

1989 Assembly Bill 888

Date of enactment: April 23, 1990

Date of publication*: May 7, 1990

1989 WISCONSIN ACT 306

AN ACT to renumber and amend 187.12; and to create 187.20 to 187.33 of the statutes, relating to: limiting the liability of directors, officers and volunteers of an incorporated Roman Catholic church, and indemnification of those directors and officers.

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

SECTION 1. 187.12 of the statutes is renumbered 187.19, and 187.19 (1), as renumbered, is amended to read:

187.19 (1) BISHOP MAY INCORPORATE. The provisions of this chapter, except this section and ss. 187.20 to 187.33, shall not apply to or in any manner affect the Roman Catholic church or denomination, or any society or religious corporation now existing or which may be organized in connection therewith. The bishop of each diocese, being the only trustee of each Roman Catholic church in his diocese, may cause any or all congregations therein to be incorporated by adding four more members as trustees as hereinafter provided. The bishop and vicar-general of each diocese, the pastor of the congregation to be incorporated, together with two laymen, practical communicants of such congregation (the latter to be chosen from and by the congregation), shall be such trustees.

SECTION 2. 187.20 to 187.33 of the statutes are created to read:

187.20 Indemnification by incorporated Roman Catholic church; definitions. In ss. 187.20 to 187.28:

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

(a) An individual who is serving as a president, vice president, treasurer or secretary of an incorporated Roman Catholic church under s. 187.19 (4) or as a director of an incorporated Roman Catholic church under s. 187.19 (5).

(b) An individual who, while a director or officer of an incorporated Roman Catholic church, is or was serving at the request of the incorporated Roman Catholic church as a director, officer, partner, trustee, member of any governing or decision-making committee, employe or agent of a corporation, partnership, joint venture, trust or other enterprise.

(c) An individual who, while a director or officer of an incorporated Roman Catholic church, is or was serving an employe benefit plan because his or her duties to the incorporated Roman Catholic church 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 of an incorporated Roman Catholic church.

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

(3) "Incorporated Roman Catholic church" means a corporation organized under s. 187.19.

(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 incorporated Roman Catholic church or by any other person.

187.21 Indemnification of directors and officers.

(1) An incorporated Roman Catholic church 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 incorporated Roman Catholic church.

(2) (a) In cases not included under sub. (1), an incorporated Roman Catholic church may 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 incorporated Roman Catholic church, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the incorporated Roman Catholic church and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the incorporated Roman Catholic church 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 an incorporated Roman Catholic church will indemnify a director or officer under this subsection shall be made under s. 187.22.

(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 permitted under this subsection.

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

(4) (a) The obligation of an incorporated Roman Catholic church to indemnify under sub. (1) and its authority to indemnify under sub. (2) may be limited by its articles of incorporation under s. 187.24.

(b) A director or officer may not seek indemnification under this section if the director or officer has previously received indemnification or allowance of expenses from any person, including the incorporated

Roman Catholic church, in connection with the same proceeding.

187.22 Determination of voluntary indemnification. Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the incorporated Roman Catholic church, the director or officer seeking indemnification under s. 187.21 (2) shall select one of the following means for determining whether the incorporated Roman Catholic church will indemnify the director or officer:

(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 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.

(4) By any other method provided for in any additional right to indemnification permitted under s. 187.25.

187.23 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, an incorporated Roman Catholic church may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the incorporated Roman Catholic church 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 incorporated Roman Catholic church.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the incorporated Roman Catholic church, to pay reasonable interest on the allowance to the extent that indemnification is not required under s. 187.21 (1) and that it is ultimately determined under s. 187.22 that the incorporated Roman Catholic church will not indemnify the director or officer under s. 187.21 (2). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted

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

187.24 Authority to limit indemnification. (1) The obligation of an incorporated Roman Catholic church to indemnify under s. 187.21 (1) and its authority to indemnify under s. 187.21 (2) may be limited as follows:

(a) If the incorporated Roman Catholic church 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 incorporated Roman Catholic church 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.

187.25 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 187.21 and 187.23 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 incorporated Roman Catholic church.

(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 incorporated Roman Catholic church 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 incorporated Roman Catholic church that the director or officer did not breach or fail to perform a duty he or she owes to the incorporated Roman Catholic church which constitutes conduct under s. 187.21 (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 187.20 to 187.28 do not affect the power of an incorporated Roman Catholic church 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 incorporated Roman Catholic church.

187.26 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the incorporated

Roman Catholic church, a director or officer who has been successful on the merits or otherwise in the defense of a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines that the director or officer is entitled to indemnification under s. 187.21 (1). If the court also determines that the incorporated Roman Catholic church unreasonably refused the director's or officer's request for indemnification, the court shall order the incorporated Roman Catholic church to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

187.27 Indemnification and allowance of expenses of employes and agents. An incorporated Roman Catholic church 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.

187.28 Insurance. An incorporated Roman Catholic church may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the incorporated Roman Catholic church 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 incorporated Roman Catholic church is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 187.21, 187.23, 187.25 and 187.27.

187.30 Definitions applicable to liability-related provisions. In ss. 187.30 to 187.33:

(1) "Director" means an individual who is serving as a director of an incorporated Roman Catholic church under s. 187.19 (5).

(2) "Incorporated Roman Catholic church" has the meaning given in s. 187.20 (3).

(3) "Officer" means an individual who is serving as a president, vice president, treasurer or secretary of an incorporated Roman Catholic church under s. 187.19 (4).

187.31 Reliance by directors or officers. Unless the director or officer knew or should have known that reliance was unwarranted, a director or officer, in discharging his or her duties to the incorporated Roman Catholic church, 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 incorporated Roman Catholic church whom the director or officer believes in

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good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other professional persons or experts employed by the incorporated Roman Catholic church, 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.

187.32 Limited liability of directors and officers.

(1) Except as provided in sub. (2), a director or officer is not liable to the incorporated Roman Catholic church, its members or creditors, or any person asserting rights on behalf of the incorporated Roman Catholic church, 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 incorporated Roman Catholic church 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) (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. If the incorporated Roman Catholic church operates a cemetery, the liability of a director or officer arising from a breach of, or failure to perform, any duty relating to the receipt, handling, investment or other use of perpetual care funds, maintenance funds or other funds held in trust in connection with the operations of the cemetery.

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

187.33 Limited liability of volunteers. (1) DEFINITION. In this section, "volunteer" means an individual, other than an employe of the incorporated Roman Catholic church, who provides services to or on behalf of the incorporated Roman Catholic church 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 incorporated Roman Catholic church, an act or omission within the scope of the volunteer's duties as a director or officer.

(e) 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 s. 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 3. Initial applicability. The treatment of sections 187.32 and 187.33 of the statutes first applies to causes of action that accrue on the effective date of this SECTION.