

ISSUE ALERTS



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

May 30, 2023

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



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](mailto:bmatthews@foulston.com) or Paul V. Renyer at 316.291.9515 or [prenyer@foulston.com](mailto:prenyer@foulston.com). For more information on the firm, please visit our website at [www.foulston.com](http://www.foulston.com).

Established in 1919, Foulston Siefkin is the largest Kansas-based law firm. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; renewable energy, storage, and transmission; securities & corporate finance; startup/entrepreneurship; supply chain management; tax-exempt organizations; taxation; trade secret & noncompete litigation; and water rights.

#### **ADDITIONAL RESOURCES**

Sign up to receive Foulston's issue alerts straight to your inbox [here](#).

---

*This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.*

#### **PRACTICE AREAS**

---

- Business & Corporate Law