64B.08 PERSONAL LIABILITY; INDEMNIFICATION; INSURANCE; ADVANCES.

Subdivision 1. **No personal liability.** The officers and members of the supreme governing body or any subordinate body of a society shall not be personally liable for any benefits provided by a society.

Subd. 2. **Indemnification.** A person may be indemnified and reimbursed by a society for expenses reasonably incurred by and liabilities imposed upon the person in connection with or arising out of any action, suit, or proceeding, whether civil, criminal, administrative, or investigative, or threat thereof, in which the person may be involved by reason of the fact that the person is or was a director, officer, employee, or agent of the society or of any firm, corporation, or organization which the person served in any capacity at the request of the society. A person shall not be so indemnified or reimbursed (1) in relation to any matter in the action, suit, or proceeding as to which the person shall finally be adjudged to be or have been guilty of breach of a duty as a director, officer, employee, or agent of the society, or (2) in relation to any matter in the action, suit, or proceeding, or threat thereof, which has been made the subject of a compromise settlement, unless in either such case the person acted in good faith for a purpose the person reasonably believed to be in or not opposed to the best interests of the society and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that the person's conduct was unlawful. The determination whether the conduct of the person met the standard required in order to justify indemnification and reimbursement in relation to any matter described in clause (1) or (2) may only be made by the supreme governing body or board of directors by a majority vote of a quorum consisting of persons who were not parties to the action, suit, or proceeding or by a court of competent jurisdiction. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, as to the person shall not in itself create a conclusive presumption that the person did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which the person may be entitled as a matter of law and shall inure to the benefit of heirs, executors, and administrators.

Subd. 3. **Insurance.** A society may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the society, or who is or was serving at the request of the society as a director, officer, employee, or agent of any other firm, corporation, or organization against any liability asserted against the person and incurred in any such capacity or arising out of the person's status as such, whether or not the society would have the power to indemnify the person against such liability under this section.

Subd. 4. **Advances.** If a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the society, to payment or reimbursement by the society of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding, (1) upon receipt by the society of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 and the bylaws of the society have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the society, if it is ultimately determined that the criteria for indemnification have not been satisfied; and (2) after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking required by clause (1) is an unlimited general obligation of the person making it but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Subd. 5. **Elimination or limitation of liability.** A director's personal liability to the society, supreme governing body, or members for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles shall not eliminate or limit the liability of a director:

(1) for any breach of the director's duty of loyalty to the society, the supreme governing body, or its members;

(2) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

(3) for any transaction from which the director derived an improper personal benefit; or

(4) for any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

History: *1985 c 49 s 8; 1986 c 444; 1987 c 33 s 1,2*