

LEGISLATIVE BILL 285

Approved by the Governor March 20, 1987

Introduced by Lynch, 13

AN ACT relating to schools; to amend section 79-4,155, Reissue Revised Statutes of Nebraska, 1943; to define terms for the purpose of granting to technical community colleges the power to indemnify and purchase liability insurance as prescribed; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 79-4,155, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

79-4,155. (1) A school district shall have the right to indemnify as follows:

(a) ~~(1)~~ A school district shall have power to indemnify any person, who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the school district, by reason of the fact that he or she is or was a school board member, officer, employee, or agent of the school district, against expenses, including ~~attorneys'~~ attorney's fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the school district, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the school district and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful;

(b) ~~(2)~~ A school district shall have power to

indemnify any person, who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the school district to procure a judgment in its favor by reason of the fact that he or she is or was a school board member, officer, employee, or agent of the school district, against expenses, including ~~attorneys'~~ attorney's fees, actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the school district, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the school district unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper;

(c) ~~{3}~~ To the extent that a school board member, officer, employee, or agent of a school district has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subdivisions ~~{1}~~ (a) and ~~{2}~~ (b) of this ~~section~~ subsection, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including ~~attorneys'~~ attorney's fees, actually and reasonably incurred by him or her in connection therewith;

(d) ~~{4}~~ Any indemnification under subdivisions ~~{1}~~ (a) and ~~{2}~~ (b) of this ~~section~~ subsection, unless ordered by a court, shall be made by the school district only as authorized in the specific case upon a determination that indemnification of the school board member, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subdivisions ~~{1}~~ (a) and ~~{2}~~ (b) of this ~~section~~ subsection. Such determination shall be made by the school board members by a majority vote of a quorum consisting of school board members who were not parties to such action, suit, or proceeding; or, if such a quorum is not obtainable; or, even if obtainable a quorum of disinterested board members so directs, by independent legal counsel in a written opinion;

(e) ~~(5)~~ Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the school district in advance of the final disposition of such action, suit, or proceeding as authorized in the manner provided in subdivision ~~(4)~~ (d) of this ~~section~~ subsection upon receipt of an undertaking by or on behalf of the school board member, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the school district as authorized in this section;

(f) ~~(6)~~ The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any agreement, either as to action in his or her official capacity or as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a school board member, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person; and

(g) ~~(7)~~ A school district shall have power to purchase and maintain insurance on behalf of any person who is or was a school board member, officer, employee, or agent of the school district against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the school district would have the power to indemnify him or her against such liability under the ~~provisions of this section~~ subsection.

(2) As used in this section, unless the context otherwise requires: (a) School district shall mean a school district as defined in section 79-101 and a technical community college area as defined in section 79-2637; and (b) school board shall mean a school board as defined in section 79-101 and the governing board of a technical community college area as provided in section 79-2640.

Sec. 2. That original section 79-4,155, Reissue Revised Statutes of Nebraska, 1943, is repealed.