

ISSUE ALERTS

SOME CORPORATE "OFFICERS" MAY LOSE INDEMNIFICATION JULY 1 WITHOUT CORPORATE ACTION

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By: William P. Matthews and Paul V. Renyer

On April 24, 2023, Governor Laura Kelly signed Senate Bill 244, which in part amends K.S.A. 17-6305(c). This section of the Kansas General Corporation Code has long required corporations to indemnify current and former directors and officers if they are successful in defending claims brought against them because they are or were a director or officer. Prior to the 2023 amendment, the term "officer" was undefined, but effective July 1, 2023, an officer for the purpose of this statute is limited to the following persons:

- the corporation's current or former president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer, or chief accounting officer; and
- any current or former individual identified in public filings with the U.S. Securities and Exchange Commission as one of the most highly compensated officers of the corporation.

This amendment will remove mandatory indemnification rights from any corporate officer who does not hold one of the stated titles. For example, prior to this amendment a vice president may have been considered an officer and, therefore, entitled to mandatory indemnification. But as of July 1, that vice president is no longer an officer for the purpose of this statute, and the corporation is under no statutory obligation to indemnify that vice president.

The amendment provides that corporations may choose to indemnify any person who is not a director or officer of the corporation. Therefore, a Kansas corporation may voluntarily provide indemnification to corporate officers not holding one of the stated titles, ideally through an amendment to their corporate governance documents. **To avoid any gap in indemnification coverage for affected corporate officers, corporations should consider adopting voluntary indemnification obligations before July 1.**

FOR MORE INFORMATION

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If you have questions or want more information regarding the amendment to K.S.A. 17-6305(c), contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact William (Bill) P. Matthews at 316.291.9556 or bmatthews@foulston.com or Paul V. Renyer at 316.291.9515 or prenyer@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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