

**16-6a-906 Determination and authorization of indemnification of directors.**

- (1)
  - (a) A nonprofit corporation may not indemnify a director under Section 16-6a-902 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 16-6a-902.
  - (b) A nonprofit corporation may not advance expenses to a director under Section 16-6a-904 unless:
    - (i) authorized in the specific case after the written affirmation and undertaking required by Subsections 16-6a-904(1)(a) and (1)(b) are received; and
    - (ii) the determination required by Subsection 16-6a-904(1)(c) has been made.
- (2)
  - (a) The determinations required by Subsection (1) shall be made:
    - (i) by the board of directors by a majority vote of those present at a meeting at which a quorum is present if only those directors not parties to the proceeding are counted in satisfying the quorum;
    - (ii) if a quorum cannot be obtained under Subsection (2)(a)(i), by a majority vote of a committee of the board of directors:
      - (A) designated by the board of directors; and
      - (B) consisting of two or more directors not parties to the proceeding; or
    - (iii) by persons listed in Subsection (3).
  - (b) The directors who are parties to the proceeding may participate in the designation of directors for the committee described in Subsection (2)(a)(ii).
- (3)
  - (a) The determination required to be made by Subsection (1) shall be made by a person described in Subsection (3)(b) if:
    - (i)
      - (A) a quorum cannot be obtained in accordance with Subsection (2)(a)(i); and
      - (B) a committee cannot be established under Subsection (2)(a)(ii); or
    - (ii) even if a quorum is obtained or a committee is designated, a majority of the directors constituting the quorum or committee directs.
  - (b) If a condition described in Subsection (3)(a) is met, the determination required to be made by Subsection (1) shall be made:
    - (i) by independent legal counsel selected by:
      - (A) a vote of the board of directors or the committee in the manner specified in Subsection (2)(a)(i) or (ii); or
      - (B) if a quorum of the full board cannot be obtained and a committee cannot be established, by independent legal counsel selected by a majority vote of the full board of directors; or
    - (ii) by the voting members, but a voting member may not vote on the determination if the voting member is:
      - (A) a director; and
      - (B) at the time seeking indemnification.
- (4)
  - (a) Except as provided in Subsection (4)(b), an authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible.
  - (b) Notwithstanding Subsection (4)(a), if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of

indemnification and advance of expenses shall be made by the body that selected the independent legal counsel.

Enacted by Chapter 300, 2000 General Session