

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

487.13904 Indemnification.

Sec. 3904. (1) A bank may indemnify a person described in subsection (2) who was or is a party or is threatened to be made a party to any type of threatened, pending, or completed action, suit, or proceeding, other than an action by or in the right of the bank, against expenses, including attorney fees, judgments, penalties, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit, or proceeding 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 bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(2) Subsection (1) applies to a person who is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another depository institution, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not.

(3) The termination of an action, suit, or proceeding by judgment, order, settlement, or conviction, or upon 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 bank or its shareholders and with respect to a criminal action or proceeding had no reasonable cause to believe his or her conduct was unlawful.

(4) A bank may indemnify a person who was or is a party to or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the bank to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee, or agent of the bank or is or was serving at the request of the bank as a director, officer, partner, trustee, employee, or agent of another bank or national banking association, foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, whether for profit or not, against expenses, including actual and reasonable attorney fees and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or suit, 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 bank or its shareholders. Indemnification shall not be made for a claim, issue, or matter in which the person has been found liable to the bank except as authorized in subsection (5).

(5) A director, officer, employee, or agent of the bank who is a party or threatened to be made a party to an action, suit, or proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice it considers necessary may order indemnification if it determines that the person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he or she met the applicable standard of conduct set forth in this section or was adjudged liable, but if he or she was adjudged liable, his or her indemnification is limited to reasonable expenses incurred.

History: 1999, Act 276, Eff. Mar. 1, 2000.