

2006

CHAPTER 26

An Act to amend certain Statutes with respect to Indemnification of
and Insurance for Directors, Officers and certain Other Individuals

(Assented to May 19, 2006)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of
Saskatchewan, enacts as follows:

PART I Short Title

Short title

1 This Act may be cited as *The Miscellaneous Statutes (Directors' and Officers' Indemnification and Insurance) Amendment Act, 2006*.

PART II *The Business Corporations Act*

R.S.S. 1978, c.B-10 amended

2(1) *The Business Corporations Act* is amended in the manner set forth in this section.

(2) The following subsection is added after subsection 117(3):

“Reliance on statements

(4) An officer or director has complied with his or her duty set out in subsection (1) if he or she relies in good faith upon:

(a) financial statements of the corporation represented to him or her by an officer of the corporation or in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation; or

(b) a report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him or her”.

(3) Section 119 is repealed and the following substituted:

“Indemnification and insurance

119(1) A corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation, or another individual who acts or acted at the corporation's request as a director or officer of or in a similar capacity for another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, that the individual reasonably incurs with respect to any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity, if:

(a) the individual acted honestly and in good faith with a view to the best interests of, as the case may be:

(i) the corporation; or

(ii) the other entity for which, at the corporation's request, the individual acted as a director or officer or in a similar capacity; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

(2) A corporation may advance moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding mentioned in subsection (1), but the individual must repay the moneys to the corporation if the individual does not fulfil the conditions set out in clauses (1)(a) and (b).

(3) With respect to an action by or on behalf of a corporation or other entity to procure a judgment in its favour, the corporation or other entity, with the approval of the court, may indemnify an individual mentioned in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with that action, or advance moneys to that individual pursuant to subsection (2) for the costs, charges and expenses reasonably incurred by the individual in connection with that action, if the individual:

(a) is made a party to the action because of the individual's association with the corporation or other entity as described in subsection (1); and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(4) Notwithstanding subsection (1), an individual mentioned in that subsection is entitled to indemnity from the corporation against all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the corporation or other entity as described in subsection (1), if the individual seeking indemnity:

(a) was not judged by the court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(5) A corporation may purchase and maintain insurance for the benefit of an individual mentioned in subsection (1) against any liability incurred by the individual in the individual's capacity:

(a) as a director or officer of the corporation; or

(b) as a director or officer of another entity, or in a similar capacity, if the individual acts or acted in that capacity at the corporation's request.

(6) A corporation, an individual or an entity mentioned in subsection (1) may apply to the court for an order approving an indemnity pursuant to this section, and the court may so order and make any further order that it sees fit.

(7) An applicant pursuant to subsection (6) shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

(8) On an application pursuant to subsection (6), the court may order notice to be given to any interested person, and that person is entitled to appear and be heard in person or by counsel”.

PART III
The Credit Union Act, 1998

S.S. 1998, c.C-45.2 amended

3(1) *The Credit Union Act, 1998* is amended in the manner set forth in this section.

(2) **Section 112 is amended:**

(a) **by renumbering it as subsection 112(1); and**

(b) **by adding the following subsection after subsection (1):**

“(2) An officer or director has complied with his or her duty set out in subsection (1) if he or she relies in good faith:

(a) on statements of fact represented to him or her by an officer of the credit union to be correct; or

(b) on statements contained in a written report or opinion of the auditor of the credit union or a professional adviser engaged by the credit union who is competent to give advice with respect to the matter”.

(3) **Section 116 is repealed and the following substituted:**

“**Indemnification**

116(1) A credit union may indemnify a director or officer of the credit union, a former director or officer of the credit union, a member of any committee appointed by the board, or another individual who acts or acted at the credit union’s request as a director or officer of or in a similar capacity for another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, that the individual reasonably incurs with respect to any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the credit union or other entity, if:

(a) the individual acted honestly and in good faith with a view to the best interests of, as the case may be:

(i) the credit union; or

(ii) the other entity for which, at the credit union’s request, the individual acted as a director or officer or in a similar capacity; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

(2) A credit union may advance moneys to a director, officer or other individual mentioned in subsection (1) for the costs, charges and expenses of a proceeding mentioned in that subsection, but the individual must repay the moneys to the credit union if the individual does not fulfil the conditions set out in clauses (1)(a) and (b).

(3) With respect to an action by or on behalf of a credit union or other entity to procure a judgment in its favour, the credit union or other entity, with the approval of the court, may indemnify an individual mentioned in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with that action, or advance moneys to that individual pursuant to subsection (2) for the costs, charges and expenses reasonably incurred by the individual in connection with that action, if the individual:

(a) is made a party to the action because of the individual's association with the credit union or other entity as described in subsection (1); and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(4) Notwithstanding subsection (1), an individual mentioned in that subsection is entitled to indemnity from the credit union against all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the credit union or other entity as described in subsection (1), if the individual seeking indemnity:

(a) was not judged by the court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(5) A credit union, an individual or an entity mentioned in subsection (1) may apply to the court for an order approving an indemnity pursuant to this section, and the court may so order and make any further order that it sees fit.

(6) An applicant pursuant to subsection (5) shall give notice of the application to:

(a) the registrar, and the registrar is entitled to appear and be heard in person or by counsel; and

(b) CUDGC, and CUDGC is entitled to appear and be heard by counsel.

(7) On an application pursuant to subsection (5), the court may order notice to be given to any interested person, and that person is entitled to appear and be heard in person or by counsel”.

(4) Section 117 is repealed and the following substituted:

“Insurance

117 A credit union may purchase and maintain insurance for the benefit of any of the following individuals against any liability incurred by the individual in the individual’s capacity:

- (a) as a director, officer, member of any committee appointed by the board, or employee of the credit union; or
- (b) as a director, officer, member of a committee or employee of another entity, or in a similar capacity, if the individual acts or acted in that capacity at the credit union’s request”.

PART IV

The Crown Corporations Act, 1993

S.S. 1993, c.C-50.101 amended

4(1) *The Crown Corporations Act, 1993* is amended in the manner set forth in this section.

(2) Subsection 46(2) is amended in the portion preceding clause (a) by adding “has complied with his or her duty set out in subsection (1) and” after “director”.

(3) Section 48 is repealed and the following substituted:

“Indemnification and insurance

48(1) A Crown corporation or designated subsidiary Crown corporation may indemnify a director or officer of the Crown corporation or designated subsidiary Crown corporation, a former director or officer of the Crown corporation or designated subsidiary Crown corporation, or another individual who acts or acted at the Crown corporation’s or designated subsidiary Crown corporation’s request as a director or officer of or in a similar capacity for another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, that the individual reasonably incurs with respect to any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Crown corporation, designated subsidiary Crown corporation or other entity, if:

- (a) the individual acted honestly and in good faith with a view to the best interests of, as the case may be:
 - (i) the Crown corporation or designated subsidiary Crown corporation; or

- (ii) the other entity for which, at the Crown corporation's or designated subsidiary Crown corporation's request, the individual acted as a director or officer or in a similar capacity; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.
- (2) A Crown corporation or designated subsidiary Crown corporation may advance moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding mentioned in subsection (1), but the individual must repay the moneys to the corporation if the individual does not fulfil the conditions set out in clauses (1)(a) and (b).
- (3) With respect to an action by or on behalf of a Crown corporation, designated subsidiary Crown corporation or other entity to procure a judgment in its favour, the Crown corporation, designated subsidiary Crown corporation or other entity, with the approval of a court, may indemnify an individual mentioned in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with that action, or advance moneys to that individual pursuant to subsection (2) for the costs, charges and expenses reasonably incurred by the individual in connection with that action, if the individual:
 - (a) is made a party to the action because of the individual's association with the Crown corporation, designated subsidiary Crown corporation or other entity as described in subsection (1); and
 - (b) fulfils the conditions set out in clauses (1)(a) and (b).
- (4) Notwithstanding subsection (1), an individual mentioned in that subsection is entitled to indemnity from the Crown corporation or designated subsidiary Crown corporation against all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the Crown corporation, designated subsidiary Crown corporation or other entity as described in subsection (1), if the individual seeking indemnity:
 - (a) was not judged by a court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and
 - (b) fulfils the conditions set out in clauses (1)(a) and (b).
- (5) A Crown corporation or designated subsidiary Crown corporation may purchase and maintain insurance for the benefit of an individual mentioned in subsection (1) against any liability incurred by the individual in the individual's capacity:
 - (a) as a director or officer of the Crown corporation or designated subsidiary Crown corporation; or

(b) as a director or officer of another entity, or in a similar capacity, if the individual acts or acted in that capacity at the Crown corporation's or designated subsidiary Crown corporation's request.

(6) A Crown corporation, a designated subsidiary Crown corporation, an individual or an entity mentioned in subsection (1) may apply to a court for an order approving an indemnity pursuant to this section, and the court may so order and make any further order that it sees fit.

(7) On an application pursuant to subsection (6), the court may order notice to be given to any interested person, and that person is entitled to appear and be heard in person or by counsel”.

PART V

The New Generation Co-operatives Act

S.S. 1999, c.N-4.001 amended

5(1) *The New Generation Co-operatives Act* is amended in the manner set forth in this section.

(2) Subsection 176(3) is repealed and the following substituted:

“(3) A co-operative may purchase and maintain insurance for the benefit of a director, officer, member of a committee or employee against any liability incurred by the individual in the individual's capacity:

(a) as a director, officer, member of a committee or employee of the co-operative; or

(b) as a director, officer, member of a committee or employee of another entity, or in a similar capacity, if the individual acts or acted in that capacity at the co-operative's request”.

(3) Section 178 is amended:

(a) by renumbering it as subsection 178(1); and

(b) by adding the following subsection after subsection (1):

“(2) An officer or director has complied with his or her duty set out in subsection (1) if he or she relies and acts in good faith:

(a) on statements of fact represented to him or her by an officer of the co-operative to be correct; or

(b) on statements contained in a written report or opinion of the auditor of the co-operative or a professional person engaged by the co-operative who is competent to give advice with respect to the matter”.

(4) Clause 180(1)(e) is amended by striking out “subsection 181(3)” and substituting “subsection 181(5)”.

(5) Section 181 is repealed and the following substituted:

“Indemnification

181(1) A co-operative may indemnify a director or officer of the co-operative, a former director or officer of the co-operative, or another individual who acts or acted at the co-operative's request as a director or officer of or in a similar capacity for another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, that the individual reasonably incurs with respect to any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the co-operative or other entity, if:

(a) the individual acted honestly and in good faith with a view to the best interests of, as the case may be:

(i) the co-operative; or

(ii) the other entity for which, at the co-operative's request, the individual acted as a director or officer or in a similar capacity; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

(2) A co-operative may advance moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding mentioned in subsection (1), but the individual must repay the moneys to the co-operative if the individual does not fulfil the conditions set out in clauses (1)(a) and (b).

(3) With respect to an action by or on behalf of a co-operative or other entity to procure a judgment in its favour, the co-operative or other entity, with the approval of the court, may indemnify an individual mentioned in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with that action, or advance moneys to that individual pursuant to subsection (2) for the costs, charges and expenses reasonably incurred by the individual in connection with that action, if the individual:

(a) is made a party to the action because of the individual's association with the co-operative or other entity as described in subsection (1); and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(4) Notwithstanding subsection (1), an individual mentioned in that subsection is entitled to indemnity from the co-operative against all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the co-operative or other entity as described in subsection (1), if the individual seeking indemnity:

(a) was not judged by the court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done; and

(b) fulfils the conditions set out in clauses (1)(a) and (b).

(5) A co-operative, an individual or an entity mentioned in subsection (1) may apply to the court for an order approving an indemnity pursuant to this section, and the court may so order and make any further order that it sees fit.

(6) On an application pursuant to subsection (5), the court may order notice to be given to any interested person, and that person is entitled to appear and be heard in person or by counsel”.

PART VI Coming into force

Coming into force

6 This Act comes into force on assent.

