

STATE OF NEW YORK

5160

2025-2026 Regular Sessions

IN SENATE

February 19, 2025

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to the indemnification of directors, officers and key persons; and to repeal sections 721, 722 and 723 of the not-for-profit corporation law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Sections 721, 722 and 723 of the not-for-profit corporation
2 law are REPEALED.
3 § 2. The not-for-profit corporation law is amended by adding a new
4 section 721 to read as follows:
5 § 721. Authorization for indemnification of directors, officers or key
6 persons; insurance.
7 (a) A corporation may indemnify any director, officer or key person
8 against expenses, including judgments, fines, excise taxes, amounts paid
9 in settlement, attorneys' fees, court costs and disbursements actually
10 and necessarily incurred as a result of action or proceeding, or any
11 appeal thereof, arising out of service as a director, officer or key
12 person (1) who was or is a party or is threatened to be made a party to
13 any threatened, pending or contemplated action or proceeding, or any
14 appeal thereof, whether civil, criminal, administrative or investigative
15 (including an action by or in the right of the corporation and/or by its
16 members, if any, or in the right of any other corporation of any kind,
17 domestic or foreign and/or by its members, if any), or by any partner-
18 ship, joint venture, trust, employee benefit plan or other enterprise;
19 and (2) who has met the standards of conduct set forth in section 717
20 (duty of directors and officers and key persons) and elsewhere in this
21 article and who is entitled to the protection of section 720-a of this
22 article (liability of directors, officers, key persons and trustees) to

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 the extent applicable, and (3) with respect to any criminal action or
2 proceeding, who had reasonable cause to believe that their conduct was
3 lawful. A director, officer or key person who may be indemnified under
4 this section shall include a person (i) whose testator or intestate is
5 or was a director, officer or key person of the corporation, or (ii) who
6 is or was serving in any capacity at the request of the corporation as a
7 director, officer or key person of another corporation, partnership,
8 joint venture, trust, estate, employee benefit plan or other enterprise.

9 (b) The termination of any action or proceeding, including an action
10 by or in the right of the corporation and/or by its members, by judg-
11 ment, order, settlement, adjudging liability to the director, officer or
12 key person, conviction or upon a plea of nolo contendere or its equiv-
13 alent shall not necessarily create a presumption that the (1) director,
14 officer or key person did not act in accordance with the standards of
15 care set forth in paragraph (a) of this section, and (2) with respect to
16 any criminal action or proceeding, did not have reasonable cause to
17 believe that the director's, officer's or key person's conduct was
18 unlawful.

19 (c) No indemnification shall be made by the corporation if such direc-
20 tor, officer or key person shall have been adjudged to be liable,
21 including liability to the corporation, unless and only to the extent
22 that the court, in which such action or proceeding was brought, shall
23 determine, upon application, that, despite the adjudication of liability
24 but in view of all the circumstances of the case, such director, officer
25 or key person is fairly and reasonably entitled to indemnification with
26 respect to all or any of the judgments, fines, excise taxes, amounts
27 paid in settlement, attorneys' fees, court costs and disbursements actu-
28 ally and necessarily incurred, because the director, officer or key
29 person had made a good faith effort to meet the standards of conduct set
30 forth in this article.

31 (d) Expenses, including attorneys' fees, court costs and disburse-
32 ments, incurred by a director, officer or key person of the corporation
33 or by persons serving at the request of the corporation as directors,
34 officers or key persons of another corporation, partnership, joint
35 venture, trust or other enterprise, in defending any civil, criminal,
36 administrative or investigative action or proceeding, arising out of
37 such service, may be paid, if authorized in accordance with paragraph
38 (e) of this section, in advance of the final disposition of such action
39 or proceeding, upon receipt by the corporation of an undertaking in
40 accordance with article 25 of the civil practice law and rules by or on
41 behalf of such director, officer or key person to repay such amount if
42 they shall ultimately be determined not to be entitled to be indemnified
43 as authorized in this section.

44 (e) Any indemnification or advancement under this section, except for
45 one ordered by a court, shall be made only in the specific action or
46 proceeding upon a determination that indemnification of the present or
47 former director, officer or key person is proper in the circumstances
48 because the person has met or in the case of an advance can be reason-
49 ably expected to meet the applicable standard of conduct set forth in
50 paragraph (a) of this section:

51 (1) by a majority vote of the directors of the corporation who are not
52 parties to such action or proceeding, even though less than a quorum;

53 (2) by a committee of such directors designated by majority vote of
54 such directors, even though less than a quorum;

55 (3) if there are no such directors, or if such directors so direct, by
56 independent legal counsel in a reasoned written opinion; or

1 (4) by the members, if any.

2 (f) A right to indemnification or to advancement of expenses arising
3 under a provision of the certificate of incorporation, a bylaw or a
4 resolution of the board or of a committee thereof shall not be elimi-
5 nated or impaired by an amendment to the certificate of incorporation to
6 the bylaws or to the resolution after the occurrence of the act or omis-
7 sion that is the subject of the civil, criminal, administrative or
8 investigative action or proceeding for which indemnification or advance-
9 ment of expenses is sought, unless the provision in effect at the time
10 of such act or omission explicitly authorizes such elimination or
11 impairment after such action or omission has occurred.

12 (g) A corporation may purchase and maintain insurance on behalf of any
13 person who is or was a director, officer or key person of the corpo-
14 ration, or is or was serving at the request of the corporation as a
15 director, officer or key person of another corporation, partnership,
16 joint venture, trust, estate, employee benefit or other enterprise,
17 against any liability asserted against such person and incurred by such
18 person in any such capacity, or arising out of such person's status as
19 such, whether or not the corporation would have the power to indemnify
20 such person against such liability under this section.

21 (h) For purposes of this section, references to "the corporation"
22 shall include, in addition to a consolidated or surviving corporation,
23 any constituent corporation, including any constituent of a constituent,
24 absorbed in a consolidation or merger which, if its separate existence
25 had continued, would have had power and authority to indemnify its
26 directors, officers or key persons that any person who is or was a
27 director, officer or key person of such constituent corporation, or is
28 or was serving at the request of such constituent corporation as a
29 director, officer or key person of another corporation, partnership,
30 joint venture, trust, estate, employee benefit plan or other enterprise,
31 shall stand in the same position under this section with respect to the
32 resulting or surviving corporation as such person would have with
33 respect to such constituent corporation if its separate existence had
34 continued.

35 (i) The indemnification and advancement of expenses provided by, or
36 granted pursuant to, this section shall continue as to a person who has
37 ceased to be a director, officer or key person and shall inure to the
38 benefit of their heirs, executors and administrators if that person was
39 a director, officer or key person at the time the cause of action or
40 claim arose or prosecution was threatened or information or indictment
41 was filed.

42 (j) For the purpose of this section, a corporation shall be deemed to
43 have requested a person to serve an employee benefit plan where the
44 performance by such person of their duties to the corporation also
45 imposes duties on, or otherwise involves services by, such person to the
46 plan or participants or beneficiaries of the plan; excise taxes assessed
47 on a person with respect to an employee benefit plan pursuant to appli-
48 cable law shall be considered fines; and action taken or omitted by a
49 person with respect to an employee benefit plan in the performance of
50 such person's duties for a purpose reasonably believed by such person to
51 be in the interest of the participants and beneficiaries of the plan
52 shall be deemed to be for a purpose which is not opposed to the best
53 interests of the corporation.

54 § 3. Section 724 of the not-for-profit corporation law, as amended by
55 chapter 368 of the laws of 1987, paragraph (a) as amended by chapter 549

1 of the laws of 2013, is renumbered section 722 and amended to read as
2 follows:

3 § 722. Indemnification of directors [~~and~~], officers or key persons by a
4 court.

5 (a) Notwithstanding the failure of a corporation to provide indemnifi-
6 cation, and despite any contrary resolution of the board, of a committee
7 thereof or of the members in the specific case under section [~~723~~] 721
8 [~~(Payment of indemnification other than by court award)~~] (Authorization
9 for indemnification of directors, officers or key persons; insurance),
10 indemnification [~~shall~~] may be awarded by a court to the extent author-
11 ized under section [~~722 (Authorization for indemnification of directors~~
12 ~~and officers), and paragraph (a) of section 723 (Payment of indemnifica-~~
13 ~~tion other than by court award)~~] 721 (Authorization for indemnification
14 of directors, officers or key persons; insurance). Application therefor
15 shall be made on notice to the attorney general and may be made, in
16 every case, either:

17 (1) In the civil action or proceeding in which the expenses were
18 incurred or other amounts were paid, or

19 (2) To the supreme court in a separate proceeding, in which case the
20 application shall set forth the disposition of any previous application
21 made to any court for the same or similar relief and also reasonable
22 cause for the failure to make application for such relief in the action
23 or proceeding in which the expenses were incurred or other amounts were
24 paid.

25 (b) The application shall be made in such manner and form as may be
26 required by the applicable rules of court or, in the absence thereof, by
27 direction of a court to which it is made. Such application shall be upon
28 notice to the corporation. The court may also direct that notice be
29 given at the expense of the corporation to the members and such other
30 persons as it may designate in such manner as it may require.

31 (c) Where indemnification is sought by judicial action, the court may
32 allow a person such reasonable expenses, including attorneys' fees,
33 during the pendency of the litigation as are necessary in connection
34 with [~~his~~] their defense therein, if the court shall find that the
35 defendant has by [~~his~~] their pleadings or during the course of the liti-
36 gation raised genuine issues of fact or law.

37 § 4. Section 725 of the not-for-profit corporation law is renumbered
38 section 723.

39 § 5. The section heading and subdivision (a) of section 723 of the
40 not-for-profit corporation law, as amended by chapter 368 of the laws of
41 1987 and such section as renumbered by section 4 of this act, are
42 amended to read as follows:

43 Other provisions affecting indemnification of directors [~~and~~], offi-
44 cers and key persons.

45 (a) All expenses incurred in defending a civil or criminal action or
46 proceeding which are advanced by the corporation under paragraph [~~(e)~~]
47 (d) of section [~~723~~] 721 [~~(Payment of indemnification other than by~~
48 ~~court award)~~] (Authorization for indemnification of directors, officers
49 or key persons; insurance) or allowed by a court under paragraph (c) of
50 section [~~724 (Indemnification of directors and officers by a court)~~] 722
51 (Indemnification of directors, officers or key persons by a court) shall
52 be repaid in case the person receiving such advancement or allowance is
53 ultimately found, under the procedure set forth in this article, not to
54 be entitled to indemnification or, where indemnification is granted, to
55 the extent the expenses so advanced by the corporation or allowed by the
56 court exceed the indemnification to which [~~he is~~] they are entitled.

1 § 6. Section 720-a of the not-for-profit corporation law, as amended
2 by chapter 445 of the laws of 2019, is amended to read as follows:

3 § 720-a. Liability of directors, officers, trustees and key persons.

4 Except as provided in sections [~~seven hundred nineteen~~] 719 and [~~seven~~
5 ~~hundred twenty~~] 720 of this chapter, and except any action or proceeding
6 brought by the attorney general or, in the case of a charitable trust,
7 an action or proceeding against a trustee brought by a beneficiary of
8 such trust, no person serving without salary or other compensation as a
9 director, officer, key person or trustee of a corporation, association,
10 organization or trust described in section 501 (c) (3) of the United
11 States internal revenue code shall be liable to any person other than
12 such corporation, association, organization or trust based solely on
13 [~~his or her~~] their conduct in the execution of such office unless the
14 conduct of such director, officer, key person or trustee with respect to
15 the person asserting liability constituted gross negligence or was
16 intended to cause the resulting harm to the person asserting such
17 liability. For purposes of this section, such a director, officer, key
18 person or trustee shall not be considered compensated solely by reason
19 of payment of [~~his or her~~] their actual expenses incurred in attending
20 meetings or otherwise in the execution of such office.

21 § 7. The rights to indemnification that accrued prior to the effective
22 date of this act shall be determined by the not-for-profit corporation
23 law as then in effect, unless the director, officer or key person
24 elects to have those rights or obligations determined by the not-for-
25 profit corporation law as amended by this act.

26 § 8. This act shall take effect on the first of January next succeed-
27 ing the date on which it shall have become a law.