplement 1987, is amended to read as follows:

8. A Any provision which ~~eliminates~~ eliminating or limits limiting the personal liability of a director to the corporation or its shareholders or members for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a any breach of the director's duty of loyalty to the corporation or its shareholders or members, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or for a any transaction from which the director derives an improper personal benefit. A provision in the articles of incorporation shall not eliminate or limit the liability of a director for an any act or omission occurring prior to the date when the provision becomes effective.

Sec. 4. Section 496A.4A, subsection 7, Code Supplement 1987, is amended to read as follows:

7. Except as limited in subsection 2 with respect to proceedings by or in the right of the corporation, the indemnification and advancement of expenses provided by, or granted pursuant to, the other subsections of this section are not exclusive of any other rights to which those seeking indemnification or advancement of expenses are entitled under a provision in the articles of incorporation or bylaws, agreements, vote of shareholders or disinterested directors, or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office. However, ~~the provisions or agreements~~ indemnification shall not provide indemnification be provided to a director for a any breach of the director's duty of loyalty to the corporation or its ~~stockholders~~ shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or for a any transaction from which the director derives an improper personal benefit; ~~or under section 496A.44.~~

Sec. 5. Section 496A.49, subsection 13, Code Supplement 1987, is amended to read as follows:

13. A Any provision which ~~eliminates~~ eliminating or limits limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision shall not eliminate or limit the liability of a director for a any breach of the director's duty of loyalty to the corporation or its ~~stockholders~~ shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, for a any transaction from which the director derives an improper personal benefit, or under section 496A.44. A provision shall not eliminate or limit the liability of a director for an any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 6. NEW SECTION. 497.34 INDEMNIFICATION.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in section 496A.4A, provided that where section 496A.4A provides for action by shareholders the section is applicable to action by voting members of the cooperative association, and where section 496A.4A refers to the corporation organized under chapter 496A the section is applicable to the cooperative association organized under this chapter, and where section 496A.4A refers to the director the section is applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

Sec. 7. NEW SECTION. 498.36 INDEMNIFICATION.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in section 496A.4A, provided that where section

496A.4A provides for action by shareholders the section is applicable to action by voting members of the cooperative association, and where section 496A.4A refers to the corporation organized under chapter 496A the section is applicable to the cooperative association organized under this chapter, and where section 496A.4A refers to the director the section is applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

Sec. 8. NEW SECTION. 499.59A INDEMNIFICATION.

A cooperative association operating under this chapter may indemnify any present or former director, officer, employee, member, or volunteer in the manner and in the instances authorized in section 496A.4A, provided that where section 496A.4A provides for action by shareholders the section is applicable to action by voting members of the cooperative association, and where section 496A.4A refers to the corporation organized under chapter 496A the section is applicable to the cooperative association organized under this chapter, and where section 496A.4A refers to the director the section is applicable to a director, officer, employee, member, or volunteer of the cooperative association organized under this chapter.

Sec. 9. Section 508C.16, Code Supplement 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. The provisions of section 496A.4A shall apply to the association.

Sec. 10. Section 524.302, subsection 10, Code Supplement 1987, is amended to read as follows:

10. A Any provision which ~~eliminates eliminating~~ or ~~limits limiting~~ the personal liability of a director to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability of a director for a any breach of the director's duty of loyalty to

the corporation or its ~~stockholders~~ shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, for a any transaction from which the director derives an improper personal benefit, or under subsections 1 and 2 of section 524.605. A provision shall not eliminate or limit the liability of a director for an any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 11. Section 533.1, subsection 8, unnumbered paragraph 1, Code Supplement 1987, is amended to read as follows:

The original articles or amended articles may contain a provision which ~~eliminates eliminating~~ or ~~limits limiting~~ the personal liability of a director, officer, or employee of the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, officer, or employee, provided that the provision does not eliminate or limit the liability of a director, officer, or employee for a any breach of the director's, officer's, or employee's duty of loyalty to the corporation or its ~~stockholders~~ shareholders, for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, or for a any transaction from which the director, officer, or employee derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director, officer, or employee for an any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 12. Section 534.501, subsection 1, paragraph m, Code Supplement 1987, is amended to read as follows:

m. A Any provision which ~~eliminates eliminating~~ or ~~limits limiting~~ the personal liability of a director to the corporation or its shareholders or members, for monetary damages for breach of fiduciary duty as a director, provided that the provision does not eliminate or limit the liability

of a director for a any breach of the director's duty of loyalty to the association or its stockholders shareholders or members, for an act acts or omission omissions not in good faith or which involves involve intentional misconduct or a knowing violation of the law, or for a any transaction from which the director derives an improper personal benefit. A provision shall not eliminate or limit the liability of a director for an any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

Sec. 13. The commissioner of human services shall appoint a person in each district to recruit and to assist volunteers to serve as guardians and conservators. The person appointed in each district shall attempt to recruit a sufficient number of qualified volunteers in each county to meet local needs for guardian or conservator services.

Sec. 14. INTERIM STUDY OF ISSUES RELATING TO GUARDIANSHIP AND CONSERVATORSHIP. The legislative council shall create an interim study committee during the 1988 interim to study issues relating to guardianship and conservatorship including, but not limited to, the need for reasons for a shortage of, and means to provide for, surrogate decision makers and case management services for clients, patients, or residents of health care facilities, and residents within communities, who are either temporarily or permanently incapacitated in their decision-making ability regarding health care, money management, or independent living, and who have no family, legally appointed decision maker, or other person willing or able to take responsibility for them. The study committee shall submit a report of its findings and recommendations to the legislative council and the Seventy-third General Assembly, 1989 Session.

Sec. 15. The department shall report to the general assembly by January 15, 1989, on the level of demand for guardianship and conservatorship services, whether the

resources are available to meet the demand, and resources that are needed to handle unmet demand in the areas of recruitment, training, and monitoring of guardians and conservators.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2248, Seventy-second General Assembly.

JOHN P. DWYER
Secretary of the Senate

Approved May 6, 1988

TERRY E. BRANSTAD
Governor