



Sen. A. J. Wilhelmi

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09700SB1127sam001

LRB097 04845 AEK 53807 a

1 AMENDMENT TO SENATE BILL 1127

2 AMENDMENT NO. _____. Amend Senate Bill 1127 by replacing
3 everything after the enacting clause with the following:

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

1 agent of another corporation, partnership, joint venture,
2 trust or other enterprise, against expenses (including
3 attorneys' fees), judgments, fines and amounts paid in
4 settlement actually and reasonably incurred by such person in
5 connection with such action, suit or proceeding, if such person
6 acted in good faith and in a manner he or she reasonably
7 believed to be in, or not opposed to the best interests of the
8 corporation, and, with respect to any criminal action or
9 proceeding, had no reasonable cause to believe his or her
10 conduct was unlawful. The termination of any action, suit or
11 proceeding by judgment, order, settlement, conviction, or upon
12 a plea of nolo contendere or its equivalent, shall not, of
13 itself, create a presumption that the person did not act in
14 good faith and in a manner which he or she reasonably believed
15 to be in or not opposed to the best interests of the
16 corporation or, with respect to any criminal action or
17 proceeding, that the person had reasonable cause to believe
18 that his or her conduct was unlawful.

19 (b) A corporation may indemnify any person who was or is a
20 party, or is threatened to be made a party to any threatened,
21 pending or completed action or suit by or in the right of the
22 corporation to procure a judgment in its favor by reason of the
23 fact that such person is or was a director, officer, employee
24 or agent of the corporation, or is or was serving at the
25 request of the corporation as a director, officer, employee or
26 agent of another corporation, partnership, joint venture,

1 trust or other enterprise, against expenses (including
2 attorneys' fees) actually and reasonably incurred by such
3 person in connection with the defense or settlement of such
4 action or suit, if such person acted in good faith and in a
5 manner he or she reasonably believed to be in, or not opposed
6 to, the best interests of the corporation, provided that no
7 indemnification shall be made with respect to any claim, issue,
8 or matter as to which such person has been adjudged to have
9 been liable to the corporation, unless, and only to the extent
10 that the court in which such action or suit was brought shall
11 determine upon application that, despite the adjudication of
12 liability, but in view of all the circumstances of the case,
13 such person is fairly and reasonably entitled to indemnity for
14 such expenses as the court shall deem proper.

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

25 (d) Any indemnification under subsections (a) ~~and~~ (b) or
26 (c) (unless ordered by a court) shall be made by the

1 corporation only as authorized in the specific case, upon a
2 determination that indemnification of the present or former
3 director, officer, employee or agent is proper in the
4 circumstances because he or she has met the applicable standard
5 of conduct set forth in subsections (a), (b), or (c) ~~(b)~~. Such
6 determination shall be made with respect to a person who is a
7 director or officer of the corporation at the time of the
8 determination: (1) by the majority vote of the directors who
9 are not parties to such action, suit or proceeding, even though
10 less than a quorum, (2) by a committee of such ~~the~~ directors
11 ~~who are not parties to such action, suit, or proceeding~~, even
12 though less than a quorum, designated by a majority vote of
13 such ~~the~~ directors, (3) if there are no such directors, or if
14 such ~~the~~ directors so direct, by independent legal counsel in a
15 written opinion, or (4) by the shareholders.

16 (e) Expenses (including attorney's fees) incurred by an
17 officer or director of the corporation in defending a civil or
18 criminal action, suit or proceeding may be paid by the
19 corporation in advance of the final disposition of such action,
20 suit or proceeding upon receipt of an undertaking by or on
21 behalf of such ~~the~~ director or officer to repay such amount if
22 it shall ultimately be determined that such person is not
23 entitled to be indemnified by the corporation as authorized in
24 this Section. Such expenses (including attorney's fees)
25 incurred by former directors and officers or other employees
26 and agents of the corporation or by persons serving at the

1 request of the corporation as directors, officers, employees or
2 agents of another corporation, partnership, joint venture,
3 trust or other enterprise may be so paid on such terms and
4 conditions, if any, as the corporation deems appropriate.

5 (f) The indemnification and advancement of expenses
6 provided by or granted under the other subsections of this
7 Section shall not be deemed exclusive of any other rights to
8 which those seeking indemnification or advancement of expenses
9 may be entitled under any by-law, agreement, vote of
10 shareholders or disinterested directors, or otherwise, both as
11 to action in his or her official capacity and as to action in
12 another capacity while holding such office. A right to
13 indemnification or to advancement of expenses arising under a
14 provision of the articles of incorporation or a by-law shall
15 not be eliminated or impaired by an amendment to such provision
16 after the occurrence of the act or omission that is the subject
17 of the civil, criminal, administrative or investigative
18 action, suit or proceeding for which indemnification or
19 advancement of expenses is sought, unless the provision in
20 effect at the time of such act or omission explicitly
21 authorizes such elimination or impairment after such act or
22 omission has occurred.

23 (g) A corporation may purchase and maintain insurance on
24 behalf of any person who is or was a director, officer,
25 employee or agent of the corporation, or who is or was serving
26 at the request of the corporation as a director, officer,

1 employee or agent of another corporation, partnership, joint
2 venture, trust or other enterprise, against any liability
3 asserted against such person and incurred by such person in any
4 such capacity, or arising out of his or her status as such,
5 whether or not the corporation would have the power to
6 indemnify such person against such liability under the
7 provisions of this Section.

8 (h) If a corporation indemnifies or advances expenses to a
9 director or officer under subsection (b) of this Section, the
10 corporation shall report the indemnification or advance in
11 writing to the shareholders with or before the notice of the
12 next shareholders meeting.

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

1 merging corporation if its separate existence had continued.

2 (j) For purposes of this Section, references to "other
3 enterprises" shall include employee benefit plans; references
4 to "fines" shall include any excise taxes assessed on a person
5 with respect to an employee benefit plan; and references to
6 "serving at the request of the corporation" shall include any
7 service as a director, officer, employee or agent of the
8 corporation which imposes duties on, or involves services by
9 such director, officer, employee, or agent with respect to an
10 employee benefit plan, its participants, or beneficiaries. A
11 person who acted in good faith and in a manner he or she
12 reasonably believed to be in the best interests of the
13 participants and beneficiaries of an employee benefit plan
14 shall be deemed to have acted in a manner "not opposed to the
15 best interest of the corporation" as referred to in this
16 Section.

17 (k) The indemnification and advancement of expenses
18 provided by or granted under this Section shall, unless
19 otherwise provided when authorized or ratified, continue as to
20 a person who has ceased to be a director, officer, employee, or
21 agent and shall inure to the benefit of the heirs, executors,
22 and administrators of that person.

23 (l) The changes to this Section made by this amendatory Act
24 of the 92nd General Assembly apply only to actions commenced on
25 or after the effective date of this amendatory Act of the 92nd
26 General Assembly.

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

2 Section 10. The General Not For Profit Corporation Act of
3 1986 is amended by changing Section 108.75 as follows:

4 (805 ILCS 105/108.75) (from Ch. 32, par. 108.75)

5 Sec. 108.75. Indemnification of officers, directors,
6 employees and agents; insurance.

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

1 proceeding by judgment, order, settlement, conviction, or upon
2 a plea of nolo contendere or its equivalent, shall not, of
3 itself, create a presumption that the person did not act in
4 good faith and in a manner which he or she reasonably believed
5 to be in or not opposed to the best interests of the
6 corporation or, with respect to any criminal action or
7 proceeding, that the person had reasonable cause to believe
8 that his or her conduct was unlawful.

9 (b) 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 or suit by or in the right of the
12 corporation to procure a judgment in its favor by reason of the
13 fact that such person is or was a director, officer, employee
14 or agent of the corporation, or is or was serving at the
15 request of the corporation as a director, officer, employee or
16 agent of another corporation, partnership, joint venture,
17 trust or other enterprise, against expenses (including
18 attorneys' fees) actually and reasonably incurred by such
19 person in connection with the defense or settlement of such
20 action or suit, if such person acted in good faith and in a
21 manner he or she reasonably believed to be in, or not opposed
22 to, the best interests of the corporation, provided that no
23 indemnification shall be made in respect of any claim, issue or
24 matter as to which such person shall have been adjudged to be
25 liable for negligence or misconduct in the performance of his
26 or her duty to the corporation, unless, and only to the extent

1 that the court in which such action or suit was brought shall
2 determine upon application that, despite the adjudication of
3 liability, but in view of all the circumstances of the case,
4 such person is fairly and reasonably entitled to indemnity for
5 such expenses as the court shall deem proper.

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

16 (d) Any indemnification under subsections (a), ~~and~~ (b), or
17 (c) (unless ordered by a court) shall be made by the
18 corporation only as authorized in the specific case, upon a
19 determination that indemnification of the present or former
20 director, officer, employee or agent is proper in the
21 circumstances because he or she has met the applicable standard
22 of conduct set forth in subsections (a), (b), or (c) ~~(b)~~. Such
23 determination shall be made with respect to a person who is a
24 director or officer of the corporation at the time of the
25 determination: (1) by the majority vote of the directors who
26 are not parties to such action, suit or proceeding, even though

1 less than a quorum, (2) by a committee of such ~~the~~ directors
2 ~~designated by a majority vote of the directors~~, even though
3 ~~through~~ less than a quorum, designated by a majority vote of
4 such directors, (3) if there are no such directors, or if such
5 ~~the~~ directors so direct, by independent legal counsel in a
6 written opinion, or (4) by the members entitled to vote, if
7 any.

8 (e) Expenses (including attorney's fees) incurred by an
9 officer or director of the corporation in defending a civil or
10 criminal action, suit or proceeding may be paid by the
11 corporation in advance of the final disposition of such action,
12 suit or proceeding, as authorized by the board of directors in
13 the specific case, upon receipt of an undertaking by or on
14 behalf of such ~~the~~ director or officer to repay such amount,
15 unless it shall ultimately be determined that such person is
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 ~~the~~
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 ~~by-law~~, agreement, vote of
3 members or disinterested directors, or otherwise, both as to
4 action in his or her official capacity and as to action in
5 another capacity while holding such office, ~~and shall continue~~
6 ~~as to a person who has ceased to be a director, officer,~~
7 ~~employee or agent, and shall inure to the benefit of the heirs,~~
8 ~~executors and administrators of such a person.~~ A right to
9 indemnification or to advancement of expenses arising under a
10 provision of the articles of incorporation or a by-law shall
11 not be eliminated or impaired by an amendment to such provision
12 after the occurrence of the act or omission that is the subject
13 of the civil, criminal, administrative or investigative
14 action, suit or proceeding for which indemnification or
15 advancement of expenses is sought, unless the provision in
16 effect at the time of such act or omission explicitly
17 authorizes such elimination or impairment after such act or
18 omission has occurred.

19 (g) A corporation may purchase and maintain insurance on
20 behalf of any person who is or was a director, officer,
21 employee or agent of the corporation, or who is or was serving
22 at the request of the corporation as a director, officer,
23 employee or agent of another corporation, partnership, joint
24 venture, trust or other enterprise, against any liability
25 asserted against such person and incurred by such person in any
26 such capacity, or arising out of his or her status as such,

1 whether or not the corporation would have the power to
2 indemnify such person against such liability under the
3 provisions of this Section.

4 (h) In the case of a corporation with members entitled to
5 vote, if a corporation indemnifies or advances expenses under
6 subsection (b) of this Section to a director or officer, the
7 corporation shall report the indemnification or advance in
8 writing to the members entitled to vote with or before the
9 notice of the next meeting of the members entitled to vote.

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

25 (j) For purposes of this Section, references to "other
26 enterprises" shall include employee benefit plans; references

1 to "fines" shall include any excise taxes assessed on a person
2 with respect to an employee benefit plan; and references to
3 "serving at the request of the corporation" shall include any
4 service as a director, officer, employee or agent of the
5 corporation which imposes duties on, or involves services by
6 such director, officer, employee, or agent with respect to an
7 employee benefit plan, its participants, or beneficiaries. A
8 person who acted in good faith and in a manner he or she
9 reasonably believed to be in the best interests of the
10 participants and beneficiaries of an employee benefit plan
11 shall be deemed to have acted in a manner "not opposed to the
12 best interests of the corporation" as referred to in this
13 Section.

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

20 (l) ~~(k)~~ The changes to this Section made by this amendatory
21 Act of the 92nd General Assembly apply only to actions
22 commenced on or after the effective date of this amendatory Act
23 of the 92nd General Assembly.

24 (Source: P.A. 92-33, eff. 7-1-01.); and

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.".