

1987 Assembly Bill 301

Date of enactment: **June 9, 1987**
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1987 Wisconsin Act 13

AN ACT *to repeal* 180.05; *to renumber* 148.01, 181.05, 185.04, 186.09 and 215.52; *to amend* 148.02 (3), 181.29, 185.37 (1), 611.07 (2), 611.62 (title), (1) and (2), 612.03, 613.07 (2), 613.62 (title), (1) and (2) and 614.07 (2); *to repeal and recreate* 181.045, 185.037, 611.62 (3) and 613.62 (3); and *to create* 148.01, 148.04 to 148.23, 180.042 to 180.049, 180.051 to 180.059, 180.303 to 180.307, 180.40 (4m), 181.041 to 181.044, 181.047, 181.049, 181.051, 181.053, 181.283 to 181.287, 181.297, 185.034 to 185.036, 185.038, 185.039, 185.04 to

185.042, 185.363 to 185.367, 186.082 to 186.089, 186.091 to 186.096, 215.512 to 215.519, 215.521 to 215.525 and 447.15 to 447.38 of the statutes, *relating to* indemnification and liability of corporate directors and officers and liability of volunteers of nonprofit corporations.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 148.01 of the statutes is renumbered 148.015.

SECTION 2. 148.01 of the statutes is created to read:

148.01 Definition. In this chapter, “medical society” means the state medical society of Wisconsin and any county medical society organized or continued under this chapter.

SECTION 3. 148.02 (3) of the statutes is amended to read:

148.02 (3) If there ~~be~~ is not a sufficient number of physicians and surgeons in any county to form a county medical society they may associate with those of adjoining counties, and the physicians and surgeons of not more than ~~fifteen~~ 15 adjoining counties may organize a county medical society under this chapter, meeting at such time and place as a majority agree upon.

SECTION 4. 148.04 to 148.23 of the statutes are created to read:

148.04 Definitions applicable to indemnification and insurance provisions. In ss. 148.04 to 148.17:

(1) “Director or officer” means any of the following:

(a) A natural person who is or was a director or officer of a medical society.

(b) A natural person who, while a director or officer of a medical society, is or was serving at the medical society’s request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another medical society or corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a medical society, is or was serving an employe benefit plan because his or her duties to the medical society also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(2) “Expenses” include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(3) “Liability” includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(4) “Party” means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(5) “Proceeding” means any threatened, pending or completed civil, criminal, administrative or investiga-

tive action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the medical society or by any other person.

148.05 Mandatory indemnification. (1) A medical society shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the medical society.

(2) (a) In cases not included under sub. (1), a medical society shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the medical society, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the medical society and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the medical society or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 148.06.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification shall make a written request to the medical society.

(4) (a) Indemnification under this section is not required to the extent limited by the medical society’s constitution or bylaws under s. 148.09.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the medical society, in connection with the same proceeding.

148.06 Determination of right to indemnification. Unless otherwise provided by the constitution or bylaws or by written agreement between the director or officer and the medical society, the director or officer seeking indemnification under s. 148.05 (2)

shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of a majority of members who are entitled to vote and who are present in person or represented by proxy at a meeting at which a quorum is present, if there are members having voting rights. Unless the constitution or bylaws provide otherwise, members holding one-tenth of the votes entitled to be cast, present in person or represented by proxy, shall constitute a quorum at a meeting of members. Membership rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 148.13.

(6) By any other method provided for in any additional right to indemnification permitted under s. 148.11.

148.07 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a medical society may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the medical society with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the medical society.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the medical society, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 148.06 that indemnification under s. 148.05 (2) is not required and that indemnification is not ordered by a court under s. 148.13 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director

or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

148.09 Medical society may limit indemnification.

(1) A medical society's obligations to indemnify under s. 148.05 may be limited as follows:

(a) With respect to the state medical society or, except as provided in s. 148.02 (4), a county medical society organized under s. 148.02 (1) before the effective date of this paragraph [revisor inserts date], by an amendment to its constitution or bylaws which becomes effective on or after the effective date of this paragraph [revisor inserts date].

(b) With respect to a county medical society organized under s. 148.02 (1) on or after the effective date of this paragraph [revisor inserts date], except as provided in s. 148.02 (4), by its constitution or bylaws, including any amendments to its constitution or bylaws.

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

148.11 Additional rights to indemnification and allowance of expenses.

(1) Except as provided in sub. (2), ss. 148.05 and 148.07 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The constitution or bylaws.

(b) A written agreement between the director or officer and the medical society.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the medical society may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the medical society that the director or officer did not breach or fail to perform a duty he or she owes to the medical society which constitutes conduct under s. 148.05 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 148.04 to 148.17 do not affect a medical society's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the medical society.

148.13 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between

the director or officer and the medical society, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 148.06 (5) or for review by the court of an adverse determination under s. 148.06 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 148.05 (1) or (2). If the court also determines that the medical society unreasonably refused the director's or officer's request for indemnification, the court shall order the medical society to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 148.05 (2).

148.15 Indemnification and allowance of expenses of employees and agents. A medical society may indemnify and allow reasonable expenses of an employee or agent who is not a director or officer to the extent provided by the constitution or bylaws, by general or specific action of the board of directors or by contract.

148.17 Insurance. A medical society may purchase and maintain insurance on behalf of an individual who is an employee, agent, director or officer of the medical society against liability asserted against and incurred by the individual in his or her capacity as an employee, agent, director or officer, or arising from his or her status as an employee, agent, director or officer, regardless of whether the medical society is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 148.05, 148.07, 148.11 and 148.15.

148.19 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the medical society, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employee of the medical society whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

148.21 Consideration of interests in addition to members' interests. In discharging his or her duties to the medical society and in determining what he or she believes to be in the best interests of the medical society, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employees, suppliers and customers of the medical society.

(2) The effects of the action on communities in which the medical society operates.

(3) Any other factors the director or officer considers pertinent.

148.23 Limited liability of directors and officers. (1) Except as provided in subs. (2) and (3), a director or officer is not liable to the medical society, its members or creditors, or any person asserting rights on behalf of the medical society, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the medical society or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(3) Subsection (2) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

SECTION 5. 180.042 to 180.049 of the statutes are created to read:

180.042 Definitions applicable to indemnification and insurance provisions. In ss. 180.042 to 180.059:

(1) "Corporation" means a domestic corporation and any domestic or foreign predecessor of a domestic corporation where the predecessor corporation's existence ceased upon the consummation of a merger or other transaction.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a corporation.

(b) A natural person who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another corporation or foreign corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a corporation, is or was serving an employe benefit plan because his or her duties to the corporation also impose duties on, or otherwise involve services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including an excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" includes a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the corporation or by any other person.

180.044 Mandatory indemnification. (1) A corporation shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the corporation.

(2) (a) In cases not included under sub. (1), a corporation shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the corporation, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the corporation and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the corporation or its shareholders in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 180.046.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the corporation.

(4) (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 180.048.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the corporation, in connection with the same proceeding.

180.046 Determination of right to indemnification. Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the corporation, the director or officer seeking indemnification under s. 180.044 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By a majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of shares as provided in s. 180.28. Shares owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 180.051.

(6) By any other method provided for in any additional right to indemnification permitted under s. 180.049.

180.047 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a corporation may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the corporation with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the corporation.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the corporation, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 180.046 that indemnification under s. 180.044 (2) is not required and that indemnification is not ordered by a court under s. 180.051 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

180.048 Corporation may limit indemnification. (1) A corporation's obligations to indemnify under s. 180.044 may be limited as follows:

(a) If the corporation is incorporated on or after the effective date of this paragraph [revisor inserts date], by the articles of incorporation, including any amendments or restatements of the articles of incorporation.

(b) If the corporation was incorporated before the effective date of this paragraph [revisor inserts date], by an amendment to, or restatement of, the articles of incorporation which becomes effective on or after the effective date of this paragraph [revisor inserts date].

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

180.049 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 180.044 and 180.047 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the corporation.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of all of the corporation's voting shares then issued and outstanding.

(2) Regardless of the existence of an additional right under sub. (1), the corporation may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the corporation that the director or officer did not breach or fail to perform a duty he or she owes to the corporation which consti-

tutes conduct under s. 180.044 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 180.042 to 180.059 do not affect a corporation's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the corporation.

SECTION 6. 180.05 of the statutes is repealed.

SECTION 7. 180.051 to 180.059 of the statutes are created to read:

180.051 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the corporation, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 180.046 (5) or for review by the court of an adverse determination under s. 180.046 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 180.044 (1) or (2). If the court also determines that the corporation unreasonably refused the director's or officer's request for indemnification, the court shall order the corporation to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 180.044 (2).

180.056 Indemnification and allowance of expenses of employes and agents. A corporation may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles of incorporation or bylaws, by general or specific action of the board of directors or by contract.

180.058 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the corporation against liability asserted against or incurred by the individual in his or her capacity as an employe, agent, director or officer or arising from his or her status as an employe, agent, director or officer, regardless of whether the corporation is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 180.044, 180.047, 180.049 and 180.056.

180.059 Indemnification and insurance against securities law claims. (1) It is the public policy of this state to require or permit indemnification, allowance of expenses and insurance for any liability incurred in connection with a proceeding involving securities regulation described under sub. (2) to the extent required or permitted under ss. 180.042 to 180.058.

(2) Sections 180.042 to 180.058 apply, to the extent applicable to any other proceeding, to any proceeding involving a federal or state statute, rule or regulation regulating the offer, sale or purchase of securities, securities brokers or dealers, or investment companies or investment advisers.

SECTION 8. 180.303 to 180.307 of the statutes are created to read:

180.303 Reliance by directors or officers. (1) Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the corporation, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(a) An officer or employe of the corporation whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(b) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(c) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

(2) This section does not apply to a director's reliance under s. 180.40 (3).

180.305 Consideration of interests in addition to shareholders' interests. In discharging his or her duties to the corporation and in determining what he or she believes to be in the best interests of the corporation, a director or officer may, in addition to considering the effects of any action on shareholders, consider the following:

(1) The effects of the action on employes, suppliers and customers of the corporation.

(2) The effects of the action on communities in which the corporation operates.

(3) Any other factors the director or officer considers pertinent.

180.307 Limited liability of directors to corporation and shareholders. (1) Except as provided in subs. (2) and (3), a director is not liable to the corporation, its shareholders, or any person asserting rights on behalf of the corporation or its shareholders, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director, unless the person asserting liability

proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the corporation or its shareholders in connection with a matter in which the director has a material conflict of interest.

(b) A violation of criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director derived an improper personal profit.

(d) Wilful misconduct.

(2) This section does not apply to the liability of a director under s. 180.40 (1).

(3) (a) A corporation may limit the immunity provided under this section as follows:

1. If the corporation is incorporated on or after the effective date of this subdivision [revisor inserts date], by the articles of incorporation, including any amendments or restatements of the articles of incorporation.

2. If the corporation was incorporated before the effective date of this subdivision [revisor inserts date], by an amendment to, or restatement of, the articles of incorporation which becomes effective only after the effective date of this subdivision [revisor inserts date].

(b) A limitation under par. (a) applies if the cause of action against a director accrued while the limitation is in effect.

SECTION 9. 180.40 (4m) of the statutes is created to read:

180.40 (4m) Sections 180.303 and 180.307 do not apply to the liability of a director under sub. (1) or the reliance of a director under sub. (3).

SECTION 10. 181.041 to 181.044 of the statutes are created to read:

181.041 Definitions applicable to indemnification and insurance provisions. In ss. 181.041 to 181.053:

(1) "Corporation" means a domestic corporation and any domestic or foreign predecessor of a domestic corporation where the predecessor corporation's existence ceased upon the consummation of a merger or other transaction.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a corporation.

(b) A natural person who, while a director or officer of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another corporation or foreign corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a corporation, is or was serving an employe benefit plan because his or her duties to the corporation also

imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the corporation or by any other person.

181.042 Mandatory indemnification. (1) A corporation shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the corporation.

(2) (a) In cases not included under sub. (1), a corporation shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the corporation, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the corporation and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the corporation or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 181.043.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the corporation.

(4) (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 181.045.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the corporation, in connection with the same proceeding.

181.043 Determination of right to indemnification. Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the corporation, the director or officer seeking indemnification under s. 181.042 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of members as provided in s. 181.17, if there are members having voting rights. Membership rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 181.049.

(6) By any other method provided for in any additional right to indemnification permitted under s. 181.047.

181.044 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a corporation may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the corporation with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the corporation.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the corporation, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 181.043 that indemnification under s. 181.042 (2) is not required and that indemnification is not ordered by a court under s. 181.049 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

SECTION 11. 181.045 of the statutes is repealed and recreated to read:

181.045 Corporation may limit indemnification. (1) A corporation's obligations to indemnify under s. 181.042 may be limited as follows:

(a) If the corporation is incorporated on or after the effective date of this paragraph [revisor inserts date], by the articles of incorporation, including any amendments or restatements of the articles of incorporation.

(b) If the corporation was incorporated before the effective date of this paragraph [revisor inserts date], by an amendment to, or restatement of, the articles of incorporation which becomes effective on or after the effective date of this paragraph [revisor inserts date].

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

SECTION 12. 181.047 of the statutes is created to read:

181.047 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 181.042 and 181.044 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the corporation.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the corporation may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the corporation that the director or officer did not breach or fail to perform a duty he or she owes to the corporation which constitutes conduct under s. 181.042 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related

proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 181.041 to 181.053 do not affect a corporation's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the corporation.

SECTION 13. 181.049 of the statutes is created to read:

181.049 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the corporation, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 181.043 (5) or for review by the court of an adverse determination under s. 181.043 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 181.042 (1) or (2). If the court also determines that the corporation unreasonably refused the director's or officer's request for indemnification, the court shall order the corporation to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 181.042 (2).

SECTION 14. 181.05 of the statutes is renumbered 181.057.

SECTION 15. 181.051 of the statutes is created to read:

181.051 Indemnification and allowance of expenses of employes and agents. A corporation may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles of incorporation or bylaws, by general or specific action of the board of directors or by contract.

SECTION 16. 181.053 of the statutes is created to read:

181.053 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the corporation against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer,

regardless of whether the corporation is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 181.042, 181.044, 181.047 and 181.051.

SECTION 17. 181.283 to 181.287 of the statutes are created to read:

181.283 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the corporation, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the corporation whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

181.285 Consideration of interests in addition to members' interests. In discharging his or her duties to the corporation and in determining what he or she believes to be in the best interests of the corporation, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the corporation.

(2) The effects of the action on communities in which the corporation operates.

(3) Any other factors the director or officer considers pertinent.

181.287 Limited liability of directors and officers. (1) Except as provided in subs. (2) and (3), a director or officer is not liable to the corporation, its members or creditors, or any person asserting rights on behalf of the corporation, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the corporation or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(c) The liability of a director under s. 181.29.

(3) Subsection (2) (a) and (b) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

SECTION 18. 181.29 of the statutes is amended to read:

181.29 Directors' liability on loans to officers and directors. In addition to any other liabilities imposed by law ~~upon directors of a corporation~~, directors of a corporation who vote for an ~~assent to the~~ in favor of making of a loan to an officer or director of the corporation shall be jointly and severally liable to the corporation for the amount of ~~such~~ the loan until ~~the repayment thereof repaid~~, unless ~~such~~ the directors ~~shall sustain the burden of proof~~ prove that such the loan was made for a proper purpose in furtherance of the corporation's affairs. Section 181.287 does not apply to the liability of a director under this section.

SECTION 18m. 181.297 of the statutes is created to read:

181.297 Limited liability of volunteers. (1) DEFINITION. In this section, "volunteer" means a natural person, other than an employe of the corporation, who provides services to or on behalf of the corporation without compensation.

(2) IMMUNITY. Except as provided in sub. (3), a volunteer is not liable to any person for damages, settlements, fees, fines, penalties or other monetary liabilities arising from any act or omission as a volunteer, unless the person asserting liability proves that the act or omission constitutes any of the following:

(a) A violation of criminal law, unless the volunteer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(b) Wilful misconduct.

(c) If the volunteer is a director or officer of the corporation, an act or omission within the scope of the volunteer's duties as a director or officer.

(d) An act or omission for which the volunteer received compensation or any thing of substantial value in lieu of compensation.

(3) EXCEPTIONS. (a) Except as provided in par. (b), this section does not apply to any of the following:

1. A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

2. A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

3. Claims arising from the negligent operation of an automobile, truck, train, airplane or other vehicle by a volunteer.

4. A proceeding against a volunteer who is licensed, certified, permitted or registered under state law and which is based upon an act or omission within the scope of practice under the volunteer's license, certificate, permit or registration.

5. Proceedings based upon a cause of action for which the volunteer is immune from liability under ss. 146.31 (2) and (3), 146.37, 895.44, 895.48, 895.51 or 895.52.

(b) Paragraph (a) 1 and 2 does not apply to a proceeding brought by or on behalf of a governmental unit, authority or agency in its capacity as a contractor.

SECTION 19. 185.034 to 185.036 of the statutes are created to read:

185.034 Definitions applicable to indemnification and insurance provisions. In ss. 185.034 to 185.042:

(1) "Cooperative" means a domestic cooperative and any domestic or foreign predecessor of a domestic cooperative where the predecessor cooperative's existence ceased upon the consummation of a merger or other transaction.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a cooperative.

(b) A natural person who, while a director or officer of a cooperative, is or was serving at the cooperative's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of an association, corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a cooperative, is or was serving an employe benefit plan because his or her duties to the cooperative also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) A natural person who is or was the chief executive, managerial employe of a cooperative, regardless of the person's title.

(e) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the cooperative or by any other person.

185.035 Mandatory indemnification. (1) A cooperative shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the cooperative.

(2) (a) In cases not included under sub. (1), a cooperative shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the cooperative, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the cooperative and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the cooperative, its members or stockholders in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 185.036.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the cooperative.

(4) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the cooperative, in connection with the same proceeding.

185.036 Determination of right to indemnification. Unless otherwise provided by the articles or bylaws or by written agreement between the director or officer and the cooperative, the director or officer seeking indemnification under s. 185.035 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By a majority vote of a quorum of the members. Members who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not vote in making the determination.

(5) By a court under s. 185.039.

(6) By any other method provided for in any additional right to indemnification permitted under s. 185.038.

SECTION 20. 185.037 of the statutes is repealed and recreated to read:

185.037 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a cooperative may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the cooperative with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the cooperative.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the cooperative, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 185.036 that indemnification under s. 185.035 (2) is not required and that indemnification is not ordered by a court under s. 185.039 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

SECTION 21. 185.038 of the statutes is created to read:

185.038 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 185.035 and 185.037 do not preclude any additional right to indemnification or allowance of

expenses that a director or officer may have under any of the following:

(a) The articles or bylaws.

(b) A written agreement between the director or officer and the cooperative.

(c) A resolution of the board.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the cooperative may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the cooperative that the director or officer did not breach or fail to perform a duty he or she owes to the cooperative which constitutes conduct under s. 185.035 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 185.034 to 185.042 do not affect a cooperative's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the cooperative.

SECTION 22. 185.039 of the statutes is created to read:

185.039 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the cooperative, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 185.036 (5) or for review by the court of an adverse determination under s. 185.036 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 185.035 (1) or (2). If the court also determines that the cooperative unreasonably refused the director's or officer's request for indemnification, the court shall order the cooperative to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 185.035 (2).

SECTION 23. 185.04 of the statutes is renumbered 185.043.

SECTION 24. 185.04 to 185.042 of the statutes are created to read:

185.04 Indemnification and allowance of expenses of employes and agents. A cooperative may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles or bylaws, by general or specific action of the board or by contract.

185.041 Insurance. A cooperative may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the cooperative against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer, regardless of whether the cooperative is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 185.035, 185.037, 185.038 and 185.04.

185.042 indemnification and insurance against securities law claims. (1) It is the public policy of this state to require or permit indemnification, allowance of expenses and insurance for any liability incurred in connection with a proceeding involving securities regulation described under sub. (2) to the extent required or permitted under ss. 185.034 to 185.041.

(2) Sections 185.034 to 185.041 apply, to the extent applicable to any other proceeding, to any proceeding involving a federal or state statute, rule or regulation regulating the offer, sale or purchase of securities, securities brokers or dealers, or investment companies or investment advisers.

SECTION 25. 185.363 to 185.367 of the statutes are created to read:

185.363 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the cooperative, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the cooperative whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of which the director is not a member if the director believes in good faith that the committee merits confidence.

185.365 Consideration of interests in addition to members' and stockholders' interests. In discharging his or her duties to the cooperative and in determining what he or she believes to be in the best interests of the cooperative, a director or officer may, in addition to

considering the effects of any action on members and stockholders, consider the following:

(1) The effects of the action on employes, suppliers and customers of the cooperative.

(2) The effects of the action on communities in which the cooperative operates.

(3) Any other factors the director or officer considers pertinent.

185.367 Limited liability of directors and officers.

(1) Except as provided in subs. (2) and (3), a director or officer is not liable to the cooperative, its members, stockholders or creditors, or any person asserting rights on behalf of the cooperative, its members, stockholders or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the cooperative, its members or stockholders in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(c) The liability of a director under s. 185.37 (1).

(3) Subsection (2) (a) and (b) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

SECTION 26. 185.37 (1) of the statutes is amended to read:

185.37 (1) Directors who negligently or in bad faith vote for any distribution of assets contrary to this chapter or the articles are jointly and severally liable to the cooperative for the value of assets distributed in excess of the amount which could have been distributed without violating this chapter or the articles. Section 185.367 does not apply to the liability of directors under this subsection.

SECTION 26b. 186.082 to 186.089 of the statutes are created to read:

186.082 Definitions applicable to indemnification and insurance provisions. In ss. 186.082 to 186.091:

(1) "Credit union" means any of the following:

(a) A cooperative, nonprofit corporation incorporated under s. 186.02 and any domestic or foreign predecessor of that corporation where the predecessor's existence ceased upon the consummation of a merger or other transaction.

(b) The Wisconsin credit union savings insurance corporation organized under s. 186.35.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a credit union.

(b) A natural person who, while a director or officer of a credit union, is or was serving at the credit union's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another credit union or foreign credit union, corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a credit union, is or was serving an employe benefit plan because his or her duties to the credit union also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(e) A natural person who is or was a member of a credit union's credit committee.

(f) A natural person who is or was a trustee of the Wisconsin credit union savings insurance corporation.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the credit union or by any other person.

186.083 Mandatory indemnification. (1) A credit union shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the credit union.

(2) (a) In cases not included under sub. (1), a credit union shall indemnify a director or officer against liability incurred by the director or officer in a proceed-

ing to which the director or officer was a party because he or she is a director or officer of the credit union, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the credit union and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the credit union or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 186.084.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the credit union.

(4) (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 186.086.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the credit union, in connection with the same proceeding.

186.084 Determination of right to indemnification. Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the credit union, the director or officer seeking indemnification under s. 186.083 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of a majority of members present at an annual meeting or special meeting called for that purpose. Voting rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 186.088.

(6) By any other method provided for in any additional right to indemnification permitted under s. 186.087.

186.085 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a credit union may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the credit union with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the credit union.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the credit union, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 186.084 that indemnification under s. 186.083 (2) is not required and that indemnification is not ordered by a court under s. 186.088 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

186.086 Credit union may limit indemnification. (1) A credit union's obligations to indemnify under s. 186.083 may be limited as follows:

(a) If the credit union is incorporated on or after the effective date of this paragraph ... [revisor inserts date], by the articles of incorporation, including any amendments to the articles of incorporation.

(b) If the credit union was incorporated before the effective date of this paragraph ... [revisor inserts date], by an amendment to the articles of incorporation which becomes effective, as provided in s. 186.02 (4) (a) or 186.35 (1), on or after the effective date of this paragraph ... [revisor inserts date].

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

186.087 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 186.083 and 186.085 do not preclude any additional right to indemnification or allowance of

expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the credit union.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of members present at an annual meeting or special meeting called for that purpose.

(2) Regardless of the existence of an additional right under sub. (1), the credit union may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the credit union that the director or officer did not breach or fail to perform a duty he or she owes to the credit union which constitutes conduct under s. 186.083 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 186.082 to 186.091 do not affect a credit union's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the credit union.

186.088 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the credit union, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 186.084 (5) or for review by the court of an adverse determination under s. 186.084 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 186.083 (1) or (2). If the court also determines that the credit union unreasonably refused the director's or officer's request for indemnification, the court shall order the credit union to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 186.083 (2).

186.089 Indemnification and allowance of expenses of employes and agents. A credit union may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided

by the articles of incorporation or bylaws, by general or specific action of the board of directors or by contract.

SECTION 26f. 186.09 of the statutes is renumbered 186.098.

SECTION 26k. 186.091 to 186.096 of the statutes are created to read:

186.091 Insurance. A credit union may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the credit union against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer, regardless of whether the credit union is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 186.083, 186.085, 186.087 and 186.089.

186.093 Definitions applicable to liability-related provisions. In ss. 186.093 to 186.096:

(1) "Credit union" means a cooperative, nonprofit corporation incorporated under s. 186.02 and the Wisconsin credit union savings insurance corporation organized under s. 186.35.

(2) "Director or officer" means a natural person who serves as a director or officer of a credit union, a member of a credit union's credit committee or a trustee of the Wisconsin credit union savings insurance corporation.

186.094 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging his or her duties to the credit union, may rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the credit union whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

186.095 Consideration of interests in addition to members' interests. In discharging his or her duties to the credit union and in determining what he or she believes to be in the best interests of the credit union, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the credit union.

(2) The effects of the action on communities in which the credit union operates.

(3) Any other factors the director or officer considers pertinent.

186.096 Limited liability of directors and officers.

(1) Except as provided in subs. (2) and (3), a director or officer is not liable to the credit union, its members or creditors, or any person asserting rights on behalf of the credit union, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the credit union or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A proceeding brought against a director or officer under s. 186.23, 186.24 (1) or 186.29 (1m) (a).

(b) A civil or criminal proceeding, other than a proceeding described in par. (a), brought by or on behalf of any governmental unit, authority or agency.

(c) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(3) Subsection (2) (b) and (c) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

SECTION 26o. 215.512 to 215.519 of the statutes are created to read:

215.512 Definitions applicable to indemnification and insurance provisions. In ss. 215.512 to 215.521:

(1) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a mutual association.

(b) A natural person who, while a director or officer of a mutual association, is or was serving at the mutual association's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another mutual association or foreign association, cooperation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a mutual association, is or was serving an employee benefit plan because his or her duties to the mutual association also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(2) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(3) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employee benefit plan, and reasonable expenses.

(4) "Mutual association" means a mutual savings and loan association organized under this subchapter and any domestic or foreign predecessor of the mutual association where the predecessor mutual association's existence ceased upon the consummation of a merger or other transaction.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or in the right of the mutual association or by any other person.

215.513 Mandatory indemnification. (1) A mutual association shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the mutual association.

(2) (a) In cases not included under sub. (1), a mutual association shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the mutual association, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the mutual association and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the mutual association or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 215.514.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the mutual association.

(4) (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 215.516.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the mutual association, in connection with the same proceeding.

215.514 Determination of right to indemnification.

Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the mutual association, the director or officer seeking indemnification under s. 215.513 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By members by an affirmative vote of a majority of votes cast in person or by proxy as provided in s. 215.43 (4). Voting rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 215.518.

(6) By any other method provided for in any additional right to indemnification permitted under s. 215.517.

215.515 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a mutual association may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the mutual association with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the mutual association.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the mutual association, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 215.514 that indemnification under s. 215.513 (2) is not required and that indemnification is not ordered by a court under s. 215.518 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

215.516 Mutual association may limit indemnification. (1) A mutual association's obligations to indemnify under s. 215.513 may be limited as follows:

(a) If the mutual association obtains a certificate of incorporation on or after the effective date of this paragraph [revisor inserts date], by the articles of incorporation, including any amendments to the articles of incorporation.

(b) If the mutual association has obtained a certificate of incorporation before the effective date of this paragraph [revisor inserts date], by an amendment to the articles of incorporation with an effective date, as provided in s. 215.41 (5), on or after the effective date of this paragraph [revisor inserts date].

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

215.517 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 215.513 and 215.515 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the mutual association.

(c) A resolution of the board.

(d) A resolution, after notice, adopted by members by an affirmative vote of a majority of votes cast in person or by proxy as provided in s. 215.43 (4).

(2) Regardless of the existence of an additional right under sub. (1), the mutual association may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the mutual association that the director or officer did not breach or fail to perform a duty he or she owes to the mutual associa-

tion which constitutes conduct under s. 215.513 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 215.512 to 215.521 do not affect a mutual association's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the mutual association.

215.518 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the mutual association, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 215.514 (5) or for review by the court of an adverse determination under s. 215.514 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 215.513 (1) or (2). If the court also determines that the mutual association unreasonably refused the director's or officer's request for indemnification, the court shall order the mutual association to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 215.513 (2).

215.519 Indemnification and allowance of expenses of employes and agents. A mutual association may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles of incorporation or bylaws, by general or specific action of the board or by contract.

SECTION 26s. 215.52 of the statutes is renumbered 215.528.

SECTION 26w. 215.521 to 215.525 of the statutes are created to read:

215.521 Insurance. A mutual association may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the mutual association against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer, regardless of whether the mutual association is required or authorized to indemnify or allow expenses

to the individual against the same liability under ss. 215.513, 215.515, 215.517 and 215.519.

215.523 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer of a mutual association organized under this subchapter may, in discharging his or her duties to the mutual association, rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the mutual association whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of which the director is not a member if the director believes in good faith that the committee merits confidence.

215.524 Consideration of interests in addition to members' interests. In discharging his or her duties to a mutual association organized under this subchapter and in determining what he or she believes to be in the best interests of the mutual association, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the mutual association.

(2) The effects of the action on communities in which the mutual association operates.

(3) Any other factors the director or officer considers pertinent.

215.525 Limited liability of directors and officers.

(1) Except as provided in subs. (2) and (3), a director or officer of a mutual association organized under this subchapter is not liable to the mutual association, its members or creditors, or any person asserting rights on behalf of the mutual association, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the mutual association or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A proceeding brought against a director or officer under s. 215.02 (10) or (15), 215.12 or 215.21 (21).

(b) A civil or criminal proceeding, other than a proceeding described under par. (a), brought by or on behalf of any governmental unit, authority or agency.

(c) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(3) Subsection (2) (b) and (c) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

SECTION 26y. 447.15 to 447.38 of the statutes are created to read:

447.15 Definitions applicable to indemnification and insurance provisions. In ss. 447.15 to 447.31:

(1) "Dental society" means a county or district dental society organized or continued under s. 447.12.

(2) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a dental society.

(b) A natural person who, while a director or officer of a dental society, is or was serving at the dental society's request as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of another dental society or corporation, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a dental society, is or was serving an employe benefit plan because his or her duties to the dental society also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(3) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(4) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is brought by or

in the right of the dental society or by any other person.

447.17 Mandatory indemnification. (1) A dental society shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the dental society.

(2) (a) In cases not included under sub. (1), a dental society shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the dental society, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the dental society and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the dental society or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 447.19.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification shall make a written request to the dental society.

(4) (a) Indemnification under this section is not required to the extent limited by the dental society's articles, constitution or bylaws under s. 447.23.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the dental society, in connection with the same proceeding.

447.19 Determination of right to indemnification. Unless otherwise provided by the articles, constitution or bylaws or by written agreement between the director or officer and the dental society, the director or officer seeking indemnification under s. 447.17 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board of directors consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by major-

ity vote of a committee duly appointed by the board of directors and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board of directors or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board of directors, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By an affirmative vote of a majority of members who are entitled to vote and who are present in person or represented by proxy at a meeting at which a quorum is present, if there are members having voting rights. Unless the articles, constitution or bylaws provide otherwise, members holding one-tenth of the votes entitled to be cast, present in person or represented by proxy, shall constitute a quorum at a meeting of members. Membership rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 447.27.

(6) By any other method provided for in any additional right to indemnification permitted under s. 447.25.

447.21 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a dental society may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the dental society with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the dental society.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the dental society, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 447.19 that indemnification under s. 447.17 (2) is not required and that indemnification is not ordered by a court under s. 447.27 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

447.23 Dental society may limit indemnification. (1) A dental society's obligations to indemnify under s. 447.17 may be limited as follows:

(a) If the dental society is organized before the effective date of this paragraph [revisor inserts date], except as provided in s. 447.12 (4), by an amendment to its articles, constitution or bylaws which becomes effective on or after the effective date of this paragraph [revisor inserts date].

(b) If the dental society is organized on or after the effective date of this paragraph [revisor inserts date], except as provided in s. 447.12 (4), by its articles, constitution or bylaws, including any amendments to its articles, constitution or bylaws.

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

447.25 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 447.17 and 447.21 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles, constitution or bylaws.

(b) A written agreement between the director or officer and the dental society.

(c) A resolution of the board of directors.

(d) A resolution, after notice, adopted by a majority vote of members who are entitled to vote.

(2) Regardless of the existence of an additional right under sub. (1), the dental society may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the dental society that the director or officer did not breach or fail to perform a duty he or she owes to the dental society which constitutes conduct under s. 447.17 (2) (a) 1, 2, 3 or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 447.15 to 447.31 do not affect a dental society's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the dental society.

447.27 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the dental society, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination

by the court under s. 447.19 (5) or for review by the court of an adverse determination under s. 447.19 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 447.17 (1) or (2). If the court also determines that the dental society unreasonably refused the director's or officer's request for indemnification, the court shall order the dental society to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 447.17 (2).

447.29 Indemnification and allowance of expenses of employes and agents. A dental society may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles, constitution or bylaws, by general or specific action of the board of directors or by contract.

447.31 Insurance. A dental society may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the dental society against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, or arising from his or her status as an employe, agent, director or officer, regardless of whether the dental society is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 447.17, 447.21, 447.25 and 447.29.

447.34 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer of a county or district dental society organized or continued under s. 447.12 may, in discharging his or her duties to the dental society, rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the dental society whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.

447.36 Consideration of interests in addition to members' interests. In discharging his or her duties to a county or district dental society organized or continued under s. 447.12 and in determining what he or she

believes to be in the best interests of the dental society, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the dental society.

(2) The effects of the action on communities in which the dental society operates.

(3) Any other factors the director or officer considers pertinent.

447.38 Limited liability of directors and officers. (1) Except as provided in subs. (2) and (3), a director or officer of a county or district dental society organized or continued under s. 447.12 is not liable to the dental society, its members or creditors, or any person asserting rights on behalf of the dental society, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the dental society or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A civil or criminal proceeding brought by or on behalf of any governmental unit, authority or agency.

(b) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(3) Subsection (2) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

SECTION 27. 611.07 (2) of the statutes is amended to read:

611.07 (2) EFFECT OF UNAUTHORIZED CORPORATE ACTS. Section 180.06 applies to stock corporations and s. ~~181.05~~ 181.057 applies to mutuals.

SECTION 28. 611.62 (title), (1) and (2) of the statutes are amended to read:

611.62 (title) Directors' and officers' liability and indemnification. (1) LIABILITY. ~~Section~~ Sections

180.303 to 180.307 and 180.40 (1) to (4) applies (4m) apply to stock corporations and s. ss. 181.283 to 181.29 applies apply to mutuals.

(2) INDEMNIFICATION. ~~Section 180.05 applies Sections 180.042 to 180.056 and 180.059 apply~~ to stock corporations and s. ~~181.045 applies ss. 181.041 to 181.051 apply~~ to mutuals but no indemnification may be made until at least 30 days after notice to the commissioner, containing full details about the proposed indemnification.

SECTION 29. 611.62 (3) of the statutes is repealed and recreated to read:

611.62 (3) INSURANCE. Section 180.058 applies to stock corporations and s. 181.053 applies to mutuals.

SECTION 30. 612.03 of the statutes is amended to read:

612.03 General powers and effect of unauthorized corporate acts. Sections 181.04 (intro.), (1) to (8), (10), (11) and (14) to (16) and ~~181.05~~ 181.057 (intro.), (1) and (2) apply to town mutuals. Section 181.04 (7) is subject to s. 612.35.

SECTION 31. 613.07 (2) of the statutes is amended to read:

613.07 (2) EFFECT OF UNAUTHORIZED CORPORATE ACTS. Section ~~181.05~~ 181.057 applies to service insurance corporations.

SECTION 32. 613.62 (title), (1) and (2) of the statutes are amended to read:

613.62 (title) Directors' and officers' liability and indemnification. (1) LIABILITY. ~~Section~~ Sections 181.283 to 181.29 applies apply to service insurance corporations.

(2) INDEMNIFICATION. ~~Section 181.045 applies Sections 181.041 to 181.051 apply~~ to service insurance corporations but no indemnification may be made until at least 30 days after notice to the commissioner, containing full details about the proposed indemnification.

SECTION 33. 613.62 (3) of the statutes is repealed and recreated to read:

613.62 (3) INSURANCE. Section 181.053 applies to service insurance corporations.

SECTION 34. 614.07 (2) of the statutes is amended to read:

614.07 (2) EFFECT OF UNAUTHORIZED CORPORATE ACTS. Section ~~181.05~~ 181.057 (1) and (2) applies to fraternal.

SECTION 35. **Initial applicability.** The treatment of sections 148.23, 180.307, 181.287, 181.297, 185.367, 186.096, 215.525 and 447.38 of the statutes first applies to causes of action which accrue on the effective date of this SECTION.