

CREDIT UNION ACT (EXCERPT)
Act 215 of 2003

490.383 Discharge of duties by officers; standards; indemnification.

Sec. 383.

(1) An official of a domestic credit union shall discharge the duties of his or her position in good faith and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position. In discharging his or her duties, an official may rely upon the opinion of legal counsel for the domestic credit union, upon the report of an independent appraiser selected with reasonable care by the board or by an officer of the domestic credit union, or upon financial statements of the domestic credit union represented to him or her to be correct by the general manager or the officer of the domestic credit union having charge of its records, or as stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the domestic credit union.

(2) A domestic credit union may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal, other than an action by or on behalf of the domestic credit union, because he or she is or was an official, employee, or agent of the domestic credit union or is or was serving at the request of the domestic credit union as an official, employee, or agent of 1 or more domestic credit unions or other profit or nonprofit enterprises, for attorney fees, judgments, penalties, fines, amounts paid in settlement, and other expenses actually and reasonably incurred by him or her in connection with the action, suit, or proceeding. A domestic credit union may only indemnify a person under this subsection if the person 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 domestic credit union or its members, and with respect to a criminal action or proceeding, if the person had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or a plea of nolo contendere or its equivalent, does not of itself create a presumption that the person did not act in good faith and in a manner that he or she reasonably believed to be in or not opposed to the best interests of the domestic credit union or its members and with respect to a criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

(3) A domestic credit union may indemnify a person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action or suit, by or on behalf of the domestic credit union to procure a judgment in its favor by reason of the fact that he or she is or was an official, employee, or agent of the domestic credit union or is or was serving at the request of the domestic credit union as an official, employee, or agent of 1 or more domestic credit unions or other profit or nonprofit enterprises, for actual and reasonable attorney fees, amounts paid in settlement incurred by the person in connection with the action or suit, and other expenses. A domestic credit union may only indemnify a person under this subsection if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the domestic credit union or its members and a domestic credit union shall not indemnify a person for a claim, issue, or matter in which the person has been found liable to the domestic credit union unless and only to the extent that the court in which the action or suit was brought has determined upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnification for the expenses that the court considers proper.

(4) To the extent that an official, employee, or agent of a domestic credit union is successful on the merits or otherwise in defense of an action, suit, or proceeding described in subsection (8), or in defense of any claim, issue, or matter in the action, suit, or proceeding, the domestic credit union shall indemnify the person for actual and reasonable attorney fees and other expenses incurred by him or her in connection with the action, suit, or proceeding and any action, suit, or proceeding brought to enforce the mandatory indemnification provided in this subsection.

(5) Unless ordered by a court, a domestic credit union shall indemnify a person under subsection (2) or (3) only for the action, suit, or proceeding specified by the domestic credit union in the determination described in this subsection and only if the domestic credit union obtains from 1 of the following a determination that indemnification of the person is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (2) or (3):

(a) The credit union board, by a majority vote of a quorum of the board consisting of directors who are or were not parties to the action, suit, or proceeding.

(b) If a quorum described in subdivision (a) is not obtainable, a committee of directors that consists of 2 or more directors who are or were not parties to the action, by majority vote.

(c) Independent legal counsel in a written opinion.

(d) The members.

(6) If a person is entitled to indemnification under subsection (2) or (3) for a portion of attorney fees, judgments, penalties, fines, amounts paid in settlement, and other expenses, but not for the total amount of the expenses, the domestic credit union may indemnify the person for the portion of the attorney fees, judgments, penalties, fines, amounts paid in settlement, or other expenses for which the person is entitled to indemnification.

(7) A domestic credit union may pay expenses incurred by a person in defending a civil or criminal action, suit, or proceeding described in subsection (2) or (3) before the final disposition of the action, suit, or proceeding if the domestic credit union receives an unlimited, general, secured, or unsecured guarantee by or on behalf of the person to repay the expenses if it is ultimately determined that the person is not entitled indemnification from the domestic credit union.

(8) An indemnification or advance of expenses provided under subsections (2) to (7) is not exclusive of other rights to which a person seeking indemnification or advancement of expenses is entitled under the bylaws or an agreement. The total amount of expenses advanced or indemnified from all sources combined shall not exceed the amount of actual expenses incurred by the person seeking the indemnification or advance of expenses. An indemnification provided under subsections (2) to (7) continues after the person ceases to be an official, employee, or agent and inures to the benefit of the heirs, executors, and administrators of the person.

(9) As used in subsections (2) to (8), "domestic credit union" includes all other credit unions that become related to a domestic credit union by a consolidation or merger and the resulting or continuing credit union. A person who is or was an official, employee, or agent of a domestic credit union that is consolidated or merged into the domestic credit union or is or was serving at the request of a credit union that is consolidated or merged into the domestic credit union as an official, partner, trustee, employee, or agent of 1 or more other credit unions, or other profit or nonprofit enterprises is in the same position under this section with respect to the resulting or continuing credit union as he or she would if he or she had served the resulting or continuing credit union in the same capacity.

History: 2003, Act 215, Eff. June 1, 2004