

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 797
SENATE BILL 635

1 AN ACT TO AMEND CHAPTER 55 OF THE GENERAL STATUTES RELATING TO
2 BUSINESS CORPORATIONS SO AS TO PROVIDE FOR INDEMNIFICATION OF
3 CERTAIN PERSONS, THE PURCHASE OF INDEMNIFICATION INSURANCE, AND
4 CERTAIN OTHER SECTIONS.

5
6 The General Assembly of North Carolina do enact:
7

8 **Section 1.** G.S. 55-19 is hereby amended and rewritten to read as follows:

9 **Section 55-19. Indemnification of Directors, Officers, Employees or Agents; General**
10 **Provisions.** (a) Except as indemnification of a director or officer of a corporation is permitted
11 by this Section or by G.S. 55-20 and 55-21, no provision, hereafter made or adopted, whether
12 contained in the charter, the bylaws, a resolution, a contract or otherwise, whereby the
13 corporation purports to exempt or indemnify any director or officer of a corporation with
14 respect to any liability or litigation expenses arising out of his activities as director or officer
15 shall be valid.

16 (b) As used in this Section and in G.S. 55-20 and 55-21, the term "officer" includes any
17 dominant shareholder engaged to perform services for the corporation, whether as employee or
18 independent contractor; and the term "person" includes the legal representative of such person.

19 (c) Anything in this Section or in G.S. 55-20 or 55-21 to the contrary notwithstanding, a
20 corporation shall have power to purchase and maintain insurance on behalf of any person who
21 is or was a director, officer, employee or agent of the corporation, or is or was serving at the
22 request of the corporation as a director, officer, employee or agent of another corporation,
23 partnership, joint venture, trust or other enterprise against any liability asserted against him and
24 incurred by him in any such capacity, or arising out of his status as such, whether or not the
25 corporation would have the power to indemnify him against such liability.

26 (d) Expenses incurred by a director, officer, employee or agent in defending a civil or
27 criminal action, suit or proceeding may be paid by the corporation in advance of the final
28 disposition of such action, suit or proceeding as authorized by the board of directors in the
29 specific case upon receipt of an undertaking by or on behalf of the director, officer, employee
30 or agent to repay such amount unless it shall ultimately be determined that he is entitled to be
31 indemnified by the corporation as authorized in this Section."

32 **Sec. 2.** G.S. 55-20 is hereby amended and rewritten to read as follows:

33 **"Section 55-20. Indemnification in Actions by Outsiders.** (a) When because of his duties or
34 activities while serving as director, officer, employee or agent of a corporation, or in any such
35 capacity at the request of the corporation in any other corporation, partnership, joint venture,
36 trust or other enterprise, any person is or was a party or is threatened to be made a party to any
37 threatened, pending or completed action, suit or proceedings, whether civil, criminal,
38 administrative or investigative, not brought by the corporation nor brought by any party seeking
39 derivatively to enforce a liability of such a person to the corporation, such person shall be
40 entitled to indemnification or reimbursement by the corporation for any expenses, including
41 attorneys' fees, or any liabilities which he may have incurred in consequence of such action,
42 suit or proceeding, under the following conditions:

- 1 (1) If such person is wholly successful in his defense on the merits, or if the
2 proceeding is an administrative or investigative proceeding which does not
3 result in the indictment, fine or penalty of such person, he shall be entitled to
4 reimbursement from the corporation of all his reasonable expenses of
5 defense or participation, including attorneys' fees.
- 6 (2) If such person is wholly successful in his defense otherwise than solely on
7 the merits, the corporation may pay or agree to pay to him such expenses of
8 defense or participation, including attorneys' fees, as the board of directors in
9 good faith shall deem reasonable, regardless of any adverse interest of any or
10 all the directors.
- 11 (3) If such person is not wholly successful or is unsuccessful in his defense, or
12 the proceeding to which he is a party results in his indictment, fine or
13 penalty, the corporation may pay or agree to pay, in whole or in part, such
14 expenses of defense or participation, including attorneys' fees, and the
15 amount of any judgment, money decree, fine, penalty or settlement for
16 which he may have become liable, if
- 17 (i) a plan for such payment is approved by a consent in writing signed
18 by the holders of all shares entitled to vote or such plan is sent to the
19 holders of all shares entitled to vote, with notice of a shareholders'
20 meeting, whether annual or special, to be held to take action thereon
21 and if at such meeting a plan is approved by the holders of a majority
22 of such shares, exclusive of the shares held directly or indirectly by
23 any persons to be benefited by the plan if approved, or
- 24 (ii) a majority of a quorum consisting of directors who are not parties to
25 such action, suit or proceeding shall determine that such person acted
26 in good faith and in a manner he reasonably believed to be in the best
27 interests of the corporation, and, with respect to any criminal action
28 or proceeding, had no reasonable cause to believe his conduct was
29 unlawful, or
- 30 (iii) in a proceeding brought by such person for such determination in the
31 Superior Court of the district where the corporation has its registered
32 office it shall be determined that such person acted in good faith and
33 in a manner he reasonably believed to be in the best interests of the
34 corporation, and, with respect to any criminal action or proceeding,
35 had no reasonable cause to believe his conduct was unlawful. In such
36 a proceeding, the court in its discretion may order notice thereof to
37 be sent to the shareholders of the corporation in such manner and in
38 such form as it may deem appropriate, at the expense of the
39 corporation; and it may allow all shareholders so notified to be heard
40 in opposition to the determination requested.
- 41 (b) The termination of any action, suit or proceeding by judgment, order, settlement,
42 conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a
43 presumption that the person did not act in good faith and in a manner which he reasonably
44 believed to be in the best interests of the corporation, and, with respect to any criminal action or
45 proceeding, had reasonable cause to believe that his conduct was unlawful."

46 **Sec. 3.** G.S. 55-21(a) is hereby amended and rewritten to read as follows:

- 47 "(a) When a present or former director, officer, employee or agent of a corporation or
48 any person who has served or is serving in such capacity at the request of the corporation in any
49 other corporation, partnership, joint venture, trust or other enterprise, is sued, alone or with
50 others, in the courts of this State, in any action seeking to establish his liability to the
51 corporation arising out of his alleged dereliction of duty to the corporation, he shall in turn be

1 entitled to indemnification or reimbursement from the corporation for so much of his expenses
2 of defense, including attorneys' fees, as the court in its discretion, upon motion for
3 indemnification or reimbursement, duly made in such action, finds to be reasonable, if:

4 (1) Such person is successful in whole or in part in the action against him or in
5 any settlement thereof and the court finds that his conduct fairly and
6 equitably merits such relief;

7 or

8 (2) The court finds, despite his adjudication of liability, that such person has
9 acted honestly and reasonably and that, in view of all the circumstances of
10 the case, his conduct fairly and equitably merits such relief."

11 **Sec. 4.** G.S. 55-155(a) is hereby amended by striking out the first word of the first
12 sentence following the catchline, "The" and inserting in lieu thereof the words. "In addition to
13 any taxes prescribed by G.S. 55-156,".

14 **Sec. 5.** G.S. 55-156(a) is hereby amended by striking out the first word of the first
15 sentence following the catchline, "On", and inserting in lieu thereof the words. "In addition to
16 any fees prescribed by G.S. 55-155,".

17 **Sec. 6.** All laws and clauses of laws in conflict with this Act are hereby repealed.

18 **Sec. 7.** This Act shall be effective from and after its ratification.

19 In the General Assembly read three times and ratified, this the 12th day of June,
20 1969.