

**16-6a-901 Indemnification definitions.**

As used in this part:

- (1)
  - (a) "Director" means an individual who:
    - (i) is or was a director of a nonprofit corporation; or
    - (ii) while a director of a nonprofit corporation at the nonprofit corporation's request, is or was serving as a director, officer, partner, member, manager, trustee, employee, fiduciary, or agent of:
      - (A) another domestic or foreign corporation;
      - (B) another nonprofit corporation;
      - (C) another person; or
      - (D) an employee benefit plan.
  - (b) A director is considered to be serving an employee benefit plan at the nonprofit corporation's request if the director's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, the director to the employee benefit plan or to participants in or beneficiaries of the employee benefit plan.
  - (c) "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.
- (2) "Expenses" includes attorneys' fees.
- (3) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, or fine, including:
  - (a) an excise tax assessed with respect to an employee benefit plan; or
  - (b) reasonable expenses.
- (4) "Nonprofit corporation" includes any domestic or foreign entity that is a predecessor of a nonprofit corporation by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- (5)
  - (a) "Officer," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the nonprofit corporation, at the nonprofit corporation's request, is or was serving as a director, officer, partner, trustee, employee, fiduciary, or agent of:
    - (i) another domestic or foreign corporation;
    - (ii) another person; or
    - (iii) an employee benefit plan.
  - (b) An officer, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the nonprofit corporation's request if that person's duties to the nonprofit corporation also impose duties on, or otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan.
  - (c) Unless the context requires otherwise, "officer," "employee," "fiduciary," and "agent" include the estates or personal representatives of the officer, employee, fiduciary, or agent.
- (6)
  - (a) "Official capacity" means:
    - (i) when used with respect to a director, the office of director in a corporation; and
    - (ii) when used with respect to a person other than a director, as contemplated in Section 16-6a-907, the office in a corporation held by the officer or the employment, fiduciary, or agency relationship undertaken by the person on behalf of the corporation.
  - (b) "Official capacity" does not include service for any:
    - (i) other foreign or domestic corporation;
    - (ii) other person; or

- (iii) employee benefit plan.
- (7) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.
- (8) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Enacted by Chapter 300, 2000 General Session