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1995 SENATE BILL 561

February 21, 1996 - Introduced by Senators Huelsman, Drzewiecki, Panzer, Rosenzweig, Schultz, Rude, Buettner and Petak, cosponsored by Representatives Brancel, Porter, Kelso, Green, Musser, Otte, Olsen, Freese, Hahn, Zukowski, Gronemus, Goetsch, Baldus, Ladwig, Jensen, Ziegelbauer, Klusman, Vrakas and Ainsworth. Referred to Committee on Judiciary.

AN ACT to amend 187.19 (1); and to create subchapter I (title) of chapter 187 [precedes 187.01], subchapter II (title) of chapter 187 [precedes 187.20] and subchapter III of chapter 187 [precedes 187.40] of the statutes; relating to: limiting the liability of trustees, directors, officers and volunteers of religious organizations.

Analysis by the Legislative Reference Bureau

Current law contains provisions limiting the liability of directors, officers and volunteers of Roman Catholic churches incorporated under certain state law provisions. This bill creates parallel provisions limiting the liability of directors, officers and volunteers of certain other religious organizations.

Under current law, 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 a religious organization, may generally rely on information, opinions, reports or statements prepared by any of the following: 1) an officer or employe of the Roman Catholic church 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 professional persons or experts employed by the Roman Catholic church, as to matters the director or officer believes in good faith are within the person's professional or expert competence; and 3) in the case of 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.

In addition, current law provides that a director or officer is not liable to any 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 liability arises from: 1) a wilful failure to deal fairly 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 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; or 4) wilful misconduct. These protections from liability do not apply with respect to proceedings brought by a governmental unit or agency, to proceedings under a statute creating an express private right of action created by state or federal statute or certain proceedings involving misuse of funds in connection with the operation of a cemetery.

Current law also limits the liability of volunteers of Roman Catholic churches incorporated under certain state law provisions. Generally, 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 act or omission is: 1) a violation of criminal law, unless the volunteer had no reasonable cause to believe his or her conduct was unlawful; 2) wilful misconduct; 3) in the case of a volunteer who 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; or 4) an act or omission for which the volunteer received compensation or anything of substantial value in lieu of compensation. These protections from liability do not apply with respect to proceedings brought by a governmental unit or agency, to proceedings under a statute creating an express private right of action created by state or federal statute, to claims arising from the negligent operation of an automobile, truck, train, airplane or other vehicle by a volunteer, to 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 or to proceedings in which the volunteer is immune from liability under other state law provisions.

This bill creates parallel provisions limiting the liability of directors, officers and volunteers of certain other religious organizations. These provisions apply to associations, conferences, congregations, conventions, committees or other entities that are organized and operated for religious purposes and that are eligible for an exemption from the federal income tax and to subunits of these organizations that are organized and operated for religious purposes. The provisions do not apply to religious organizations that are organized as nonstock corporations organized under state law; however, similar provisions under current law apply to these nonstock corporations.

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

SECTION 1. Subchapter I (title) of chapter 187 [precedes 187.01] of the statutes

is created to read:

CHAPTER 187

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1	SUBCHAPTER I		
2	GENERAL PROVISIONS		
3	Section 2. 187.19 (1) of the statutes is amended to read:		
4	187.19 (1) BISHOP MAY INCORPORATE. The provisions of this chapter, except this		
5	section and ss. 187.20 to 187.33 subch. II, shall not apply to or in any manner affect		
6	the Roman Catholic church or denomination, or any society or religious corporat		
7	now existing or which may be organized in connection therewith. The bishop of ea		
8	diocese, being the only trustee of each Roman Catholic church in his diocese, ma		
9	cause any or all congregations therein to be incorporated by adding four mo		
10	members as trustees as hereinafter provided. The bishop and vicar-general of each		
11	diocese, the pastor of the congregation to be incorporated, together with two		
12	laypersons, practical communicants of such congregation (the latter to be chose		
13	from and by the congregation), shall be such trustees.		
14	Section 3. Subchapter II (title) of chapter 187 [precedes 187.20] of the statute		
15	is created to read:		
16	CHAPTER 187		
17	SUBCHAPTER II		
18	LIABILITY AND INDEMNIFICATION;		
19	ROMAN CATHOLIC CHURCH		
20	Section 4. Subchapter III of chapter 187 [precedes 187.40] of the statutes is		
21	created to read:		
22	CHAPTER 187		
23	SUBCHAPTER III		
24	LIABILITY; OTHER RELIGIOUS		
25	ORGANIZATIONS		

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SECTION 4

187.40	Definitions.	In this	subchapter:
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- (1) "Director" means an individual who is serving as a trustee or director of a religious organization or an individual who is serving in a similar capacity in a religious organization.
- (2) "Religious organization" means an association, conference, congregation, convention, committee or other entity that is organized and operated for a religious purpose and that is eligible for an exemption from federal income tax under 26 USC 501 (c) (3) or (d) and any subunit of such an association, conference, congregation, convention, committee or entity that is organized and operated for a religious purpose, except that "religious organization" does not include any of the following:
 - (a) A Roman Catholic church organized under s. 187.19.
 - (b) A nonstock corporation organized under ch. 181.
- (3) "Officer" means an individual who is serving as a president, vice president, treasurer or secretary of a religious organization or who is serving in a similar office in a religious organization.
- 187.41 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 a religious organization, 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 religious organization 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 professional persons or experts employed by the religious organization, 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 governing body of the religious organization of which the director is not a member if the director believes in good faith that the committee merits confidence.
- 187.42 Limited liability of directors and officers. (1) Except as provided in sub. (2), a director or officer is not liable to the religious organization, its members or creditors, or any person asserting rights on behalf of the religious organization, 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 religious organization 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 religious organization 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.
- **187.43** Limited liability of volunteers. (1) In this section, "volunteer" means an individual, other than an employe of the religious organization, who provides services to or on behalf of the religious organization without compensation.
- (2) 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 the 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 religious organization, an act or omission within the scope of the volunteer's duties as a director or officer.

1	(d) An act or omission for which the volunteer received compensation or any
2	thing of substantial value in lieu of compensation.
3	(3) (a) Except as provided in par. (b), this section does not apply to any of the
4	following:
5	1. A civil or criminal proceeding brought by or on behalf of any governmental
6	unit, authority or agency.
7	2. A proceeding brought by any person for a violation of state or federal law
8	where the proceeding is brought pursuant to an express private right of action
9	created by state or federal statute.
10	3. Claims arising from the negligent operation of an automobile, truck, train,
11	airplane or other vehicle by a volunteer.
12	4. A proceeding against a volunteer who is licensed, certified, permitted or
13	registered under state law and which is based upon an act or omission within the
14	scope of practice under the volunteer's license, certificate, permit or registration.
15	5. Proceedings based upon a cause of action for which the volunteer is immune
16	from liability under s. $146.31\ (2)$ and (3) , 146.37 , 895.44 , 895.48 , 895.482 , 895.51 or
17	895.52.
18	(b) Paragraph (a) 1. and 2. does not apply to a proceeding brought by or on
19	behalf of a governmental unit, authority or agency in its capacity as a contractor.
20	187.44 Applicability of other liability provisions. This subchapter does
21	not affect any powers and privileges granted under s. 187.01 (2) to religious societies
22	formed under s. 187.01.

(END)