

CHAPTER 1170

LEGAL LIABILITIES OF CERTAIN OFFICERS, EMPLOYEES, AND VOLUNTEERS

S.F. 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 ~~a~~ 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.

Approved May 6, 1988

CHAPTER 1171

REGISTRATION OF VOTERS IN STATE OFFICES

S.F. 2233

AN ACT relating to the registration of voters in state offices.

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

Section 1. Section 48.20, Code Supplement 1987, is amended to read as follows:

48.20 REGISTRATION IN STATE OFFICES.

The registration forms provided in section 48.3 shall be available in the all offices maintained by the state agencies listed in this section. The officers and employees of those agencies shall offer to each person doing business in that office the opportunity to register, unless the officer or employee is reasonably certain that a person doing business in the office has already been offered a registration form within the previous twelve-month period. If the person does execute the form, the form shall be sent to the appropriate commissioner of registration. This section applies to the Iowa civil rights commission and the state departments of human services, human rights, cultural affairs, employment services, revenue and finance, personnel, agriculture and land stewardship, and transportation, and the offices of the clerks of court of the district courts. This section does not prevent the officers or employees of any other state agency from offering voter registration forms to persons in those offices.

The state commissioner of elections is responsible for coordinating and encouraging voter registration activities required by this section. Each department where voter registration is conducted under this section shall report quarterly to the state commissioner the number of registrations completed by the office. The state commissioner shall adopt rules and forms necessary to carry out this section.

Approved May 6, 1988