

(D) INDEMNIFICATION MAY NOT BE MADE:

(1) WITH RESPECT TO ANY SUIT, CLAIM, OR MATTER AS TO WHICH THE FIDUCIARY WAS ADJUDGED TO BE LIABLE FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF THE FIDUCIARY'S DUTY TO THE SEVERAL SYSTEMS; OR

(2) FOR AN INDEPENDENT CONTRACTOR FURNISHING SERVICES TO THE SEVERAL SYSTEMS.

(E) THE STATE SHALL PROVIDE INSURANCE FOR EVERY FIDUCIARY ELIGIBLE FOR INDEMNIFICATION UNDER THIS SECTION AGAINST ANY LIABILITY ASSERTED AGAINST THE FIDUCIARY OR INCURRED BY THE FIDUCIARY ARISING OUT OF THE FIDUCIARY'S STATUS AS A FIDUCIARY. THE STATE MAY PROVIDE SELF-INSURANCE FOR THIS PURPOSE, IN WHOLE OR IN PART, UNDER TERMS AND CONDITIONS SATISFACTORY TO THE STATE TREASURER. IF THE STATE FAILS TO PROVIDE ADEQUATE INSURANCE COVERAGE OR IF THE STATE FAILS TO PROVIDE INDEMNIFICATION PURSUANT TO THIS SECTION, A FIDUCIARY MAY NOT BE REQUIRED TO PAY AMOUNTS ATTRIBUTABLE TO LIABILITY DESCRIBED IN THIS SECTION BY REASON OF THE FAILURE OF THE STATE TO PROVIDE THE INDEMNIFICATION.

COMMITTEE NOTE: This section formerly appeared as Art. 73B, § 13A(a), (c), (d), (e), and (f).

The term "fiduciary" is substituted for "person" to reflect the use of the defined term "fiduciary".

The term "several systems" is substituted for "Employees' Retirement System" to clarify that this provision applies to fiduciaries in all systems.

Former § 13(b) now appears in § 1-201(b) of this subtitle.

The clause "the fiduciary shall be indemnified for" is substituted for "indemnification shall be against" to clarify who is to be indemnified.

The phrase "paid in settlement" is deleted as ambiguous.

The only other changes are stylistic.

1-208. AGREEMENT RELIEVING FIDUCIARY FROM LIABILITY; INDEMNIFICATION.

(A) EXCEPT AS PROVIDED IN § 1-204(A) OF THIS SUBTITLE, ANY PROVISION IN AN AGREEMENT OR INSTRUMENT WHICH PURPORTS TO RELIEVE A FIDUCIARY FROM RESPONSIBILITY OR LIABILITY FOR ANY RESPONSIBILITY, OBLIGATION, OR DUTY UNDER THIS SUBTITLE SHALL BE VOID AS AGAINST PUBLIC POLICY.